

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

AWP No. 635-P/2016

J U D G M E N T .

Date of hearing: **19.1.2017**

Petitioner: _____

Respondent: _____

WAQAR AHMAD SETH, J:- Through the instant Amended Writ Petition, the petitioner seeks issuance of an appropriate writ with the following prayer:-

“In view of the foregoing, it is, therefore, prayed that on acceptance of this petition, this hon’ble Court may be pleased:

- (i) To declare the impugned action and the consequent order of dismissal of the petitioner from service as illegal, unlawful, void ab initio and of no legal effect;*
- (ii) To direct the respondents to cancel the impugned order of petitioner’s dismissal from service dated 12.10.2015 and to reinstate to his post i.e. Assistant Treasurer III, with all fringe benefits;*
- (iii) To allow compensatory costs to the petitioner; and*
- (iv) To grant any other remedy to which the petitioner is found fit in law, justice and equity”.*

2. In essence, case of the petitioner is that he was posted as Assistant Treasurer III in the main Administration Block of University of Peshawar and a case FIR No. 230 dated 12.9.2014 was registered against him along with one Siraj in

Police Station University Campus, Peshawar by Mrs. Ghosia Lutfullah, Directress of the Centre of Bio-technology & Micro-Biology with the allegation of missing of some amount from accounts No. 7305-1 and 7380-8. The petitioner was arrested and later on, he was released on bail by the competent court of law. The respondents also initiated departmental proceedings against the petitioner and suspended him from service by issuing charge sheet and statement of allegations. Subsequently, the petitioner filed Writ Petition No. 1236-P/2015 before this Court for issuance of direction to the respondents to conclude the inquiry proceedings and submit report. During pendency of the above said Writ Petition, the respondents issued the impugned office order dated 12.10.2015, whereby the petitioner was dismissed from service, thus, the Writ Petition having become infructuous, disposed of as such vide order dated 13.10.2015. However, the petitioner was allowed to file a fresh one, if needed. Thereafter, the petitioner filed departmental appeal before the Chancellor, which was rejected vide order dated 21.7.2016; hence, the instant Amended Writ Petition.

3. Comments were called from respondents No. 1 to 4, which they accordingly furnished and denied the assertion of petitioner.

4. Arguments heard and record perused.

5. Admittedly, the relationship between the parties is that of Master / Employer and Servant / Employee and as such this Court cannot be expected to dig the case on merits, as the appropriate remedy in the matter of employer and employee / Master and Servant could not be reinstatement rather for damages for the purpose of wrongful termination / dismissal could be obtained. Since, the parties are governed by the Statute, commonly known as University of Peshawar Employees Efficiency and Discipline Statute, 1977, which has been promulgated in pursuance to section 27 (1) K of the University of Peshawar Act, 1974, therefore, the writ is entertainable, in order to evaluate as to whether the procedure given in the said Statute has been complied with or not.

6. In the instant case, as per the requirement of the above referred statute, petitioner was issued a charge sheet on 16.9.2014, coupled with statement of allegation and simultaneously under section-11 of the Statute 1977, Inquiry Committee, consisting of three members including convener was constituted to probe into the allegations so levelled in the charge sheet / statement of allegation. Record suggests that before the charge sheet dated 16.9.2014, on 12.9.2014 a proper complaint was also lodged before the Station Officer, Police Station, University Campus Peshawar as the matter and charge against the petitioner was of misappropriation of

university funds etc. An FIR No. 230 dated 12.9.2014 was registered, accordingly.

7. The charges so communicated to the petitioner reads as under:-

- i) While he was performing duties as Assistant Treasure, he would fraudulently case cheques worth Rs. 20, 48, 545/- from account No. 7305-1 and 7380-8 of the Center of Biotechnology and Microbiology maintained at the United Bank Limited (Campus Branch)
- ii) He, on 12.9.2014 sent Mr. Siraj, Daftari, Internal Audi Cell to case cheque no. 5557265 dated 27.8.2014 amounting to Rs. 237, 912 from UBL Account No. 73051-1 of the Center of Biotechnology and Microbiology.
- iii) He cheated the Directress Centre of Biotechnology and Microbiology by counterfeiting her signature on cheque No. 55577265.
- iv) While handover over the charge of Assistant Account Officer of centre of Biotechnology and Microbiology to the income Assistant Account Officer Mr. Muhammad Haris Khan, he fraudulently retained certain cheque books of the Centre Bank accounts which he subsequent used for issuing fake cheques and withdrawal of cash from the centre's bank accounts under counterfeited signatures of the Directress.

8. Petitioner, as per Statute was required to submit his written defence to the above charges, within seven days of the receipt of the charge sheet and in accordance with the said Statute, petitioner was asked to intimate as to whether he desire to be heard in person. Accordingly petitioner submitted his reply dated 4.10.2014 to the charge sheet / statement of

allegation while denying the allegations, received in the office on 9.10.2014.

