

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. W.P No.34140/2015

Dr. Kumail Abbas Rizvi VS University of Punjab etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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20.12.2016 Mrs. Rabbiya Bajwa, Adv. for the Petitioner.
Ch. Aamir Mahmood, Legal Advisor University of Punjab.
Mr. Ashfaq Ahmad Kharal, Assistant Advocate General.

Through this constitutional petition, the Petitioner has assailed Notification dated 1.10.2014 whereby Respondent No.4 intimated the Petitioner about fate of meeting of Syndicate held on 29.08.2015, whereby it did not accept the resignation of the Petitioner w.e.f. 01.08.2011, and terminated the Petitioner from the Punjab University service w.e.f. 06.08.2011 through the impugned order dated 01.10.2015.

2. Brief facts for the disposal of this constitutional petition are that the Petitioner was appointed as Lecturer at Hailey College of Commerce and he applied for two-years Ex-Pakistan Study Leave (without pay) to resume his duties on HEC overseas scholarship for Masters leading to PHD Studies at the University of Paris. The said application of the Petitioner was approved as requested by the Respondent No.3. Subsequently, the Petitioner came back to Pakistan in 2011 and tendered his resignation to Respondent No.2. He was offered promotion to the post of Assistant Professor, but the Petitioner refused to accept the same with thanks and ultimately name of Petitioner was removed from

the faculty list on the college website. Eventually vide letter dated 23.09.2014 issued by the Respondent No.4, the Petitioner was removed from service and his lien from the post of lecturer was terminated on account of alleged absence from duty. The Petitioner approached Respondent No.2 through written application dated 2.10.2014 for acceptance of previously tendered resignation in lieu of termination from service, which was declined vide impugned office order dated 1.10.2015. Hence this constitutional petition.

3. The learned counsel for the Petitioner argued that the Petitioner came back to Pakistan from France and tendered his resignation on 1st August 2011 to the Vice Chancellor which was forwarded to the concerned authorities and reached the Additional Registrar but instead of accepting his resignation he received the termination letter dated 23rd September 2014. The counsel further stated that Petitioner immediately approached the Respondent No.2 to clarify his position and requested to rectify the mistake of not accepting his resignation on time but the Respondents declined his requested and terminated him with a non speaking order without hearing him, hence, violated Article 4 of the Constitution of Pakistan, 1973 (the "Constitution") under which it is Petitioner's inalienable right to be treated with law and to enjoy the protection of law and the Respondents cannot take any action detrimental to the reputation of the Petitioner except under the law. Lastly, the counsel argued that that the impugned order is also not a speaking order with reasons and passed against the Article 10-A of the Constitution in which the Petitioner has a fundamental right of a fair trial and a due process of law. In support of her contention, she has placed reliance upon **Qaiser Zaman v. Federal Board Of Revenue, Islamabad**

and others (2015 PLC (CS) 243), whereby the Hon'ble Supreme Court of Pakistan in the identical situation did not maintain the findings of the departmental authority and/or the order of the learned Tribunal passed on the ground of limitation, which orders have adverse effect on the career of the appellant, and directed the Secretaries, Establishment Division and Cabinet Division to ensure that the resignation cases of the Civil Servants be immediately processed and the concerned Civil Servant be also informed about its fate forthwith as per Rules. The delinquent officers/officials who cause delay in processing such cases be made accountable and proceeded against departmentally.

4. The Respondents in their report and parawise comments in para-6 has admitted that *“only due to inadvertence or for the reasons best known by the then Additional Registrar-I, who instead of accepting the resignation of Dr. Syed Kumail Abbas Rizvi, initially advised him not to resign. It is only on account of not processing his case, that the Syndicate in its meeting held on 29.08.2015 terminated his lien from the post of Lecturer.”* It is also reflected from perusal of comments submitted by the respondents that *“The impugned notification is the result of inadvertence as resignation of the petitioner did not reach his personal file and was also not processed. However, considering his case as one of absence from duty, the matter was placed before the Syndicate before the Competent Authority which eventually terminated the lien of the petitioner.”* When confronted with the Respondent's counsel, whether the impugned order is sketchy and non-speaking, the counsel frankly conceded.

5. It is reflected from perusal of record that Petitioner after his repatriation, moved his resignation from the

position of Lecturer to the Respondent No.2 on 01.08.2011 for its acceptance. It is to be noted that the said resignation application was officially received on 19.08.2011 and then forwarded to the concerned Registrar on 19.08.2011. This application was not decided and was kept aside, without any reason. However, the Syndicate in its 1714th Meeting (the 'Meeting') held on 29 August 2015 wrote which is as follows:

“Thereafter, he submitted his resignation to the Principal, Hailey College of Commerce with effect from 01.08.2011 which was sent to the Vice-Chancellor who marked it to the Registrar. Record shows this resignation reached to the then Additional Registrar-I, Prof. Dr. Aurangzeb Alamgir who did not process it on the reason best known to him. As the resignation of Mr. Kumail Abbas Rizvi did not reach to his personal file, therefore, as per record, Mr. Kumail Abbas Rizvi was considered absent from his duties since 06.08.2011.

