

2017 P L C (C.S.) 1376

[Sindh High Court]

Before Faisal Arab, C.J. and Zafar Ahmed Rajput, J

ZAFAR IQBAL

Versus

FEDERAL URDU UNIVERSITY OF ARTS, SCIENCES AND TECHNOLOGY, KARACHI through Registrar and 2 others

C.Ps. Nos.D-6662 of 2014 and D-51 of 2015, decided on 8th December, 2015.

Federal Urdu University of Arts, Science and Technology (Islamabad) Ordinance (CXIX of 2002)---

----Ss. 17 & 42---Rules of Meeting of the Senate of Federal Urdu University of Arts, Science and Technology, R.29(3)(ii)(iii)(iv)---General Clauses Act (X of 1897), S.16---Convening meeting of Senate of Federal Urdu University of Arts, Science and Technology, Islamabad---Requirements---Suspension of Registrar of the University and sending Vice Chancellor on leave---Interim order passed in the Civil Suit---Effect---Contention of petitioners was that seven days' notice along with agenda was necessary to be issued by the Registrar of the University whereas notice and agenda were issued through fax but not prior to seven days---Validity---Holding of at least two meetings of the Senate in a calendar year was a statutory requirement---No meeting of Senate had been held since October, 2013---Chancellor of the University directed the Vice-Chancellor to review the administrative matters of the University with the coordination of Higher Education Commission but he declined---Interim order passed in the civil suit did not restrain the Senate from convening its meeting---Senate, in circumstances, had become dysfunctional after 23-12-2014---Affairs of the University were being conducted in violation of its statutory provisions---Issuance of seven days' notice for holding meeting of Senate along with agenda by the Registrar to the Senate members was directory in nature and not mandatory---Alleged meeting of Senate was convened on the directions of the President of Pakistan in order to break the stalemate caused by the Vice-chancellor and the Registrar and to keep the Senate intact---Said functionaries had not been penalized by the impugned decisions but they had been given an opportunity to present their point of view, both having absented themselves willfully, they could not claim to have been condemned unheard---Impugned decisions were not penal in nature as during leave period and suspension

petitioners would continue to draw their salaries and enjoy all perks and privileges allowed to them---Authority who had power to appoint had also power to suspend---Temporary suspension would be deemed to be an implied term in every contract of service---Constitutional petition was dismissed in circumstances.

Human Rights Case Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010 PLD 2010 SC 759; Mst. Ummatullah through Attorney v. Province of Sindh, through Secretary Ministry of Housing and Town Planning, Karachi and 6 others PLD 2010 Kar. 236; Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others PLD 2010 SC 61; Director, Directorate-General of Intelligence and Investigation and others v. Messrs Al-Faiz Industries (Pvt.) Limited and others 2006 SCMR 129; Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed 2013 SCMR 1707; Lt. Col. Aziz M. Khan v. A.B.A. Haleem, Vice-Chancellor, University of Karachi and another PLD 1957 W.P. Kar. 496 and Messrs East-End Exports, Karachi v. The Chief Controller of Import and Export Rawalpindi and another PLD 1965 SC 605 ref.

Ghaffar Ali and others v. Provincial Police Officer, Khyber Pakhtunkhwa 2014 PLC (C.S.) 558 rel.

Khalid Javed for Petitioners (in C.Ps. Nos. D-6662 of 2014 and D-51 of 2015).

Faisal Kamal for Respondent No.2 (in both petitions).

Anwar Mansoor Khan for Respondent No.3 (in both petitions).

Salman Talibuddin, Additional Attorney General for Pakistan.

Moin Azhar Siddiqui for Intervener.

Date of hearing: 18th May, 2015

ORDER

ZAFAR AHMED RAJPUT, J.--- The facts and law points that arise for consideration in both the petitions are common; hence, the same have been heard and disposed of by this common order.

2. Through instant petitions, the petitioners have assailed the decisions taken by the respondents in 26th meeting of Senate of Federal Urdu University of Arts, Sciences and Technology (hereinafter referred to as the "University") held on 20th December, 2014, whereby petitioner Zafar Iqbal, the Vice-Chancellor of the University, has been sent on leave for a period of three months with immediate effect, while petitioner Fahim Uddin, the Registrar of the University, has been suspended till further orders.

