

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P No.860-M/2018

Shakil Muhammad.....Petitioner.

Versus

Vice Chancellor, University of Malakand at Chakdara, District Dir Lower and others.....Respondents.

Present: ***Muhammad Nisar Banoorkhel, Advocate for Petitioner.***

Mr. Haq Nawaz Khan, A.A.G for official Respondents.

Muhammad Yar Malezai, Advocate for Respondent/ University.

Date of hearing: **19.10.2022.**

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Through instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks that office letter/order bearing No.3820-23 dated 20.03.2017 of respondent No.3 (District Education Officer (Male), Dir Lower at *Timergara*), whereby his appointment order dated 18.03.2017 was withdrawn on the ground of wrong declaration of date in the result of Master of Arts (Islamic Studies) i.e., 07.09.2016 instead of 01.11.2016, be declared as illegal and ineffective upon his rights and by declaring as such his appointment order dated a8.03.2017 may be restored.

02. The focal point as reflected from the contents of the petition is that pursuant to an advertisement of respondent

No.3, the petitioner, being qualified and eligible, submitted his application alongwith requisite documents/testimonials for his appointment against the post of Primary School Teacher (**PST**). He participated in the process i.e., test and interview etc. and accordingly he was appointed as primary school by respondent No.3 on 18.03.2017, he assumed the charge on 21.03.2017 (forenoon), but all of a sudden he was served with an office order 20.03.2017, of District Education Officer (M) Dir Lower (respondent No.3) whereby his appointment order dated 18.03.2017, being based upon the report of scrutiny committee pertaining to wrong declaration in the result of MA Islamic Studies i.e., 07.09.2016 instead of 01.11.2016, his appointment order was withdrawn. He approached to the competent authority for his redressal but to no avail, hence this petition.

03. In the petition, he arrayed respondent/ university through its Vice Chancellor, Chairman Department of Islamic Studies alongwith officials of the education department were as party, who according to the directions of this Court furnished their respective para-wise comments. Respondent/ university in their comments have categorically mentioned that the result of M.A (Islamic Studies) Semester System of sessions 2014-16, after completion, was declared on 07.06.2016 and Provisional **DMCs** were issued to the petitioner on 19.09.2016 by concerned department, the

declaration of result was submitted to the Vice Chancellor for approval and accordingly final DMCs were issued to the students on 23.11.2016 but being confronted with the difference in the date of declaration of result the competent authority issued notification dated 06.03.2017 and it was confirmed by the University that result was declared on 07.09.2016 and accordingly, correction certificates were issued to the students including petitioner. Respondent No.3 also submitted his comments to the effect that the petitioner during the process of interview has provided a Provisional Transcript of Record (PTR) from the department of Islamic Studies of the University and as per the advertisement the cutoff date for candidates having requisite qualification was 30.09.2016 whereas the petitioner was awarded DMC of Islamic Studies on 23.11.2016 after the cutoff date, hence the impugned order was rightly issued.

04. Arguments of learned counsel for petitioner, counsel for respondent University and of Mr. Haq Nawaz Khan learned Assistant Advocate General heard and record perused.

05. It was not disputed that cutoff date for submission of application and acquiring requisite qualification was 30.09.2016 as per advertisement. Perusal of record reveals that the result of M.A Islamic Studies of the session 2014-2016 was announced by the University on 07.09.2016 and accordingly Provincial Transcript of Record was issued to the


petitioner on 19.09.2016 much earlier to the cutoff date, which was submitted to the Education Department along with others requisite documents by the petitioner. The respondent university in their comments have admitted that result of Islamic Studies was announced on 07.09.2016 and the provincial transcripts were issued to the petitioner on 19.09.2016. It is reflected from record that due to issuance of wrong dates of announcement of result of department of Islamic Studies, the appointment orders of against different post were also withdrawn by the Education Department regarding one Abuzar Shah who was appointed as T.T (Theology Teacher) vide order 03.04.2017 and was adjusted as Theology Teacher on 29.05.2017 but his appoint order too was withdrawn on 13.10.2017 on the same ground that his result of M.A Islamic Studies was announced after cutoff date i.e., 30.09.2016 and his DMC was fake. He approached to this Court through Writ Petition No. 772-M of 2017, where the University produced the same letter dated 06.03.2017, the relevant portion whereof for convenience is reproduced as under:

“I am directed to refer to the subject cited above and intimate that it has been observed that due to the difference of dates of declaration as recorded on detailed marks certificate issued by the department and that on the Transcripts issued by the examination section, students are facing problems while applying for the jobs or appearing for interview. In order to resolve the issue and facilitate the students, a specimen of certificate is enclosed herewith which

may please be filled in and submit officially to the examination section for countersignature on the demand of student.”

