

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**CASE NO. : W.P. NO.3449-2015**

**Professor Dr. Zafar Iqbal**

**Vs.**

**Federal Urdu University of Arts, Sciences and Technology,  
Islamabad through its Registrar etc.**

**Petitioner by : Mr. Bilal Ahmad, Advocate**  
**Respondents by : Mr. Atta Ullah Hakim Kundi, Advocate**  
**Mr. Afnan Karim Kundi, Additional**  
**Attorney General**  
**Date of hearing : 15.06.2017**

**AAMER FAROOQ J.** The petitioner is aggrieved of his removal from service by the respondents in pursuance of the Inquiry Report dated 16.07.2015.

2. The facts, leading to the filing of instant petition, are that the petitioner was appointed as Vice Chancellor of Federal Urdu University of Arts, Sciences and Technology, Islamabad through Notification dated 31.01.2013 by the competent authority i.e. the Chancellor/President of Pakistan under section 12 of Federal Urdu University of Arts, Sciences and Technology, Islamabad Ordinance, 2002 (the Ordinance). On 20.12.2014, in the 26<sup>th</sup> meeting of the Senate of respondent University, it was alleged that there are irregularities and mismanagement in the affairs of the University therefore the petitioner was sent on forced leave for a period of three months and a Five Members' Inquiry Committee/Review Panel was constituted to probe into the charges of inefficiency

and misappropriation of University's resources and misconduct by the Vice Chancellor-petitioner, Registrar and the Treasurer. In pursuance of the recommendations of the Senate on 29.01.2015, a Five Members' Committee was constituted. On 02.06.2015, in its first meeting of the Committee when the petitioner was present before it, the matter was adjourned to 12.06.2015 as adjournment was sought on behalf of complainant, which was allowed. On 19.06.2015, affidavits were filed by the complainant/respondent No.1 and the petitioner was ordered to file the counter-affidavits within fifteen days by 04.07.2015. The mandate of the Inquiry Committee was extended for another period of three months i.e. 30.09.2015. On 04.07.2015, a request for adjournment was made on behalf of petitioner for a period of 30-days to file counter-affidavits however, the same was turned down rather seven days time was allowed and the matter was adjourned to 11.07.2015. On 16.07.2015, the Inquiry Committee rendered its finding by holding the petitioner guilty of corruption, mismanagement and involved in financial irregularities. On 01.08.2015, respondent No.4 acting on behalf of respondent No.1, issued a notice for 28<sup>th</sup> meeting of the Senate which was convened on 08.08.2015 for *inter alia* consideration of the report by the Inquiry Committee. In the referred meeting, the Senate considered the report and the same was reaffirmed. On 10.08.2015, respondent No.2 removed the petitioner from the post of Vice Chancellor of respondent University in terms of Section 12(5) of the Ordinance.

3. Learned counsel for the petitioner, *inter alia*, contended that the petitioner was not afforded ample opportunity to present his case. In this behalf it was contended that the affidavits and the documents attached with the petition were voluminous and the time afforded to the petitioner to file counter-affidavits and present his case was scanty. It was further contended that Inquiry Committee did not apply its independent mind in evaluation of the contents of the complaint and the evidence and the petitioner was also not afforded any opportunity to cross-examine the witnesses on behalf of complainant or rebut the documents. It was also submitted that under S.12(5) of the Ordinance it was mandatory for the Senate of the University to provide opportunity of hearing which was not done; that no notice regarding meeting of Senate was served on petitioner. Reliance was placed on University of Dacca versus Zakir Ahmed (PLD 1965 SC 90); Babar Hussain Shah versus Mujeeb Khan (2012 SCMR 1235); State Bank of Patiala versus S.K. Sharma (AIR 1996 Supreme Court 1669); Euro Duty Free Shop (Pvt.) Ltd. versus Federation of Pakistan (2015 PTD 790); Council of Civil Servants versus Minister for Civil Service [1984] 3 ALL ER 935 and Padfield and others versus Minister of Agriculture, Fisheries and Food and others [1968], ALL ER 674.