Regarding the performance of the Petitioner it has been written in the Meeting as follows:

“His performance was exceptionally good. As he was already doing Ph.D., he requested for leave for the completion of his studies. He did not receive any scholarship funds from the University for Ph.D studies. Further, he was on leave without pay. His leave was, therefore, approved. On completion of his Ph.D, he came back, joined Punjab University and then resigned from Punjab University service being an unconfirmed employee till that time.

In the said Meeting it was further written regarding the resignation of the Petitioner which is as follows:

“The Additional Registrar-I (Dr. Kamran Abid) replied that the statement of Mr. Rizvi itself showed that his resignation reached the table of Dr. Aurangzeb Alamgir, the then Additional Registrar-I who called upon Mr. Rizvi in his

office and advised him not to resign and thereafter, the resignation did not see day light till today. Therefore, responsibility lies with the then Additional Registrar-I who did not process his resignation.”

6. Despite what is written above, the Syndicate did not approve the request of the Petitioner and terminated his lien from the post of Lecturer Hailey College of Commerce and declared the Petitioner absent w.e.f. 06.08.2011. Moreover, the Syndicate also initiated civil proceedings against the Petitioner and his surety for breach of contract (surety bond) amount of liquidated damages Rs.10,00,000/-. Subsequently, the Syndicate in its Meeting held on 29.08.2015 disapproved the request of the Petitioner for acceptance of his resignation w.e.f 01.08.2011 instead of his termination from Punjab University service w.e.f 06.08.2011.

7. From the facts above and after examining the record appended with the instant petition, it is to be noted that the said state of affairs demonstrate that resignation of the Petitioner was tendered on 01.08.2011 and the Respondents without any legal justification, for no fault on part of Petitioner declared him as absent from duty since 06.08.2011 and terminated his lien from the post of the Lecturer from the said date. The Petitioner is qualified person and from the issuance of impugned notification, his future has been stigmatized for no fault on his part. The termination letter is of two line and has been passed without giving detailed reasons for terminating the services. It was the mistake of the Respondent for not accepting the resignation on time. The work of Petitioner has been appreciated by the Respondent in its 1714th Meeting on 29 August 2015 by holding that the performance of the Petitioner is exceptionally good but then terminating him,

lowers his dignity in the public life. It is fundamental right of the Petitioner to be treated by the Respondent with dignity under Article 14 of the Constitution, which is reproduced hereunder:

*“14. Inviolability of dignity of man, etc.---(1)
The dignity of man and, subject to law, the
privacy of home, shall be inviolable.”*

8. Hon’ble Mr. Justice (R) Fazal Karim in book *“Judicial Review of Public Action”* explains that the Clause (1) of Article 14 of the constitution has two parts; the first part guarantees the dignity of man and the second part guarantees the privacy of home. While the dignity of man is an absolute right and “is not subject to law but is an unqualified guarantee”, the right to privacy of home is subject to law. The dignity of man and privacy of home appear to run into each other; they are rights related one with the other and that is the reason that they have been dealt with together in Clause (1) of Article 14 of the constitution. Further, the honorable superior courts of Pakistan in various judgments has established that the right to dignity is one of the cardinal principles of law and most valuable right, to be observed in every civilized society and more particularly in a country which claims to be an Islamic Country because the human values are to be guarded and protected. This principle is required to be extended further to the cases where any violation of the right to dignity is caused, because the human dignity, honour and respect is more important than physical comforts and necessities.

9. It has been held in the case of **Liaqat Ali Chughtai v. Federation Of Pakistan through Secretary Railways and 6 others** (PLD 2013 Lahore 413) that dignity of man

was that valued and serene condition in a person's social and individual life which was violated when he was, publicly or privately, subjected by another to offensive and degrading treatment, or when he was exposed to ill-will ridicule disesteem or contempt. However, dignity in humans involved the earning or the expectation of personal respect or of esteem and it was something that was inherently a person's God-given inalienable right that deserved to be protected and promoted by the Government and the community. Human dignity was in itself enshrined as the corner stone of society from the very beginning of civilization and was the foundation, the cause and end of all social institutions, therefore, all social institutions, governments, States, laws, human rights and respect for persons originated from the concept of dignity of man or his personhood. Any attempt to undermine the dignity of a human being would also undermine the very foundation and support upon which an orderly society was structured. (*University of Pretoria v. Tommie Meyer Films (Edms) Bpk 1979 1 SA 441(A). and Jean Frederic Ponoo v. Attorney-General [2010] SCCC 4 rel.*) It was further held in *Liaqat Ali Chughtai ibid* case that value of human dignity was not only concerned with an individual's sense of self-worth, but also constituted an affirmation of the worth of human beings in the society and included the intrinsic worth of human beings shared by all people as well as the individual reputation of each person built upon his or her own individual achievements. Value of human dignity, therefore, valued both the personal sense of self-worth as well as the Public's estimation of the worth or value of an individual.