9. Record suggests that petitioner objected to one of the inquiry member / secretary namely Dr. Vorad Ahsan Zia, the said application / objection was entertained and one Mr. Irfan Saeed, Resident Deputy Director Audit was replaced in place of Dr. Vorad Ahsan Zia, vide office order dated 28.10.2014. On 26.11.2014, said Mr. Irfan Saeed was also replaced through Dr. Mehbood Rashid. Record is suggestive that thereafter the inquiry committee determined the TOR's and during several meetings on various dates, inspected the record and recorded the statements of 14 persons connected with the offence, including the statement of petitioner. Record further suggests that petitioner was allowed to cross examine all the others witnesses i.e prosecution witnesses. Petitioner was given the personal hearing as well by the Committee and he was asked different questions and he gave their answers which are on record. The cross examination done by the petitioner is also on record. Learned counsel for petitioner tried to create some confusion regarding the dates mentioned on said statements of prosecution and his presence before the inquiry committee on those dates. The original record summoned, reflects some confusion in the said dates but one thing is very much clear that on page-180 dated 14.1.2015 and page-184 dated 23.1.2015, wherein petitioner while not

denying his signature has accepted that he has been given opportunities of cross examination over the witnesses appearing against him and he has availed the opportunity, given by the inquiry committee. These two undertakings not denied by the petitioner confirm that the opportunity of cross examination was given to him on all the witnesses of prosecution against him.

10. As far as the procedure given in the statute is concerned, the original record confirms that the same was adopted and nothing prejudice to the case of petitioner is on record. Record suggests that the alleged misappropriated amount stands deposited and the presumption that no one else would deposit the amount alleged against anyone else is there, however, the petitioner during the inquiry stated when confronted that the said amount was deposited by his brother Mujahid, as the police threatened him. It is on record that the alleged amount of misappropriation was deposited in the police station, on the same night in presence of the petitioner and as such the acceptance of guilt is on record.

11. On merits, the entire record including the cross examination of the witnesses done by the petitioner examined but nowhere it could ascertain that petitioner is not involved in the entire episode. In the case of Master and Servant, the master cannot be compelled by any court of law to retain or to re-employ an undesired person and that too; against the post

connected with financial matters. Record further confirms that there are other amounts which were misappropriated in addition to the deposited one which the inquiry committee has recommended that the name of the petitioner / defaulter be including in Exist Control List, till the completion of complete audit of accounts of the Centre of Biotechnology and Microbiology. Indeed, the inquiry committee recommended removal from service but the employer / competent authority has imposed the punishment of dismissal, which in fact is the domain of employer as the Court of law cannot enter into the quantum of punishment as the same is the prerogative and domain of the employer.

12. The employer / respondents after conducting an inquiry through an inquiry committee imposed the punishment of dismissal from service, which is provided in the statute as there is prima facie case against the petitioner based on a report of Directress of the Center (COBAM), while purchasing certain items for the Department, checked the departments; Bank Accounts where it was revealed that certain transaction from the department's accounts were made through cheque Books that were not available in the COBAM record and to which the centre was not aware. She informed the concerned Bank i.e UBL Peshawar University Campus Branch, through a letter (Annex: PC/2) that no transaction be made except from the cheque Books mentioned in the letter and the presenter

may be detained and she may be informed immediately. The Directress concerned also checked the previous transaction and it was revealed that a sum of Rs. 20, 48, 545/- were encashed from centre's Accounts using Cheque Books which were not available with the Centre.

13. On 12.9.2014 the Directress concerned received a call from the Bank that a person presented a Cheque other than the cheque Books mentioned in the letter of respondent No.5. She alongwith other senior / responsible officers reached the bank where the person, who presented the cheque, introduced himself as Mr. Siraj, Daftari, Internal Audit Cell of the respondents university. He was inquired about the said cheque to which he replied that the cheque was given to him by the petitioner. Upon the same the petitioner was called on his cell phone and requested to reach the bank. In the meantime the police officials were also called and concerned SHO also reached the bank. After some time the petitioner also reached the bank where he was informed about the issue to which he admitted that he gave the cheque to Mr. Siraj and that the same was given to him by some other person. However, when he was asked to give particulars of that person, the petitioner replied that the person was a supplier of chemicals to the COBAM and that he left for Afghanistan. Keeping in view the sensitively of the issue the Directress and other officers of the university decided to proceed to police station, however he

was asked to provide the detail of the person who gave the said cheque to him. The petitioner against replied that he did not know any further particulars of that person. He was then informed that the scenario made him and the other one Mr. Siraj as alleged accused of the said act. The petitioner requested to give him access to his brother and after discussion with his brothers, he agreed to repay the entire amount of Rs. 20, 48, 545/-. Later on his brother brought the said amount to the Police Station and deposited the same in shape of cash and bonds. In the meantime, Directress wrote a letter to the SHO of the concerned police station requesting him for lodging the FIR (Annex:PC/3). The police officials accordingly lodged an FIR No. 230 dated 12.9.2014 under section 419/420/468/471/34 against the petitioner and Mr. Siraj.

14. Since, there is nothing on record showing that any procedure so provided in the statute has been violated or there was some malafide or ill will on behalf of the employer, due to which the proceedings as conducted had prejudice the petitioner, therefore, this writ petition is dismissed with no order as to cost.

Announced.
19.01.2017.

JUDGE.

JUDGE.