3. Facts in brief, as pleaded in C.P. No.D-6662 of 2014, are that the petitioner Zafar Iqbal was appointed as Vice-Chancellor of the University, in accordance with the Federal University of Arts, Sciences and Technology, Ordinance, 2002 (hereinafter referred to as the "Ordinance"), vide letter dated 31.01.2013 for a renewable

period of five years in terms of section 12(4) of the Ordinance and he resumed the charge on 01.02.2013. It has further been pleaded that while the petitioner was discharging his duties as Vice-Chancellor of the University, some of the staff members; who were involved in various cases of misconduct, misappropriation of university's funds and were facing disciplinary charges started negative campaign against him with the support of Chairman, Higher Education Commission (HEC) as some of them were closely related to him and he, being biased, was actively supporting and encouraging them; therefore, he managed to have some directions from the Respondent No.2 (The Chancellor of the University) for the constitution of a committee by illegal means and in clear violation of the Ordinance; as such, a Constitutional Petition No.D-3049 of 2014 was filed against HEC and others; besides a Civil Suit bearing No.1647 of 2014 was also filed by some aggrieved teaching staff members challenging the appointment of some teaching staff as member Senate of the University (hereinafter referred to as the "Senate"), wherein interim orders were passed by the Court, which are still operative and the matters are pending decision. It has also been pleaded that the tenure of at least seven members of the Senate was going to expire on 23rd December, 2014, who were being patronized by the Chairman HEC and some of them were facing departmental proceedings at the level of the University; therefore, Chairman HEC in collusion with some officers of Chancellor's Secretariat planned to get their favorites appointed as members of the Senate for another tenure. It is case of the petitioner that on 18.12.2014 he was informed that a meeting of the Senate was being convened on 20.12.2014 at Islamabad the notice whereof had been sent through fax on 18.12.2014 by the Director General, Chancellor Secretariat, Aiwan-e-Sadar, Islamabad but neither any agenda of the proposed meeting was attached nor the same was provided in the said notice. It is further case of the petitioner that on 21.12.2014, he was shocked to see in the newspapers that in the said meeting of the Senate, a decision was taken for sending him on forced leave with directions to hand over the charge to the Vice-Chancellor of Karachi University. The petitioner, therefore, being aggrieved by the said decision of the Senate has preferred the petition for the following reliefs:-

- (i) Declaring that the impugned meeting dated 20th December, 2014 of Senate of the respondent No.1 University was illegally held/ convened, hence such meeting and its entire proceedings are illegal, without jurisdiction, uncalled for, having no legal effect and as such the same may kindly be set aside;

(ii) Declaring that the decisions taken by the respondents in the impugned meeting dated 20th December, 2014 of the Senate of the Respondent's University against the petitioner for sending him on forced leave or any adverse decisions against him, is patently illegal, without jurisdiction, uncalled for, having no legal effect and as such the same may kindly be set aside;

(iii) Declaring that the nomination/ recommendation/ approval of seven or any number of Members/ Senators for next term in the impugned meeting is illegal, in violation of the relevant statutes, hence the same has no legal effect;

(iv) Permanently restraining the respondents, their officers, subordinates, agents, persons acting for and/or on their behalf from proceeding further, passing any orders/ decisions against the petitioner pursuant to and in furtherance of the impugned decisions and the operation of the impugned decisions of the impugned meeting may kindly be suspended and set aside.

4. Petitioner Fahim Uddin in C.P. No.D-51 of 2015 has set forth almost the same facts as pleaded by the petitioner in C.P. No.D-6662 of 2014. In addition, he has asserted that he was appointed as Registrar of the University under the Ordinance for a renewal tenure of three years on terms and conditions prescribed by the Statute and he resumed the charge as "Registrar" on 01.02.2013. It is case of the petitioner that through fax he received the impugned order dated 26.12.2014 issued by the respondent No.4 (The Deputy Registrar), whereby he was suspended by the respondent illegally, without any jurisdiction and having been issued with mala fide intention and ulterior motive. The petitioner, therefore, has preferred the petition with the following prayers:-

(i) Declaring that the impugned order dated 26th December, 2014 passed by respondent No.1 is illegal, unauthorized, without jurisdiction, uncalled for, having no legal effect and as such the same may kindly be set aside;

(ii) Declaring that the decisions taken by the respondents in the impugned 26th meeting dated 20th December, 2014 of the Senate of the respondent's University against the petitioner are patently illegal, without jurisdiction, uncalled for, having no legal effect and as such the same may kindly be set aside;

(iii) Permanently restraining the respondents, their officers, subordinates, agents, persons acting for and/or on their behalf from proceeding further, passing any orders/ decisions against the petitioner pursuant to and in furtherance of the impugned order and decisions and the operation of the

impugned order and decisions of the impugned meeting may kindly be suspended and set aside.

