SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Syed Mansoor Ali Shah

Civil Petition No.3429 of 2021.
(Against the order dated 25.3.2021 of the Peshawar High Court, Peshawar, passed in Writ Petition No.1189-P/2021)

Khyber Medical University, etc

.....Petitioners

Versus

Aimal Khan, etc

.....Respondents

For the petitioners: Mr. Abdul Munim Khan, ASC.
Mr. Sharif Janjua, AOR.

Respondent No.1: In person.

Date of hearing: 04.1.2022

ORDER

Syed Mansoor Ali Shah, J. – Respondent No.1, a medical student of 4th Semester, BS-Paramedics (Dental Technology) at the Ahmed Medical Institute, Peshawar, was apprehended while impersonating a female student and appearing on her behalf in the examination paper of Human Physiology (2nd Semester) of the Khyber Medical University **("University")**. Proceedings were initiated under Regulation 32(c) of the Khyber Medical University Examination Regulations, 2017 ("**Regulations**") and after giving a hearing to the respondent No.1 he was disqualified for three years by the Unfair Means (UFM) Committee of the University vide its decision dated 16.12.2020. The said decision was maintained, on appeal of respondent No.1, by the UFM Appellate Committee of the University vide its decision dated 03.2.2021. Respondent No.1 impugned both these decisions before the High Court in its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 (**"Constitution"**) and vide the impugned judgment dated 25.3.2021 the High Court, while accepting the position that respondent No.1 was caught red-handed by impersonating another student in an examination, reduced the penalty under Regulation 32(c) from three years to one year by taking a 'lenient view' and holding that the penalty was a "little bit harsh and liable to rectification".

2. Learned counsel for the petitioners submits that impugned judgment is against the law as under Regulation 32(c) the penalty imposed is for a period of three years; therefore, the High Court has erred in reducing the said penalty. He further submits that the University has not granted any such concession to any other student who has violated Regulation 32(c) and the impugned judgment by interfering in the internal working of the University and by ignoring the Regulations has disrupted the disciplinary and regulatory control of the University over its students. Respondent No.1 has appeared in person and submits that he wishes to argue the case himself. His only submission is that while he admits his mistake i.e., the act of impersonation, he may be dealt with leniently.

3. We have heard the parties and gone through the record of the case. We note that respondent No.1, has admitted in writing, before the University authorities, his act of impersonation and appearing in the examination of Human Physiology (2nd Semester) on behalf of another student. He, however, repeatedly requested to be forgiven for his mistake. The relevant law on the issue, i.e., Regulation 32(c) of the Regulations, is reproduced hereunder, for ready reference:

> **32. USE OF UNFAIR MEANS:**
> (c) Any candidate found guilty of impersonation, which impersonates such candidate and is on the rolls of an affiliated College, shall be, disqualified, i.e. both candidate and impersonator, for a period of three years.
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> *(Emphasis supplied)*

The above Regulation clearly states that in case a student is found guilty of impersonation, he (along with the candidate) shall be disqualified for a period of three years; it gives no discretion to the decision-making authority to fix the period of disqualification as it provides only one period, i.e., three years. Had the expression used been “for a period up to three years”, the decision-making authority would have got the discretion to fix the period of disqualification for any period up to three years, but the law does not so provide; therefore, the decision-making authority (UFM Committee) or the appellate authority (UFM Appellate Committee) could not fix the period of disqualification for Respondent No.1 to a period less than three years. The UFM Committee and the UFM Appellate Committee of the University, after considering that the respondent No.1 was caught red-handed, who had also admitted his guilt in writing, found him liable and hence disqualified him for a period of three years as

provided in Regulation 32(c). The High Court, however, has reduced the penalty of disqualification of the respondent No.1 from three years to one year on the ground of 'leniency', in disregard of the Regulation. The High Court has failed to appreciate that it cannot ignore the relevant law as everyone is to be treated in accordance with law under the constitutional command of Article 4 of the Constitution, and that under Article 199 (1)(a)(ii) of the Constitution it can declare only such act or proceeding of a public functionary to have no legal effect, which has been done or taken without lawful authority. In the present case, without finding that the public functionaries, i.e., the UFM Committee and the UFM Appellate Committee of the University, had acted without lawful authority in making their decisions dated 16.12.2020 and 03.02.2021, the High Court could not have interfered with and modified those decisions.

