

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.2838-P/2021 with IR

Irfan Ullah

Vs.

**Federation of Pakistan through Secretary, Higher
Education, Islamabad and others**

Date of hearing **20.10.2022**

Date of Announcement **10.11.2022**

Petitioner(s) by: **Mr. Amjad Ali, Advocate.**

Respondent(s) by: **M/s. Bahlol Khattak and Saadullah Khan
Marwat, Advocates.**

JUDGMENT

IJAZ ANWAR, J. This writ petition has been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:-

“It is, therefore, humbly prayed that on acceptance of this writ petition, the impugned removal order dated 25.06.2021 and advertisement Annex “N” for Manager (Admin) i.e. of petitioner may please be declared as illegal, without lawful authority, jurisdiction coram-non-judice, arbitrary, whimsical may please be set-aside and petitioner may please be reinstated in service with all back benefits.

Any other relief deemed fit may also be graciously granted”.

2. In essence, petitioner was appointed against the post of Manager (Admin & Finance) vide Order dated 02.07.2020 in the respondent-University and was confirmed in service on 08.02.2021. He raised objection on the deposit of amount/fund by the Director in his own Account instead of the respondent-University, due to which, he was issued

explanation which was duly replied by him, however, vide the impugned letter dated 25.06.2021, he was removed from service. In this regard, his appeal filed to the Chairman of the University was not responded. Hence, this writ petition.

3. Comments were called from the respondents who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioner.

4. Learned counsel for the respondents, at the beginning of arguments, raised a preliminary objection to the maintainability of this writ petition on the ground that the respondent-University is a non-statutory organization, having no statutory rules of service and claimed that its employees are having no secured rights in any law or Statutes; as such, cannot maintain writ petition against termination of their services. He placed reliance on the cases titled "Sui Southern Gas Company Limited and others Vs. Saeed Ahmed Khoso and another (2022 SCMR 1256), Pakistan International Airlines Corporation and others Vs. Tanweer-ur-Rehman and others (PLD 2010 SC 676) and judgments of the Hon'ble Islamabad High Court passed in the cases titled Ms. Tauheed Sohail Vs. National University of Computer and Emerging Sciences FAST House, Islamabad and others (W.P. No.1012/2016 decided on 13.04.2016) and Ms. Sidra Irshad Vs. Dr. Amir Muhammad and others (W.P. No.2710 of 2015 decided on 04.02.2016)".

5. In response, learned counsel, representing the petitioner, argued that the National University of Computer & Emerging Sciences, Islamabad (NUCES) is creation of

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Ordinance and the rules were framed in terms of the powers conferred, which according to him, has statutory status amenable to the jurisdiction of this Court. He placed reliance on the cases titled “Pakistan Defence Officers’ Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Sarhad Development Authority through Chairman Vs. Syed Muhammad Latif Shah and others (2015 SCMR 1060), Alam Khan Vs. Board of Intermediate & Secondary Education (2012 PLC 407) and The Secretary, Government of the Punjab, Health Department, Lahore and others (1997 SCMR 1552)”.

6. Arguments heard and record perused.

7. This Court, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can issue a writ in the form of prohibition or mandamus only where petition is filed by an aggrieved person and seeks direction against a ‘person’ performing within the territorial jurisdiction of this Court, functions in connection with the affairs of the Federation, a Province or a local authority. The word “person” used in Article 199 of the Constitution has been defined by the Hon'ble Supreme Court of Pakistan in numerous landmark judgments while for the purpose of enforcement of certain rights of the employees serving under such “persons”, the consistent view of the Superior Courts is that the “person” against which a writ is to be issued must be either Government, a body creation of an Act of Parliament or Provincial Assembly and the rules governing their rights and

obligations must have statutory status in the eyes of law. The Hon'ble Supreme Court of Pakistan in the case titled "Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), while commenting upon the jurisdiction of the High Court, has enunciated certain principles of law for maintainability of a writ petition as follows:-

