

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-849 of 2025

(Mst. Humaira Akbar v. Federal Urdu University
of Arts, Science and Technology and others)

Date	Order with signature(s) of Judge(s)
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1. For orders on office objection
2. For hearing of CMA No.16313/25
3. For hearing of main case.

16.12.2025.

Mr. Muhammad Arif Khan, Advocate for the Petitioner.

Mr. Abdul Samad Memon, Advocate for the Respondent.

Mr. Irshad Ahmed, Assistant Attorney General.

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the order dated 21.07.2025 passed by the Court of learned XIIth Additional District Judge Karachi-East (Revisional Court) in Civil Revision No.114/2025 (re: Mst. Humaira Akbar v. Federal Urdu University of Arts, Science and Technology and others) whereby the revision application was dismissed and by maintaining the order dated 08.05.2025 passed by the learned Senior Civil Judge XIIth, East Karachi (Trial Court), in Civil Suit No.7841/2025 (Mst. Humaira Akbar v. Federal Urdu University of Arts, Science and Technology and others) the plaint of the Suit was returned by invoking the provisions of Order VII Rule 10 CPC.

2. Mr Muhammad Arif Khan Learned Counsel for the petitioner submits that the petitioner was working as Assistant Professor in Federal Urdu University of Arts, Science & Technology (FUUAST). She obtained admission in University of China on scholarship for a Ph.D. degree in Physics. She went to China to pursue Ph.D. program; that due to COVID - 19 pandemic all the foreign students were intimated to return back to home destinations; that in the month of September 2022, Petitioner was asked by the University of China to resume Ph.D research, she therefore applied to FUUAST for leave without pay from the month

of November 2022 till April 2024. He argued that FUUAST did not consider Petitioner's leave application. He argued that, as the petitioner was required to complete her Ph.D. program, it was mandatory for her to leave for China and complete her research work. He further argued that the leave application filed by the petitioner was declined by the university administration, and her case was placed before Syndicate and ultimately referred to the Disciplinary Committee for taking action against her. He further argued that the Disciplinary Committee of the university proceeded against the petitioner and imposed a major penalty of removal from service, the Vice Chancer accepted the recommendations of Committee and vide office order dated 08.05.2024 petitioner was removed from service. He contended that Petitioner filed review petition against the order dated 08.05.2024 before the Vice Chancellor of the university; however, no action was taken thereon. He contended that petitioner filed petition before this Court, wherein directions were issued to the university to decide petitioner's application; however, the review application was also declined. He argued that the petitioner thereafter filed a civil suit seeking a declaration against the penal action imposed by the university administration; that the plaint was returned on the ground that an alternative remedy of appeal was available against the order passed by the Vice Chancellor in terms of Section 33 of the Federal Urdu University Ordinance, 2002 (the Ordinance). He argued that the provisions of Order VII, Rule 10, CPC were wrongly invoked, as the Court was competent to return a plaint for presentation before the court where the suit would have been instituted but cannot return the plaint for presentation before an executive authority. He further prayed that the revisional court also misdirected itself in dismissing the review application. He lastly prayed to allow this petition.

3. Mr. Abdul Samad Memon, learned counsel for FUUAST (respondent No. 1) submitted that petitioner was granted scholarship to pursue Ph.D. program in China; however, she failed to complete her Ph.D. research within the stipulated time. He argued that Petitioner applied for leave, which was refused, and she was directed to report back to the University but she did not, consequently, the matter was referred to Disciplinary Committee. He argued that during the disciplinary proceedings petitioner was found guilty of misconduct of absence without leave thus penal action of "removal from service" was recommended against her, consequently petitioner was removed from service. He further argued that Section 33 of the Ordinance provides that in case of any order passed by the Vice-Chancellor, the right of appeal lies with the Senate. He submitted that Section 43 of the ordinance bars the jurisdiction of civil court against any

action taken by University Authorities. He argued that the petition was misconceived and that the courts below rightly returned the plaint by exercising the powers conferred on them. He prayed that the petition be dismissed.

