

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

W.P.No.3017/2017  
Prof. Dr. Abdul Waheed  
**Versus**

Rector, COMSATS Institute of Information Technology,  
Islamabad and others

**Date of Hearing:** 25.09.2018  
**Petitioner by:** Mirza Waqas Qayyum, Advocate.  
**Respondents by:** Mr. Abid Hassan, Advocate.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Professor Dr. Abdul Waheed, impugns the order dated 07.04.2017, whereby the petitioner's employment contract was terminated. The petitioner also impugns the order dated 18.07.2017, whereby the petitioner's appeal against the said order dated 07.04.2017 was dismissed.

2. The record shows that on 06.12.2010, the petitioner was appointed as a Director in COMSATS Institute of Information Technology ("CIIT") on contract basis for a period of one year. The renewal of the said employment contract beyond a period of one year was dependent on the further needs of CIIT. Under clause-8 of the petitioner's employment contract, the same could be terminated by either side upon a notice of at least three months. Clause-8 of the said employment contract also provided that termination due to gross misconduct as determined by CIIT could be at any time with immediate effect, and with no notice period. Termination through latter mode entitled the employee to three months' salary. It is not disputed that the petitioner accepted the terms and conditions of the said employment contract dated 06.12.2010.

3. After allegations of corruption, malpractice, and misuse of authority were levelled against various employees of CIIT, including the petitioner, a committee was constituted to probe into the said allegations. The said committee, in its report dated

09.08.2016, recommended disciplinary proceedings to be taken against the petitioner and other employees of the CIIT under the CIIT Employees' Efficiency and Discipline Statutes, 2006 ("the 2006 Statutes"). It appears that subsequently another committee was constituted through notification dated 17.10.2016 to conduct a *de novo* inquiry against the petitioner. Perusal of the inquiry report dated 21.12.2016 shows that the inquiry committee afforded the petitioner an opportunity of personal hearing. The conclusion drawn in the said report was that the petitioner was a poor administrator and did not properly monitor his staff to whom he had assigned various duties. Furthermore, it was found that a handsome amount had been claimed by the petitioner as TA/DA for his travels. The purpose of such travels was not stated in the petitioner's claims for TA/DA. The said inquiry committee proposed that the petitioner's claim for TA/DA should be further investigated.

4. After the report of the *de novo* inquiry was examined by the Minister for Science and Technology, who was also the Chancellor of CIIT, CIIT was advised to terminate the petitioner's employment contract in terms of clause-8 thereof, and to recover the excess amount paid to him as TA/DA. Consequently, vide office order dated 07.04.2017, the petitioner's employment contract was terminated in terms of clause-8 thereof. The said office order makes express reference to the directions given by the Chancellor of CIIT on the basis of the report of the *de novo* inquiry. It was also mentioned that the excess amount of the TA/DA drawn by the petitioner was to be recovered after investigation.

5. The petitioner's departmental appeal against the said office order dated 07.04.2017 was dismissed by the Chancellor of CIIT on 18.07.2017. The said office order as well as the Chancellor's decision on the petitioner's departmental appeal have been impugned by the petitioner in the instant writ petition.

6. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the

petitioner's termination from service had stigmatized him; that no regular inquiry was conducted against the petitioner in accordance with the 2006 Statutes, especially paragraphs-16 to 22 thereof; that the procedure prescribed for conducting an inquiry against an employee of CIIT had not been observed in the case at hand; that neither was any show cause notice nor any charge sheet issued to the petitioner; that no charge was framed against the petitioner as required by Statute 16(a) of the 2006 Statutes; that the impugned office order dated 07.04.2017 is not a simple termination order pursuant to clause 8 of the petitioner's employment contract but conveys an impression adverse to the petitioner's interest; that the said order dated 07.04.2017 was issued on the directions of the Chancellor of CIIT, whereas the competent authority for terminating the petitioner's employment was the Board of CIIT; and that in terms of the provisions of the CIIT Employees Service Statutes, 2009, the petitioner's employment stood confirmed after two years of continuous service. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

7. On the other hand, learned counsel for the CIIT submitted that at all material times, the petitioner's employment with CIIT was contractual in nature; that the petitioner's contractual employment was never regularized or confirmed; that the period of the petitioner's contractual employment has been extended from time to time; that since the petitioner was a contractual employee, he could not file a writ petition against the termination of his employment contract; that there were serious allegations of corruption, malpractice and misuse of authority against the petitioner; that in the two inquiry reports, there were adverse findings against the petitioner; that this Court could not thrust the petitioner on CIIT which was unwilling to employ him; that there was no infirmity in the inquiry proceedings conducted against the petitioner; that the petitioner was afforded an opportunity of a hearing by the inquiry committees; that section 11(4) of the COMSATS Institute of Information Technology Ordinance, 2000,

provides that the Chancellor may, on receipt of a report, issue such directions as he thinks fit and the Rector shall comply with such directions; that the impugned office order dated 07.04.2017 was issued on the basis of directions issued by the Chancellor under section 11(4) *ibid*; and that there was no legal infirmity in the orders impugned in the instant writ petition. Learned counsel for the CIIT prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

9. The facts leading to the filing of the instant petition have been set out in sufficient details in paragraphs 2 to 5 and need not be recapitulated.