4. Learned counsel for respondent University contended that ample opportunity was afforded to the petitioner to present his case. It was further contended that there is no violation of law

nor principles of natural justice hence no interference is required in the impugned orders.

5. The facts, leading to the filing of instant petition, have been mentioned with brevity hereinabove therefore need not be reproduced.

6. The sole grievance of the petitioner is that he has not been provided ample opportunity for presenting his case either before the Inquiry Committee, which concluded that the petitioner is liable for misconduct, or Senate of the University which recommended removal of petitioner from service. The Inquiry Committee, after its constitution, settled the terms of reference on 12.06.2015 containing in it the allegations against the petitioner. On the said date, the petitioner was present but the matter was adjourned for filing of the affidavits by the complainant as evidence to the allegations. On 19.06.2015, the affidavits were filed along with requisite documents and the copies of the same were provided to the learned counsel for the petitioner. The matter was adjourned for filing of counter-affidavits within fifteen days i.e. till 04.07.2015. On 04.07.2015, a request for 30-days was made for filing of counter-affidavits which was turned down but seven days time period was allowed; on 11.07.2015, yet another request for adjournment was made, which was turned down. The Committee, in light of the fact that no evidence was produced in rebuttal, proceeded to decide the matter and was of the opinion that the allegations against the

petitioner, stood proved. The Senate, in its 28<sup>th</sup> meeting after deliberating the report, recommended removal of petitioner from the post of Vice Chancellor of respondent University and the competent authority passed the order on 10.08.2015, under section 12(5) of the Ordinance.

7. In the above facts and circumstances, the Inquiry Committee did provide ample opportunity to the petitioner however despite the same, he did not file anything in defence and sought adjournments, one after the other. In this behalf, the terms of reference were settled on 12.06.2015 and the affidavits were filed on 19.06.2015, but till 11.07.2015, the petitioner neither submitted reply to the terms of reference nor any counter-affidavit.

8. The petitioner has been terminated from service by the Chancellor of respondent University under section 12(5) *ibid*, which reads as follows: -

*“The Senate may, pursuant to a resolution in this behalf passed by three-fourths of its membership, recommend to the Chancellor the removal of the Vice-Chancellor, provided that where the Review Panel set up by the Chancellor in terms of section 8 of the Ordinance has reported gross misconduct by the Vice-Chancellor, including misuse of position for personal advantage of any kind, the Senate may, pursuant to a resolution in this behalf passed by two-thirds of its membership, recommend to the Chancellor the removal of the Vice-Chancellor;*

*Provided further that prior to the resolution for the removal of the Vice-Chancellor being voted upon the Vice-Chancellor shall be given an opportunity of being heard. The Senate may recommend the removal of the Vice-Chancellor on the ground of misuse of position for personal advantage,*

*inefficiency, moral turpitude or physical or mental incapacity”*

The bare perusal of the above provision shows that the Senate, with three-fourth of its Membership, may recommend the removal of petitioner from service however where a Review Panel constituted has reported gross misconduct on behalf of Vice-Chancellor (the petitioner), the Senate, with two-thirds majority may recommend to the Chancellor the removal of the Vice-Chancellor however, prior to voting for referred recommendation, Vice-Chancellor is to be granted an opportunity of hearing. Admittedly the petitioner did not appear before the Senate. In this behalf the minutes of the 28<sup>th</sup> meeting do indicate that intimation was sent to the petitioner however proof of referred intimation has not been appended with the instant petition. The respondents with reply to the instant petition, have appended copies of the notices regarding 28<sup>th</sup> meeting apparently published in the dailies ‘The Nation, Karachi’ dated 05.08.2015 and ‘The Express, Islamabad’ dated 06.08.2015 as well as email to the petitioner however no proof of personal service of the notice to him has been appended. The respondents were required to take extra caution in ensuring the service of notice, to the petitioner, for meeting of Senate as it is a statutory requirement under Section 12(5) *ibid* to provide an opportunity of hearing to Vice Chancellor before voting on resolution for recommending his removal. The Senate if had decided in 28<sup>th</sup> meeting to refer the matter for putting it to