4. Heard arguments, perused the material available on record.

5. From the perusal of the record, it appears that the petitioner was working as an Assistant Professor at the FUUAST. Petitioner was granted scholarship in China, therefore, she left Pakistan on 08.11.2022 to pursue her Ph.D. program. Before proceeding to China, Petitioner applied for leave without pay on 16.09.2022; however, such application was not considered by the University administration. The case of the Petitioner was placed before the Syndicate in its meeting held on 04.01.2024, whereupon the Syndicate approved the initiation of disciplinary proceedings against the petitioner. The period during which petitioner remained in China for her research work was treated as unauthorized absence from duty; therefore, she was proceeded under disciplinary proceedings, and a major penalty of removal from service was imposed upon her vide order dated 08.05.2024. Upon completion of Ph.D. program, petitioner reported back to University in the month of January 2024, whereupon, she came to know that she was removed from service.

6. It is the case of the petitioner that the inquiry was conducted behind her back and Inquiry Committee recommended for imposing the major penalty of "Removal from Service" without affording her a right of hearing, she was denied right to a fair trial as guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan of 1973 (the constitution), and her time and again requests for the grant of leave without pay were not considered by the University Administration. Petitioner filed review application against the order of removal from service, but did not find favours, thus she filed Civil Suit.

7. From meticulous perusal of the record it evidenced the petitioner was on probation in University when she left for Ph.D research, which per Respondent No 1 was absence from duty as under University Rules a probationer cannot be granted leave. Since the Petitioner had applied for leave without pay, therefore, of leave would not have caused any financial loss to the University, on the contrary, on completion of Ph.D University would have been bestowed with a more skilled scholar to mould students explore the horizons of research in the field of Physics.

8. Learned Trial Court on receipt of the suit returned the plaint by invoking the powers conferred under Order VII Rule 10 of C.P.C. The reason assigned for returning the plaint was that an alternate remedy of filing appeal under section 30 of the ordinance was available to the Petitioner, therefore, for want of jurisdiction the plaint was returned.

9. The provisions of Order VII Rule 10 C.P.C empower the Civil Court to return the plaint when it is found that the Suit is instituted before the Court lacking jurisdiction, thus Court is left with no option but return the suit for its presentation before the Court where it ought to have been instituted. For the ease of reference, the provisions of Order VII Rule 10 C.P.C are reproduced below:

10. ***Return of Plaint:*** (1) *The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.*
- (2) Procedure on returning plaint:*** *On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.*

10. The literal meaning of the provisions of Order VII, Rule 10, C.P.C. is that at any stage of the proceedings if the Court is of the opinion that it has no jurisdiction to entertain the suit, it is not open to the Court to dismiss the suit on that account, but the Court is required to proceed under Order VII, Rule 10, C.P.C. directing that the plaint should be returned to the plaintiff for presentation to the proper Court and on returning a plaint, the Judge must endorse the date of its presentation and return, the name of the party presenting it, with a brief statement of the reasons for returning it. From the perusal of impugned orders of the Courts below it transpired that the plaint was returned on the ground that remedy of appeal provided under section 33 of the ordinance was not exhausted, so also the jurisdiction of Civil Court to entertain the suit was barred by section 43 of the ordinance. The reason so assigned for return of plaint was not correct, as provisions of order VII Rule 10 C.P.C envisaged for return of the plaint for want of jurisdiction and presentation of plaint before the Court where the Suit should have been instituted. In any manner referred provisions of law did not empower the Trial Court to return the plaint for availing a remedy before executive authority. The petitioner filed suit and besides others she claimed a relief for

grant of special and general damages and trial court being a Civil Court was only competent to entertain and adjudicate such claim. From the pleadings contained in the plaint it transpired that Petitioner was removed from service pursuant to decision dated 04.01.2024 of Syndicate of the University. Section 33 of the ordinance did not provide for a remedy of appeal against the decision of Syndicate. For the ease of reference section 33 is reproduced below:

*33. **Appeal to the Syndicate and the Senate:**___ Where an order is passed punishing any officer other than the Vice-Chancellor, teacher or other employee of the University or altering or interpreting to his disadvantage the prescribed terms or conditions of his service, he shall, where the order is passed by any officer or teacher of the University other than the Vice- Chancellor, have the right to appeal to the Syndicate against the order, and where the order is passed by the Vice Chancellor, have the right to appeal to the Senate.*

11. From the above provisions of law, it is crystal clear that an action taken by an officer of the University other than the vice chancellor altering or interpreting to his disadvantage the prescribed terms or conditions of the service of an employee or teacher was appeal-able before Syndicate and action taken by the Vice Chancellor was appeal-able before Senate. In the case of Petitioner impugned action followed from a decision made by Syndicate and Section 33 of the ordinance did not provide for a remedy of appeal against the decision made by the Syndicate of University, therefore, aggrieved person may invoke the jurisdiction of Court of law competent to entertain such grievance.

12. Section 34 of the ordinance provides that the employees of the FUUAST shall be deemed to be the persons in service of Pakistan for the purposes of any court or tribunal set up by law in terms of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, however, it further provides that the service of persons employed by the University shall be entirely governed by the terms and conditions prescribed by Statutes. For the sake of reference Section 34 is reproduced below:

*34. **Service of the University:**___ (1)All persons employed by the University in accordance with the terms and conditions of service prescribed by Statutes shall be persons in the service of Pakistan for the purposes of any court or tribunal set up by law in terms of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973:*

Provided that any provision as regards the terms and conditions of employment of persons in the service of Pakistan in general or in comparable employment notwithstanding the service of persons employed by the University shall be entirely governed by the terms and conditions prescribed by Statutes.

(2) An officer, teacher or other employee of the University shall retire from service on the attainment of such age or tenure of service as may be prescribed.

13. When confronted to the above referred provisions of law laying down that the employees of University were deemed to be persons in service of Pakistan, what platform under the law was available to redress the grievance of an aggrieved employee. Learned Counsel for the University submitted that University had its internal mechanism to deal with the issues relating to the terms and conditions of service of employees and rules so framed were non-statutory in nature. Since the University had non-statutory rules of services therefore the relationship of the employees with the University was that of Master and Servant. The petitioner was left with no option but to institute a suit seeking declaration against the penal action of removal from service, damages and reinstatement in service.

14. The University in the case of petitioner was Master and Petitioner was its servant. The University being Master had the powers of hire and fire, the hiring is done under an express contract. But this relationship does not allow the Master to exploit the services of Servant. The Master is required to take any adverse action against the servant within the boundaries of law and any action eccentric to the prescribed framework would create a cause to sue. The lawsuits encompassing the relationship of master and servant contain claim of employee for award of damages through monetary compensation against wrongful dismissal or termination. In case of employees of statutory bodies who are neither covered under the labour laws nor the Civil Servants laws nor have any statutory rules or regulations of service, they may, due to lack and non-existence of statutory remedy or statutory rules of service, file civil suit for satisfaction of their claims against the wrongs done by the authority. Once an authority is alleged to have exercised its powers with mala fide intention, the civil court is competent to examine the issue without referring the matter back to the authority. When mala fides on the part of the authority are established, every action taken pursuant thereto becomes a nullity in the eyes of law. To prove such mala fides, the recording of evidence is required. The exercise of recording of

evidence can only be undertaken by a competent court, and the civil court, having powers to record and appreciate both oral and documentary evidence, was “Court of Ultimate Jurisdiction” to entertain cases wherein an employee seeks a declaration and damages against any illegal action of the employer.