5. Mr. Khalid Javed, learned counsel for the petitioners, has contended that the impugned decisions are illegal, without jurisdiction and lawful authority. He has further contended that the University has been created under the Ordinance, which provides constitution of Senate and Syndicate and designation of Principal Officers of the University with their specific functions and powers; therefore, any interference by the respondents shall amount to violation of the relevant provisions of law. He has also contended that the involvement of HEC either by its own or at the instance of the respondent No.2 in the administration of the University is patently illegal and without jurisdiction.

6. Mr. Khalid Javed has further maintained that the alleged meeting of the Senate was convened in violation of Rule 29 (3) (ii), (iii), (iv) of the Rules of Meeting of the Senate and sections 29 of the Ordinance, which specifically provide a seven days' notice along with agenda to be issued by the Registrar of the University, whereas, the notice dated 17.12.2014 was issued through fax on 18.12.2014, while the agenda was issued through fax on 19.12.2014 for the meeting scheduled on 20.12.2014 at Islamabad and the notice was issued by the Director General of Chancellor's Secretariat, who has no authority to do so under the Ordinance and Statutes/ University Code, hence the entire exercise of respondents in this regard is illegal, mala fide and without jurisdiction; the decisions taken in the said meeting are null and void ab-initio in the eye of law, and all the proceedings of the under meeting is, therefore, liable to be set aside.

7. It has also been maintained by Mr. Khalid Javed that so far no decision, taken in the said meeting, has been served upon the petitioner/ Vice-Chancellor by the Chancellor's Secretariat, he is; therefore, performing his duties and attending his office as Vice-Chancellor of the University, however, the impugned decision has been circulated through publication in the newspapers and through T.V. channels, which has damaged the administration and reputation of the University so also has caused irreparable loss to the petitioners. He has further maintained that the petitioners have been condemned unheard as no show cause notice or personal hearing was provided to them before passing the impugned decisions/ punishment, which punishment even otherwise is neither provided in the Statutes nor the Chancellor or the Senate has the jurisdiction to impose such punishment on the petitioners. The learned counsel has contended that for the re-appointment of the seven members of the Senate, whose term had expired on 23.12.2014, the procedure provided in the Ordinance has been violated. Lastly, the learned counsel contended that the petitioners

apprehend further illegal actions from the respondents side in pursuance and continuation of impugned decisions, and unless they are restrained from doing so, there is every likelihood of further actions by the respondents prejudicing seriously the status and position of the petitioners, University and its administration, for that the petitioners also seek indulgence of this Court. In support of his contentions, Mr. Khalid Javed has relied on the following case-law:-

i. In the matter of Human Rights Case Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759). It has been held that where a Statute provides a procedure for doing of a thing in a particular manner, that thing should be done in that manner and in no other way or it should not be done at all.

(ii) Mst. Ummatullah through Attorney v. Province of Sindh, through Secretary Ministry of Housing and Town Planning, Karachi and 6 others (PLD 2010 Karachi 236). It has been held that what cannot be done directly cannot be done or allowed to be done indirectly and that what is not possessed can neither be conferred nor delegated.

(iii) Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others (PLD 2010 SC 61). It has been held that no constitutional, legal and legislative frame-work of Pakistan recognizes any inherent ancillary or incidental powers with the competent authority to suspend or to restrain from working even a civil servant of the lowest grade, who has no constitutional security of office.

(iv) Director, Directorate-General of Intelligence and Investigation and others v. Messrs Al-Faiz Industries (Pvt.) Limited and others (2006 SCMR 129). It has been held that though no universal rule could be laid down as to whether a mandatory enactment would be construed directly only or obligatory with an implied nullification for disobedience, conclude that the accepted principle in this behalf would be that as a general rule, statutes, which enable persons to take legal proceedings under certain specified circumstances, demand that those circumstances must be accurately obeyed notwithstanding the fact that the provisions thereof are expressed in merely affirmative language.

