

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.1154-P/2019

**“Shah Faisal & another Vs. The Chancellor, Abdul Wali Khan
University, Mardan etc”**

JUDGMENT

Date of hearing **30.08.2019**

Petitioner(s) by: Mr. M. Asif Yousafzai, Advocate.

Respondent(s) by: Mr. Mansoor Tariq, Advocate.

WIQAR AHMAD, J.- The petitioners have filed the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer: -

“It is therefore most humbly prayed that on acceptance of this writ petition, the august Court may be pleased to:

- I) Declare refusal of respondents and rejection orders dated 11.01.2019 as illegal, unlawful, without lawful authority, against the principles of locus poenitentiae, operative effect, and fundamental rights, hence ineffective upon the rights of petitioners. Therefore the impugned notification to the extent of petitioners and order dated 11.01.2019 are liable to be set aside.**
- II) Declare the petitioners are legally entitled to continue their higher studies in field they are admitted to being validly admitted under the order dated 17.03.2017 issued by the competent authority.**
 - i. Any other remedy deems appropriate that may also be awarded in favour of petitioners”.**

02. Brief facts of the case as stated in the petition, are that both the petitioners had been serving in the Directorate of Information Technology of respondent-University as Network Support Engineer and Office Assistant respectively. On 01.03.2016 an Office Order was

issued by the respondent-University, wherein 20 % quota in the respective cadre was provided to the employees of the University (other than faculty staff) subject to the recommendation of HOD/HOS for pursuing higher studies in the University but the said quota was then reduced to 10 % vide Office Order dated 17.03.2017. Accordingly, both the petitioners in light of Office Order dated 17.03.2017 applied for higher studies which were duly recommended by the Director of I.T. The petitioners appeared in screening tests and were declared successful vide Notification dated 02.10.2018. After their success, their applications for NOCs were under consideration, however they were provisionally allowed admission till issuance of NOCs, according to the petitioners and that they had also started their attendance in classes. And that after provisional admission of the petitioners, the respondent-University issued a Notification on 17.12.2018, whereby, some restrictions were put in place on University employees regarding pursuance of higher studies and accordingly in the light of said Notification, the request of petitioners for NOCs were regretted. Both the petitioners filed their appeals before the Registrar of the University but in vain. Hence, the instant Writ Petition.

03. Learned counsel for the petitioners contended that the impugned guidelines/SOPs dated 17.12.2018

cannot be given retrospective effect so as to prevent the petitioners from continuing their studies in the respective courses for which admission had already been granted to them on the dent of earlier Office Order No.F.No.1(2)-Reg-I/AWKUM/2017/18720 dated 17.03.2017.

04. Learned counsel for the respondents/University contended that both the petitioners have got admission without obtaining NOC from the Head of respective Department and have thus violated the rules and instructions of the University. He drew our attention to Rule 4.4 of the AWKUM Semester Rules and Regulations, which required in-service candidates to apply for admission through proper channel alongwith NOC and leave certificate initially for three semesters, and added that the petitioners can even be proceeded departmentally for violation of the said rules. He further added that petitioners have been serving in the I.T Department in the University and have their services employed on security cameras installed at sensitive entry and exit points and other sensitive places, and if both leave, for further education, then the University do not have alternate arrangement for their substitution.

05. We have heard arguments of the learned counsel for the parties and perused the record.

06. The main contention of the learned counsel for the petitioners is that the new instructions issued vide Notification No. F.No.1(1)-Reg-I/ AWKUM/ 2018/ 24282 dated 07.12.2018 cannot be given retrospective effect so as to deprive the petitioners of their vested rights. For claiming the benefit of the rule against retrospectivity, the petitioners are required to establish acquisition of vested rights before the issuance of new instructions. The petitioners are relying on the earlier instructions issued on 17.03.2017 for establishing their rights. The said instructions in fact are issued for guiding the respective competent authorities in issuance of NOCs for employees of the University who wanted to pursue higher studies. It is admitted on record that the petitioners had not obtained any NOC from their competent authority prior to taking admission. Rule 4.4 of the AWKUM Semester Rules and Regulations also required the petitioners to apply for admission through proper channel alongwith NOC and leave certificate. The said provision is reproduced for ready reference: -

"4.4. In service candidates must apply for admission through proper channel along with NOC and leave certificate initially for three semesters".

07. The petitioners could neither show this Court that they had ever applied through proper channel or had got NOC or leave certificate from the competent authority

before applying for admission. Getting of admission by the petitioners do not cloth them with a vested right in the given situation when it has been obtained in violation of the University rules and instructions. An asserted right not obtained in accordance with law cannot be termed as vested right, preventing the authorities from exercising their locus poenitentiae. Reliance in this respect is made on the cases of "*Abdul Haque Indhar Vs. Province of Sindh*" reported as **2000 SCMR 907** and "*Nazir Ahmad Panhwar Vs. Government of Sindh*" reported as **2005 SCMR 1814**.

08. Since the petitioners have not been able to acquire rights according to law before the issuance of first Office Order No.F.No.1(2)-Reg-I/ AWKUM/ 2017/ 18720 dated 17.03.2017, therefore, there is no question of taking away of the same through the subsequent Notification. The subsequent Notification No. F.No.1 (1) -Reg-I / AWKUM / 2018 / 24282 dated 07.12.2018 applies to the case of the petitioners with full force as they are seeking issuance of NOC after the promulgation of the said Notification.

09. We are inclined to dismiss the case of the petitioners but the last assertion of the learned counsel for respondents have stirred some concern in the mind of the Court that respondents may proceed against the

petitioners departmentally. We feel that the need for such proceedings would be felt due to the reason that the petitioners invoked the constitutional jurisdiction of this Court through the instant Writ Petition. We expect the concerned authority of the University that since they have not earlier proceeded against the petitioners they shall abstain from doing the same in the peculiar facts of the case. Even otherwise this is not a very serious issue as the petitioners have just sought for obtaining higher education for which initiation of departmental proceedings may not be advisable.

10. For the reasons recorded above, petition in hand is dismissed.

ANNOUNCED.
30.08.2019

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Hon'ble Mr. Justice Ijaz Anwar
Hon'ble Mr. Justice Wiqar Ahmad

Himayat