10. There is no denying the fact that on 06.12.2010, the petitioner was employed as a Director in CIIT on contract basis for a fixed term. Clause 2 of the petitioner's employment contract provides that the term of the petitioner's appointment would expire on 30.06.2012. Although there is nothing on the record to show that the term of the petitioner's contractual employment was extended, it is not disputed that the petitioner continued his employment with CIIT until the issuance of the impugned office order dated 07.04.2017. There is also nothing on the record to show that the petitioner's employment was converted from a contractual to a regular one.

11. The CIIT Employees Service Statutes, 2009, provide *inter-alia* that the services of CIIT's employees shall be confirmed after two years of continuous service if the post and appointment are substantive and the work and conduct of the employee is found satisfactory by the appointing authority, by offering an extended contract for four years or more. This provision only speaks of the duration of a contract employment to be extended but there is nothing in the said Statutes for a contractual employment to be converted into a regular one by simple efflux of time. It must be appreciated that contractual employment does not transform into a regular employment by simple efflux of time, without a specific

regularization order or a provision in the employment contract providing for a contractual employment to become regular after lapse of a specified period. Therefore, it is safe to hold that at all material times until the issuance of the impugned office order dated 07.04.2017, the petitioner's employment with CIIT was contractual in nature.

12. Now, it is well settled that it is a master's prerogative to terminate a servant's contractual appointment if the former does not find the latter's performance to be satisfactory. Such termination can take place in accordance with the terms and conditions of the employment contract. A contractual employee cannot insist for a regular inquiry to be held regarding the employer's satisfaction with the employees' performance. It is also well settled that a contractual employee cannot file a writ petition seeking his reinstatement in service. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, can neither declare the termination of the petitioner's contractual employment to be unlawful nor hold that the petitioner's employment contract continues to subsist. Where a contractual appointment is terminated without any stigma, a writ petition is not maintainable. The contractual nature of the petitioner's employment made his relationship with CIIT as that of master and servant. The terms of petitioner's employment contract empowered CIIT to terminate his employment by giving three months' notice or three month's salary in lieu of such notice. Ordinarily, if an employee feels that the termination of his employment contract was unlawful or based on *malafides*, at best he can file a suit for damages against his employer, subject to law. In support of this view, there is a catena of case law, including the cases of Chairman NADRA, Islamabad Vs. Muhammad Ali Shah (2017 SCMR 1979), Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132), Federation of Pakistan through Secretary Law Justice and Parliamentary Affairs Vs. Muhammad Azam Chatha (2013 SCMR 120), Trustees of the Port of Karachi Vs. Saqib Samdani

(2012 SCMR 64), Syed M. Yahya Vs. First Credit and Investment Bank Limited (2009 UC 656), and Muhammad Waqas Gul Vs. Water and Power Development Authority (2015 PLC (C.S.) 144).

13. The only exception to the principles mentioned above is where a contractual employee is stigmatized by the order whereby his employment contract is terminated; and where such an order is passed without conducting a regular inquiry against the employee. This is because where termination involves a stigma it amounts to punishment.

14. The impugned office order dated 07.04.2017 provides that the petitioner's employment was terminated in terms of paragraph 8 of the terms and conditions of his appointment. The said paragraph 8 of the petitioner's employment contract is reproduced herein below:-

*"At least three months notice is required to terminate this contract by either side. On immediate leaving of CIIT by the employee, three months salary will have to be deposited. However, he will be required to complete all his responsibilities and duties, before he is relieved. Termination due to gross misconduct as determined by the CIIT would at any time be with immediate effect, with no notice period. However, he will be entitled to three months salary."*

15. There was nothing preventing the CIIT to have terminated the petitioner's employment pursuant to clause 8 of the employment contract dated 06.12.2010. All that CIIT had to do was to have issued a three months notice to the petitioner. This, however, CIIT did not do. The said office order dated 07.04.2017 provides that the petitioner's employment contract was terminated on the directions of the Chancellor of CIIT on the basis of the report of the *de novo* inquiry. It was also mentioned that the excess amount of TA/DA drawn by the petitioner was to be recovered from him after investigation by the treasurer of CIIT. It is my view that the said termination order cannot be said to be without any stigma.

16. Clause 8 of the said contract also provided that the petitioner's employment contract could be terminated due to gross misconduct without any notice but by giving him three

months' salary. It is my view that the determination of misconduct committed by the petitioner could only be made after a regular inquiry in accordance with the 2006 Statutes of CIIT. The procedure for conducting an inquiry against an officer of CIIT has been laid down in paragraphs 16 to 22 of the 2006 Statutes.

