

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. W.P No.13239/2016

Dr. Masroor Elahi VS University of Veterinary & Animal Science etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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08.02.2017 Hafiz Tariq Naseem, Adv. for the Petitioner.
Syed Bilal Haider, Adv. for the Respondents No.1 to 3.
Mr. Ashfaq Ahmad Kharral, Assistant Advocate-General.

Through this petition, the Petitioner has prayed that the impugned Notifications dated 17.07.2014 & 26.01.2016 (the “**Impugned Orders**”) may be declared as illegal, coram non-judice, void ab-initio and be set aside accordingly.

2. Brief facts for the disposal of this constitutional petition are that Respondent No.1, received an anonymous e-mail dated 27.1.2013 regarding plagiarism in publication of research papers in different journals by the faculty. Pursuant to that complaint, the Respondent No.1 constituted a Plagiarism Standing Committee, who inquired into the matter and recommended two penalties upon the Petitioner for ‘self-plagiarism’, i.e. (1) warning, and (2) ban on foreign travel relating to research for a period of one year. This recommendation was approved by the Syndicate of the University in its meeting held on 27.06.2014. The Petitioner assailed the said order through appeal before the Chancellor, which was dismissed vide Notification dated 26.01.2016.

3. It is contended by learned counsel for the Petitioner that since the complaint was anonymous, therefore, no action could be taken against the Petitioner under Rule 7 of Higher Education Commission Plagiarism Policy (the “**HEC Policy**”); that the Impugned Orders are in complete violation of Rule 9(c) of the HEC Policy and that Impugned Orders are violative of the principle of natural justice because in the meeting of Syndicate where the impugned penalties were approved, the members of Plagiarism Standing Committee were also participant. Further, the counsel submitted that second penalty imposed on the Petitioner is alien to HEC Policy, and the act of the Petitioner does not fall under the definition of ‘self-plagiarism’. The counsel has relied on the judgments titled **Shafique Ahmed Khan and others v. NESCOM through Chairman, Islamabad and others** (PLD 2016 Supreme Court 377); **Government of Pakistan and others v. Farheen Rashid** (2011 SCMR 1); **Faisal Sultan v. E.D.O. (Education) and others** (2011 PLC (C.S.) 419 [Lahore]); **Azizullah Memon v. Province of Sindh and another** (2007 SCMR 229); **Muhammad Haleem and another v. General Manager (Operation) Pakistan Railways Headquarter, Lahore and others** (2009 SCMR 339); and Judgment of the Lahore High Court passed in the case titled **Allah Ditta v. Province of Punjab and 2 others in W.P. No. 36681/2015**.

4. On the other hand, counsel for the Respondents has taken the same stance in his arguments as enumerated in the report and parawise comments. It is reflected from perusal thereof that the Higher Education Commission, Islamabad, vide its letter dated 21.09.2007 forwarded a Plagiarism Policy stating therein that a number of teachers

have been indulging in cheating by copying the work of others and publishing it as their own in journals. Consequently, in terms of the said letter, proceedings were initiated against the Petitioner. It is mentioned in the comments that Petitioner himself admitted before the University Plagiarism Standing Committee that he signed on the undertaking for Pakistan Journal of Zoology (PJZ) verifying that the material has not been submitted anywhere else, but the fact was that the material was under consideration with Pakistan Journal of Agricultural Research (PJAR) and two publications have 90% similarity with each other. In the first publication of 2007 published in 2009 in PJAR, the Petitioner has no authorship whereas same is plagiarized in 2010 in PJZ in which the Petitioner is an author despite the fact that the same material has been published in 2002 in 7th World Congress in France.

5. It was further argued that the Petitioner himself admitted before the Committee that while sending the research paper in question for publication in PJZ, the Petitioner as a second author had submitted an undertaking that the same material/paper was not sent for publication elsewhere. Whereas, the record reveals that the Petitioner knew that the Principal Author Dr. Akhtar Qureshi had submitted his research paper with same title and material for publication in PJAR in year 2007. Lastly, the Respondents have concluded that hearing officer was not the competent authority to decide representation of the Petitioner, as he was only responsible for hearing the Petitioner and the university on behalf of the Governor/Chancellor and recording facts of the case for perusal and orders of the Governor/Chancellor. It is important to mention that Livestock Department while submitting summary to the Governor simply reproduced

views of the hearing officer. The Chief Minister advised the Governor/Chancellor to decide the case in the light of report of hearing officer on its merits. The Governor/Chancellor after perusal of record and facts of the case upheld the decision of Syndicate. Lastly, he prayed for dismissal of the writ petition.

