

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

W.P.No.1316 of 2016  
Dr. Muhammad Usman  
**Versus**

COMSATS Institute of Information Technology

**Date of Hearing:** 18.11.2016  
**Petitioner by:** Hafiz S.A. Rehman, Advocate,  
**Respondent by:** Mr. Abid Hassan, Advocate.

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**MIANGUL HASSAN AURANGZEB, J:-** In the instant writ petition, instituted by Dr. Muhammad Usman against the respondent (COMSATS Institute of Information Technology), the following relief has been prayed for:-

*"It is, therefore, most respectfully prayed that the writ petition graciously be accepted and appropriate orders may kindly be passed directing the respondent institute to:-*

- i) Notify the charge assumption report made on 31.08.2015.*
- ii) Assign the duties as Assistant Professor in Mathematics CIIT.*
- iii) Release his salary and allowances w.e.f. 31-08.2015*
- iv) Approve ex-post facto ex-Pakistan leave for Post Doctoral Research at Stockholm University, Sweden.*
- v) Renew the service contract with Hon'ble conditions to enable the petitioner to complete service as laid down in the Bond and*

*It is further prayed that any other relief which this Hon'ble Court may deem fit and proper be also granted accordingly."*

2. The essential facts gathered from the voluminous record are that on 16.10.2006, the petitioner was appointed as a Research Associate in the Department of Mathematics at the respondent/institute on contract basis for a period of one year. The petitioner's appointment letter expressly provided that his services could be terminated by giving one month's notice. The petitioner's appointment was said to be purely temporary, and if not renewed, before the expiry of the contract period, it was to terminate automatically.

3. In 2007, the petitioner was selected by the respondent for an award of scholarship for MS at King's College London (University of London), United Kingdom. The terms and conditions on which the scholarship was granted were set out in the agreement dated 16.08.2007, executed between the

petitioner and the respondent. The petitioner's tuition fees, maintenance allowance, air-fare, etc., were to be paid by the respondent. The scholarship was for a period of one year, subject to the petitioner's satisfactory academic performance. The scholarship could be renewed/extended for a maximum duration of 12 months.

4. One of the terms of the said agreement was that the petitioner could not extend the specified period of studies without the prior approval of the respondent. Furthermore, the petitioner was bound to return to Pakistan and report to the respondent not later than sixty days of the completion of the duration of the scholarship program. After his return to Pakistan, the petitioner was under an obligation to serve with the respondent on full time basis for at least three years. In the said agreement, the petitioner acknowledged that the respondent would stand to suffer immensely if it was not able to benefit from the petitioner's services on full time basis for at least three years upon his return after the completion of the period of the scholarship program. The said agreement also contained a covenant that in case the petitioner breaches any of the terms and conditions of the agreement or he fails to return to Pakistan and serve with the respondent, the petitioner would pay to the respondent a penalty prescribed by the respondent, besides compensating the respondent by making a refund of the total amount of the expenditure including the travel cost incurred on him.

5. After the petitioner was granted ex-Pakistan study leave from 20.09.2007 to 19.09.2008, he proceeded to the United Kingdom. A few years later, the respondent asked the petitioner to update the respondent on his current status. The respondent complained that the petitioner had neither applied for an extension of his ex-Pakistan leave nor informed the respondent about the progress in his studies. Vide e.mail dated 10.05.2012, the petitioner responded and informed the Administrative Officer of the respondent/institute that he had completed his MS from King's College London in September, 2008, and that he was in his

final year of Ph.D at the Imperial College, London. Furthermore, the petitioner took the position that he was in touch with the Department of Mathematics at the respondent/institute.

6. On 17.05.2012, the petitioner's contractual appointment was extended up to 30.06.2015, and his ex-Pakistan leave was extended up to 19.09.2012. But it was not until 04.03.2013 that the petitioner returned to Pakistan and reported for duty at the respondent/institute. On 03.05.2013, the petitioner was appointed as an Assistant Professor in the Department of Mathematics at the respondent/institute for a period of three years with effect from 04.03.2013. The respondent's Office Order dated 06.05.2013 confirms that the petitioner assumed the position of Assistant Professor in the Department of Mathematics with effect from 04.03.2013. After serving as an Assistant Professor for just two months, the petitioner, on 06.05.2013, again applied for ex-Pakistan leave from 13.05.2013 to 31.10.2013, to join his wife, who was in her 3rd year of Ph.D. at Imperial College, London. Apparently, the petitioner's wife's studies abroad were also sponsored by the respondent. On 07.05.2013, the petitioner was granted ex-Pakistan leave for a private visit to London up to 31.10.2013.

