

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-5300 of 2020
(Rasheed Alam & one another v Dr. Qadeer Muhammad Ali & others)

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 01.01.2025

Mr. Muhammad Yousuf Chohan advocate for the petitioners.
Mr. Ameeruddin advocate for respondents/Karachi University.
Mr. Sandeep Malani, Assistant A.G

ORDER

Adnan-ul Karim Memon, J: Through this constitutional petition,
Petitioners have prayed as follows:

1. *To set aside the office order dated 24.07.2019 and continue the service of the petitioner as Transport Officer, UOK, from 24.07.2019 in the Transport Unit, UOK.*
2. *To set aside the Notification dated 15.05.2019 due to compliance with the order of the Supreme Court of Pakistan and to pass the order for the Acting Vice Chancellor Prof. Dr. Syed Abid Hasnain, Department of Food Science and Technology, UOK.*
3. *To set aside the office order dated 11.11.1996 and to dismiss from Service in UOK, Respondent No.1 and to cancel all degrees issued by UOK, due to cheating & Fraud committed by Respondent No.1.*

2. The petitioner, a Transport Officer at the University of Karachi since 1985, was promoted to Maintenance and Repairs Supervisor in 2003 and later awarded BPS-16 in 2015. In addition to his regular duties, he also assisted the Dean of the Faculty of Management and Administrative Sciences. The respondent department issued a letter of appreciation to the petitioner in 2023 for his valuable services. The counsel argues that the petitioner was appointed as Transport Officer and later promoted, but his current BPS is inconsistent. He highlights a Supreme Court order regarding the appointment of the Acting Vice-Chancellor. He also alleges that respondent No.1's appointment was obtained fraudulently and requests the court to allow the petition.

3. Mr. Ameeruddin advocate for respondents/Karachi University has argued that the petitioner concealed an inquiry report where he admitted corruption. He added that the transfer order cannot be challenged as the University's service rules are non-statutory and transfers are administrative acts. He further submitted that the petitioner's promotion was temporary and he was transferred upon his request. Learned counsel states that the issues raised by the learned counsel for the Petitioner involve factual controversy, which requires evidence; therefore, the Constitution

Jurisdiction of this Court cannot be invoked. He emphasized that a writ of mandamus is not available to the petitioner against the decision of the respondent university. Learned counsel further pointed out that the Hon'ble Supreme Court of Pakistan has already held in its various pronouncements that interference in the internal governance and affairs of the educational institutions are not called for by this Court under Article 199 of the Constitution on the premise that university authorities possess technical expertise and experience of the educational institutions. In support of his contentions, he relied upon the cases of Amir Jamil v. University of Karachi through Registrar and others, **2018 PLC (S) 542**, Muhammad Zahid Maqsood v. University of Karachi through Vice-Chancellor and others, **2013 MLD 9**, Selling of National Assets Including PIA at a throwaway price, **2019 SCMR 1952**, Capt. (Retd.) Muhammad Naseem Hijazi v. Province of Punjab through Secretary, Housing and Physical Planning and others, **2000 SCMR 1720**, Khyber Medical University and others v. Aimal Khan and others, **PLD 2022 Supreme Court 92**, Chief Executive, Multan Electric Power Company Ltd, Khanewal Road, Multan v. Muhammad Ilyas and others, **2021 SCMR 775**, and unreported order dated 26.06.2018 passed in C.P No.663-K of 2017 by the Supreme Court of Pakistan. He lastly prayed that since the administrative and policy matters of the universities are under attack, therefore, until and unless there is any violation of any fundamental right or any law, the indulgence of this Court is not required.

4. The counsel for the petitioner replied to the objection raised by the learned counsel for the respondent university and argued that statutory rules are those that are created by an act of Parliament or a legislative body. They have the force of law and are binding on all those who are subject to them. Non-statutory rules, on the other hand, are not created by an act of Parliament. They may be created by a government department, a regulatory body, or a private organization. They do not have the force of law and are not binding on anyone. He added that the University of Karachi's statutory rules govern employment aspects like recruitment, terms of service, grievance procedures, and disciplinary actions, therefore this petition is maintainable to be heard and decided on merits.

5. We have heard the learned counsel for the Petitioners as well as learned counsel for the respondents and AAG and have perused the material available on record with their assistance.

6. To address the question of maintainability of the instant petition in the light of the ratio of the judgment of the Supreme Court in the case of Khyber Medical University and others v. Aimal Khan and others, **PLD 2022 Supreme Court 92**. There is no cavil to the proposition as set forth

by the Supreme Court that Courts ordinarily refrain from interfering in the policymaking domain of the Executive of the Public Sector Universities, until and unless the same offends the fundamental rights of the parties. Primarily, everyone is to be treated under the law under the constitutional command of Article 4 of the Constitution, and under Article 199 (1) (a) (ii) of the Constitution, the High Court can declare such act or proceeding of a public functionary to have no legal effect, which has been done or taken without lawful authority. In principle, the issue of the initial appointment, absorption, repatriation, up-gradation, regularization of service, re-employment, and deputation could be looked into by this Court under Article 199 of the Constitution, however, in the present case, the issue of terms and conditions of service of the petitioner is involved in the present matter to attract the bar of jurisdiction about non-statutory rules of service of the respondent-university.

