

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

Constitutional Petition No. D-4100 of 2025

(Abbas Ali versus Registrar Federal Urdu University of Arts, Science & Technology Karachi & others)

Dated _____ Order with signature of Judge _____

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:-14.05.2026

Mr. Altaf Hussain Khoso, advocate for the petitioner, along with
Abbas Ali petitioner
Mr. Abdul Samad Memon, advocate for Federal Urdu
University of Arts, Science & Technology.

ORDER

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

i) Declare that the impugned order dated 4th March 2025, whereby the petitioner has been prematurely and compulsorily retired from service, is illegal, void ab initio, without lawful authority;

ii) Direct the Respondent University to reinstate the petitioner in service to his substantive post of Assistant Superintendent (BPS-16) at the Central Library, Abdul Haq Campus, Karachi, with immediate effect, along with full back benefits, emoluments, seniority, continuity of service, and all ancillary rights and entitlements as per law;

iii) Grant any other relief deemed just and proper in the circumstances of the case.

2. The case of the Petitioner is that he has been serving at Federal Urdu University of Arts, Science and Technology, Karachi, since 01.01.1996 and, through his dedication, competence, and unblemished service record spanning nearly twenty-nine years, earned promotions from BPS-1 to the post of Assistant Superintendent (BPS-16) in the Central Library, Abdul Haq Campus. The Petitioner submits that despite developing permanent visual impairment during service, duly certified by the competent medical authority, he continued to discharge his official duties diligently and efficiently. His performance and conduct were repeatedly appreciated by various competent authorities, including his immediate supervisory officer, the Librarian, who acknowledged his professionalism and recommended him for further promotion on several occasions. It is the case of the Petitioner that after he raised concerns regarding employees' financial hardships and non-payment of salaries through a response to the Vice Chancellor's Eid message, the Respondents, in a mala fide and retaliatory manner, initiated disciplinary proceedings against him. A show-cause notice was issued, followed by an order withholding his annual increment without

conducting any proper inquiry or affording him an opportunity of personal hearing, in violation of due process and principles of natural justice. Thereafter, further acts of victimization were initiated through complaints and inquiries by officials having no supervisory authority over the Petitioner, coupled with the constitution of a biased inquiry committee. The Petitioner further submits that despite furnishing a valid medical fitness certificate issued by a competent Civil Surgeon, along with supporting medical documents, and despite clear testimonials from his immediate superior confirming his competence and satisfactory performance, the Respondent University unlawfully and arbitrarily issued an order dated 04.03.2025 prematurely retiring him from service without lawful justification, inquiry, or opportunity of hearing. The Petitioner challenged the said action through departmental appeals, representations, legal notice, and by approaching the Wafaqi Mohtasib; however, no effective remedy was provided. The Petitioner submitted that the impugned action is arbitrary, discriminatory, mala fide, and violative of his constitutional and legal rights, particularly in view of the protection available to persons with disabilities under the law. Hence, the Petitioner seeks the intervention of this Court for setting aside the impugned order and for the grant of reliefs in accordance with law.

3. The Petitioner, along with his counsel, submits that the impugned order dated 04.03.2025, whereby he was prematurely and forcibly retired from service, is illegal, arbitrary, mala fide, and without lawful authority. The Petitioner contends that the said action was taken in complete violation of the principles of natural justice, as no proper show cause notice, statement of allegations, inquiry proceedings, or opportunity of personal hearing was ever provided before passing the impugned order. The Petitioner submits that such action is violative of Articles 4, 9, 10-A, 14, 25, and 27 of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantee due process, fair trial, dignity, equality before law, and protection against discrimination in service matters. It is further submitted that the Respondent University acted beyond its lawful jurisdiction and contrary to the provisions of the Federal Urdu University of Arts, Sciences and Technology Ordinance, 2002, particularly Sections 32, 34, and 35 thereof, as the Petitioner had neither attained the age of superannuation nor completed the prescribed tenure of service. The Petitioner submits that under the law, no adverse action could be taken against him without affording him an opportunity of hearing, which mandatory requirement was completely ignored. The impugned order is, therefore, void ab initio, non-speaking, and based upon non-application of mind. The Petitioner further submits that the entire disciplinary process was tainted with mala fide intent, bias, and victimization. Complaints and proceedings were initiated by officials who had no supervisory or administrative authority over the Petitioner, while even the complainant himself was included in the inquiry mechanism, rendering the proceedings coram non iudice and contrary to settled principles that no person can act as judge in his own cause. The Petitioner asserts that the adverse action was, in fact, retaliatory in nature after he raised