It was observed by this Court in the referred to above writ petition that the result of M.A Islamic Studies of the session 2014-2016 of Malakand University was declared on 07.09.2016. Thus, the writ petition was allowed by this Court in the following terms.

“In the light of above referred documents annexed with the comments filed by respondents No. 1 & 2 and the arguments advanced by learned counsel for petitioner, the withdrawal order dated 13.10.2017 passed by respondent No. 3 is not legally sustainable. Resultantly, this writ petition is allowed impugned order dated 03.10.2017 is set aside and the appointment order dated 03.04.2017 and the transfer/adjustment order dated 29.05.2017 are restored.”

 **06.** It appears from record that not only the petitioner has got requisite qualification well before the cutoff date but certificate was also issued to him showing the correct date of announcement of result i.e., 07.09.2016. It was due to certificates issued by the university respondent wherein the difference pertaining to the date of declaration of result was surfaced which resulted into withdrawal of appointment order of petitioner and another, as discussed above, but it is equally important that not only the attested copy of the order of this Court was annexed with instant petition with almost similar facts pertaining to the dates of declaration of result of session 2014-2016 of M.A Islamic Studies of Malakand University

with reference to the same letter for clarification of result and resolution of controversy dated 14.05.2018 but this fact was categorically mentioned in Para (F) of the ground of the writ petition but even then the contents of this petition were refuted by the respondents in their petition comments, which otherwise should have been admitted because the petitioner was not at fault from the date of submission of his application for appointment.

07. There is yet another aspect of the case that once the appointment order was issued by considering the enclosures/testimonials of application as submitted by the petitioner for his appointment, for which the process was initiated since the date of publication of advertisement with the last date for submission of application till 30.09.2016 and after test and interview, he was appointed on 18.03.2017 then before issuing of impugned order, he must have been afforded an opportunity for hearing because by issuance of appointment order and on assuming the charge certain rights were accrued in his favour. Respondent No.3 has recklessly issued the impugned order, which remained pending adjudication before this Court till today, it was the responsibility of education department that after getting the knowledge that respondent university has rectified their errors/omission by issuing the certificate duly countersigned in earlier writ petition by the order of this Court they too

should have to resolve the issue but even then, it was resisted. The admission of respondent/ university that too in categorical terms was placed on record and Muhammad Yar Malezai, Advocate who is representing the respondent/ university has admitted the inadvertent/ unintentional mistake of the respondent/ university, however, contended that no sooner did the university observe mentioning of wrong dates they corrected it by issuing countersigned certificates to the students with the correct date of issuance of result as 07.09.2016.

08. Furthermore, Mr. Muhammad Amin, DEO (M), Dir Lower present before the Court alongwith the learned A.A.G submitted that the withdrawal of appointment order was in fact the consequence of difference in the dates of declaration of result of the students of M.A Islamic Studies issued by the university. He also admitted it at the bar that the mistake/fault on part of the respondent/ university has already been corrected/rectified. It is settled law that one cannot be held responsible for the wrongs of other and that too which adversely affecting him and if anyone was treated as such, that treatment requires rectification/ correction. In such circumstances, when the submissions of the petitioner have not been controverted by either of the respondents rather inadvertent mistake was admitted by the respondent/ university and rectification thereof was placed on record then

for the reasons discussed above, this petition stands allowed, the impugned order is set aside and it is directed that the petitioner shall be deemed to be in service from the date of issuance of the impugned withdrawal order.

09. This petition is accordingly allowed in the above terms, with no order as to costs.

Announced.
19.10.2022.


JUDGE


JUDGE

Office
24/10/2022