

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

Constitutional Petition No. D –3683 of 2016

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Date	order with signature of Judge(s)
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For hearing of Misc. No.26625/2021 (Contempt)

**24.02.2022**

Dr. Raana Khan, advocate for the petitioners  
Mr. Ishrat Zahid Alvi, advocate for alleged contemnors  
Mr. Muhammad Nishat Warsi, DAG

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The captioned petition was disposed of vide order dated 23.08.2021 with the following observations:-

“2. At the outset, learned counsel for the respondents contends that respondents are not going to execute notification dated 26.05.2016 and letter dated 28.05.2016 and according to learned counsel these notification and letter may not be acted upon. Accordingly, this notification and letter shall not be treated as *“in existence”* in listed matters.

3. With regard to prayer clause 4 i.e.:

*“Direct to the respondent No. 3 to 5 to revise and extend the salaries of the petitioners according to their status i.e. professors as adopted by the other universities”*

counsel for the respondents contends that the petitioners’ salaries will be considered at par with other professors within the Service Rules of University while considering the new recruitment and their present privilege as well.

4. With regard to prayer clause No.5 i.e:

*“Direct to the respondent No. 3 to 5 to enhance the Ph.D Allowance from 7000 to 15000 as prescribed by the Govt. of Pakistan”*

he contends that they will examine policy of HEC and amount of PHD allowance will be allowed for all professors as per HEC policy. Besides, counsel for the respondents contends that there will be no discrimination against the petitioners because of filing of this petition and they will act strictly in accordance with law.

5. At this juncture, counsel for the petitioners has placed an application for maternity of Ms. Reshma Khan [petitioner in CP.NO.D-494 of 2017], which is past and closed transaction. We expect that university shall treat the professors with the due respect as well as the professors are expected that they will perform their duties with diligence within their code of conduct. Accordingly, petition No. D-3683 of 2016 stands disposed of in view of undertaking, made by learned counsel for respondents.

6. With regard to promotions, if any, petitioners shall be heard by the respondents and in case any application/presentation is preferred that shall be decided within one month. CP.No.D-494 of 2017 is also disposed of in terms as mentioned above.

Office to place a copy of this order in connected petition.”

Dr. Raana Khan, learned counsel for the applicants, has argued that despite clear directions in the above-said order, the alleged contemnors have not complied with the same.

Mr. Ishrat Zahid Alvi learned, counsel for the alleged contemnors has raised the question of maintainability of contempt application on the premise that the Higher Education Commission of Pakistan (HEC) notification dated 30.09.2021 is only applicable to public sector universities and not to private sector universities. He emphasized that such amounts are highly exorbitant and the Jinnah University for Women is not only on the lower scale as far as charging fees from the students is concerned, however, the respondent university is actively giving scholarship to the deserving students; that as per performance evaluation ranking, petitioner No.1 scored 9 out of 41 marks in the said faculty; and the petitioner No.3 scored 7 out of 41 marks, thus they failed to achieve the threshold marks as per criteria set forth by the HEC. Per learned counsel, the salaries of the petitioners would only be enhanced when they would enhance and increase their performance in the respondent university. Learned counsel added that respondent university has non statutory rules of service which could not be enforced through writ petition and/or contempt proceedings. He further added that the petitioners could not ask for the relief through contempt proceedings. He added that contempt proceedings cannot be initiated at the desire of petitioners and this court has to be satisfied as to whether act of respondent university comes within the mischief of law or otherwise amounts to interference with the administration of justice; that very purpose of initiating contempt proceeding is always vindication of dignity and honor of the court or that of justice of administration. In support of his contentions, he relied upon the cases of *Khalid Rashid v. Kamran Lashari, Chairman CDA Islamabad and others*, **2010 SCMR 594**, Dr. Nazeer Saeed v. Muhammad Javed and 16 others, PLD 2014 Lahore 660, Muhammad Nazir v. Safdar Javed Syed, Senior member, Board of Revenue Punjab and 6 others, 2005 P Cr. LJ 1056, Sikandar Hameed v. Muhammad Aslam Kamboh and others, PLD 2020 Lahore 38, Syed Alam Rizvi and others v. Dr. Muhammad Saeed, 2009 SCMR 477, and Muhammad Ismail Qureshi and another v. Mst. Saira Jabeen, 2005 SCMR 1685. He has prayed for the dismissal of the listed application.

This is a simple case of enforcement of the order dated 23.08.2021 passed by this Court as discussed supra.

The plea taken by the respondents that salaries of the petitioners could only be considered at par with other Professors in the light of Performance Evaluation Formula as per HEC ranking criteria and the petitioners have failed to meet the threshold of the marks, thus their salaries could only be enhanced subject to their performance in the respondent university, which has non statutory rules of service.

The aforesaid stance of the alleged contemnors has been refuted by learned counsel for the petitioners by referring the objections on reply made by the respondents on contempt application. Learned counsel extensively read paragraph 1 to 11 and submitted that the respondents /alleged contemnors are bound to comply with the direction of this court, therefore, they are liable to revise and extend the salaries of the petitioners

according to their status i.e. Professors as adopted by the other public / private sector universities.

We have noticed that on 23.08.2021 learned counsel for the respondent university made categorical statement that the petitioners salaries would be considered at par with other professors within the service rules of the university while considering new recruitment and their present perks and privileges as well. Learned counsel also stated that the respondent university would examine the policy of HEC and the amount of Ph.D allowance would be allowed for all professors as per HEC policy; and there will be no discrimination against the petitioners, therefore, this court expected the university to treat the petitioners/ Professor with due respect and they would perform their duties with diligence within their code of conduct.

The undertaking given to this court on behalf of the counsel of the respondent university could be enforced on the analogy that such undertaking is now part of the order of the court.

*Prima facie*, the aforesaid stance of the respondent-university negates the basic spirit of the order dated 23.8.2021 passed by this Court, which cannot be construed to be substantial compliance of the aforesaid order, warranting interference of this Court to take action against the alleged contemnors under Article 204 of the Constitution.

In view of the facts and circumstances of the case and for the reasons alluded above, we are not satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 23.08.2021 passed by this Court has been made in its letter and spirit. Therefore, at this juncture, we deem it appropriate to grant two weeks to the alleged contemnors to comply with the directions contained in the order dated 23.08.2021 in its letter and spirit otherwise we will have no option but to initiate contempt proceedings against the alleged contemnors. Resultantly, if the respondents failed to the observation made hereinabove within the stipulated time, the office is directed to issue Show Cause Notice to the alleged Contemnors for further proceedings in the matter. The alleged contemnors are directed to be in attendance on the next date of hearing. CMA No. 26625/2021 is adjourned; to be taken after two (02) weeks.

**JUDGE**

**JUDGE**

Nadir/-