(v) Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed (2013 SCMR 1707). It has been held that where the action of statutory authority in a service matter is in disregard of the procedural requirement and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.

8. On the other hand, Mr. Salman Talibuddin, learned Additional Attorney General, while referring Sections 7, 8(7), 11(5), 12(5), 13(1), (3) and (4), 17(5), (7) & (8) and 19 of the Ordinance and expounding the facts of the case, as pleaded in the para-wise comments filed on behalf of the respondent No.2 to the petitions, has submitted that upon receiving complaints from various corners against the petitioner/Vice-Chancellor about mismanagement, corruption and irregularities, the respondent No.2, Chancellor of the University, referred the matter to HEC directing to constitute a committee comprising of three to five persons of known integrity and eminence to undertake evaluation of the performance of the University in terms of Section 10(1)(b) of HEC Ordinance, 2002. Accordingly, a three-member Committee was constituted vide HEC Notification dated 07.05.2014, against that a Constitutional Petition bearing No.D-3049 of 2014 was filed by the petitioner/Registrar at the behest of Petitioner/ Vice-Chancellor in this High Court; as a result thereof, the Committee stopped its function and the Chancellor's office could not obtain an impartial view on the afore-mentioned charges, and it is also regretful that till date the petitioner/ Vice-Chancellor has surreptitiously thwarted commencement of an impartial inquiry into the affairs of the University through frivolous litigation, however this is not the subject matter of this petition.

9. Mr. Salman Talibuddin has further maintained that holding of at least two Senate meetings in a calendar year is a statutory requirement under section 17(5) of the Ordinance and as a matter of fact no Senate meeting had been held since October, 2013, though in terms of Section 11(2) of the Ordinance, the petitioner/ Vice-Chancellor was under mandatory obligation to ensure faithful compliance of the governing law and the Constitutional Petition No.D-3049 of 2014 or the Civil Suit No.1647 of 2014 did not bar him holding meeting of the Senate and in this regard the respondent No.2 vide letter, dated 13.8.2014, directed him to convene a meeting of the Senate to review the administrative matters of the University, but he willfully and purposely declined to do so; consequently, the Senate was in danger of becoming dysfunctional after 23.12.2014, as the retirement of seven members of the Senate was due on the said date and the act of the petitioner/Vice-Chancellor exposed his motivation for not holding the Senate meeting that he wanted to stop the nomination of new Senate members so that it become dysfunctional causing further delay in inquiry process against him. Mr. Salman Talibuddin has also maintained that taking note of this situation the Pro-Chancellor of the University and Minister of State for Federal Education and Professional Training, who are also members of Senate, advised the respondent No.2 under Section 8(3) of the

Ordinance to convene a meeting of the Senate in terms of Section 17(1) and section 42(1) of the Ordinance; hence under such circumstances, summoning of the meeting was absolutely inevitable; therefore, the respondent No.2 issued directions through his Secretariat vide letter, dated 17.12.2014 to convene 26th meeting of the Senate on 20th December, 2014.

10. Refuting the contentions of learned counsel for the petitioners, Mr. Salman Talibuddin further added that the Rule -29 (3) (ii), (iii), (iv) of the Rules of the Meeting of the Senate is the bye-laws of the respondent No.1 and issuance of the purported seven days' notice is not mandatory, and the meeting of the Senate was convened by the respondent No.2 by invoking Section 42 of the Ordinance, 2002 in order to end the deadlock created by the petitioners uniquely to protect themselves from the consequences of the inquiry by abusing their authorities. He has also added that the decisions taken by the Senate in its 26th meeting are legal and in utmost good faith and through consensus in view of the alleged and reported mismanagement in administrative, financial and academic functions of the University, non-compliance of the statutory provisions, incurring expenditures without the approval of the University Budgets, continued in-subordination and defiance of the orders of the Chancellor by the petitioners. He has also added that the petitioners were given an opportunity, like all other members of Senate, to attend the 26th meeting and present their point of view but they absented purposely. The Senate sent the petitioner/Vice-Chancellor on leave for three months and petitioner/ Registrar was placed under suspension so that they may not interfere in the inquiry and the decision is not penal in nature, and it was made after taking into account the complaint of Dr. A.Q. Mughal who withdrew himself from previous panel of Inquiry Committee on account of threats extended to him, which he communicated through letter dated 18.08.2014 (copy is available as Appendix 1/4 at page No.207 of Court File). In support of his contentions, Mr. Salman Talibuddin has relied on the following case-law:-