- (i) *Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.*
- (ii) *Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.*
- (iii) *In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.*
- (iv) *Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*
- (v) *That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.*

8. In the instant case, the petitioner claims that his rights to employment in the respondent-University have been violated. To ascertain the status of the respondent University, we may refer to the National University of Computer and Emerging Sciences Ordinance, 2000 (hereinafter to be

referred as “the Ordinance”), whereunder, the University has been created. The relevant para of its preamble is reproduced:-

“whereas it is in the interest of the country to establish centers of excellence in the emerging disciplines of science and technology to provide a strong base for economic growth and human development and to provide quality education to talented students”.

9. By the very name of the University and the preamble above referred, it appears that it was the decision of the Federal Government to establish an Institute/University in the interest and betterment future of this country. Article 25A of the Constitution of Islamic Republic of Pakistan, 1973 was inserted through Constitution (Eighteenth Amendment) Act, 2010 (Act No.X of 2010) which provides for right to education. Article 25A has been added which identifies the education as one of the fundamental rights of the people. Though, the said Article provides for free and compulsory education to all children of the age of 5 to 16, however, provision of educational facilities is also the function of the State from Primary to Secondary and Higher Level as it is an established fact that human resource development is key to all successes and in order to compete with the modern world, the youth of this country must be well equipped with the skill of self employability and as such, the Government has to establish such Institutes/Universities for the purpose of research, professional or technical training or the promotion of special studies. We are thus of the considered opinion that

providing venues to the youth of this country for higher education in all fields and industrialization is one of the core function of the State and thus can be conveniently termed as the University is functioning within the affairs of the Federal Government. Reference can be made to the case titled *"Fiaqat Hussain and others Vs. Federation of Pakistan through Secretary, Planning & Development Division, Islamabad and others (PLD 2012 SC 224)"*.

10. In terms of Section 9 of "the Ordinance", the President of Pakistan shall be the "Patron" of the University; similarly, under Section 8 of "the Ordinance", the Chancellor of the University is to be appointed by the Patron on the recommendation of the Foundation; while "Foundation" has been defined under Section 2(h) of "the Ordinance" as "Foundation for advancement of Science and Technology (FAST)". Under Section 12 of "the Ordinance", the "Board of Trustees" is constituted which consists of the following members:-

- i. *The Chancellor who shall be its Chairperson;*
- ii. *Chairman, University Grants Commission or his nominee not below the rank of an officer of Basic Pay Scale 20;*
- iii. *a retired judge of the Supreme Court of Pakistan or a High Court;*
- iv. *a retired vice-chancellor or an eminent scholar;*
- v. *two eminent scientists;*
- vi. *two nominees of the Foundation;*
- vii. *Rector;*
- viii. *one nominee of the Board; and*
- ix. *Secretary, Ministry of Education.*

11. Similarly, under Section 13 of "the Ordinance", "Powers and functions of the Board of Trustees" are provided

which has, besides the other functions, also the powers and functions "to approve the draft statutes proposed by the Board of Governors"; while Section 14 of "the Ordinance" provides for the constitution of the "Board of Governors" who will be having the general supervision and control of the administrative, academic and financial affairs and the power to lay down the policies of the University. The "Board of Governors" consists of the following members:-

- a) *Rector who shall be the Chairperson of the Board;*
- b) *one retired judge of the Supreme Court of Pakistan or a High Court, to be nominated by the Foundation;*
- c) *Chairman, University Grants Commission, or his nominee not below the rank of an officer of Basic Pay Scale 20;*
- d) *one vice-chancellor of a University to be nominated by the Foundation;*
- e) *Secretary, Ministry of Education, or his nominee not below the rank of an officer of Basic Pay Scale 20;*
- f) *one Dean to be nominated by the Board of Trustees in consultation with the Rector;*
- g) *three persons, prominent in the field of their specialization because of their experience and achievements, to be nominated by the Board of Trustees; and*
- h) *Registrar of the University shall act as Secretary of the Board".*

12. It has also been provided in the powers and functions of the Board in Section 15(b) and (c) of "the Ordinance" "to make rules and regulations" and "to prepare or have prepared and revised from time to time rules and regulations for the efficient and effective operation of the University".

