

## **JUDGMENT SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**W.P. No. 1706/2020.**

Freeha Amna

*Versus*

Federation of Pakistan, etc.

**Petitioner by:** Mr. Arif Ch., Advocate.

**Respondents by:** Barrister M. Mumtaz Ali, AAG.  
Mr. Shahid Habib, Advocate for HEC.  
Mr. Nauman Munir Paracha, Advocate for  
NUML, Islamabad.

**Date of Decision:** 06.08.2020.

**MOHSIN AKHTAR KAYANI, J:** Through this Writ Petition, the petitioner has prayed for issuance of direction to respondents No.2 to 5 to issue final award of scholarship to the petitioner for admission in Ph.D in University of Hamburg, Germany and also process her case for grant of study leave without pay and reimburse amount deposited by the petitioner for taking admission in the University from her personal account.

2. Brief facts referred in the instant writ petition are that petitioner after qualifying M.A (English), was appointed as lecturer in Islamia University of Bahawalpur on 26.09.2007 and performed her duties in the said university. However, in the year 2017 respondent No.3 invited applications for the award of scholarship for faculty of public sector universities that have HRD component in their PSDP projects advertised by HEC for 17 universities. In order to enlist in the said program petitioner applied through an application and she successfully obtained provisional offer of acceptance dated 03.09.2018 after getting zero salary contract from the NUML University. The petitioner in terms of said program has to secure the admission in Ph.D, whereby she successfully obtained admission in the Macquarie University, Australia in MS leading to Ph.D program for four

years, however, petitioner was informed by the HEC to secure the admission of Ph.D program within the scope of PC-I. The petitioner arranged her second admission in the University of Limerick, Ireland but no agreement existed between HEC and aforementioned university, therefore, petitioner was informed that she has to arrange admission in accordance with offer given by HEC in the provisional letter and she has been informed through the said letter to arrange such admission before 31.12.2019. The petitioner after hectic efforts got admission in Hamburg University, Germany and even managed the admission through her own finances but she has been denied further benefit of the scholarship scheme of the HEC due to timeline notified by the HEC i.e. 31.12.2019.

3. Learned counsel for the petitioner contends that petitioner has made hectic efforts, even she is working with zero pay contract at NUML, after leaving her permanent job from Islamia University of Bahawalpur to get scholarship and even she succeeded in getting admission on merit, hence she could not be deprived of her right of future education under the program of HEC especially when alternate candidate has not been selected, nor any offer of scholarship has been given to any other candidate against the seat; that case of petitioner for admission in foreign university could not be managed due to Covid-19, which has global effect and all the universities were closed; that petitioner successfully achieved the admission in the Australian university as well as in the university of Ireland but HEC objected which resulted into delay and there is no fault on the part of petitioner.

4. Conversely, learned counsel for the HEC contends that offer of scholarship for Ph.D to the petitioner is provisionally and is time bound subject to get admission in the foreign university at her own but petitioner has failed to get admission and in such type of cases alternate candidates are given scholarship, however, alternate candidate has not yet been given scholarship on

behalf of petitioner which requires complete selection process through concerned committee.

5. Learned counsel for the NUML contends that petitioner has entered into zero salary contract with respondent university and she has given the undertaking that she will perform her duties in the university after her successful completion of Ph.D program and as such she met the eligibility criteria for the faculty program, however, contract awarded to the petitioner has been extended from time to time till this date and university has nothing to do with the scholarship program except that the petitioner was appointed on zero salary contract which is an administrative action and her appointment contract has been extended.

6. Arguments heard, record perused.

7. Perusal of record reveals that petitioner has successfully achieved overseas scholarship for Ph.D for faculty development for period of four years from spring 2019 session whereas petitioner has been selected through process adopted and notified by the HEC from 2017-2019 after leaving her permanent job from Islamia University of Bahawalpur. She also entered into contract with NUML/respondents No.4 & 5 on zero salary contract for the purpose of achieving scholarship for Ph.D and as such contract is in field.

