

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Constitutional Petition No. D-5674 of 2025
(*Dr. Kashif Bin Zaheer & another versus Federation of Pakistan & others*)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 08.4.2026

Mr. Asif Ali Khawaja advocate for the petitioners
Ms. Wajiha Mehdi, Assistant Attorney General
Mr. Abdul Samad Memon advocate for respondents No.2 and 3

ORDER

Adnan-ul-Karim Memon, J. Petitioners have filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following relief: -

I. To declare the letters dated 24.02.2020, 04.08.2020, 27.10.2023 & 18.06.2025 issued by the Respondent Nos. 1 & 2 regarding the recovery of the FDP scholarship program are violative of basic rights of the Petitioners.

II. To direct the Respondent Nos. 1 to 3, to refund the already deducted amount from the Petitioners from July to October 2025, and for payment to HBFC's defaulted amounts.

III. To direct the Respondent Nos. 1 to 3, to release Ph.D allowances of Petitioner No.1 from the date of completion of Ph.Ds.

IV. To direct the Respondent Nos. 1 to 3 to release the annual increments pending since January 2013 of Petitioner No.1.

V. To direct the Respondents No.1 to 3 not to deduct the salaries of Petitioners on the pretext of FDP scholarship program and penalties there against, as petitioners have completed Ph.Ds & accreted from the University Technology Malaysia (UTM) on dated: 27.06.2018 & 29.07.2020

VI. To declare that after obtaining Ph.D degrees, the question of NTS no longer exists. Therefore, Petitioners may please be exempted from the NTS test.

2. The Petitioners, husband and wife, are serving as Assistant Professors (BPS-19) in the Department of Mathematical Sciences under Respondent No. 1. Both hold PhD degrees from University Technology Malaysia (UTM), which they pursued after obtaining prior qualifications (M.Phil/MS) from recognized institutions in Pakistan. They were granted No Objection Certificates (NOCs), educational leave with pay, and were subsequently awarded scholarships under the Faculty Development Program (FDP) through proper approvals and office orders issued in January 2013. The said scholarship covered tuition fees, stipends, and related expenses, and the Petitioners duly executed surety bonds as required. The Petitioners proceeded abroad and completed their PhDs Petitioner No. 2 in 2018 and Petitioner No. 1 in 2020 after obtaining extensions in their study leave

duly approved by the Respondents. During the course of their studies, funds were released intermittently, and at certain stages, the Petitioners bore expenses from their own resources. Upon completion, they resumed their duties. However, after several years, the Respondents initiated proceedings against the Petitioners on the pretext that they had not submitted NTS/GAT results, purportedly required under the FDP scholarship. It is urged that show-cause notices were issued in 2020 demanding repayment of substantial amounts. The Petitioners responded, clarifying that the scholarship had been awarded unconditionally and that the requirement of NTS/GAT was neither communicated nor enforced at the relevant time. It is added that despite this, no final decision of any inquiry was communicated. Subsequently, in 2023 and 2025, the Respondents directed recovery of alleged scholarship amounts along with a 25% penalty, resulting in severe deductions from the Petitioners' salaries (up to 65.52% and 79.90%). Per learned counsel these deductions have caused extreme financial hardship, rendering the Petitioners unable to meet their financial obligations, including repayment of their house loan from HBFC, thereby exposing them to default. The Petitioners' counsel contended that the impugned actions are arbitrary, unlawful, and taken without due process or proper hearing, in violation of their fundamental rights guaranteed under Articles 4, 10-A, and 25 of the Constitution. He further asserts that the requirement of NTS/GAT, if any, became redundant after completion of their PhDs, particularly when the scholarship was granted without adherence to such formalities at the outset. It is also their case that the Respondents failed to grant annual increments and PhD allowance to Petitioner No. 1, while extending such benefits to Petitioner No. 2, amounting to discrimination. It is submitted that the recovery calculations are inflated, inaccurate, and based on incorrect assumptions, as a significant portion of expenses was either not paid by the Respondents or was borne by the Petitioners themselves. In these circumstances, the Petitioners seek a declaration that the impugned letters and recovery proceedings are illegal and unconstitutional, along with directions for refund of deducted amounts, cessation of further recoveries, release of pending benefits. Learned counsel for the petitioners prayed to allow this petition.

3. The counsel for the Respondents No. 1 to 3 submitted that the present petition is not maintainable and is liable to be dismissed. The Petitioners have approached this Court with unclean hands, concealing material facts and raising disputed questions of fact which cannot be adjudicated in constitutional jurisdiction. It is submitted that the petition is vague, frivolous, and based on misrepresentation, and thus amounts to an abuse of process. It is further contended that the relationship between the parties is governed by contractual obligations, and in view of settled law, where service matters of a statutory body