13. Thus, in terms of Section 15(b) and (c) of "the Ordinance", the Board of Governors are empowered to make

rules and regulations and to prepare or have prepared and revised from time to time rules and regulations for the efficient and effective operation of the University which will be then placed before the Board of Trustees which has under Section 13(c) of "the Ordinance" the powers and functions "to approve the draft statutes proposed by the Board of Governors".

14. In the case of "Pakistan Defence Officers' Housing Authority and others (2013 SCMR 1707), it is one of the principles enunciated from the case law for the maintainability of the writ petition that "violation of service rules or regulations framed by the statutory bodies under the powers derived from statutes in the absence of any adequate or efficacious remedy can be enforced through writ jurisdiction".

15. The Hon'ble Supreme Court of Pakistan in the case titled "Masood Ahmad Bhatti and others Vs. Federation of Pakistan through Secretary, M/o Information Technology and Telecommunication and others (2012 SCMR 152)", while distinguishing its earlier judgment pertaining to the status of statutory rules i.e. Pakistan International Airlines Corporation and others Vs. Tanweer-ur-Rehman and others (PLD 2010 SC 667), held as under:-

"5. Since the judgment of the High Court is based on the case of Tanweer-ur-Rehman supra, it firstly is to be seen if indeed the principle of law enunciated therein supports the conclusion in the impugned judgment. Para 18 of the cited precedent is of particular relevance in this context. It sets out the circumstances which led to the Court's finding that the regulations which were under consideration in the said case could not be treated as being statutory in nature. The test laid down for deciding if the regulations were in fact statutory, was stated with

great clarity. These regulations had been framed by the Board of Directors of the Pakistan International Airlines Corporation ('PIAC') under the PIAC Act 1956. It was observed by the Court that "if the relationship between the [PIAC] and its employees is regulated by statutory provisions and if there is any breach of such provisions, an employee ... may maintain an action for reinstatement". It was further observed that "the PIAC has regulations which have been framed by the Board of Directors of the PIAC, pursuant to the power contained in section 30 of the [PIAC] Act; however, there is nothing on record to indicate that these regulations have been framed with the previous sanction of the Central Government or that they were gazetted and laid before the National Assembly in terms of section 31 of the [PIAC] Act". This finding of the apex Court was, in turn, based on the case titled Raziuddin v. Chairman, PIAC (PLD 1992 SC 531). In short, the reason for holding that the regulations in question were not statutory was that the requirements of sections 30 and 31 of the PIAC Act had not been complied with.

6. The observations in the case of Tanweer-ur-Rehman supra have necessitated an examination of sections 30 and 31 of the PIAC Act to see if these provisions have any parallel or relevance in the present appeals. It is quite clear from the PIAC Act that in order for the regulations to have statutory force, it was necessary that the same be framed "with the previous sanction of the Central Government". Additionally, under section 31 of the PIAC Act, the regulations were required to be gazetted and laid before the National Assembly. It is only because these contentious regulations had not been framed with the previous sanction of the Central Government and had not been published in the official Gazettee, that the Court came to the conclusion the regulations were not statutory in nature. It follows from the cited judgment that if in fact the regulations had fulfilled the requirements of sections 30 and 31 of the PIAC Act, there would have been no dispute or contention as to the statutory status of the said regulations. The circumstances of the present appeals (considered below) are very different from the facts in Tanweer-ur-Rehman's case".

16. In the instant case too, we find that the HR Manual placed on file was framed in accordance with the procedure prescribed under "the Ordinance", which nowhere has provided for framing of the rules by the Government or its placement before the Federal Government; as such, it is held that the rules, framed by the Board of Governors and duly approved by the Board of Trustees, have the statutory status.