17. It is an admitted position that the petitioner was alleged to have committed corruption, malpractice, and misuse of authority. Paragraph 16 of the 2006 Statutes requires the authorized officer to frame a charge and communicate the same along with the statement of allegations to the employee requiring him to put his defence in writing and state whether he desires to be heard in person. Paragraph 17 of the said Statutes *inter-alia* entitles the employee to cross-examine the witnesses produced against him. Paragraph 19 of the said Statutes requires the inquiry committee to submit a report within a period of one month after the filing of the reply to the charge sheet or statement of allegations. Paragraph 21 of the said Statutes requires the Inquiry Committee to submit its findings to the authorized officer in four parts i.e. summary of the course; proceedings; findings; and recommendations. Paragraph 22 of the said Statutes mandates that the members of the Inquiry Committee shall be senior against whom the inquiry is conducted.

18. There is nothing on the record to show that either a charge sheet or the statement of allegations was issued to the petitioner. The record is also silent as to whether the petitioner was given an opportunity to cross-examine the witnesses produced against him, if any. At no material stage, was any show cause notice issued to the petitioner. In other words, the procedure prescribed in the 2006 Statutes for conducting an inquiry against an employee accused of corruption or misconduct had not been adhered to by the CIIT in proceeding against the petitioner. It would, therefore, be safe to hold that a regular inquiry against the petitioner had not been conducted in accordance with the 2006 Statutes before the issuance of the office order dated 07.04.2017. Since the said office order had stigmatized the petitioner; and

since an inquiry in accordance with the 2006 Statutes had not been conducted against the petitioner, the orders impugned in the instant petition are not sustainable. In holding so, I derive guidance from the law laid down in the following judgments:-

- (i) In the case of The Secretary, Government of Punjab Vs. Riaz-ul-Haq (1997 SCMR 1552), it has been held as follows:-

*“7. Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct.”*

- (ii) In the case of Aleem Jaffar, Ex-Line Superintendent, WAPDA Vs. WAPDA (1998 SCMR 1445), it has been held that even in the case of a temporary employee whose service is liable to be terminated on thirty days notice or pay in lieu thereof on either side, his services cannot be terminated on the basis of misconduct without holding a proper inquiry. Furthermore, it was held that if the termination order conveys a message of any stigma, the employee cannot be ousted from service without resorting to the procedure of Efficiency and Discipline Rules.
- (iii) In the case of Muhammad Amjad Vs. WAPDA (1998 PSC 337), the Hon'ble Supreme Court held that even a contract employee cannot be terminated without the recourse of regular inquiry if his termination is on account of some misconduct.
- (iv) In the case of Rai Zaid Ahmad Kharal Vs. Water and Power Development Authority (2008 PLC (C.S.) 1005), it has been held as follows:-



***“4. There is no cavil from the proposition that a contract employee cannot claim to be retained in service for indefinite period over and above the contract time but simultaneously it is well-settled law laid down by the apex Court that if the termination order is of a simplicitor termination then of course the aggrieved person cannot agitate against simple termination but if the termination order attaches stigma as in the present case then the employee should not have been condemned unheard.”***

- (v) In the case of Dr. Muhammad Ibrahim Vs. Secretary Health (2009 PLC (C.S.) 741), it has been held by the Hon'ble Lahore High Court as follows:-

***“By now it is well-settled proposition of law that if services of any employee are dispensed with on account of any misconduct or other allegations and if he denies the same in that eventually a regular inquiry is a must. This principle equally applies to all employees whether ad hoc, contract, contractual or permanent. No distinction can be drawn between them, for the simple reason that every employee has a right to defend himself, to get the stigma removed.”***

- (vi) In the case of Lt. Col. (Retd.) Sultan Zeb Khan Vs. Board of Governors, Fazle Haq College, Mardan (2015 PLC (C.S.) 1385), the Division Bench of the Hon'ble Peshawar High Court has held as follows:-

***“We may observe that there is a marked distinction between the simpliciter termination of service in accordance with terms and conditions of appointment and the termination of service on the ground of misconduct. No doubt if a person is employee on contract basis and the terms of employment provides the manner of termination of his service, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a contract employee, would be entitled to a fair opportunity to clear his position. It means that in case of stigmatize termination there must be a regular inquiry in terms of Efficiency and Disciplinary Rules.”***

Law to the said effect has also been laid down in the cases of Muhammad Riaz Vs. Medical Superintendent, Service Hospital, Lahore (2016 PLC (C.S.) 296, Faisal Sultan Vs. E.D.O. (Education) (2011 PLC (C.S.) 419) and Rana Asif Nadeem Vs. Executive District Officer, Education, District Nankana (2008 PLC (C.S.) 715).

19. In view of the aforementioned, the instant petition is allowed, and the impugned office order dated 07.04.2017 and the appellate order dated 18.07.2017 are set-aside. CIIT is at liberty to proceed against the petitioner in terms of the provisions of the employment contract dated 16.12.2010 and the law referred to above. For the period between 07.04.2017 and the date on which this judgment is announced, the petitioner shall be treated as on leave without pay. There shall be no order as to costs.

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(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON 08/10 2018.

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(JUDGE)

**APPROVED FOR REPORTING**

*Qamar Khan\**

Uploaded By :- Engr. Umer Rasheed Dar