

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.780-P/2015

JUDGMENT

Date of hearing.....28.02-2018.....

Petitioner: (Murad Saeed) By Mr. Amir Javed, Advocate
for the petitioner.

Respondent: (University of Peshawar through its Registrar,
University Campus, Peshawar) By M/S. Waseem-ud-
Din Khattak and Khalid Rehman, Advocates.

QALANDAR ALI KHAN, J.- This single judgment

in the instant writ petition shall also dispose of writ
petitions titled Shahla Nazneen..Vs..University of
Peshawar through Vice Chancellor (W.P No.1090-
P/15) and another writ petition titled Haider Ali
Shah..Vs..Murad Saeed and three others (W.P
No.1350-P/15), as all the three writ petitions arise out
of the same matter of alleged malpractices in the
conduct of (B.E.S) semesters makeup examination in
the Department of Environmental Sciences dated
02.03.2015 for the petitioner, Murad Saeed, former
student of the Department (Session 2005-2009).

2. Murad Saeed, petitioner in the instant writ petition, initially, in his original writ petition, prayed for a direction to the respondents i.e. University of Peshawar to issue Degree of the petitioner under Role No.11 for BS Environmental Sciences, University of Peshawar; and in the amended writ petition, while assailing the impugned proceedings conducted by University of Peshawar including Notification dated 04.03.2015 regarding constitution of the committee, report of the committee dated 10.03.2015 and letter of Registrar of the University dated 13.03.2015, prayed for declaring the same as illegal, without jurisdiction and of no legal effect being violative of Principles of Natural Justice, and also assailing refusal by University of Peshawar to issue final degree of B.E.S Environmental Science to him, prayed for setting aside the impugned proceedings and notification/report and letter, and also prayed for issuance of direction to the concerned University Authorities to issue the desired Degree of B.E.S Environmental Science to him.

3. In the instant writ petition, petitioner Murad Saeed contended that after completion of his FSC (Pre-Medical/Intermediate) examination in 2004, he got admission as regular student of Bachelor of Environmental Sciences (B.E.S) Programme at Department of Environmental Sciences, University of Peshawar (Session 2005-2009), which was a four years Degree program involving eight semesters. The petitioner claimed that he 'successfully' completed the required course of B.E.S from Department of Environmental Sciences, University of Peshawar, spanning over eight semesters, as a regular student with effect from 2005 till 2009, and was awarded the course completion certificate bearing No.1384 by Chairperson/Chairman of the Department on 26.11.2009; but was not granted Degree on the successful completion of the course despite his consistent efforts stretching over several years, during which, he joined active politics and was elected MNA from Constituency N.A-29 Swat; and was, eventually, informed about missing of his three papers of

Introduction to Environment, Applied Ecology and Remote Sensing, out of which the paper of Applied Ecology was returned by Doctor Sardar Khan, the teacher of Applied Ecology, on his return from abroad i.e. China, whereas the other two papers remained missing; therefore, the petitioner was advised to repeat the said two papers through a makeup examination, permissible under the Semester Regulation, 1982.

According to the petitioner, he applied to the Chairman/Chairperson of the Department for arrangement of Degree and examination of two subjects, whereupon the Coordinator and dealing teachers were directed for doing the needful; and the make-up examination containing objective questions/MCQs of both papers with maximum time allowed one hour were arranged/conducted and as a result thereof, the petitioner was declared successful in the said examination on 02.03.2015. However, due to an alleged malicious campaign, leading to protests/processions, the petitioner was not issued Degree for successful completion of the course, rather

on the basis of alleged one sided report of an inquiry committee 'incompetently' constituted by the Vice Chancellor of the University of Peshawar, the Controller of Examination was advised to declare the makeup examinations of the petitioner as null and void.

4. In her writ petition (W.P No.1090-P/2015), petitioner Shahla Nazneen called in question the proceedings of 'fact finding committee' constituted by the Vice Chancellor, Peshawar University, in the case of Murad Saeed, petitioner in the instant writ petition, inter alia, on the grounds that as a Coordinator having no role in the makeup examination under Regulation No.18 of Regulation No.2 (IV) of 2010, she was issued charge sheet and statement of allegations on the basis of report of the 'fact finding committee', without prior approval of the Syndicate under sections 10 and 11 of the Efficiency and Discipline Statute, 1977.

5. In his writ petition No.1350-P/2015, petitioner Haider Ali Shah prayed for declaration of

Notification of respondent No.1, Murad Saeed, as elected representative of N.A-29 as illegal, without lawful authority, void and of no legal effect, and also declare him as non sagacious, righteous, honest and *Ameen* and disqualified to hold the public office as Member of the National Assembly, after requiring him to show cause under what authority of law he held the office as Member of the Parliament (MNA). The *quo warranto* writ of the petitioner is based on his claim that at the time of submission of his nomination papers, Murad Saeed had not disclosed that he was a defaulter in payment of hostel dues etc and had made a false declaration about his educational qualification portraying himself to be Bachelor of Environmental Sciences and thus incurred disqualification under Article 62 of the Constitution as well as Section 99 of the RPA, 1976.

6. The stance of the University/respondents in the instant writ petition, as reflected in their para-wise comments, was that the petitioner did not fulfill the criteria for issuance of degree as he had failed in

three subjects/papers of BS Environmental Sciences and that as per section 1 of the rules relating to admission to degrees, only those names of the persons were reported to the competent authority for admission to the degrees who had passed the examinations required for the said degree of the University and having fulfilled other conditions as well. The respondents also raised objection to the maintainability of the writ petition on the ground that factual controversies could not be resolved and/or settled in writ jurisdiction unless and until pro & contra evidence was recorded. The respondents, however, admitted this fact that the petitioner was a student of respondent/university in BS Environmental Sciences (four years programme) for the Session 2005-2009. According to the respondents, the petitioner failed in the subjects of Remote-Sensing and Applied Ecology in the 6th Semester, while remained absent in the subject of Introduction to Environmental Sciences in the first semester. It was pointed out by the respondents that course completion certificate related

to studying and completing the concerned program courses only, but for obtaining degree, there were certain other requirements and that only course completion certificate did not make a student eligible for his degree. The respondents also mentioned an amount of Rs,19680/- as outstanding against the petitioner on account of his stay in the University hostel, which was deposited by him in the HBL University Campus Branch on 04.03.2015. The respondents also averred that the petitioner had only once approached the Department concerned, however, he was informed that he will have to clear his failed papers and clear his dues in order to make himself eligible for the degree. The respondents maintained that when the issue was highlighted in the press and electronic media, an inquiry committee was constituted and in the light of recommendations of the said inquiry committee, a procedural inquiry was initiated against the employee involved in the faulty process of arranging makeup examination for the petitioner. Respondent No.6 i.e. Professor Doctor Shafiq-ur-

Rehman, Chairperson/Chairman, Department of Environmental Sciences, University of Peshawar, also furnished separate comments wherein he defended his position and actions taken by him as Chairman/Chairperson, Department of Environmental Sciences, University of Peshawar. In his comments, the respondent also explained the rules and procedure relating to the programme in question. He pointed out that beside the petitioner, several other male and female students were allowed to complete remaining requirements of their respective degree programmes beyond the stipulated four years term provided they fulfilled other legal requirements, and that the concerned bodies and authorities of the University never raised any objection with regard to declaring result of such student after certification by the Chair. However, in the instant case, the Vice Chancellor hastily constituted an inquiry committee without approval of the Syndicate and without fulfilling the required obligations and cancelled the makeup

examination in haste. The respondent fully supported the contentions raised in the writ petition.

7. Arguments of learned counsel for the parties heard; and record perused with their valuable assistance.

8. The claim of the petitioner, Murad Saeed, that he was a student of Bachelor of Environmental Sciences (B.E.S) programme at Department of Environmental Sciences, University of Peshawar (Session 2015-2009), which was a 4 years degree programme involving eight semesters, was not disputed by any of the respondents. The petitioner also furnished a course completion certificate dated 26.11.2009 issued by Dr. S.Shafiq-ur-Rehman, Professor and Chairman, showing completion of course by the petitioner upto 8th semester. The petitioner, however, was not granted degree despite his claim of *successfully* completing the required course of B.Sc from Department of Environmental Sciences, University of Peshawar, spanning over 8 semesters as a regular student with effect from 2005 to 2009. The

respondents, on the other hand, disputed claim of the petitioner with regard to his *successful* completion of the course, though not disputing completion of the course, and contended that the petitioner had failed in two papers/subjects of Remote Sensing and Applied Ecology in 6th semester, while remaining absent in the subject of introduction to environmental sciences in the 1st semester. The claim of the petitioner in this regard, on the other hand, is that all the said three papers were missing, out of which the paper of Applied Ecology was returned by the teacher, Dr. Sardar Khan, on his return from China; but for the remaining two missing papers he was made to apply for the make-up examination. He accordingly moved application for the said examination to the Chairman on 03.02.2015, whereupon makeup examination was conducted and the petitioner was declared successful in the examination on 02.03.2015. The controversy which erupted following the makeup examination centered around the allegation of misuse of his position as MNA by the petitioner, conduct of makeup

examination in the two papers in hast, in a very short span of time of barely one hour, and allowing the petitioner the make-up examination after a considerable period of almost five years, and that too without adopting proper procedure for make-up examination, leading to protests and processions, and also probe into the alleged male-practices in the conduction of BS (BES) Semester make-up examination at the Department of Environmental Sciences dated 02.03.2015” by a committee constituted by the Vice Chancellor, University of Peshawar, vide office order dated 4.3.2015. After inquiry/probe, besides other recommendations, the committee made the following three recommendations, which are subject of the instant writ petition as well as W.P No. No.1090-P/15 of Shahla Nazneen:-

“i. The make-up test arranged by the Department of Environmental Sciences for one Mr. Murad Saeed shall be declared null and void and may be arranged a fresh if provided/permissible under relevant statutes/rules/regulations.

ii. The faculty members who were not authorized to issue/gave statement to media on

the issue may be dealt with under the Employee Efficiency and Discipline Statues-1977 and in light of the decision of the Syndicate dated 11.08.1992.

iii. Proper procedure under the relevant statues may be adopted against the faculty members who were part of the faulty process that brought a bad name to this university.”

Consequent upon the recommendations of the committee, the Registrar, University of Peshawar, informed the Controller of Examination, University of Peshawar, vide letter dated 13.03.2015, that the competent authority had approved recommendations of inquiry committee constituted vide order dated 04.03.2015; and requested the latter to ‘declare the make-up examination held for Mr. Murad Saeed son of Mr. Saeed Ullah, BS (Session 2005-2009) student of the department of environmental sciences held on 02.03.2015 as null and void with immediate effect’.

9. Feeling aggrieved of the proceedings of the Committee and its recommendations and also letter dated 13.03.2015 of the Registrar, University of Peshawar, the petitioner invoked the writ jurisdiction

of this Court on the ground that he had *successfully* completed the course as was evident from the documentary proof in his possession and that misplacement/missing of his papers in the 2/3 subjects was not his fault, and that holding of the make-up examination for him in the two subjects through objective questions/MCQS was not something unique or unusual, as so many other students had been extended the facility of make-up examinations during this period, which were never objected to by any quarter, while he was singled out because of his position as the youngest ever parliamentarian, representing PTI. Anyhow, we noted, during the course of arguments, that focus of learned counsel for the petitioner in the instant case was non-association of the petitioner with the so-called inquiry proceedings, which were conducted in his absence, but even then he was penalized on the basis of recommendations of the committee, which had not afforded the opportunity of being heard to the petitioner. The learned counsel for the petitioner pointed out that it is clear from the report

of the committee that the petitioner did not appear during committee proceedings and that the committee adopted a novel procedure of taking into consideration his press conference and subsequent press release. The learned counsel further contended that despite claim of the committee that the petitioner was contacted, there was nothing on the record to substantiate this claim of the committee, which, inspite of its claim of taking into consideration the press conference and press release of the petitioner, did not accord due importance to the press conference and press release of the petitioner and statement issued by the faculty of the department duly signed by the Chairperson. Needless to say that the inquiry proceedings leading to imposition of the penalty of declaring his make-up examination as null and void, without participation of the petitioner in the committee proceedings, violated the principle of Natural Justice i.e. the maxim Audi Alteram Partem in the light of judgments of august apex Court reported as **PLD 1965 Supreme Court 90, 1994 SCMR 2232, 2000 SCMR 1030 and PLD 2017**

Supreme Court 173; and also that of the Indian jurisdiction reported as A.I.R 1962 Supreme Court 1111 and A.I.R 1962 Calcutta 694.

10. In the writ petition of Shahla Nazneen (W.P No.1090-P/15), the petitioner challenged disciplinary action against her and also issuance of charge-sheet and statement of allegations to her in pursuance of recommendations of the 'fact finding inquiry committee' without approval of the Syndicate. In support of the plea raised in the writ petition, the learned counsel for the petitioner referred to University of Peshawar, Employees Efficiency and Discipline Statutes , 1977, wherein not only procedure for inquiry has been laid down but the Syndicate has also been designated both the Appointing Authority and also Authority competent to take disciplinary action for employees of the University in N.P.S 16 and above, while designating the Chancellor as the Appellate Authority. The stance of the University in this regard, as appearing in their para-wise comments, is that the Syndicate in its meetings held on

11.08.1992 and 381st held on 16.11.2002 had authorized the Vice Chancellor to act on its behalf as the Authorized Officer and the Authority to proceed against an employee as required under the University of Peshawar Employees Efficiency and Discipline Statutes ,1977. Apart from questions raised regarding powers of the Syndicate under the relevant law/rules to delegate its powers of disciplinary proceedings against employees of the University, the fact remains that the entire inquiry proceedings were conducted in the absence of petitioner in the instant writ petition, Murad Saeed, and statements of all concerned, including statement of petitioner Shahla Nazneen were recorded in a manner which vitiated the entire so-called inquiry proceedings. We are, therefore, going to send back/refer the case to the Vice Chancellor for affording opportunity of hearing to the petitioner in the instant writ petition. As such, it would also be more akin to the Principle of Natural Justice to also afford opportunity of hearing to petitioner Shahla Nazneen by the Authority, who shall pass a speaking

order, with reasons, in the cases of both the petitioners in the instant writ petition as well as petitioner Shahla Nazneen, even after placing the matter before the Syndicate, if essentially required under the relevant law/rules of the University.

11. Adverting to the *quo-warranto* writ petition of the petitioner, Haider Ali Shah, in W.P No.1350-P/15, whereby election as MNA of the petitioner in the instant writ petition was challenged on the basis of alleged false statement of Murad Saeed in his nomination paper in regard to his educational qualification and hostel dues; because, according to the petitioner in the said writ petition, the petitioner in the instant writ petition had not only failed in three papers in the B.E.S programme but had also not deposited the hostel dues.

12. The petitioner in the instant writ petition contested both the aforementioned allegations levelled against him by Haider Ali Shah in his writ petition; and urged that in his nomination papers he had not only shown his qualification as F.Sc but had also

furnished a separate affidavit at the same time that he had completed B.E.S (Hons) Environmental Science form University of Peshawar but was waiting for his degree and that he did not mention it in his educational detail as he was waiting for detail transcript and degree and further that he could submit the same to Election Commission at any time when received. There was, as such, no misstatement on the part of the petitioner in the instant writ petition with regard to his educational qualification. As regards, non-deposit of hostel dues by the petitioner, suffice it to say that the petitioner claimed to have deposited Rs.19680/- on account of make-up examination in two subjects and not on account of hostel dues, which were waived of/exempted by the Provincial Government for students hailing from Swat due to militancy and law & order situation there. In any case, the conflicting claims and counter claims of the parties with regard to the said deposit made by the petitioner tend to give rise to a factual controversy,

which cannot be resolved by this Court in its writ jurisdiction.

13. Besides, in the writ petition of Haider Ali Shah, the nomination papers filed during election of 2013 have been challenged, which he could, obviously, not assail in time before the competent forum i.e. Election Tribunal under Article 225 of the Constitution of the Islamic Republic of Pakistan, 1973, which bars recourse to other forums in election disputes. Having not approached the appropriate forum under the constitution at the appropriate time, the *quo-warranto* writ of Haider Ali Shah against election of Murad Saeed in Election 2013, when next elections are around the corner, is not maintainable.

14. In view of the foregoing discussion, instant writ petition by Murad Saeed and writ petition of Shahla Nazneen, (W.P No.1090-P/15) are partially accepted and their cases are sent back/referred to the Vice Chancellor, University of Peshawar, for reconsideration in the light of aforesaid observations, 'fact finding inquiry committee' report and

proof/documents available with the parties, after affording opportunity of hearing to both the petitioners and passing a speaking order, with reasons, and also placing the case before the Syndicate if essentially required under the relevant law/rules of the University. It is expected that the whole exercise will be completed within shortest possible time but in no case later than a month from the receipt of this judgment/order.

15. The writ petition of Haider Ali Shah against Murad Saeed (W.P No.1350-P/15) is, however, dismissed in the light of above stated facts and circumstances.

Announced
28-02-2018

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M.Iqbal

(D.B) *Hon'ble Mr. Justice Ikramullah Khan.*
Hon'ble Mr. Justice Qalandar Ali Khan.