7. On 15.08.2013, while the petitioner was abroad, he again applied for ex-Pakistan leave from 01.11.2013 to 31.08.2015, so as to avail an offer for post-doctoral research at the Stockholm University, Sweden. On 06.09.2013, the petitioner's request for an extension in his leave period was turned down by the respondent. Vide letter dated 08.11.2013, the respondent once again informed the petitioner that his request for an extension in ex-Pakistan leave for post-doctoral studies had not been approved by the competent authority. Furthermore, the petitioner was directed to resume his duties at the respondent/institute. The petitioner did not return to Pakistan, and on 20.10.2013, requested the Rector of the respondent/institute to grant him ex-Pakistan leave up to 31.08.2015.

8. On 16.12.2013, the petitioner was issued a notice by the respondent to show-cause as to why a major penalty should not be imposed on him due to his misconduct in failing to resume his duties. Another such show-cause notice was sent to the petitioner on 10.02.2014. Vide e-mail dated 05.03.2014, the petitioner informed the respondent that he had submitted an appeal to the Rector of the respondent/institute. On 02.06.2015, a legal notice was issued to the petitioner on behalf of the respondent calling upon the petitioner to refund US Dollars 6,440/-, Pounds Sterling 77,225/- and Pakistan Rs.2,94,917/- expended by the respondent/institute on the petitioner's studies in the United Kingdom. The petitioner, in his reply to the said legal notice, took the position that he was under the impression that his application for ex-Pakistan leave would be approved so that he could join the post-doctoral research at the Stockholm University. Furthermore, the petitioner stated that he would return to Pakistan on 30.08.2015, and shall resume his duties at the respondent/institute. By this time a final notice had been issued to the petitioner, calling upon the petitioner to show cause as to why the penalty of removal from service should not be imposed on him.

9. The petitioner claims that he returned to Pakistan and attended the respondent/institute for the resumption of his duties on 31.08.2015. Thereafter, the petitioner applied for the allocation of a teaching course at the respondent/institute. On 05.10.2015, the petitioner again requested the respondent for the assignment of a course. He also complained against not being paid any salary. The petitioner asked the respondent to issue a notification regarding the resumption of his duties with effect from 31.08.2015. On 19.10.2015, the petitioner filed an 'appeal' before the Rector of the respondent. In this 'appeal', the petitioner sought (i) the regularization/sanction of his Ex-Pakistan leave for post-doctoral studies at the Stockholm University, Sweden; (ii) the issuance of a notification regarding the resumption of his duties with effect from 31.08.2015; and (iii) the re-fixation of his salary according to his experience, and its

release. Vide e.mail dated 02.02.2016, the respondent informed the petitioner that the department did not know about his rejoining. Again vide e-mails dated 07.02.2016, and 03.03.2016, the petitioner requested the respondent to assign him a course and to release his salary. Having not received any favourable response from the respondent, the petitioner invoked the jurisdiction of this Court by filing the instant writ petition.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:**

10. Hafiz S.A. Rehman, A.S.C., learned counsel for the petitioner submitted that the petitioner is a highly qualified person; that on account of his intellectual abilities in the field of Mathematics, he was selected for the award of a scholarship to do his MS leading to a Ph.D degree at King's College, London; that the petitioner executed an agreement with the respondent in which he agreed to return to Pakistan after completing his studies, and serve at the respondent/institute; that the petitioner after obtaining his MS degree from King's College London, got admission at the Imperial College for Ph.D; that all this was in the respondent's knowledge, which granted ex-post facto approval of the extension in his ex-Pakistan leave; that on 10.07.2012, the respondent approved the petitioner's ex-Pakistan leave up to 19.09.2012; that the petitioner was successful in obtaining a Ph.D degree, whereafter he returned to Pakistan and resumed his duties with the respondent on 04.03.2013; that on 03.05.2013, the petitioner was appointed as an Assistant Professor in the Department of Mathematics at the respondent/institute; that on 06.05.2013, the petitioner again applied for ex-Pakistan leave until 31.10.2013 on personal grounds; that while the petitioner was in the United Kingdom, he got an offer for post-doctoral studies at the University of Stockholm, Sweden; that in order to pursue post-doctoral research, the petitioner, on 05.08.2013, applied for ex-Pakistan leave up to 31.08.2015; that the petitioner's application for ex-Pakistan leave was unlawfully turned down by the respondent; that the petitioner appealed to the Rector of the respondent for the grant of ex-Pakistan leave for post-doctoral studies, but received no response; that show