7. Much has been said about the crucial issue of statutory and non-statutory rules of service of the organizations/institutions/public sector universities/authorities and Government-owned and controlled entities, established under the Act of Parliament.

8. In our understanding, briefly, the term statutory refers to organizations and bodies that are defined by a formal law or a statute and these bodies derive their power from a 'Law' or 'Statute', which is called a statutory body or statutory authority. Statutory regulation is a law passed by a legislature. A non-statutory regulation is not based on legislative action but instead is derived from the interpretation of federal or provincial law. In this context, the Parliament is the law-making authority. It passes the Acts and empowers the Government under the relevant Act to make Rules for carrying on the business. A statute is the formal "expression" in writing of the will of the legislative organ in a State. A 'Statute' is a declaration of the law, as it exists or as shall be from the time at which such statute is, to take effect. It is usually called an Act of the Legislature. It expresses the collective will of that body. A Statute is the highest constitutional formulation of the law after the fullest deliberation expresses its final will. "Statutory law" is defined as the will of the nation, expressed by the Legislature, and expounded by the Courts of Justice. If the Parliament is not in session then the laws are enforced through Ordinances promulgated by the President or Governor expressing as the case may be because of the exigencies mentioned therein. So, the Act and the Ordinance would be called the "Statutory Law". The Rules framed under the powers conferred by an Act are an integral part of the Act and these Rules are called Statutory Rules and are held to be part of the parent Act. It can do anything if within its scope. The Rules or the Bye-Laws made under the Statutes or Act cannot override the provisions of other

Statutes. Neither the Rules control the construction to be placed on the provisions of the Act nor can they enlarge the meaning of the section. The Rules are framed under the Act in aid to the construction of ambiguous Statutes. The Rules under the Act shall be made by the Authority, empowered under the Act to frame the Rules or Bye-Laws. No other authority who is not empowered under the Act makes the Rules. A Rule Making Body also cannot frame the Rules in conflict with or derogating from the substantive provisions of the law or Statute under which the Rules are framed. On the aforesaid proposition, we are guided by the decisions of the Honorable Supreme Court in the cases of Salahuddin and others v. Frontier Sugar Mills, PLD 1975 SC 244, Muhammad Yousuf Shah v. PIA, PLD 1981 SC 224, Principal Cadet College Kohat v. Muhammad Shoaib Qureshi, PLD 1984 SC 170, Anwar Hussain v. Agricultural Development Bank of Pakistan, PLD 1984 SC 194, Raziuddin v. Chairman Pakistan International Airlines Corporation and 2 others, PLD 1992 SC 531, Muhammad Tariq Badr and another. v. National Bank of Pakistan and others, 2013 SCMR 314, Zarai Taraqati Bank Limited v. Said Rehman and others, 2013 SCMR 642, Muhammad Ashraf Tiwana v. Pakistan and others, 2013 SCMR 1159; Abdul Wahab and others v. HBL and others, 2013 SCMR 1383, Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaaid Ahmed, 2013 SCMR 1707, Syed Nazir Gillani v. Pakistan Red Crescent Society and another, 2014 SCMR 982, Warid Telecom (Pvt.) Limited and 4 others v. Pakistan Telecommunication Authority through Chairman, 2015 SCMR 338, Shafique Ahmed Khan and others. v. NESCOM through Chairman, Islamabad, and others, PLD 2016 SC 377, and Muhammad Zaman and others. v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad, and others, 2017 SCMR 571. In principle, we are under the command of Article 189 of the Constitution to follow the "ratio decidendi" of the judgments rendered by the Honorable Supreme Court in the cases discussed supra.

9. There is no denial of the factum that The University of Karachi is a statutory/public Sector University under the University of Karachi Act, 1972, and has rules of service. These rules are outlined in the University of Karachi Act, 1972, and subsequent amendments and regulations. It is added here that these rules governed various aspects of employment at the university, including, recruitment and selection, and procedures for hiring faculty, staff, and other employees. It also deals with terms and conditions of service including salaries, allowances, benefits, and other terms of employment. It also provides Rules for handling misconduct and disciplinary actions. Providing guidelines for career advancement within

the university and Procedures for employees to raise and resolve grievances.

10. On reviewing the aforesaid judgments pronounced by the Supreme Court of Pakistan, it is obvious that Karachi University is a statutory body, having no statutory rules of service, but at the same time, we cannot lose sight of the effect that Karachi University is also performing the functions, in line with the Provincial Government's command, and exercising public power by creating public employment. Karachi University is, therefore "person" within the meaning of Article 199(1) (a) (ii) read with Article 199(5) of the Constitution.

11. We are also cognizant of the fact that the invocation of the writ of Mandamus under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been restricted to enforce the terms and conditions of non-statutory rules of service of government-owned and controlled organizations. However, the petitioner's case involves the enforcement of the university's service rules. The court cannot hear the transfer order challenge as it falls within the terms and conditions of service. Regarding the quo warranto writ, the petitioner must file a separate petition to challenge the private respondents' appointment orders keeping in view that one of the respondents has retired from service as pointed out by the counsel for the respondent university.

12. The petition and applications pending therein stand dismissed with no order as to costs.

JUDGE

JUDGE