6. Arguments heard and record perused.

7. From the perusal of the record, it is to be noted that the Petitioner was a Professor at Department of Livestock Production at University of Veterinary and Animal Sciences (the “**University**”). On 27.01.2013, the Vice Chancellor of the University received an anonymous email complaining about plagiarism of some faculty members of the University. Therefore, on 30.01.2013, the Vice Chancellor constituted an Inquiry Committee, comprising of three members, who submitted their report on 25.07.2013.

8. Therefore, on 05.08.2013, the Vice Chancellor constituted the University Plagiarism Standing Committee (the “**Committee**”) to investigate the matter regarding involvement of faculty members in Plagiarism. Further, the Dean/Convenor of the Committee informed the Petitioner on 21.12.2013 that the Committee has been assigned to probe into a matter of plagiarism as per the HEC Policy for the publication with name of Petitioner as co-author and the Petitioner was required to appear before the Committee alongwith written statement. After detailed inquiry and providing the Petitioner with opportunity of hearing, the Committee issued report on 26.12.2013, which was forwarded to the Registrar, UVAS on 8.01.2014 for further necessary action.

9. On 09.04.2014, the Deputy Registrar issued a notification to the Petitioner to inform that report and

recommendations of the Committee were placed before the Syndicate in its meeting held on 11.03.2014 for consideration and approval, and it was established that clear negligence on part of the Petitioner has taken place which resulted in Plagiarism because more than 90% of the contents are same in these publications. Further, the Petitioner was issued notices to appear before the Syndicate in its next meeting for personal hearing.

10. Thereafter, the Syndicate in its meeting held on 27.06.2014, after giving the chance of personal hearing, perusal of the recommendations of the Committee and the HEC Policy, approved two penalties on the Petitioner, and notice for the same was issued on 17.07.2014. Therefore, the Petitioner filed an appeal before the Governor/Chancellor on 8.8.2014, and the Petitioner was awarded opportunity of hearing for the said appeal by the Hearing Officers appointed by the Chancellor/Governor on 18.03.2015, and the Petitioner was asked to appear in person on 04.05.2015, vide letter dated 24.04.2015 of the Hearing Officers. Thereafter, the decision of the Syndicate dated 17.7.2014 was upheld vide detailed order of the Governor/Chancellor on 26.01.2016. Further, the Petitioner again requested the Chancellor on 07.03.2016 to reconsider the decision.

11. The Higher Education Commission Ordinance 2002 (the "HEC Ordinance") has been promulgated to improve and promote higher education, research and development, and to establish Higher Education Commission (HEC), and for matters connected therewith and incidental thereto. Under Section 3 & 4 of the HEC Ordinance, the HEC has been established, having the Prime Minister as the controlling authority. Under Section 10(1)(y) of the HEC Ordinance, the Commission has powers to perform such

functions consistent with the provisions of the HEC Ordinance, as may be prescribed or as may be incidental or consequential to the discharging of its functions.

12. Similarly, the University of Veterinary and Animal Sciences, Lahore has been established under the University of Veterinary and Animal Sciences, Lahore Ordinance, 2002 (the "University Ordinance"), which has been promulgated to improve teaching, research, publication and administration thereof to establish the University and for matters ancillary and connected thereto. Under Section 4(t) of the University Ordinance, the University has power to '*make provisions for research*' and under Section 4(x) of the University Ordinance, it has powers to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University as a place of education, learning and research.

13. It is to be noted that under Section 23(1) of the University Ordinance, the Syndicate is the executive body of the University and have powers to take effective measures to raise the standard of teaching, research and publication and other academic pursuits and exercise general supervision over the affairs and management of the property of the University. Specifically, under Section 23(2)(w) of the University Ordinance, the Syndicate has the power to "*suspend, punish and remove from service in the prescribed manner such officers, teachers and other employees as are appointed by the Syndicate.*"

14. It is essential to note that on 21.09.2007, the Chairman of HEC forwarded the HEC Policy to the Governor for issuing directive to strictly implement the HEC Policy. Therefore, on 29.09.2007, the Governor/Chancellor issued its directive to implement the

HEC Policy strictly in letter and spirit. Similarly, the University also adopted the HEC Policy in letter and spirit vide notification dated 07.01.2008 in meeting of Syndicate held on 08.12.2007.