resolution for recommending removal was again required to issue and serve notice on the petitioner as the requirement under the law is to provide opportunity of hearing to the Vice Chancellor before voting on the resolution recommending removal from service. Therefore, mere issuance of notice regarding 28<sup>th</sup> meeting was not sufficient as till then it had not been decided by the Senate that voting on resolution recommending removal shall take place; it was only after deliberation on the report of Inquiring committee the Senate decided to vote on resolution for dismissal from service. By now, it is settled that principles of natural justice are applicable to judicial as well as administrative proceedings. In case reported as 'The University of Dacca through its Vice-Chancellor and Another Vs. Zakir Ahmed' (PLD 1965 Supreme Court 90), the august Apex Court observed as follows:-

*"This Court has already had occasion to point out in at least three cases, namely, in the cases of the Chief Commissioner, Karachi v. Mrs. Dina Sohirab Katrak (PLD 1959 S C (Pak.) 45), Faridsons Limited v. Government of Pakistan (PLD 1961 SC 537) and Abdur Rahman v. Collector and Deputy Commissioner, Bahatwalnagar and others (PLD 1964 SC 461) that in all proceedings by whomsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting "the person or property or other right of the parties concerned." This rule applies even though there may be no positive words in the statute or legal document; whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness.*

*From a careful review of the decisions cited before us it appears that wherever any person or body of persons is empowered to take decisions after ex post facto investigation into facts Which would result in consequences affecting the person, property or other right of another*

*person, then in the absence of any express words in the enactment giving such power excluding the application of the principles of natural justice, the Courts of law are inclined generally to imply that the power so given is coupled with the duty to act in accordance with such principles of natural justice as may be applicable in the facts and circumstances of a given case.*

*What these principles of (natural justice are it is not possible to lay down with any exactness, for, they have been variously, defined in various cases, as was pointed out by the Judicial Committee in the case of the University of Ceylon v. Fernando.*

*Nevertheless, the general consensus of judicial opinion seems to be that, in order to ensure the "elementary and essential principles of fairness" as a matter of necessary implication, the person sought to be affected must at least be made aware of the nature of the allegations against him, he should be given a fair opportunity to make any relevant statement putting forward his own case and "to correct or controvert any relevant statement brought forward to his prejudice.*

*Such a person or authority can obtain information in any way it thinks fit, provided it gives a fair opportunity to the person sought to be affected to correct or contradict any relevant statement prejudicial to him. In other words, "in order to act justly and to reach just ends by just means" the Courts insist that the person or authority should have adopted the above "elementary and essential principles" unless the same had been expressly excluded by the enactment empowering him to so act"*

In case reported as 'Babar Hussain Shah and another versus Mujeeb Ahmad Khan and another' (2012 SCMR 1235), the Honourable Supreme Court of Pakistan held as follows:-

*"Although in the present case, the name of the authorized representative, who had filed his Vakalatnama in the Lahore High Court, Rawalpindi Bench at the time of filing of the petition appeared in the cause list but we are of the view that it is of no consequence whatsoever because the Vakalatnama was given to him to appear before the Lahore High Court, Rawalpindi Bench and not for Islamabad High Court, therefore, the issuance of notice to the petitioner was necessary before the case could be dismissed for non-*



*prosecution. Therefore, the order of dismissal for non-prosecution has all the ingredients of an order passed in violation of the principles of natural justice. Although from the very inception the concept of fair trial and due process has always been the golden principles of administration of justice but after incorporation of Article 10-A in the Constitution of the Islamic Republic of Pakistan, 1973 vide 18th Amendment, it has become more important that due process should be adopted for conducting a fair trial and order passed in violation of due process may be considered to be void. Collector, Sahiwal and 2 others v. Muhammad Akhtar.*