cause notices were unlawfully issued to the petitioner; that the petitioner attended the respondent/institute on 31.08.2015 to resume his duties; that the petitioner in compliance with his obligations under the agreement dated 16.08.2007 wants to serve the respondent, but the respondent is unwilling to employ the petitioner; that the petitioner should have been granted ex-post facto approval of ex-Pakistan leave up to 31.08.2015; and that the petitioner should be given an assignment at the respondent/institute, and his salary should be released. Learned counsel for the petitioner further submitted that the respondent has not exercised its discretion in a fair and reasonable manner, and therefore, had violated the law laid down in the case of Tariq Aziz ud Din- Human Rights Case No.4834/2009 (2010 SCMR 1301), I.A. Sharwani Vs. Government of Pakistan (1991 SCMR 1041), Shrin Munir Vs. Government of Punjab (PLD 1990 Supreme Court 295), and Pakistan Vs. Muhammad Himayat Ullah Farouqi (PLD 1969 SC 407).

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:**

11. Mr. Abid Hassan, Advocate, learned counsel for the respondent submitted that the petitioner was a contractual employee, whose employment contract expired on 03.03.2016; that the petitioner is no longer in the respondent's employment; that the respondent has no intention to extend the petitioner's contractual appointment; that the petitioner breached the terms of the agreement dated 16.08.2007 by not returning to Pakistan after completing the course for which he was sent on a scholarship; that one of the reasons why the petitioner was granted a scholarship was that upon the completion of his course he would return to Pakistan and serve at the respondent/institute for three years; that the petitioner stayed abroad despite the completion of his course without an extension in his ex-Pakistan leave; that the petitioner proceeded for his post-doctoral studies at Stockholm University, without the respondent's authorization; that the petitioner resumed his duties at the respondent/institute on 04.03.2013, even though he had been awarded his Ph.D degree the pervious year; that the

petitioner was appointed as an Assistant Professor in the respondent's Mathematics Department for a period of three years with effect from 04.03.2013; that on 06.05.2013, the petitioner applied for ex-Pakistan leave from 13.05.2013 to 31.10.2013, on personal grounds; that the petitioner was granted ex-Pakistan leave for the said period; that while the petitioner was abroad, he again applied for leave from 01.11.2013 to 31.08.2015 for his post-doctoral studies at Stockholm University, Sweden; that the respondent did not grant further leave to the petitioner, and asked him to resume his duties in accordance with the terms and conditions of the agreement dated 16.08.2007; that since the petitioner did not return to Pakistan, the respondent issued show cause notices dated 16.12.2013 and 10.02.2014; that since the petitioner did not resume his duties, a final show cause notice dated 17.07.2015 was issued to the petitioner requiring him to show cause as to why the major penalty of removal from service should not be imposed on him on account of his misconduct; that the petitioner's contractual employment expired during the pendency of the disciplinary proceedings against him; that the petitioner invoked the jurisdiction of this Court after the expiry of his contractual employment on 03.03.2016; and that at no material stage, was the petitioner granted any approval to remain abroad beyond 31.10.2013. The learned counsel for the respondent prayed for the writ petition to be dismissed.

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

13. The facts leading to the filing of the instant petition are set out in sufficient detail in paragraphs 2 to 9 above and need not be recapitulated.

14. The agreement dated 16.08.2007 between the petitioner and the respondent explicitly provides that immediately after the completion of the scholarship program, the petitioner shall return to Pakistan and resume his employment at the respondent/institute for at least three years. In this regard,

clauses (viii) to (x) of the said contract, are reproduced herein below:-

- "viii) The Scholar shall return to Pakistan and physically report to CIIT without any loss of time immediately after completion of the duration of the scholarship program, in any case not later than sixty (60) days of the said completion of the scholarship program.*
- ix) The Scholar shall resume the employment/service of CIIT on full-time basis and, upon his return to Pakistan as aforesaid, he/she shall, at the discretion of CIIT, serve CIIT full-time for at least three (3) years commencing from the date of his joining/resumption of duties CIIT after his/her reporting to CIIT as aforesaid --the said period is hereby acknowledged by the Scholar as reasonable and fair in the circumstances.*
- x) Till the expiry of the aforementioned period of three 3 years:*
  - a) The Scholar shall serve CIIT with dedication and shall utilize his/her best skills knowledge and judgment in so serving CIIT."*

