

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D-1569 of 2023

(Syed Muhammad Muneer Shah & another. P.O Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;
Adnan-ul-Karim Memon, J;
Muhammad AbdurRahman, J;

Date of hearing: 02-05-2024.

Date of Judgment: 02-05-2024.

Mr. Ghulam Shabbir Shar, advocate for the petitioners.

Mr. Nisar Ahmed Bhambhro, Advocate for respondents No.1&6 to 11 and 13 to 27.

Mr. Asfandyar Kharal, Assistant A.G, Sindh.

J U D G M E N T.

Adnan-ul-Karim Memon, J:- Petitioners claim to be the employees of Shah Abdul Latif University, Khairpur Mir's (SALU) have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. The brief facts for the disposal of instant Constitutional Petition are that petitioners being office bearers as well as Officers of SALU Khairpur Mirs have raised their voice of concern that the key posts of the Administrative side in the SALU are being distributed amongst the Teaching Cadre Professors/teachers on additional charges, OPS, and are not being filled through competitive process i.e. Selection Board and the syndicate in violation of the orders passed by Supreme Court of Pakistan in the cases of Contempt Proceedings against Chief Secretary, Sindh, and others 2013 SCMR 1752 and Ali Azhar Baloch and others v. Province of Sindh and others 2015 SCMR 456. They further stated that such act of Additional charge(s), looking after the charge(e) in the Universities & Boards Department Government of Sindh has already been set at naught by this Court in C.P. No.D-4434, C.P. No.D-5842 of 2020 and C.P. No.D-1459 of 2022, but despite

clear directions of this Court the respondent-university is not bothered to comply the direction. They being aggrieved by and dissatisfied with the aforesaid actions of the respondent No.1, 2, and 4 have filed this petition with the following prayer(s):

- a) To direct the Respondents to call the selection board for appointment of regular Registrar without failing.
- b) To direct the Respondents No.1 and 2 to implement upon the order dated 02.3.2023 passed by this Honorable Court in C.P. No.D-1459/2022, and Judgment of Honorable Supreme Court of Pakistan, passed in C.P. No.89/2011, and remove the Respondents No.6 to 27 forthwith from Additional Charges and (OPS).
- c) To direct the Respondents No.1 to 5 to implement upon the order of this Honorable Court vide 02.3.2023 passed in C.P. No.D-1459/2022, and make appointments on regular posts through 3rd Party in order to save the prestige and reputation and to bring reforms in education and provide better qualifications to the students of Shah Abdul Latif University Khairpur.
- d) To direct the Respondents to submit the record of those who has been awarded PhD degrees without the fulfilling the requirements of Ph.D qualification during last 10 years in Shah Abdul Latif University Khairpur.
- e) To grant interim injunction thereby restraining the Respondents No.6 to 27 from further holding additional charges in violation of the order dated 02.3.2023 passed by this Honorable Court in C.P. No.D-1459/2022, and Judgment of Honorable Supreme Court of Pakistan, passed in C.P. No.89/2011, until and unless permanent recruitments against those regular posts have not been made by the Respondents No. 1 to 5, and till final disposal of the main Petition.
- f) That Honorable court may be pleased to declare additional charges, OPS, assigned work charge administrative charges experience of faculty may not be counted for the post of VC and PVC, only academic or administrative may be counted not both simultaneously.

3. Respondents 1 and 2 have been served vide orders dated 7.11.2023 and 20.2.2024 and they have filed the para-wise comments, raising the question of maintainability of the captioned petition on various grounds, however, they have chosen to remain absent though intimation notice was given to the learned counsel representing the respondent-university, he is not bothered to appear and assist this Court, therefore in such a situation, this court vide order dated 23.4.2024 asked the learned counsel representing the private respondents to intimate the counsel for the respondent-university to appear, he just informed that he intimated for his

appearance but today he is called absent thus the learned AAG is directed to assist on the subject issue.