*As far as due process is concerned, this Court in the case of "New Jubilee Insurance Company Limited, Karachi v. National Bank of Pakistan, Karachi (PLD 1999 SC 1126)", while summarizing the term due process of law relied on the judgment of this Court in the case of "Aftab Shahban Mirani v. President of Pakistan (1998 SCMR 1863)", wherein this Court held as under:--*

*.....*

*(2) He shall be given reasonable opportunity to defend.*

*....*

*(4) ..... A person cannot be said to have been given a fair and proper trial unless he is provided a reasonable opportunity to defend the allegation made against him"*

In case reported as 'State Bank of Patiala and others versus S.K. Sharma' (AIR 1996 Supreme Court 1669) Supreme court of India observed as follows:-

*"(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice—or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action—the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between 'no opportunity' and no adequate opportunity, i.e., between 'no notice'/'no hearing' and 'no fair hearing' (a) In the*

*case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one choose to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem) (b) But in the latter case, the effect of violation (of a facet of the rule of audit alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query"*

In case reported as 'Euro Duty Free Shop (Pvt.) Ltd. versus Federation of Pakistan and others' (2015 PTD 790), this Court observed as follows:-

*10. At this stage it is also relevant to briefly mention the minimum requirements for observing due process of law. The Honourable Supreme Court in case of "Muhammad Nadeem Arif and others v. Inspector General of Police, Punjab, Lahore and others" reported as 2011 SCMR 408, has summarized the minimum requirements of due process of law as follows:--*

*.....*

*(b) reasonable opportunity to defend shall be given;*

*.....*

*.....*

*It is further to be noted that 'hearing' is to be meaningful, particularly when some action detrimental to the rights of citizens is to be taken. A hearing held in a mechanical or perfunctory manner cannot be treated a hearing for the purposes of due process of law. This Court concurs with the meaning of 'hearing' elaborated by the Lahore High Court in case of "Maqbool Ahmed and others v. District Officer (R) and others" reported as PLD 2010 Lahore 332. For convenience the relevant portion is reproduced as below:--*

*"Hearing is not a mere mechanical and perfunctory ritual or a desultory cosmetic requirement that has to be hurriedly complied with. There is a deeper meaning to a hearing. Hearing first of all requires that the person*

*against whom the action is proposed is made a part of the decision making process and the officer exercising discretion has given due weightage to the submissions made during the hearing.....”*

In case reported as ‘Council of Civil Service Unions and others Vs. Minister for the Civil Service [1984] 3 All ER 935, the House of Lords, while elaborating grounds of judicial review of administrative action, observed as follows: -

*“My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognized in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.*

*By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided”*

In case reported as ‘Padfield and others Vs. Minister of Agricultural Fisheries and Food and Others [1968 1 All ER 694, it was held as follows: -

*“What is a fair procedure in relation to any particular decision depends upon all the circumstances, including the subject matter of the decision, its importance to the person*

*particularly affected and the interests of the public in general”*

9. Since the petitioner has been removed from service and it was his right, under the law, that an opportunity of hearing was to be granted to him which was not done hence recommendations of the Senate are in violation of the proviso to sub-section (5) of section 12 of the Ordinance therefore the same are not tenable. The referred action of the Senate falls in categories of illegality and procedural impropriety therefore amenable to judicial review. The Chancellor acted on the recommendations of the Senate which, as observed above, are not sustainable.

10. In view of above, instant petition is allowed and the recommendations of the Senate regarding the termination of the petitioner from service are set aside along with the order by the Chancellor removing him accordingly; consequently, the Senate of the respondent University, shall convene a meeting after due intimation to the petitioner and provide him an opportunity of hearing, where-after shall make appropriate recommendations/decide the issue accordingly.

**(AAMER FAROOQ)**  
**JUDGE**

Announced in Open Court on 12.09.2017

**JUDGE**

Zawar

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