15. The scholarship was granted to the petitioner for a period of one year which could be extended for a maximum duration of 12 months. Although, the ex-Pakistan leave granted to the petitioner was only for a period of one year (i.e. up to 19.09.2008), the petitioner continued to stay in the United Kingdom and got admission at Imperial College London for a Ph.D degree. As late as May, 2012, Mr. Ahmad Hafeez, the Administrative Officer at the respondent/institute, asked the petitioner about the progress in his studies. It was brought to the petitioner's notice that he had not applied for an extension in his ex-Pakistan leave beyond 19.09.2008. On the petitioner's application dated 10.05.2012, he was granted ex-Pakistan Leave up to 19.09.2012. For the period between 20.09.2008 to 16.05.2012, the respondent granted the petitioner ex-post facto ex-Pakistan leave. The petitioner again stayed abroad beyond the period for which he was granted ex-Pakistan leave. The petitioner returned to Pakistan and reported for duty at the respondent/institute on 04.03.2013. On 03.05.2013, the petitioner was appointed as an Assistant Professor in the Department of Mathematics at the respondent/institute for a period of three years with effect from 04.03.2013. Just two days after that, the petitioner again applied for ex-Pakistan Leave from 13.05.2013 to 31.10.2013 to join his wife in the United Kingdom. The petitioner



did not return to Pakistan upon the expiry of this leave period. While in the United Kingdom, he applied for ex-Pakistan leave from 01.11.2013 to 31.08.2015 for post-doctoral research at Stockholm University, Sweden. Vide e-mails dated 06.09.2013, and 26.09.2013, and letter dated 08.11.2013, the petitioner was informed that his request for ex-Pakistan leave for post-doctoral studies had not been approved by the competent authority. Furthermore, the petitioner was asked to resume his duties at the respondent/institute. The petitioner did not return to Pakistan, and proceeded for his post-doctoral studies. The petitioner was issued notices dated 16.12.2013 and 10.02.2014, calling upon him to show cause as to why disciplinary proceedings for misconduct should not be initiated against him. He was again asked to resume his duties at the respondent/institute. On 16.07.2015, the petitioner was issued a final notice to show cause as to why the major penalty of dismissal from service should not be imposed upon him.

16. The petitioner tried to justify his stay abroad beyond 31.10.2013 on the ground that he had applied/appealed to the Rector of the respondent/institute for the grant of ex-Pakistan leave. The mere fact that he had made such an application was no justification for him to stay beyond the sanctioned period of his ex-Pakistan leave. He could not have ignored the respondent's e-mails and in particular the letter dated 08.11.2013, wherein the petitioner was clearly informed that his application for ex-Pakistan leave for post-doctoral studies had not been approved by the competent authority.

17. It is well settled that when an employee does not return to Pakistan and report for duty after the expiry of the ex-Pakistan leave period, he can be proceeded against for willful absence from duty. In the case at hand, the petitioner should have returned on or before 31.10.2013 (i.e. when his ex-Pakistan leave period expired), but he stayed abroad for more than one year and four months beyond the said date. Reference to the following case-law on this aspect of the case would be apposite:-

- (i) In the case of Chairman, WAPDA Vs. Tabassum Zaib (2002 SCMR 692), the petitioner was granted leave, but she did not join her duty upon the expiry of the leave period. Her request for an extension in the leave period was declined and she was asked to resume her duty. Instead of joining her duty, she continued to absent herself in order to pursue higher education. She was issued a show cause notice, and after her employer observed the codal formalities, she was removed from service. An appeal against her removal was allowed by the Services Tribunal by converting the punishment of 'removal from service' into 'compulsory retirement'. The Hon'ble Supreme Court of Pakistan allowed her employer's appeal and restored the penalty of removal from service. Furthermore, it was held as follows:-

*“6. Surprisingly, in instant case, Service Tribunal observed that respondent is guilty of misconduct on account of her prolonged absence from duty but without assigning justifiable reasons reduced her sentence of removal from service into compulsory retirement merely for the reason that higher education received by her and the experience which she has on her credit would be beneficial for WAPDA in future. This reason itself cannot be considered to be justifiable in any manner because respondent after availing long leave did not opt to join service and even without caring to make arrangements for extension of leave opted to remain absent from duty and on account of her such conduct the Department decided to remove her from service on account of misconduct and once she is removed from service or is not allowed to join duty on account of compulsory retirement, in both cases, she would not serve the WAPDA. As such for such reason alone conversion of punishment of removal from service into compulsory retirement is not sustainable. Therefore, we are of the opinion that the impugned judgment warrants interference by this Court.”*