4. Mr. Ghulam Shabbir Shar learned counsel for the petitioners has submitted that SALU has appointed respondent No.6 as Acting Registrar out of cadre, without the approval of the syndicate/selection Board; he added that the Registrar is an administrative position and head of the University's administration, he is responsible to frame academic policies being a secretary of the university's governing bodies and head of subsections of the administration as such this position cannot be left at the wish and will of Vice-chancellor of SALU, which needs to be filled on regular basis within the cadre. Learned counsel for the Petitioners, contended that the respondent university has failed and neglected to fill the administrative posts through the competitive process, however, the respondent- University in deviation of law started posting the teaching cadre officers on administrative posts of their own choice on Own Pay and Scale (OPS) and additional charges, which is apathy on the part of Vice Chancellor of SALU. He asserted that their abortive attempt to induct the teaching cadre officers on administrative posts through defective process was/is unconstitutional, illegal, without jurisdiction, malafide, void abinitio, and of no legal effect. However the same is required to be made through the competitive process. He emphasized that all the appointments made by the respondent-university on administrative cadre posts as disclosed in the chart on page N.105 of the memo of petition, in the intervening period are required to be scrapped. He lastly prayed for allowing the instant petition as prayed.

5. Mr. Nisar Ahmed Bhanbhro, advocate for respondents Nos.1 & 6 to 9, 11, and 27 has raised the question of maintainability of the instant petition and argued that the subject petition is liable to be dismissed as there was transparency in the posting of the private respondents on the aforesaid posts purely on merit without any favoritism or otherwise, therefore no fundamental rights of the petitioners have been infringed. He has emphasized that there is one essential condition for invoking the jurisdiction of this Court under Article 199 of the Constitution, the condition is that the subject matter of the petition under this Article must relate to the enforcement of any of the Fundamental Rights conferred by Part II, Chapter 1 of the Constitution, and the burden of proof was/is upon the petitioner to demonstrate as to which of his fundamental rights had been infringed upon but he failed and neglected to point out an infraction of any of his fundamental rights. He

asserted that under Article 199(1)(b)(ii) of the Constitution the petitioner(s) has to show that the private respondents are holding office in violation of the Constitution or the law and thereafter same can be asked from the private respondents that under what authority of law they are holding the public office. Learned counsel averred that private respondents have been posted by the competent authority of SALU, keeping in view their experience on the administrative/teaching side, and they have been posted within the parameters of law set out in the SALU code as the Vice Chancellor has powers to post any of the teacher cadre to administrative cadre posting exigency of his / her service as such there is no illegality in posting them on any cadre post of university. Per learned counsel since there is no officer available for promotion and posting from amongst the officers of the administrative cadre, therefore, officers belonging to the teaching cadre could be posted on administrative posts, thus no illegality has been committed by the respondent department while posting the private respondents. He prayed for dismissal of the instant petition.

6. At the outset, Mr. AsfandyarKharal, learned AAG has also opposed this Petition on the ground that a policy decision has been taken by the respondent university which cannot be interfered with by this Court; learned AAG has submitted that while deciding the writ of quo warranto, the conduct and the motive of the petitioner(s) could be seen to the extent that this practice of instituting proceedings by way of Quo Warranto with oblique considerations or motives of self-gain, has been deprecated by the Supreme Court. He further submitted that petition filed by an interested person(s) is not maintainable. He asserted that a writ of quo warranto only lies against a person who is holding some post for which he/she is otherwise not eligible or disqualified, whereas the private respondents belonging to Teaching Cadre if any are fully entitled to hold the subject posts due to exigency of service. He added that executive policy making is not the domain of this Court in the scheme of the Constitution and, is the prerogative of the executive to ascertain based on its need, requirement, available resources, and fiscal space, which posts it wishes to keep and which it wishes to abolish and which Civil/public Servant is to be transferred and posted in a particular place in exigency of service. He further averred that the petitioners have failed to substantiate the violation of any of their Fundamental Rights conferred by Chapter 1 Part II of the Constitution. He added that in the instant case, neither violation of any of the Fundamental Rights has been listed in the petition nor

established during arguments. He further submitted that for a person to activate the jurisdiction of this Court as a public interest litigant, for the enforcement of the Fundamental Rights, he must show on the given facts that he/she is acting *bona fide*. He next submitted that the constitutional jurisdiction of this court is always discretionary and he/she who seeks equity must come with clean hands. At this stage, we reminded him that relief is not to be denied to the litigants on technical considerations. He admitted this legal proposition however averred that the service of the private respondents was requisitioned by the respondent-university and keeping in view the exigency of service they were posted, which is legal he prayed for dismissal of the petition.

