

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-6124 of 2022

(Dr. Muhammad Amir Qureshi v. Government of Sindh & others)

Petitioner : through Mr. Muhammad Ali Soomro
advocate
Respondent No. 2 : Ms. Farkhunda Shaheen advocate
Respondent No.3 : Mr. Ali Safdar Depar Assistant A.G.
Date of hearing : 20-05-2025
Date of order : 20-05-2025

ORDER

Adnan-ul-Karim Memon, J., The petitioner requests this Court to:

- (i) *Call for the relevant records and the Selection Board proceedings from 2010-2011.*
- (ii) *Declare the non-consideration of the petitioner's promotion in 2010-2011 illegal and unlawful.*
- (iii) *Order the petitioner's promotion effective from 2010, when junior colleagues were promoted.*

2. As an Assistant Professor at NED University Karachi since 2007, with 21 years of service and a PhD obtained in the same year, the petitioner has faced inexplicable barriers to promotion from BPS-19. While junior colleagues advanced to BPS-20 and 21 between 2000 and 2011, the petitioner was repeatedly denied due process. Applications for promotion went unanswered, with no interviews or opportunities to be heard. This perceived deliberate oversight, which ignored the petitioner's seniority and rights, led to a failed departmental appeal in 2022. Consequently, the petitioner petitions the court to declare the non-consideration for promotion in 2010-2011 illegal and to mandate a retroactive promotion to that year.

3. The learned counsel for the petitioner submitted that the petitioner's non-promotion was a clear infringement of constitutional guarantees. It was argued that the respondents' actions demonstrated discriminatory treatment and a denial of equal protection under the law (Articles 4 and 25). Furthermore, counsel contended that the petitioner was a victim of malafide intentions, with the promotion of absent colleagues highlighting a deliberate suppression of the petitioner's career progression and a denial of equal employment opportunities.

4. The counsel for the respondent, NED University, contends that the petition is legally flawed. She argued that the university's service regulations are non-statutory, establishing a Master and Servant relationship that precludes

constitutional petitions concerning employment terms. Furthermore, she asserted that all actions taken were legally sound; the petitioner has no inherent right to the requested relief, and the matter arises from a contract of service that is not subject to constitutional writ. The respondent's counsel also maintains that promotion is not a guaranteed right, seniority is not the only factor in promotions, the petition involves factual disputes, and the petitioner is not entitled to discretionary relief under Article 199 of the Constitution, which renders the petition unmaintainable.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The maintainability of this petition under Article 199 of the Constitution is addressed. NED University of Engineering & Technology Karachi, being a public sector university and a statutory body under the Sindh Act No. III of 1977, performs functions related to provincial affairs. As per Section 3(3) of the Act, the university is a body corporate with functions involving public authority, making it subject to writ jurisdiction. Therefore, the university's status qualifies it as a "person" performing functions in connection with provincial affairs, as per Article 199(1)(a)(ii) read with Article 199(5) of the Constitution.

7. Regarding the Respondent-University's counsel's objection on statutory versus non-statutory rules. The Hon'ble Supreme Court of Pakistan, in *Rector National University of Science and Technology (NUST) Islamabad and others Vs. Driver Muhammad Akhter* (Civil Appeal No. 495 of 2010, decided on 28.04.2011) addressed the issue of statutory rules. The Court held that the National University of Sciences and Technology (Enforcement of Academic, Service, and Financial Matters) Statutes, 2005, were statutory in nature, as they were framed according to the procedure laid down in Section 21 of the University of Sciences and Technology Act, 1997. The Court distinguished this case from *Chairman, State Life Insurance Corporation v Hamayun Irfan*, where regulations required government approval and notification. In the NUST case, the statutes became enforceable upon approval by the Board of Governors, as per the Act. Since this was the only ground for granting leave, the appeal was dismissed.

8. The petitioner's claim for promotion, denied in 2010 and 2011, is subject to the doctrine of laches due to the delay in filing this petition on 06.10.2022. Without addressing the merits, this petition is disposed of with the direction that the respondent-university must consider the petitioner's candidature for any future promotion vacancy, in accordance with law and promotion policy, if the petitioner meets the eligibility criteria.

JUDGE

HEAD OF CONST. BENCHES

SHAFI