are not regulated by statutory rules, the remedy lies elsewhere and not under Article 199 of the Constitution. Moreover, under the relevant provisions of the University Ordinance, the jurisdiction of this Court is barred, and the proper forum is the Tribunal constituted under Article 212 of the Constitution. On merits, the Respondents' counsel submitted that although the Petitioners were granted permission, study leave, and financial assistance under the Faculty Development Program (FDP), such benefits were strictly conditional. He added that the Petitioners had executed surety bonds and were bound to fulfill mandatory requirements, including submission of NTS/GAT results and compliance with other conditions stipulated in the Office Orders. It is emphasized that despite repeated opportunities and extensions granted over several years, the Petitioners failed to fulfill these obligations, thereby committing a material breach of contract. The Respondents' counsel maintain that the Petitioners were fully aware of these conditions at all relevant times and continued to avail benefits without objection. Their subsequent claim that such conditions were mere formalities is an afterthought and legally untenable. It is submitted that the completion of PhD degrees does not absolve them of their contractual liabilities. It is further submitted that the University fulfilled its obligations by facilitating the Petitioners' studies and releasing funds as required. However, upon directions of the Higher Education Commission (HEC), recovery proceedings were initiated due to the violation of scholarship terms. The Petitioners were duly issued notices, afforded opportunities of hearing, and even appeared before an inquiry committee. Hence, the allegation of denial of due process is incorrect. He submitted that the recoveries, including imposition of 25% penalty, are stated to be in accordance with the terms of the surety bonds and HEC directives. The University is legally entitled to recover the amounts in the same currency in which they were disbursed and to deduct the same from the Petitioners' salaries in the absence of any other security. He submitted that such recovery is neither arbitrary nor unlawful but a lawful enforcement of contractual and statutory obligations. The Respondents' counsel also contend that the Petitioners' personal financial liabilities, including their HBFC loan, are irrelevant and cannot impede recovery of public funds. Any financial hardship claimed is a consequence of their own breach and does not create any legal defense. Lastly, it is submitted that the stoppage of increments and PhD allowance was/is due to non-compliance with mandatory conditions, and the same could have been restored had the Petitioners fulfilled their obligations. In view of the above, the Respondents pray that the petition be dismissed with exemplary costs, as the Petitioners have failed to establish any violation of law or fundamental rights.

4. We have heard learned counsel for the parties at length and have perused the material available on record.

5. The controversy essentially revolves around whether the impugned recovery proceedings initiated against the Petitioners, after completion of their PhD degrees, are lawful, justified, and in accordance with due process.

6. At the outset, the objection regarding maintainability is not sustainable in the peculiar facts of the present case. It is a settled principle that where actions of a public authority are alleged to be arbitrary, without lawful authority, or in violation of fundamental rights, the constitutional jurisdiction under Article 199 of the Constitution is rightly invoked, notwithstanding the existence of an alternate remedy. The Supreme Court held that constitutional jurisdiction can be exercised where the impugned action is coram non iudice, mala fide, or without lawful authority.

7. From the record, it transpires that the Petitioners were granted study leave, NOCs, and financial assistance under the Faculty Development Program (FDP) through formal approvals and office orders. The Respondents, at the relevant time, permitted the Petitioners to proceed abroad and facilitated their studies without enforcing the alleged precondition of submission of NTS/GAT results. The Petitioners completed their PhDs and resumed their duties. The requirement of NTS/GAT, if any, was neither enforced at the inception nor during the subsistence of the scholarship, and thus cannot be invoked retrospectively to penalize the Petitioners after successful completion of their studies.

8. The conduct of the Respondents in allowing the Petitioners to avail the entire benefit of the scholarship, coupled with extensions of leave and continuous facilitation, clearly attracts the doctrine of estoppel, whereby a party cannot be permitted to approbate and reprobate or take a position contrary to its earlier conduct.

9. Moreover, the recovery proceedings appear to have been initiated after an inordinate delay of several years, without any final determination through a transparent and concluded inquiry. Even though notices were issued, there is nothing on record to demonstrate that a reasoned and speaking order was passed after affording the Petitioners a meaningful opportunity of hearing. Such action is violative of the principles of natural justice and due process guaranteed under Article 10-A of the Constitution, as held in *the Messrs. Mustafa Impex case*.

10. The imposition of a 25% penalty, along with massive recoveries resulting in the deduction of up to 65% to 79% of the Petitioners' salaries, is also disproportionate and arbitrary. It is a settled principle that administrative actions must satisfy the test of reasonableness and proportionality, failing which such actions cannot be sustained.

11. Furthermore, the Respondents' plea that the matter is purely contractual is not entirely correct. The Respondent University, being a public sector institution, is amenable to constitutional jurisdiction, and its actions must conform to fairness, transparency, and legality. Even in contractual matters, where actions of a public authority are arbitrary or discriminatory, the constitutional jurisdiction can be invoked.

12. The plea regarding the bar of jurisdiction under the University Ordinance is also misconceived, as statutory ouster clauses cannot override constitutional jurisdiction where fundamental rights are infringed.

13. In the present case, the cumulative effect of non-enforcement of the alleged condition at the relevant time, completion of PhDs with Respondents' full knowledge and facilitation, absence of a proper adjudicatory process, and disproportionate recoveries, leads to the inescapable conclusion that the impugned actions suffer from arbitrariness, lack of lawful authority, and violation of due process.

14. Consequently, the impugned letters dated 24.02.2020, 04.08.2020, 27.10.2023, and 18.06.2025, to the extent of recovery and penalty, cannot be sustained in law.

15. Accordingly, the petition is disposed of along with pending application(s) whereby the impugned recovery proceedings are declared illegal and without lawful authority. The Respondents shall forthwith cease further deductions from the salaries of the Petitioners; Any amount already deducted shall be refunded or adjusted reasonably within a stipulated period; The cases of the Petitioners for grant of PhD allowance and annual increments shall be considered strictly in accordance with law; However, it is clarified that if any liability is to be determined, the same shall be done strictly after providing the Petitioners a fair opportunity of hearing through a transparent and reasoned process.

JUDGE

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