7. We have heard learned counsel for the parties present in court at length and have also examined the material/comments of respondent No. 1 and 2, available on record.

8. The objection regarding the jurisdiction of this Court as raised is misconceived and is hereby discarded, for the reason that as per the profile of the Shah Abdul Latif University Khairpur, Mir's, which reveals that it is a Public Sector statutory university established under the Shah Abdul Latif University Act, 1986; and, performing functions in connection with the affairs of the Province under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution, therefore the instant petition is maintainable to be heard and decided on merits. Besides, the petitioners have mainly challenged the appointment of the private respondents regarding their qualification to hold the administrative/cadre posts having been belonging to the teaching cadre of the university, in violation of the Recruitment Rules of the subject posts, and arbitrariness of the respondent university in posting them as under:-

<i>Sr. No</i>	<i>Name</i>	<i>Original department</i>	<i>Grade</i>	<i>Actual position</i>	<i>Presently, Additional charge/OPS/Acting charge/assigned</i>	<i>Grade</i>	<i>Remarks</i>
1.	Dr. Minhoon Khan Leghari	Institute of Business Administration	21	Professor	Registrar (BPS-20)	BPS-20	Holding two Additional charges
2.	Dr. Noor Ahmed Shaikh	Institute of Computer	21	Professor	Director, Planning & Development & Incharge IT Centre	BPS-20 BPS-18	Holding two Additional charges OPS
3.	Dr. Iram Rani Shaikh	Institute of Business Administration	21	Professor	Director, (QEC)	Addl. Charges	Additional charges

4.	Dr. Naveed Hussain Shaikh	Institute of Business Administration	21	Professor	Director, PGS	Addl. Charges	Additional charges
5.	Dr. Samina Rajper.	Institute of Computer Science.	21	Professor	Director (ORIC) BPS-20	BPS-20	Additional charges
6.	Dr. Agha Nadia Pathan	Professor Department of Sociology	21	Professor	Director, Gender Studies	-	Additional Charges of other Department
7.	Dr. Muhammad Saleh Memon	Institute of Business Administration	21	Professor	Focal person/ Incharge Dean, Faculty of Education	Addl. Charge instead of Dean	Additional Charges of another faculty Dean
8.	Dr. Taj Muhammad Lashari.	Institute of International Relations.	21	Professor	Dean, Faculty of Social Science & Director Media & Public Relations.	-	02 Additional charges
9.	Dr. Mushtaque Jakhrani	Institute of Chemistry	21	Professor	Director, Institute of Chemical & Chairman Colony & Allotment Committee	-	02 Additional Charges
10	Dr. Khalida Parveen Mahar	Institute of Chemistry	21	Professor	Provost Girls Hostel	-	Additional charges
11	Dr. Masiullah Jatoi.	Institute of Business Administration	21	Professor	Director, students affairs (BPS-19)	19	Additional charges (OPS)
12	Dr. Liaqat Ali Chandio	Institute of International Relations.	21	Professor	Provost Hostels boys.	-	Additional charges
13	Dr. Hisamudin Shaikh	Department of Mathematics department.	21	Professor	Chairman Beautification	21	02 Additional Charges
14	Dr. Tasleem Abro	Department of Archaeology	21	Professor	Director, Archaeology & anthropology Museum & Chairperson, Archaeology	-	Additional Charges
15	Dr. Rahim Bux Soomro	Institute of Business Administration	21	Professor	Director, Business Centre	-	Additional Charge
16	Ali Nawaz Soomro	Department of Political Science	19	Assistant Professor	Deputy Director, GPS	-	Additional Charges
17	Dr. Anwar Phulpoto	Institute of Microbiology	19	Assistant Professor	Student Advisor	18	Additional Charges OPS
18	Ghulam Ali Keerio	Department of Teachers Education	19	Assistant Professor	i. Incharge Special Education, ii. Incharge Institute of Education, Main campus	-	02 Additional charges OPS