lawful grievances relating to employees' hardships and administrative irregularities. The Petitioner also submits that despite suffering from visual impairment, he remained medically fit for service as certified by a competent Civil Surgeon, while his immediate supervisory officer, namely the Librarian of the Central Library, repeatedly certified his satisfactory performance, diligence, and unblemished service record. In the absence of any medical board declaration declaring the Petitioner incapacitated, the Respondents could not lawfully force him into premature retirement. The impugned action, therefore, amounts to constructive dismissal under the guise of retirement. It is further submitted that the Petitioner, being a person with disability, is entitled to constitutional and statutory protection under the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, the Amendment Act, 2015, and the Sindh Empowerment of Persons with Disabilities Act, 2018, which mandate equal treatment, protection from discrimination, and reasonable accommodation in employment. Instead of extending such protection, the Respondents unlawfully removed the Petitioner from service in blatant disregard of the rights guaranteed to persons with disabilities under the law. The Petitioner submits that he exhausted all departmental and alternate remedies, including filing departmental appeals, representations, and approaching the Wafaqi Mohtasib, but no effective remedy was provided. Hence, having no other adequate or efficacious remedy available, the Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution for a declaration of the impugned order as illegal and without lawful authority, and for reinstatement in service with all consequential benefits.

4. Learned counsel for the Respondent University raised preliminary objections regarding maintainability, submitting that the Petition is not maintainable under Article 199 of the Constitution as the service of University employees is governed by non-statutory rules and the relationship is that of master and servant. Reliance was placed upon PLD 2010 SC 676, 2010 PLC (C.S.) 1258, and 2023 PLC (C.S.) Note 49. It was further contended that under Section 43 of the Federal Urdu University Ordinance, 2002, this Court lacks jurisdiction to interfere in actions taken in good faith under the Ordinance. On merits, learned counsel submitted that the Petitioner was lawfully retired on medical grounds after due inquiry proceedings, medical examination, and approval by the Syndicate of the University. It was argued that complaints regarding the Petitioner's conduct and disruptive behavior led to disciplinary proceedings and medical examination, wherein he was diagnosed with retinitis pigmentosa and declared fit only for duties of a "Counselor," though no such post exists in the University. The Head of the Library also reported that due to visual impairment, the Petitioner was unable to independently perform official duties. Learned counsel submitted that the Petitioner was repeatedly afforded opportunities of explanation and hearing; therefore, no violation of due process occurred. Allegations of mala fide and victimization were denied, and it was asserted that

no independent material had been produced in support thereof. Learned counsel further contended that protections available to persons with disabilities do not obligate the employer to retain an employee medically unfit to perform the essential duties of his post, particularly when disability quota applies only to initial appointments. It was also submitted that the Petitioner had previously faced disciplinary proceedings and had filed multiple baseless complaints against University officials, while a civil suit for defamation was also pending against him. He thus prayed for dismissal of the petition, maintaining that the impugned action was lawful, bona fide, and taken strictly in accordance with law.