- (ii) In the case of Asjid Hussain Vs. Chief Engineer (Administration) Power, WAPDA (2011 SCMR 1102), the Hon'ble Supreme Court of Pakistan upheld the decision to remove an officer from service, because he had absented himself from duty after the expiry of his sanctioned ex-Pakistan study leave.

- (iii) In the case of Muhammad Ilyas Sheikh Vs. Secretary/Chairman Ministry of Railways (2011 SCMR 1429), the petitioner's application for extension in leave had been rejected by his employer. In spite of that, the petitioner did not resume his duties or make himself available for personal hearing, because he was abroad. The petitioner was removed from service after dispensing with a regular inquiry. The Hon'ble Supreme Court of Pakistan upheld the dismissal from service with the observation that since the petitioner had proceeded abroad, he could not make any grouse regarding the dispensation of a regular inquiry.
- (iv) In the case of Iftikhar Ahmed Malik Vs. Secretary, Ministry of Petroleum and Natural Resources (2005 SCMR 806), the petitioner was dismissed from service on the charge of misconduct after a comprehensive inquiry. One of the charges against the petitioner was that he had stayed abroad for about one year without being sanctioned ex-Pakistan leave. The Services Tribunal converted the penalty from dismissal from service into removal from service. The Hon'ble Supreme Court upheld the decision of the Services Tribunal.

18. In the case at hand, even though show cause notices were issued to the petitioner, he was at no material stage dismissed from service. Since the petitioner's employment contract with the respondent had expired on 03.03.2016, perhaps the respondent did not feel the need to proceed further against the petitioner. Nevertheless, the petitioner's failure to resume his duties after the expiry of his sanctioned ex-Pakistan leave was a serious matter. Such conduct on the part of the petitioner certainly disentitled him to seek the issuance of a writ of *mandamus*, in effect directing the respondent to ignore the petitioner's absence from duty for one year and ten months, and let him work for the remaining period of his contractual employment. The respondent already extended ample concession to the petitioner by letting him stay abroad for a

period way beyond the scholarship program. Though the petitioner remained abroad in pursuit of higher education, the fact remains that he had bound himself in a contract of employment with the respondent, which contract he was expected to honour.

19. It is an admitted position that the petitioner upon his return to Pakistan in March, 2013, was appointed as an Assistant Professor by the respondent for a period of three years. This three-year period expired on 03.03.2016. It is certainly not the petitioner's prerogative to choose the portion of this contract period in which to serve. He was supposed to work for this entire period of three years unless he was granted leave by the competent authority. The petitioner's absence from duty from 01.11.2013 to 31.08.2015, was unauthorized. The petitioner cannot, under any canon of law, justice or equity, insist that the respondent should condone his absence from duty for the said period or to award him another contract. The respondent, after all, did in fulfillment of its obligations under the agreement dated 16.08.2007 appoint the petitioner as an Assistant Professor in the Department of Mathematics for a period of three years. It may be mentioned that the petitioner's scholarship agreement dated 16.08.2007 is annexed at Page 29 of the respondent's written comments. The document at Page 70 of the writ petition is not the petitioner's scholarship agreement.

20. The learned counsel for respondent acknowledged that the petitioner had returned to Pakistan as a highly accomplished doctor of philosophy, but he submitted with regret that no exception could be made by the respondent for the petitioner as it would set a terrible precedent and would be an impetus to other scholarship holders to breach their contractual obligations by staying abroad beyond the period for which they were sponsored by the respondent. I would tend to agree with him. In the case of Zafar Hameed Vs. NESCOM (2016 MLD 647), it has been held by the Hon'ble Peshawar High Court that no leniency should be shown to those persons who proceed for studies

abroad on scholarship and violate their agreements/bonds by not returning to Pakistan after completion of their studies.

21. For the foregoing reasons, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs. Should the respondent institute a suit for recovery of money against the petitioner, the observations herein shall not in any way prejudice the petitioner.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017**

**(JUDGE)**

**APPROVED FOR REPORTING**

Qamar Khan\*

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