15. Importantly, the HEC Policy has been drafted to apprise student and teachers about Plagiarism and to impose penalties against those who were found guilty. Clause 2 of the HEC Policy defines plagiarism as *'taking and using the thoughts, writing and inventions of another person as one's own'*, and similarly defines 'self-plagiarism' as *"the verbatim or near verbatim re-use of significant portion of one's own copyrighted work without citing the original source."*

16. It is unequivocal that under Clause 7(e) of the HEC Policy, the name, designation, organization, address, email address and telephone number of the Complainant is essential to be provided, however, under Clause 8 of the HEC Policy, the Vice Chancellor has been given discretion of not taking any action on anonymous complaints. Further, Clause 8 also obliges the Vice Chancellor to constitute a Plagiarism Standing Committee, and it is manifest to note that under Clause 8(e) of the HEC Policy, the Vice Chancellor is under obligation to provide opportunity to the author under investigation to justify original concepts and research work and a similar opportunity is also to be provided to the author whose paper is deemed to have been plagiarised and/or the complainant to justify the complaint. However, in the present case, no communication with the other co-author of the paper has been annexed, and no opportunity of personal hearing has been provided to the co-author, who has published paper, similar to Plagiarised paper of the Petitioner. Therefore, there has been a violation of Clause 8(e) of the HEC Policy.

17. Furthermore, the Committee is authorized to conduct investigation under the Clause 9 of HEC Policy, and under Clause 9(c) of the HEC Policy, the Committee may solicit comments to the claim from the Editor in Chief (of a journal) or Program Chair (of conference proceedings) and referees of either or both papers. It is to be noted that such comments have not been solicited by the Committee in present case, however, use of word 'may' in Clause 9 does not make it obligatory for the Committee to solicit the same. Under the Clause 10 of the HEC Policy, the Committee has to submit findings and recommendations to the Vice Chancellor, having discretion to implement the recommendations after approval and to take punitive action. Moreover, the Clause 11 of the HEC Policy outlines the penalties for plagiarism for teachers, researchers, staff and students, and further divides the categorise of penalties for teachers, researchers and staff, into 'Major Penalty' of dismissal, 'Moderate Penalty' of demotion to the next lower grade, and 'Minor Penalty' of (a) warning; (b) freezing of all research grants, (c) stopping the promotion/annual increment for specified period, and (d) debarring the offender from sponsorship of research funding, travel grant etc. It is pertinent to note here that the penalty of 'ban on foreign travel relating to research' has not been provided in the Clause 11.

18. Similarly, under the Clause 13 of the HEC Policy, the affected persons have right to appeal before the Chairman HEC/Vice Chancellor/Rector/Head of the Organization for review of findings or may submit a mercy petition within 30 days from the date of notification. It is manifest to note that under Section 11 of the University Ordinance, the Chancellor has power to call for and examine the record of any proceedings in which the Order

has been passed by any authority to satisfy himself as to the correctness, legality or propriety of any finding or order and may pass such order as it deem fit, after providing an opportunity of being heard to the affected person.

19. In a recent case titled **Shafique Ahmed Khan and others v. NESCOM through Chairman, Islamabad and others (PLD 2016 Supreme Court 377)**, the honourable Supreme Court has held that Rules framed under sections 7, 9 and 15 of the Act were statutory on all accounts and by every attribute. It has been held in following words that:

“Fact that certain Rules or Regulations were framed without the approval of the Federal Government was not the sole criteria to term them as non-statutory in nature. It was indeed their nature and area of efficacy which were determinative of their status. Rules dealing with instructions for internal control or management were treated as non-statutory while those whose area of efficacy was broader and were complementary to the parent statute in the matters of crucial importance were statutory. The Rules framed under sections 7, 9 and 15 of the Act fell in the latter category as they were not only broader in their area of efficacy but were also complementary to the parent statute in matters of crucial importance. It would rather be naïve and even myopic to equate the Rules of the Authority dealing with matters of crucial importance having so wide a scope and area of efficacy with the instructions meant for internal management and thereby depriving them of their statutory status. Although, said Rules had not been framed with the intervention and approval of the Federal Government, but that would not prevent them from being statutory. Firstly because, approval of the Federal Government was not required either under section 9 or 15 of the Act; secondly because, all those who called the shots were already part of the Authority while framing the Rules, and thirdly because, the scope and area of their efficacy not only

stretched beyond the employees of the Authority but overreached many other strategic Organizations including nuclear and space related technologies systems and matters, as mentioned in sections 8 and 9 of the Act.”