5. Learned counsel for the Petitioner, while rebutting the contentions raised by the Respondent University, submitted that the objection regarding maintainability is misconceived, as the impugned action is tainted with mala fide, discrimination, and violation of fundamental rights guaranteed under the Constitution, particularly the rights relating to dignity, equality, and protection against discrimination on account of disability. It was argued that where actions of statutory bodies are arbitrary, without lawful authority, or violative of constitutional safeguards, this Court can validly exercise jurisdiction under Article 199 of the Constitution, notwithstanding the existence of non-statutory service rules. Learned counsel further contended that Section 43 of the Federal Urdu University Ordinance, 2002, does not provide blanket immunity to arbitrary or unlawful actions taken in abuse of authority. On merits, learned counsel submitted that the Petitioner was neither afforded a fair inquiry nor provided a proper opportunity to defend himself against the allegations levelled by the Respondent University. It was argued that the so-called disciplinary proceedings and complaints were merely a consequence of personal hostility and victimization by certain University officials after the Petitioner raised grievances regarding administrative irregularities before lawful forums. Learned counsel denied that the Petitioner was guilty of misconduct or disruptive behavior and contended that the complaints relied upon by the Respondents were exaggerated, motivated, and unsupported by any independent evidence. About the medical grounds, learned counsel submitted that the diagnosis of retinitis pigmentosa by itself could not legally justify compulsory retirement, particularly when the Petitioner had continued to discharge his duties for years and had never previously been declared incapacitated. It was argued that no Medical Board was constituted, and the impugned action was based merely upon a unilateral opinion of a Consultant Ophthalmologist, which could not override the Petitioner's service record and experience. Learned counsel further submitted that instead of providing reasonable accommodation or adjusting the Petitioner to a suitable post in terms of disability laws and constitutional protections, the Respondent University adopted a punitive approach to forcibly remove him from service. The contention that no post of "Counselor" existed was stated to be irrelevant, as the employer was under a legal and constitutional obligation to explore alternative placement or accommodation for an employee who acquired disability during service. Learned

7. It is a settled principle of law that where an employee acquires disability during service, the employer is under an obligation to consider reasonable accommodation, adjustment to a suitable post, or alternative duties before resorting to compulsory retirement or removal from service. Mere medical unfitness for a particular assignment cannot mechanically justify termination, as protection of the livelihood and service benefits of a disabled employee forms part of the constitutional guarantees of equality, dignity, and non-discrimination.

8. The objection regarding maintainability raised by the Respondent University does not appear to be sustainable in the peculiar facts and circumstances of the present case. Although ordinarily disputes relating to service conditions of employees of autonomous bodies governed by non-statutory rules may not be amenable to constitutional jurisdiction, it is equally well-settled that where the action of a statutory body is alleged to be arbitrary, mala fide, discriminatory, coram non iudice, or violative of fundamental rights guaranteed under the Constitution, the constitutional jurisdiction of this Court under Article 199 of the Constitution can validly be invoked. Reference in this regard may be made to the principles laid down by the Supreme Court, wherein it has been consistently held that constitutional jurisdiction is available where executive or administrative action lacks lawful authority or infringes fundamental rights. In the present case, the grievance of the Petitioner pertains not merely to a service dispute simpliciter but to allegations of discriminatory treatment, denial of due process, and unlawful deprivation of livelihood on account of disability, thereby bringing the matter within the constitutional domain.

9. The contention of the Respondent University that the impugned action was taken strictly on medical grounds also does not withstand judicial scrutiny. The material on record reflects that the Petitioner had admittedly been serving the Respondent University since 1996 and had earned promotions from BPS-1 to BPS-16 during nearly three decades of service. The record further demonstrates that despite visual impairment, the Petitioner continued performing his duties, and no declaration had ever previously been issued declaring him permanently incapacitated or unsuitable for service. The impugned action appears to have been triggered only after disputes arose between the Petitioner and certain University officials following complaints and grievances raised by him regarding administrative matters. Such surrounding circumstances cannot be ignored while examining the bona fides of the impugned action.

10. The Respondent University primarily relied upon the opinion of a Consultant Ophthalmologist diagnosing the Petitioner as a case of retinitis pigmentosa and opining that he was fit only for duties of a "Counselor." However, admittedly, no Medical Board was constituted to undertake a comprehensive assessment regarding the Petitioner's overall functional capacity,

extent of disability, or possibility of adjustment to another suitable assignment. It is a settled principle that where civil consequences involving deprivation of livelihood are to ensue, a solitary medical opinion without independent review by a duly constituted Medical Board cannot be treated as conclusive. The failure to constitute a Medical Board assumes greater significance in the present case because the Petitioner had continued serving for years with the same condition, and there existed material on record, including testimonials from his immediate supervisory officer, reflecting satisfactory performance of duties.