(i) Lt. Col. Aziz M. Khan v. A.B.A. Haleem, Vice-Chancellor, University of Karachi and another (PLD 1957 W.P. Karachi 496). It has been held that in view of Section 16 of the General Clauses Act it is not necessary to put such words relating to removal as provisions relating to the power to appoint have to be read as if such words existed therein and a reference to power of removal is needed only when the intension is to take away or limit the power.

(ii) Messrs East-End Exports, Karachi v. The Chief Controller of Import and Export Rawalpindi and another (PLD 1965 SC 605). It has been held that a temporary

suspension is deemed to be an implied terms in every contract of service. Section 16 of the General Clauses Act also lays down that an authority who has got power to appoint has also the power to suspend.

(iii) Ghaffar Ali and others v. Provincial Police Officer, Khyber Pakhtunkhwa [2014 PLC (C.S.) 558]. It has been held that suspension is not a punishment and suspension of a government servant during the course of his service simply means that no work is to be taken from him during the period of suspension. The suspension is only a temporary measure wherein the employee is entitled to receive his full emolument.

11. Mr. Anwar Mansoor Khan, learned counsel for the respondent No.3, in addition to the arguments of the learned Additional Attorney General, has maintained that the instant petitions are not maintainable in law being without any cause of action; based on false and frivolous facts, and the petitioners have approached this Court with unclean hands; therefore, the same merit dismissal. Referring the provisions of Section 17(5) of the Ordinance, 2002, Mr. Anwar Mansoor Khan has further maintained that the said provision is mandatory in nature and if the Vice-Chancellor fails or refuses holding meeting of the Senate then under section 42 of the Ordinance, respondent No.2 can take the matter into his hands in the larger interest of the University. He has also maintained that the petitioners had failed to perform their statutory obligations, therefore, the impugned decisions were taken by the Senate in accordance with law, for that the petitioners have no legal right to seek remedy before this Court, as it is well settled principle of law that the person approaching the Court with unclean hands, would not be entitled to discretionary and equitable relief, as one who seeks equity must have equities in his favour. Mr. Anwar Mansoor Khan, while referring section 34 of the Ordinance, has contended that even otherwise the service of the petitioners is governed by the terms and condition of service prescribed by Statutes and they are; therefore, deemed to 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, therefore, the jurisdiction of this Court is barred under Article 212 of the Constitution.

12. When we confronted Mr. Khalid Javed with section 34 of the Ordinance and enquired about the maintainability of the petitions, he relying upon the case of Pakistan Defence Officers Housing Authority (supra) submitted that where the action of a statutory authority in a service matter is in disregard of the procedural requirement and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.

13. We have heard the learned counsel for the parties at length and have also considered the facts and circumstances of the case as borne out by the pleadings and have gone through the material available on record.

14. In order to appreciate the contentions of learned counsel for the parties, we deem it appropriate to reproduce hereinafter the relevant provisions/sections of the Ordinance, as under:-

2. Definition._ In this Ordinance unless there is anything repugnant in the subject or context,

(a)

(b)

(c) "Authority" means any of the Authorities of the University specified or set up in terms of Section 16;

(d) ..

(e) ..

(f) "Commission" means the Higher Education Commission set up by the Higher Education Commission Ordinance, 2002 (LII of 2002);

8. Chancellor and Pro-Chancellor.--- (1) The President of Pakistan shall be the Chancellor of the University and the Chairperson of the Senate.

(2) .

(3) the Federal Minister for Education shall be the Pro-Chancellor of the University and shall aid and advise the Chancellor in such manner as may be required by the Chancellor. The Pro-Chancellor shall, in the absence of the Chancellor, preside at the Convocation of the University.

(4) .

(5) .

(6) .

(7) If Chancellor is satisfied that serious irregularity or mismanagement with respect to the affairs of the university has occurred, he may,-

(a) as regards proceedings of the Senate, direct that specified proceedings be reconsidered and appropriate action taken within one month of the direction having been issued.

