

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 1480 of 2019

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Dr. Maryam Shafique V/S Chancellor, Federal Urdu University of Arts, Science and Technology and 06 others.

Date of hearing
& decision : 17.03.2020

Mr. Muhammad Haseeb Jamali, advocate for the petitioner.

Mr. Shakeel Ahmed Khan, advocate for respondents 2 and 6 along with Dr. Sajid Jehangir, Registrar, Federal Urdu University of Arts, Science and Technology.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

Adnan-ul-Karim Memon, J. Through this constitutional petition, the petitioner has sought indulgence of this Court while calling in question the termination letter dated 26.02.2019 issued by the Federal Urdu University of Arts, Science and Technology (hereinafter referred to as “University”), relieving her from the services of University with retrospective effect i.e. 20.10.2018, which according to the petitioner is without lawful authority and of no legal effect.

2. The case of the petitioner, in nutshell, is that she was appointed in the year 2011 as Assistant Professor, Tenure Track System (TTS) in the department of Microbiology of the respondent-university. Petitioner has asserted that she has performed duties assigned to her with keen interest and devotion without any complaint, however, the respondent-university has dispensed with her service with effect from 20.2.2018 vide office order dated 26.02.2019, without assigning any cogent reason. Petitioner being aggrieved by and dissatisfied with the impugned action has approached this Court on 02.03.2019.

3. Mr. Muhammad Haseeb Jamali, learned counsel for the petitioner, states that this petition has served its purpose to the extent of restoration of service of the petitioner as the impugned termination letter dated 26.02.2019 has been withdrawn by the respondent-university vide office order dated 24.02.2020. He further states that the services of the petitioner were terminated with effect from 20.02.2019, however, she has been restored with effect from 14.02.2020.

According to him, petitioner ought to have been restored with effect from the date on which she was terminated illegally and as such she is entitled to all the benefits for the intervening period. He next submitted that the impugned decision to terminate the petitioner's service has been withdrawn by the respondents on the merits, finding it to be totally unjustified. That being so, in view of the clear mandate of Fundamental Rule 54, it is obvious that the decision of the respondent-university to treat the period of absence from service of the petitioner as "non-duty" infarcts FR – 54, and thus cannot be sustained.

4. While defending this petition by refuting the stance of the petitioner, the Registrar of the respondent-university has submitted that her service was terminated with retrospective effect. He, however, conceded the factual position of the case that her service has been restored with effect from 14.02.2020.

5. We asked him to show us any law to the proposition that when the termination order has been withdrawn by the respondent-university, her service ought to have been reinstated from the date of termination order i.e. 20.02.2019. He states that this is a policy of the respondent-university. We are not satisfied with the assertion of the respondent-university on the aforesaid analogy, for the reason that Fundamental Rule 54, is clear in its terms, dealing with the reinstatement of the employee consequent to setting aside of his dismissal/removal from service, the entitlement of the employee, to have the period of his absence from his service treated as "on duty" is a statutory consequence of his being reinstated on the merits. That being so, we do not feel that it would be fair to deny the petitioner her just entitlement of service benefits of intervening period under FR - 54, an excerpt whereof is as under:

“Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe. In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so directs.”

6. This being the legal position of the case, the instant petition is allowed with no order as to costs by holding that the impugned termination order dated 26.02.2019 issued by respondent-university is without legal consequence. Thus, the service of the petitioner is reinstated with effect from termination of her service i.e. 14.02.2019. The respondents are directed to grant her service benefits for the intervening period in accordance with law, within a period of two (02) weeks from the date of receipt of this order.

JUDGE

JUDGE

Nadir*