8. The record further reflects that petitioner has initially arranged her admission in Australian University for MS leading to Ph.D program for four years. The said university was though in list of HEC under the agreement but only for Ph.D program for three years, therefore, petitioner was informed to arrange admission in another university, consequent thereupon petitioner after hectic efforts arranged the admission in Ireland University but the same has no agreement with HEC. Resultantly, she was again notified to arrange the admission in the university having agreement with HEC on or before 31.12.2019. The petitioner after her hectic efforts got admission in University of Hamburg

but due to Covid-19 pandemic around the globe the universities working have been suspended and matter of admission has been delayed, even the cases with HEC have not been regulated in manner required for such type of programs. It has not been denied that petitioner was given provisional award of scholarship for Ph.D under project and matter was referred to Scholarship Management Committee, which was taken up in meeting dated 04.10.2019, however, the committee has given the following decision:-

*Ms. Fareeha Shahid, is the scholar who has yet to proceed abroad. She has MRes leading to PhD admission offer from Macquarie University, Australia which is not only beyond the scope of PC-I but also not covered under the agreement between HEC and Macquarie University, Australia. The time extension granted by NUML to secure PhD admission abroad will expire by December 31, 2019. If the candidate is unable to acquire admission as per conditions of award letter viz direct admission to PhD abroad, the university shall withdraw the provisional offer and extended the scholarship to next alternate candidate, if any, recommended by this SMC. The committee agreed that any vacant scholarship slot will not be re-advertised further and project will be closed at the reduced scope.*

9. The above referred decision of the Scholarship Management Committee clearly spells out that petitioner has put serious efforts in getting her admission firstly in Australian University and then in the university of Ireland but she was directed to arrange the admission on or before 31.12.2019 otherwise offer will be withdrawn. The petitioner at last has succeeded to get admission in University of Hamburg but despite that she could not achieve the requisite scholarship.

10. By taking into consideration all these factors, this Court confronted the counsel for HEC as to whether any other alternate candidate has been selected for the same program, who has secured the admission and was allowed to proceed abroad for scholarship, whereby learned counsel for HEC has taken categorical stance that alternate candidate has not been given provisional offer of this scholarship and as such scholarship is still in the field.

11. Keeping in view the mandate given in the scholarship program and other hardships faced by the petitioner in the entire process especially when she has resigned from her permanent job from Islamia University of Bahawalpur and entered into contract with NUML on zero salary on the direction of HEC and arranged admission in Australian University and then second admission in Ireland University which was not in the list of HEC, though the admission in Australian university, has contract with HEC but the program offered by the said university is for four years, which is beyond PC-I of HEC, and at last she has succeeded to get admission in the University of Hamburg having agreement with HEC, although, the same has been somewhat delayed but there is no fault of petitioner rather she is victim of circumstances beyond her control. She could not be blamed for third party acts, her resilience and efforts to get admission are apparent on record and if at this stage she is deprived of her legitimate right of expectation for scholarship program it amounts to abuse of process by the State entities.

12. There is no denial that scholarship management committee has fixed the cutoff date in case of petitioner as 31.12.2019 but there is not a single letter through which it could be justified by HEC or NUML that such date was notified and conveyed to the petitioner, even then the date so fixed by the scholarship management committee if assumed to be final, they have not yet processed the case of alternate candidate, who is second in the list, even no provisional offer for Ph.D program has been given to the alternate candidate and as such no right has been accrued in favour of alternate candidate. All these circumstances lead this Court to an irresistible conclusion that petitioner has made hectic efforts for getting her admission in the third university by her own financial resources, which reflects her efforts which she earned on merits after a long process. Therefore, it is not justified to deprive the petitioner from her hard earned right by fixing the timeline as 31.12.2019 as fixed by the Scholarship Management

Committee. In such type of situation, the Courts are bound to protect the rights of the individuals/citizens of Pakistan who are not able to achieve their rights from the State functionaries for no fault on their part. Article 4 read with Articles 9 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 provide due protection to the petitioner and her right of admission could not be denied as it amounts to negation of right to life.

13. Even otherwise, it is the constitutional mandate to be observed in all spheres of life where women have been given equal opportunity and fair chance to participate in all spheres of life, especially a woman like petitioner who has achieved the merit selection for Ph.D scholarship program of HEC through a long process, therefore, clog placed by the Scholarship Management Committee through timeline 31.12.2019 is set aside to that extent only with direction to the Scholarship Management Committee, HEC to process the case of the petitioner within period of three (03) months. Similarly, respondents No.4 & 5 are also directed to facilitate the case of petitioner to be processed, no adverse order be passed against the petitioner, if she is required to go through further requirements of the scholarship program. It is expected from the HEC to act/exercise parental jurisdiction while considering the case of petitioner on sympathetic and humanitarian grounds by extending the timeline for completion of codal formalities within next three (03) months.

14. Instant writ petition stands accepted in above terms.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid