

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.1761-P/2020

Iqra Salim daughter of Muhammad Salim Khan,
r/o Bazar Garhi Chamkani,
District, Peshawar.

Petitioner (s)

VERSUS

Government of Khyber Pakhtunkhwa,
through Chief Secretary and others.

Respondent (s)

For Petitioner :-	<u>Barrister Amir Khan Chamkani.</u>
For Respondents :-	<u>Barrister Ibrahim Khan Afridi.</u>
Date of hearing:	<u>10.09.2020.</u>

JUDGMENT

ROOH-UL-AMIN KHAN, J:-Through this common judgment, we propose to decide the instant writ petition filed by lady Dr. Iqra Salim and connected Writ Petition No.2778-P/2020, filed by Dr. Barkat Ullah (*hereinafter to be referred as the petitioners*), as identical question of law and fact is involved therein. In their respective writ petitions, the petitioners have questioned the orders dated 30.01.2020, issued by Medical Director LRH (MTI), Peshawar, whereby they have been terminated from service. The impugned orders are reproduced below:-

“Whereas, Dr. Iqra Salim d/o Muhammad Salim Khan Medical Officer Emergency Department (MTI employee) does not mark her attendance by herself and handing over her RFID Card to Class-IV who has been caught red handed swiping her RFID card on 23.01.2020 by the

Manager Emergency Department. Therefore, the services of Dr. Iqra Salim are hereby terminated with immediate effect.”

“Whereas, Dr. Barkat Ullah s/o Azeed Khan, Medical Officer Emergency Department (MTI employee) does not mark his attendance by himself and handing over his RFID Card to Class-IV who has been caught red handed swiping his RFID card on 23.01.2020 by the Manager Emergency Department. Therefore, the services of Dr. Barkatullah are hereby terminated with immediate effect.”

2. Facts in brief forming the background of the writ petitions are that petitioner Dr. Iqra Salim was appointed as Medical Officers in Emergency Department of the respondents’ Institution, namely, Lady Reading Hospital (LHR), Peshawar, on regular basis whereas, petitioner Dr. Barkat Ullah was appointed in the said Institution on contract basis for a period of one year. As per averment of facts narrated in the petition, on 23.01.2020, petitioners premises of the hospital in connection with performance of their duties through Triage-2 gate and came across a critically ill patient whom had collapsed, therefore, instead of marking their attendance, they preferred to ensure resuscitating the patient, as such give their Radio frequency Identification (RFID) cards to class-IV employee for marking their attendance, but they were shocked when learnt about their termination from service vide office orders dated 30.01.2020, on the petty matter of not

marking their attendance by themselves. Grievance of the petitioners is that their termination from service by the respondents through a unilateral orders without giving them show cause notice or providing them opportunity of hearing, that too, on a petty matter of not marking the attendance themselves, is not only against the law but also against the principle of natural justice that no one should be condemned unheard, hence, liable to be set aside.

3. Comments of the respondents were called wherein not marking attendance by the petitioners by themselves has been given the ground of termination of their service.

4. Learned counsel for the parties heard and record perused.

5. It appears from record that before passing the impugned order, neither the petitioners have been served with any show cause notice nor any opportunity of personal hearing has been provided to them what to speak of any regular inquiry conducted against them. It is not the case of the respondents that the petitioners were not present in the hospital and Ward Orderly was marking their presence as a proxy. Astonishingly, after termination of the petitioners on 30.01.2020, an Inquiry Committee was constituted on 03.03.2020. The Inquiry Committee after conducting a detailed investigation, submitted its report on 17.03.2020, wherein it was concluded that:-

- i. **It is confirmed that on 23.01.2020, the doctors handed over their RFID cards to ward orderly to mark their attendance while they were present at work.**
- ii. **It is quite clear that both doctors were present on that day and handed over the cards to orderly after arriving at their work station.**
- iii. **The doctors were handed over penalty without giving them opportunity to explain and defend themselves in proper inquiry. In short the rules and proceedings were not followed before handing over major penalty i.e. termination from service.**

6. It is quite apparent from report of the Inquiry Committee that both the doctors/petitioners were present on their duties. It also does appeal to a prudent that the petitioners being medical Officers in Emergency department keeping in view requirement and demand of their profession might have given preference to rescue the life of serious patient instead of marking their attendance themselves. The presence of the petitioners on the duty is neither denied by the respondents nor controverted in the comments, rather from the Inquiry report and termination orders of the petitioners, it is manifestly clear that both the petitioners arrived at their duties much before the swiping their RFID cards through ward orderly. Awarding of major penalty i.e. Termination from service on a petty matter of not marking attendance by the petitioners themselves, that too, without following the codal formalities, smell mala fide and bias on the part of the competent authority against

the petitioners for the reasons best known to them. Admittedly, the impugned termination orders are based on flimsy and insignificant allegation i.e. swiping of RFID cards by the petitioners through a class-IV employee, but neither any notice for explanation nor any opportunity of hearing or defence was provided to the petitioners. In fact, the impugned orders are not the bona fide act, punitive in nature and result of colourful exercise of power, could not be passed without an opportunity of being heard the petitioners. We have noted with great concern that by issuing such an order, it seems that the Government Intuitions have been converted into Kingdom and the officer in authority are passing orders like a King sitting on the throne and giving orders according to his whims and wishes. Needless to say that we are living in a democratic country and believe on the supremacy of the Constitution and the law made thereunder. The mode and manner in which the petitioners have been dealt with remind us the ancient days of ignorance where might was the sole measure of right and every one according to his powers was the king of his choices, which exercise in the present era cannot be countenanced to prevail. The untoward attitude of the employer towards the employees/petitioners is not only deplorable but also against the conduct and ethics of government service. We are fully convinced to burden the employer/authority with heaving cost, who has

passed the termination orders of the petitioners in a colourful exercise of his power; but keeping in view the polite and mild attitude of their counsel, we instead of imposing cost, warn him to remain careful in future and adhere to the law and rules while passing such like orders.

7. Resultantly, this and the connected Writ petition No.2778-P/2020, titled, “Dr. Barkat Ullah Vs Govt of KPK etc” are allowed. The impugned termination orders dated 30.01.2020, issued by Medical Director Lady Reading Hospital (MTI), Peshawar, are declared as illegal, unlawful void ab initio, hence, are hereby set aside. The respondents are directed to reinstate petitioner Dr. Iqra Salim in the service from the date of her termination with all back benefits. Similarly, petitioner Dr. Barkat Ullah shall be reinstated into service for the remaining period of his contract with all back benefits.

Announced:

10.09.2020

M.Siraj Afridi PS

JUDGE

JUDGE

**DB of Hon’ble Mr. Justice Rooh ul Amin Khan; and
Hon’ble Mr. Justice Muhammad Nasir Mehfooz**