10. While discussing the sanctity and inviolability of human dignity in the case of **Bashir Ahmad and**

another v. Maqsood Ahmad and another, (2010 PCr.L.J FSC 1824), the honorable Federal Shariat Court has held that Holy Quran in very clear terms in "Surah Bani Israeel" declares and upholds the principle of human dignity. According to this Islamic Injunction every person born in this world without reference to colour, caste and creed is clothed with dignity; it is a free gift from Allah Almighty and no human being has the authority to tear as under the cloak of honour conferred by the Lord Creator; it is a fundamental right which is not dependent on the sanction of human Legislation and is excellent in the highest degree. Edifice of social interaction is built upon this edict; and it is the duty of persons in authority to honour the concept of human dignity. To establish such right is tantamount to enforcing a Divine Injunction.

11. On the issue of terminating the Petitioner's services, it is essential to note that the honorable Lahore High Court in **Nadeem Asghar Nadeem vs. Province of Punjab, (2016 PLC (CS) 155)**, has held that every termination order must carry reasons and this was equally applicable to the case of termination simpliciter and there was no plausible explanation why a public authority must shy away from giving reasons for termination. To withhold reasons for termination of a civil servant generated a host of adverse assumptions against the character of a civil servant which had a bearing on his reputation and goodwill and failure of disclosing or intentional withholding of reasons was, therefore, below the dignity of any white collared officer and offended Article 14 of the Constitution.

12. From the above facts, the said act of the Punjab University/the Respondents, not only stigmatized the honour and prestige of the Petitioner, but has also defamed

him in the estimation of society which is contrary to law and above said principle laid down by the Superior Courts. The right to live is not confined to mere living but it means meaningful life, which can be enjoyed with dignity and without defamation. No attempt on the part of any person individually, jointly or collectively to detract, defame or disgrace another person, thereby diminishing, decreasing and degrading the dignity, respect, reputation and value of life should be allowed to go with the impunity. The situation is aggravated if it affects the honour and respect of any person in public life or in any concerned with collective good of the public, in any walk of life.

13. It is apparent from the record that dignity of the Petitioner guaranteed in Article 14 of Constitution, in instant case had been reduced to a farce by terminating the Petitioner on 01.10.2015 on account of absence, while he already had submitted his resignation on 01.08.2011 which was not accepted without any fault on behalf of the Petitioner. It is a well settled law that no one should suffer on the acts of the Departments or the Government. Once the Petitioner has tendered his resignation, the Respondents were bound to decide its application without delay and with reasons, within reasonable time. As noted above, the Syndicate in the Meeting clearly held that *“The Additional Registrar-I (Dr. Kamran Abid) replied that the statement of Mr. Rizvi itself showed that his resignation reached the table of Dr. Aurangzeb Alamgir, the then Additional Registrar-I who called upon Mr. Rizvi in his office and advised him not to resign and thereafter, the resignation did not see day light till today. Therefore, responsibility lies with the then Additional Registrar-I who did not process his resignation.”* Hence, the Petitioner has suffered due to the act of the Respondents. The alleged

actions of the Respondents are blatant violation of Fundamental Rights of the Petitioner, as enshrined in Article 9 & 14 of the Constitution, to enjoy the inviolability of right to life and dignity of man. Dignity of man is not only provided by Constitution, but according to history and under Islam, great value has been attached to dignity of man.

14. Since the dignity of Petitioner, as discussed above, had been violated in breach of law by the Respondents, it is the duty of this Court, being the custodian of rights of the citizens of Pakistan, to render help and protect the same as far as possible because Article 14 of the Constitution provided inviolable right to dignity of the man. It is the duty of the Court, under Articles 9 and 14 of the Constitution to safeguard and preserve the life and dignity of the citizens and protect them from serious and hazardous risks so that they can live a happy and meaningful life. In this case, the Petitioner being a citizen of Pakistan was suffering loss to the stigma of termination instead of the resignation due to the act of the Respondents for his future in the academia.

15. Since the above said situation, the resignation of the Petitioner was tendered well within time on 1st August 2011 and was forwarded to the concerned on 19th August 2011, the responsible officials/officers of the Respondent who sat over it and remained dormant for a considerable time and did not put it up, were under legal obligation to process it in accordance with law and rules of the University.

16. Hence in view of the above, this petition is allowed and the Respondents are directed to accept the resignation dated 1st August 2011 of the Petitioner in accordance with relevant Laws and Rules and the order of termination dated

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1 October 2015 is set aside, being in violation and contrary to constitutional guaranteed rights of the Petitioner.

(JAWAD HASSAN)
JUDGE

Approved for reporting.

JUDGE

ZAHOR