Provided that if the Chancellor is satisfied that either no reconsideration has been carried out or that the reconsideration has failed to address the concern expressed he may, after calling upon the Senate to show cause in writing, appoint a five member Review Panel to examine and report to the Chancellor on the functioning of the Senate. The report of the Review Panel shall be submitted within such time as may be prescribed by the Chancellor. The Review Panel shall be drawn from persons of eminence in academics and in the fields of law, accountancy and administration; and

(b) as regards proceedings of any Authority or with respect to matters within the competence of any Authority other than the Senate, direct the Senate to exercise Powers under section 19.

11. Vice-Chancellor.- (1) There shall be a Vice-Chancellor of the University who shall be an eminent academic or a distinguished administrator and shall be appointed on such terms and conditions as may be prescribed.

(2) The Vice-Chancellor shall be the Chief Executive Officer of the University responsible for all administrative and academic functions of the University and for ensuring that the provisions of the Ordinance, Statutes, Regulations and Rules are faithfully observed in order to promote the general efficiency and good order of the University. The Vice-Chancellor shall have all powers prescribed for this purpose, including administrative control over the officers, teachers and other employees of the University.

(3) ..

12. Appointment and removal of Vice-Chancellor.- (1) The Vice-Chancellor shall be appointed by the Chancellor on the basis of recommendations made by the Senate.

(2) .

(3) .

(4) The Vice-Chancellor shall be appointed for a renewable tenure of five years on terms and conditions prescribed by Statute. The tenure of an incumbent Vice-Chancellor shall be renewed by the Chancellor on receipt of a resolution of the Senate in support of such renewal;

Provided that the Chancellor may call upon the Senate to consider such resolution once.

(3) The Senate may, pursuant to a resolution in this behalf passed by three fourth of its membership, recommend to the Chancellor the removal of the Vice-Chancellor:

Provided that where the Review Panel set up by the Chancellor in terms of section 8 of the Ordinance has reported gross misconduct by the Vice-Chancellor, including misuse of position for personal advantage of any kind, the Senate may, pursuant to a resolution in this behalf passed by two-thirds of its membership, recommend to the Chancellor the removal of the Vice-Chancellor.

Provided further that prior to a resolution for the removal of the Vice-Chancellor being voted upon the Vice-Chancellor shall be given an opportunity of being heard. The Senate may recommend the removal of the Vice-Chancellor on the ground of misuse of position for personal advantage,

inefficiency, moral turpitude or physical or mental incapacity.

(6) A resolution recommending the removal of the Vice-Chancellor shall be submitted to the Chancellor forthwith. The Chancellor may accept the recommendation and order removal of the Vice-Chancellor or return the recommendation to the Senate.

13. Registrar.-- (1) There shall be a Registrar of the University to be appointed by the Senate on the recommendation of the Vice-Chancellor, on such terms and conditions as may be prescribed

(2)

(3) The Registrar shall be a full-time officer of the University and shall, -

(a) be the administrative head of the secretariat of the University and be responsible for the provision of secretariat support to the Authorities of the University;

(b)

(c)

(d)

(e)

(4) The term of office of the registrar shall be a renewable period of three years;

Provided that the Senate may, on the advice of the Vice-Chancellor, terminate the appointment of the Registrar on grounds of inefficiency or misconduct in accordance with the prescribed procedure.

16. Authorities.- (1) The following shall be the Authorities of the University, namely:-

(a) Authorities established by the Ordinance:-

(i) the Senate;

(ii) the Syndicate; and

(iii) the Academic Council;

17. Senate.-- (1) The Senate shall be the body responsible for the governance of the University and shall consist of the following, namely:---

(a) the Chancellor who shall be the Chairperson of the Senate;

(b) the Deputy Chair of the Senate;

(c) the Vice-Chancellor;

(d) Secretary, Ministry of Education or his nominee not below the rank of Joint Secretary,

(e) five persons from society at large being persons of distinction in the fields of administration, management, education, academics, law, accountancy, medicine, fine arts,

architecture, agriculture, science, technology and engineering such that the appointment of these persons reflects a balance across the various fields.

(f) President, Anjuman-e-Taraqqi Urdu Pakistan or his nominee:

(g) one person from amongst the alumni of the University;

(10) Two university teachers;

(i) Three persons from the academic community of the country, other than an employee of the University, at the level of professor or principal of a college; and

(j) One person nominated by the Commission.