19	Sikandar Ali Janwri	Computer Technical Post	17	Senior data processing officer	Assistant Registrar teach	17	Charge allowed to work
20	Muhammad Hassan Halepoto	Administration	20	Inspector Colleges	Director, admissions (BPS-19)	19	Charge OPS
21	Gulzar Ahmed Khemtiyo	Computer Technical post	17	Senior data processing officer	Assistant Controller Examinations	17	Additional Charges allowed other charges
22	Zuhaib Memon	Administration	16	Office Assistant	Additional Charge OPS, Secretary to VC	17	Additional Charge OPS
23	Dr. Ameer Ahmed Mirbahar	Department of Botany	20	Associate Professor	Additional Charge OPS, Director, Date Palm	21	Additional Charge, OPS
24	Dr. Riaz Ahmed Shaikh	Institute of Computer Science	21	Professor	Deputy Director, QEC.	-	Additional Charge

9. Secondly, so far as fitness to hold the subject Posts is concerned, the same can be filled on merits within the cadre the officer fit in all respects can be appointed; and in such circumstances, for issuance of the Writ of Quo Warranto, it is established law that any person can lay information to the court regarding a public office being illegally occupied. The person laying such information shall not necessarily be aggrieved. However, at the same time, we are cognizant of the fact that there is much difference between the Writ of Quo Warranto and Mandamus. Mandamus also differs from writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed, for the performance of public duty and commands the person to whom it is addressed to perform some public or quasi-public legal duty, which he has refused to perform, and the performance of which cannot be enforced by any other adequate legal remedy. In such a situation party should be an aggrieved party having no other adequate and efficacious remedy. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of *Secretary Finance and Others Vs Ghulam Safdar* 2005 SCMR 534.

10. Having dilated upon the maintainability of the Petition, and to appreciate whether such a direction sought by the petitioners could be issued while exercising powers of Writ of Quo Warranto or mandamus/prohibition, it would be important to refer to Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The perusal of Article 199(b)(ii) of the Constitution shows that a person performing duties in connection with affairs of the Province could be required to

show under what authority he is holding a particular public office and for that purpose, the petitioner therein may not be required to be an aggrieved person, however, in the instant matter the directions sought by the petitioners were not merely confined to the afore-referred aspect of the matter rather the same include the issuance of directions like the Writ of Mandamus and prohibition against the private respondents requiring them to show their fitness to hold the administrative post in BS- 18 to 21 in SALU without fulfilling the criteria as outlined in the recruitment rules.

11. Dilating on the subject issue, primarily, the term "Cadre" this term has been defined in rule 9(4) of Fundamental Rules, 1922. The said Rule defines "cadre" to mean "the strength of the service or a part of the service sanctioned as a separate unit. The terms "department" and "cadre" are not defined in the code and the term "cadre" given in the Fundamental Rules is not inconsistent with any of the provisions of the law of the SALU. The same, therefore, will apply to the service laws of the public sector universities of the province. What is of significance is that the cadre to which a civil/public servant belongs and the terms and conditions of his/her service or even the matter of transfer, posting, seniority, and promotion within his/her cadre can only be made by or under laws which are traced to and sourced in Article 240 of the Constitution. On the aforesaid proposition, reliance is placed on the cases of *Muhammad Bachal Memon and others vs. Syed Tan veer Hussain Shah and others* 2014 SCMR 1539, 2017 SCMR 2051, *Contempt proceedings against the Chief Secretary Sindh and others* 2013 SCMR 1752, *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456), and *Ajmal Hassan Khan and another Versus Government of Sindh and others* 2012 P L C (C.S.) 1153.

12. We are of the considered view that the administrative posts could only be filled as per Recruitment Rules and subject to eligibility and entitlement, and not otherwise for the simple reason that the administrative cadre is different from the teaching cadre of respondent-university; and, Recruitment Rules for the subject post are already in the field. Besides that, the post of Registrar of respondent university is a cadre post and the administrative cadre officers of respondent university are eligible to be posted under the university Code and this was the reason this Court vide order dated 2.3.2023 passed in C.P-No- D-1459 of 2023 directed as follows:-