4. It has been time and again held by this Court[1] that courts must sparingly interfere in the internal governance and affairs of educational institutions. It is simply prudent that the courts keep their hands off educational matters and avoid dislodging decisions of the university authorities, who possess technical expertise and experience of actual day to day workings of the educational institutions. Every university has the right to set out its disciplinary and other policies in accordance with law, and unless any such policy offends the fundamental rights of the students or violates any law, interference by the courts results in disrupting the smooth functioning and governance of the university.[2] It is, therefore, best to leave the disciplinary, administrative and policy matters of the universities or educational institutions to the professional expertise of the people running them, unless of course there is a violation of any of the fundamental rights or any law.

5. This self-restraint by the courts in matter of educational institutions is based on the wisdom that academic freedom and institutional autonomy of the universities must be protected and safeguarded. Academic freedom is not merely liberty from restraints on thought, expression, and association in the university, but also that the university should have the freedom to make decisions about the

[1] Khyber Medical College v. Raza Hassan 1999 SCMR 965; Muhammad Ilyas v. Bahauddin Zakariya University 2005 SCMR 961; Muhammad Arif v. University of Balochistan, PLD 2006 SC 564; Secretary Economic Affairs Division, v. Anwarul Haq Ahmed 2013 SCMR 1687.
[2] J.P. Kulshreshtha v. Allahabad University AIR 1980 SC 2141; Maharashtra State BS&HSE. v. Paritosh Bhupeshkumar. AIR 1984 SC 1543; Hindi Hitrakshak Samiti v. Union of India AIR 1990 SC 851.

educational matters including disciplinary matters. As “it is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail ‘the four essential freedoms’ of a university; who may teach, what may be taught, how it shall be taught and who may be admitted to study.”[3]

6. Democracy, human rights and the rule of law cannot become and remain a reality unless higher education institutions, and staff and students, enjoy academic freedom and institutional autonomy. Conversely, we cannot have genuine democracy unless the higher education and research community is able to enquire freely. Higher education institutions are places that have to be imbued with democratic culture, and that, in turn, helps to promote democratic values in the wider society.[4] Universities are the playgrounds of democracy and the more freedom and independence they enjoy, the more free thinkers and leaders they will produce. The academic, administrative and disciplinary autonomy of a university must be therefore, respected.

7. Raison d’etre of courts is to settle disputes, which come before them. It is not the constitutional mandate of the courts to run and manage public or private institutions or to mirco-manage them or to interfere in their policy and administrative internal matters. Courts neither enjoy such jurisdiction nor possess the requisite technical expertise in this regard. Courts should step in only when there arise justiciable disputes or causes of action between the parties involving violation of the Constitution or the law.

8. Our constitutional democracy is run by laws and not by men. Judges are to decide disputes before them in accordance with the Constitution and the law, not on the basis of their whims, likes and dislikes or personal feelings. A good judge intelligently balances law and equity to ensure that justice is tempered with mercy but never at the expense of overriding the letter of the law. Compassion, which may be said to be a shade of, and have nexus to, the rules of equity cannot be given precedence and superseding effect over the clear mandate of law. Compassion and hardship, therefore, may be considered by courts for

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[3] University of Wisconsin System v. Scott Harold Southworth 151 F.3d 717.
[4] Academic Freedom, Institutional Autonomy And The Future Of Democracy, Council of Europe Higher Education Series No. 24, United Nations Educational, Scientific and Cultural Organization.

providing relief to an aggrieved person, but only when there is scope in the relevant law to do so, not in breach of the law.[5] Regulation 32(c), made by the University under its delegated legislative power, is a law within the scope of the term "law" as used in Article 4 of the Constitution; it fixes a penalty of three years and allows no discretion to the decision-making authority for it to be reduced. There is thus no scope, in the relevant law, to grant relief of reducing the disqualification-period to the respondent No.1 on the ground of compassion or hardship[6]. The reduction of the disqualification-period by the High Court, in contravention of the relevant law, is an example of judicial overreach[7] or judicial overstepping, where law is ignored or modified by the court to give way to personal emotions and sense of compassion. Such exercise of judicial power is not permissible.

9. For the above reasons, the impugned judgment is set-aside and the decisions dated 16.12.2020 and 03.02.2021 of the UFM Committee and the UFM Appellate Committee of the University respectively, are restored. This petition is converted into an appeal and allowed in these terms.

Judge

Judge

Islamabad,
04th January, 2022.
Approved for reporting. Judge
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[5] D.G., National Savings v. Balqees Begum PLD 2013 SC 174.
[6] Wood v. Strickland 420 U.S. 308. (1975)
[7] See MEPCO v. Muhammed Ilyas 2021 SCMR 775.