15. Learned Counsel for the University at this stage argued that the jurisdiction of the Civil Courts to entertain the Suits against the University was barred by section 43 of the Ordinance, thus suit against University was not maintainable. Section 43 of the ordinance no doubt debars the prosecution of University Officials for an action which is taken in good faith, for the sake of reference section 43 is reproduced below:

43. Bar of Jurisdiction:___ *No Court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to anything done in good faith or purported to have been done or intended to be done under the Ordinance.*

16. From the perusal of the above provision of law, it can be deduced that the Court of law was debarred from entertaining any proceedings, when the action under challenge was taken by University Authority or Officer in good faith. Section 9 of C.P.C., grants jurisdiction to the Civil Courts to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The ouster of civil court’s jurisdiction cannot be presumed or anticipated straightforwardly, save as the prerequisites laid down are fulfilled. The presupposition of lack of jurisdiction was fettered to the conditions imposed by the legislation for debarring civil Court from exercising its jurisdiction. In the present case petitioner claims that before imposing major penalty of “Removal from Service” she was not afforded an opportunity of hearing which infringed her rights as to fair trial enshrined under article 10 - A of the Constitution, besides the petitioner was kept in dark regarding penal proceedings and her application for leave was declined without plausible reasons and all the actions taken by the University were motivated and taken under malice. The issue of imposition of penalty whether rightly imposed or wrongly imposed, or whether it was imposed after providing any opportunity of hearing to the Petitioner or not, or whether any regular inquiry was conducted or not to fix the responsibility, required evidence and hence in this situation, the option available to petitioner was to approach civil Court for questioning the imposition of penalty and claim damages for wrong done to her.

17. There is no denial to the fact that the University had non-statutory rules of service and the terms and conditions of service of the petitioner were governed under the principle of Master and Servant. Honorable Supreme Court of Pakistan in such like cases has laid down a unanimous principle of law that in the case of relationship of master and servant, the only course left to the aggrieved employees is to file a suit for redress of their grievances as no other equally efficacious and adequate remedy was provided under the law. The reference in that regard can be made to the case of PRESIDENT, ZARAI TARAQIATI BANK LIMITED, HEAD OFFICE, ISLAMABAD Vs KISHWAR KHAN and others reported as 2022 S C M R 1598, Tanweer-ur Rehman reported as PLD 2010 SC 676, PIAC v. Syed Suleman Alam Rizvi, reported as 2015 SCMR 1545, Abdul Wahab and others v. HBL and others reported as 2013 SCMR 1383, Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaaid Ahmed reported as 2013 SCMR 1707 and Syed Nazir Gilani v. Pakistan Red Crescent Society and another reported as 2014 SCMR 982. Since Honorable Supreme Court of Pakistan through the verdicts referred supra laid down a principle of law which has a binding effect in terms of article 189 of the Constitution was binding upon the Courts below to follow which they did not.

18. This Court, under its writ jurisdiction, is empowered to exercise the powers of judicial review where the findings of the courts below are the result of misreading or non-reading of evidence, or suffered from jurisdictional defect. From a plain reading of the impugned orders, it is evident that the courts below failed to exercise the jurisdiction vested in them. Thus, a jurisdictional defect was committed, and the impugned orders in the present proceedings warrant the interference of this Court to exercise of the powers of judicial review conferred under article 199 of the Constitution.

19. For the aforementioned reasons, this petition is allowed. Consequently, the order dated 21.07.2025 passed by the Court of XIIth Additional District Judge Karachi-East in Civil Revision No.114/2025 (re: Mst. Humaira Akbar v. Federal Urdu University of Arts, Science and Technology and others) and the order dated 08.05.2025 passed by the Court of Senior Civil Judge XIIth, East Karachi, in Civil Suit No.7841/2025 and Suit No. 7841/2025 Mst. Humaira Akbar v. Federal Urdu University of Arts, Science and Technology and others are set aside. The Suit filed by the petitioner shall be deemed to be pending before Trial Court. On entertaining the suit, Trial Court shall decide it on merits. Pending the decision

on merits of the Suit, any interlocutory applications, if filed seeking interim relief, shall be decided expeditiously and preferably within two months’ time from the date of receipt of this order.

The office is directed to send a copy of this order to the learned trial court for compliance.

JUDGE

Approved for reporting