(2)

(3)

(4)

(5) The Senate shall meet at least twice in a calendar year

(6)

(7) The Registrar shall be the secretary of the Senate.

(8) The quorum for a meeting of the Senate shall be one half of its membership.

18. Powers and functions of the Senate:- (1) The Senate shall have the power of general supervision over the University and shall hold the Vice-Chancellor and the Authorities accountable for all the functions of the University. The Senate shall have all powers of the University not expressly vested in an Authority or officer by the Ordinance and all other persons not expressly mentioned by the Ordinance that are necessary for the performance of its function.

(19) Visitation:- The Senate may, in accordance with the terms and procedures as may be prescribed, cause an inspection to be made in respect of any matter connected with the University.

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.

42. Removal of difficulties:- (1) If any question arises as to the interpretation of any of the provisions of the Ordinance, it

shall be placed before the Chancellor whose decision thereon shall be final.

(2) If any difficulty arises in giving effect any of the provisions of the Ordinance, the Chancellor may make such order after obtaining the views of the Senate, not inconsistent with the provisions of the Ordinance, as may appear to him to be necessary for removing the difficulty.

15. The issues to be decided in these petitions are the legality and the propriety of the letter, dated 17th December, 2014, issue by the respondent No.2 directing the petitioners for convening 26th meeting of the Senate of the University on 20th December, 2014 and the impugned decisions taken in the said meeting as well.

16. It may be observed from above-mentioned provisions of the Ordinance that the President of Pakistan is the Chancellor of the University and the Chairperson of the Senate, as such, he is the Principal Officer of the University and on his satisfaction that some serious irregularity or mismanagement with respect to the affairs of the University has taken place, he may direct for reconsideration of the proceedings and for the appropriate action within one month of the directions having been issued and in case of failure thereof he may appoint a five members Review Panel to examine and report to him on the function of the Senate and if the matter pertains within the competence of the Authorities as defined under Section 2(c) and set-up in terms of Section 16 of the Ordinance, then he can direct the Senate to exercise powers under Section 19 of the Ordinance.

17. The Vice-Chancellor is appointed by the Chancellor on the basis of recommendations made by the Senate under section 12(1) of the Ordinance for a renewable tenure of five years and he may be removed by the Chancellor on the recommendation of Senate in terms of subsection (5) *ibid*. He is the Chief Executive Officer of the University and responsible for all administrative and academic functions of the University and for ensuring that the provisions of the Ordinance, Statutes, Regulations and Rules of the University are accordingly observed in order to promote the general efficiency and good order of the University. He is the Chairperson of the Syndicate and Academic Council.

18. The Registrar of the University is appointed by the Senate on the recommendation of the Vice-Chancellor, under section 13(1) of the Ordinance for a renewable period of three years and his appointment may be terminated by the Senate on the advice of the Vice-Chancellor in terms of proviso of subsection (4) *ibid*. He is the administrative head of the secretariat of the University and he is responsible for the provision of secretariat support to the Authorities of the University.

19. It is an admitted position that holding of at least two meetings of the Senate in a calendar year is a statutory requirement under section 17(5) of the Ordinance and it is matter of record that no meeting of the Senate had been held since October 2013; therefore, the respondent No.2 vide letter dated 13.8.2014 directed the petitioner/Vice-Chancellor to convene a meeting of the Senate during the last week of August, 2014 to review the administrative matters of the University with the coordination of HEC, but he declined holding the meeting and in this regard the Registrar/Petitioner addressed a letter dated 11.09.2014 to the respondent No.2, stating there "the nomination of two members of the Senate has been challenged by an employee of the University in the High Court of Sindh vide, Suit No.1647 of 2014. Hence at this stage we are not in a position to hold any meeting of the Senate till audit of Islamabad Campus, Vacation of stay order of Mr. Asim Bukhari from Sindh High Court as well as decision of Suit No.1647 of 2014." These were absolutely unconvincing reasons, as the interim order passed in Civil Suit No.1647/ 2014 on 02.09.2014 did not restrain the Senate from convening its meeting. It is also revealed from the record that on 1st December, 2014, a letter from respondent No.2 was issued to petitioner/Vice-Chancellor to assign the reasons for not convening the meeting of the Senate in a calendar year, as enshrine in governing laws, but in vain. Under such state of affairs, the Senate would have become dysfunctional after 23.12.2014, as the retirement of seven members of the Senate was due on the said date, in addition to two existing vacancies; out of them, one fell vacant due to the death of Professor Shakil Auj and another because of the fact that the University has no Alumni in its Senate as yet, and according to the Ordinance, the nomination of new Senate members could only be made if the Nominating Committee of the Senate held a meeting and presented its recommendations to the Senate before 23.12.2014, under such circumstances, convening of the meeting by the Senate was absolutely inevitable for its own existence; therefore, the respondent No.2 i.e. President of Pakistan, in his capacity as Chancellor had to issue directions through his Secretariat letter dated 17th December, 2014 to petitioners to convene 26th meeting of the Senate on 20th December, 2014.