17. The judgments of the Single Bench of the Hon'ble Islamabad High Court, Islamabad passed in the cases titled "Ms. Tauheed Sohail Vs. National University of Computer and Emerging Sciences FAST House, Islamabad and others (W.P. No.1012/2016 decided on 13.04.2016) and Ms. Sidra Irshad Vs. Dr. Amir Muhammad and others (W.P. No.2710 of 2015 decided on 04.02.2016)" are distinguishable as it has relied upon the judgment of the apex Court in Tanweer-ur-Rehman case and as referred to above, probably the judgment of the Hon'ble Supreme Court of Pakistan reported as "Masood Ahmad Bhatti and others Vs. Federation of Pakistan through Secretary, M/o Information Technology and Telecommunication and others (2012 SCMR 152)", was not brought into the notice of the Hon'ble Court, wherein, the apex Court has clarified the effect of Tanweer-ur-Rehman case on the status of the Rules.

18. Now coming to the merit of the case, the record transpires that petitioner was initially appointed vide Office Order dated 02.07.2020 as Manager (Admin & Finance) and was duly confirmed after satisfactory completing his probationary period vide Office Order dated 08.02.2021. The order terminating the services of the petitioner dated 25.06.2021 under the subject "service no more required" is though argued to be in terms of the initial appointment letter dated 02.07.2020, according to which, in case of confirmation of his services, his services can be liable to be terminated on

one month notice or payment of one month salary in lieu thereof, however, in the instant matter, the reason given as 'unsatisfactory performance' after his confirmation becomes redundant, as the very termination order carries a stigma in the shape of "unsatisfactory performance" which ultimately would be a hurdle for the petitioner while applying to other departments in future. It is pertinent to mention here that from the comments, it can be gathered that the allegations against the petitioner pertain to bypassing a channel in the matter of correspondence and nowhere, it has been alleged that the interest of the University, at any stage, has been compromised. Even otherwise when there were allegations of any kind against the petitioner, the respondent-University was required to have allowed him proper opportunity to defend himself.

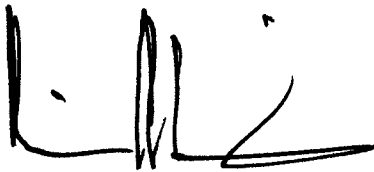
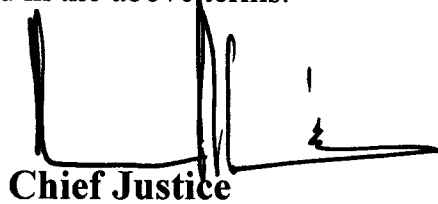
19. In the case titled "The Secretary, Government of the Punjab Health Department, Lahore and others Vs. Riaz-ul-Haq (1997 SCMR 1552)", the apex Court, while relying upon different judgments of the Hon'ble Supreme Court of Pakistan, held that "terminating the services of a probationer on the ground of unsatisfactory work will not amount to dismissal or removal from service; however, if such employee is to be terminated on account of certain allegations then even if such employment is contractual, yet holding proper departmental proceedings would be mandatory".

20. In view of the above, we find that the petitioner has not been treated in accordance with law and being a confirmed employee, he has been condemned unheard. Accordingly, the impugned termination order dated 25.06.2021 is set-aside and the petitioner is reinstated in service, allowing the respondent-University to proceed afresh against the petitioner strictly in accordance with law if they are so advised. It is further clarified that the question of back wages and benefits of the petitioner shall be decided by the respondent-University after the outcome of any such departmental proceedings, if so conducted.

21. This writ petition is allowed in the above terms.

Announced

Dt: 10-11-2022

Chief Justice



Judge

(DB) Hon'ble Mr. Justice Oaiser Rashid Khan, HCJ and Hon'ble Mr. Justice Ijaz Anwar