20. In the present case and in view of the above Shafique Ahmad Khan *supra* judgment, the HEC Policy regarding Plagiarism has been adopted by the Syndicate after due consideration and has also been approved by the Governor/Chancellor. Therefore, the HEC Policy, having broader area of efficacy and complementary to the HEC Ordinance and University Ordinance on matter of crucial importance, may be considered statutory in nature. Hence, the action taken under the HEC Policy may be challenged under the constitutional jurisdiction of the High Court.

21. Further, from the perusal of the record, it is worth mentioning that at any stage during the proceedings of the Syndicate, the Petitioner was not informed about the cogent reasons for the Notification imposing two penalties on the Petitioner. However, only the findings of the Committee have been provided in notice dated 09.04.2014, which was served to Petitioner for appearance before the Syndicate for personal hearing.

22. In the case cited by the Petitioner titled **Government of Pakistan and others v. Farheen Rashid (2011 SCMR 1)**, the Honourable Supreme Court has established a principle that public functionaries are bound to decide cases of their subordinates after application of mind with cogent reasons within reasonable time. Further, every citizen has inalienable right to be treated in accordance with law as envisaged by Article 4 of the constitution, and public functionaries are obliged to act within four corners of mandate of Constitution and Law. The word "law" used

in Constitution includes all such principles as having binding force on account of moral, customary or other sociological reasons. However, the Supreme Court was not inclined to set aside the minor penalty awarded to the respondent by the learned Federal Service Tribunal.

23. Similarly, in the case titled **Faisal Sultan v. E.D.O. (Education) and others** (2011 PLC (C.S.) 419 [Lahore]), it has been clearly held that:

“An integral, intrinsic and incidental part of "law" under Article 4 is the right to procedural due process, right to be treated fairly at all times, right to procedural fairness and right to procedural propriety. Right to a fair procedure is, therefore, constitutionally guaranteed in Pakistan and makes the Constitution stand out proudly in the Constitutions of the world. Article 4 of the Constitution is a robust and dynamic amalgam of the cardinal principle of natural justice, procedural fairness and procedural propriety of the English jurisprudence and Procedural Due Process of the American jurisprudence. Constitution of Pakistan has boldly recognized this right to be an inalienable right of every citizen or of any person for the time being in Pakistan.”

24. It has been established in the case of **Azizullah Memon v. Province of Sindh and another** (2007 SCMR 229) that since impugned action was initiated and taken to its logical conclusion under a misconception of law and under a wrong law, it had vitiated entire proceedings including final order, which could not be sustained under the law. The Supreme Court converted petition into appeal and proceedings as well as impugned order of the Service Tribunal, were set aside accordingly. Furthermore, in the case of **Muhammad Haleem and another v. General Manager (Operation) Pakistan Railways Headquarter,**

Lahore and others (2009 SCMR 339), it was clearly held that when initial order or act relating of initiation of proceedings was contrary to law and illegal, then all subsequent proceedings and actions taken thereon would have no basis and would fall.

25. In view of the above case law of Hon'ble Supreme Court of Pakistan, it is imperative to note that the Syndicate has not passed a well-reasoned order after application of its mind, thus has violated the famous principle of providing the Petitioner with procedural propriety. Therefore, the Impugned Order dated 17.07.2014 is liable to be set aside, along with the subsequent order of the Chancellor dated 26.01.2016 which has been passed in appeal of the Petitioner.

26. Even otherwise, the Petitioner has been imposed penalty of 'ban on travel' which otherwise has not been provided in relevant Clause 11 of the HEC Policy. Furthermore, the ban was only operative for one year, which has been passed since long and the Petitioner has already gone through the detention period, which has stigmatized the career prospects of the Petitioner.

27. Therefore, in view of the above discussion, law and case laws, this writ petition is accepted and the Impugned Orders dated 17.07.2014 & 26.01.2016 are set aside in the interest of justice.

**(JAWAD HASSAN)
JUDGE**

Approved for reporting.

JUDGE