20. We have, thus observed that apparently the affairs of the University were being conducted in violation of its statutory provisions, and in such a manner that if the same were allowed to continue, it would have disastrous results on the performance of the University and its main affectees would have been the students studying there in the University. This fact alone was sufficient to justify the action of respondent No.2 for taking the matter in his hands and to convene a meeting of the Senate in terms of sections

17(1) and 42(1) of the Ordinance, which relate to the responsibility of the Senate for the governance of the University and removal of difficulties, respectively. We are not impressed with the contention of the learned counsel for the petitioners regarding compliance of the Rule 29 (3) (ii), (iii), (iv) of the Rules of the Meeting of the Senate, which provides issuance of seven days' notice for holding meeting of Senate along with agenda by the Registrar to Senate members. In our view it is merely directory in nature and not mandatory, as no consequence is provided for not following the same. It is a celebrated principle of interpretation of statute that in absence of any penal or consequential provision in the rule, in case of non-compliance, the operation of the rule shall be directory assistance in nature and not mandatory. Even, otherwise the alleged meeting of the Senate was convened on the directives of the respondent No.2 by invoking section 42 of the Ordinance, in order to break the stalemate caused by the petitioners, and to keep the Senate intact for the governance of the University. Had it been convened by the Vice-Chancellor of the University in terms of section 17(5) of the Ordinance, there would have been compliance of Rule -29(3)(i) and (ii) of the Rules of the Meeting of the Senate.

21. It may be noted from the record that the petitioners were duly notified on the same date as other members of the Senate and out of total 16 members 12 attended the meeting of the Senate; one member, namely, Mr. Iftikhar Arif was reported to be out of country and another member, namely, Mr. Aftab Ahmed was unwell and bed-ridden. It is also a matter of record that none of the Senate members opposed to convene meeting on 20th December, 2014.

22. We are also of the view that the petitioners have not been penalized by the impugned decisions. They had in fact been given an opportunity, like all other members of Senate, to attend the 26th meeting and present their point of view. They absented themselves willfully and knowingly, for the reasons best known to them. They now cannot claim to have been condemned unheard. The Senate, being governing body of the University, passed the impugned decisions, which are not penal in nature as during the leave period and suspension the petitioners will continue to draw their salaries and enjoy all perks and privileges allowed to them under the law, as held in the case of Ghaffar Ali and others (supra). We are similarly not prompted by the contentions of the learned counsel for the petitioners regarding passing the impugned decisions, which according to him neither provided in the Statutes nor does the Senate has the jurisdiction to impose on the petitioners. In this regard, section 16 of the General Clauses Act, 1897, provides as under:

16. Power to appoint to include power to suspend or dismiss.-
-Where, by any (Central Act) or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having (for the time being) power to make the appointment shall also have power to suspend or dismiss any person appointed (whether by itself or any other authority) in exercise of that power.

It may be observed that section 16 ibid lays down that an authority who has got power to appoint has also the power to suspend. It is not necessary to put such words relating to suspension or dismissal as provisions relating to the power to appoint have to be read as if such words existed therein and a reference to power of suspension and dismissal is needed only when the intension is to take away or limit the power. Therefore, in such case a temporary suspension is deemed to be an implied terms in every contract of service.

23. For the fore going facts and reasons, we find no merit in the instant writ petitions, which are accordingly dismissed with listed applications, but without any order as to costs.

24. Above are the reasons of our short order dated 18.05.2015, whereby both the petitions were dismissed.

ZC/Z-13/Sindh Petition dismissed.