11. This Court is also unable to accept the contention that the Respondent University was absolved of its obligation merely because no sanctioned post of “Counselor” existed in the establishment. It is now a settled principle of law that where an employee acquires disability during service, the employer is under a legal and constitutional obligation to consider reasonable accommodation, adjustment to a suitable post, or alternative assignment compatible with the employee’s medical condition before resorting to compulsory retirement or removal from service, while interpreting protections available to disabled employees, we are of the view that an employee acquiring disability during service cannot be mechanically dispensed with merely because he becomes medically unfit for the original post, and that the employer must explore alternative placement with protection of service benefits. Similar principles relating to dignity, equality, and reasonable accommodation have also been recognized in disability rights jurisprudence and form part of the constitutional guarantees.

12. The record further reveals material procedural irregularities in the manner in which the proceedings were conducted against the Petitioner. The Petitioner consistently asserted that complaints and proceedings were initiated by officials having no direct supervisory authority over him and that even complainants themselves became part of the inquiry mechanism. The rule against bias, embodied in the maxim *nemo iudex in causa sua*, no person shall be a judge in his own cause, is a foundational principle of natural justice. Any inquiry conducted under the shadow of apparent bias or personal hostility stands vitiated in law. The Supreme Court held that departmental proceedings conducted in violation of principles of natural justice cannot sustain adverse civil consequences.

13. The plea of the Respondent University that an adequate opportunity of hearing had been afforded to the Petitioner also does not appear fully convincing from the record. The material placed before this Court does not demonstrate that before passing the drastic order of compulsory retirement, the Petitioner was confronted with a definite proposal for medical invalidation, supplied all adverse material relied upon against him, or afforded a meaningful opportunity to rebut the same before an impartial forum. The requirement of due process under

Articles 4 and 10-A of the Constitution extends beyond mere issuance of notices and encompasses fair, transparent, and unbiased proceedings. Mere formality of notices without an effective opportunity of defense cannot cure procedural illegality.

14. Equally untenable is the argument that the Petitioner's complaints before lawful forums, including grievance authorities and public institutions, could by themselves justify adverse action. Access to lawful forums for ventilating grievances is a recognized legal right and cannot ordinarily be treated as misconduct unless demonstrably shown to be malicious or knowingly false through due process of law. The pendency of a civil defamation suit against the Petitioner equally does not establish misconduct unless adjudicated by a competent Court of law. Mere allegations levelled by the administration cannot substitute legal proof. It is worthwhile to mention here that a Civil Surgeon / Associate Physician vide letter dated 06.1.2025 (Page 73 of the Court file) addressed to the Acting Registrar, Federal Urdu University for Arts, Science & Technology opined that since the petitioner is working as a Counselor, his decreased vision will not input his job performance, therefore, he is fit for job.

15. In the totality of circumstances, this Court is of the considered view that the impugned order dated 04.03.2025 suffers from procedural impropriety, non-application of mind, and failure to observe the constitutional and statutory obligations relating to reasonable accommodation of a disabled employee. The Respondent University failed to establish through cogent and legally sustainable material that the Petitioner had become wholly incapable of performing any useful service or that no alternate placement or accommodation was possible. The impugned action, therefore, appears disproportionate, arbitrary, and inconsistent with the constitutional guarantees of dignity, equality, and protection against discrimination. Consequently, the impugned order dated 04.03.2025 is declared to be without lawful authority and of no legal effect and is hereby set aside. The Respondent University is directed to reinstate the Petitioner in service forthwith, with continuity of service and all consequential service benefits. The Respondent University shall further examine and provide reasonable accommodation or adjustment against a suitable post compatible with the Petitioner's medical condition strictly in accordance with the law, and he shall not be harassed by the officials of the Respondent University due to his medical condition, i.e., visual impairment.

16. This petition is allowed in the above terms. All pending applications stand disposed of.

JUDGE

JUDGE