‘With regard to appointment of teaching associates, it has come on record that around go teaching associates were appointed without advertisement and getting 15000 salaries per month, they are providing lectures to the students of different categories as substitutes of Lecturer, Associate Professors and Professors as a stop-gap arrangement. Admittedly, this practice is not permissible under the University Act or Higher Education Commission even syndicate is competent to approve this practice, hence learned Vice Chancellor, Shah Abdul Latif University, Khairpur, shall ensure that all vacant posts are fulfilled through advertisement in a transparent manner. In Initial, screening test shall be outsourced by any Independent 3rd party testing agency having reputation and gradually reduce the number of teaching associates from the University. This exercise shall be completed within three months’

13. Unfortunately, the aforesaid decision was ignored by the respondent university and continued to perpetuate the illegalities and favored the private respondents to hold the administrative posts, though the private respondents were well aware of the fact that they were/are not fit to hold the administrative posts as they belong to different cadres and both cadres are different in their hierarchy. It is now well settled that the appointment in the Public Sector University /office can only be made through the competitive process on merit as provided under the recruitment rules and not otherwise as discussed supra. It is a well-settled law that appointments in public office are to be made strictly under applicable rules and regulations without any discrimination and in a transparent manner. Thus, all appointments in the public institution must be based on a process that is substantially and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws, subject to his/her qualification for the post under the dicta laid down by the Supreme Court of Pakistan on the subject issue. On the aforesaid proposition, our view is supported by the following cases decided by the Supreme Court of Pakistan in the cases of *Muhammad Yaseen v. Federation of Pakistan*, **PLD 2012 SC 132**, *Muhammad Ashraf Tiwana v. Pakistan*, **2013 SCMR 1159**, *Tariq Azizuddin: in re*, **2010 SCMR 1301**, *Mahmood Akhtar Naqvi v. Federation of Pakistan*, **PLD 2013 SC 195**, *Contempt Proceedings against Chief Secretary Sindh and others*, **2013 SCMR 1752** and *Syed Mubashir Raza Jafri and others v. Employees Old-age Benefits Institution (EOBI)*, **2014 SCMR 949**.

14. In view of the above facts and circumstances of the case, we hold that the respondent university was/is required to appoint a qualified person to the administrative posts as per Recruitment Rules and not otherwise for the reason that the term appointment by 'transfer' has been interpreted by the Supreme Court in the cases reported as *Contempt Proceedings against Chief Secretary, Sindh and*

others, 2013 SCMR 1752, and Ali Azhar Baloch and others v. Province of Sindh and others, 2015 SCMR 456, and held that the appointment by transfer can only be ordered if a civil servant is eligible and qualifies for his transfer ; that a civil servant who is to be appointed by transfer has to appear before the Departmental Promotion Committee or the Provincial Selection Board as the case may be, which will consider his/her eligibility, qualification and such other conditions applicable to the post as laid down in the recruitment rules of the department to which his/her transfer is to be ordered and it was incumbent upon the syndicate of the respondent-university to call the private respondents for considering their eligibility, qualification and such other conditions applicable to the posts, before allowing them to hold the subject posts as the law on the subject is very clear that Ph.D faculty members can be engaged in teaching and research only as per Higher Education Commission Policy and they cannot hold the administrative positions on purported additional charges besides the Secretary Universities and Boards vide letter dated 13.9.2021 directed to cancel all transfer and postings on OPS basis and acting charges basis but the policy decision was ignored by the respondent-university, the reasons assigned by the University in the comments that Vice-Chancellor was/is competent to assign such administrative postings to any of the employee of university cannot be made basis to violate the command of the Constitution and dicta laid down by the Supreme Court in its various pronouncements on subject issue. Prima facie such an approach of the university is misconceived and cannot be allowed. The private respondents are required to go back to their original positions and work in their own cadre as this practice of transfer and posting out of the cadre based on purported Additional/Acting/OPS charges is not permissible under the University Act or Higher Education Commission. Besides this court has held in C.P-No- D-1459 of 2023 that the syndicate is not competent to approve this practice. The Vice-Chancellor of SALU and Secretary of Universities and Boards shall take immediate steps to withdraw the transfer and postings of private respondents on administrative positions forthwith.

15. Coming to the question of (OPS) and holding additional charges against the administrative/cadre posts in the SLAU in violation of the order dated 02.3.2023 passed by this Court in C.P. No.D-1459/2022, and Judgment of Supreme Court of Pakistan, suffice it to say that the Supreme Court in the case of The Province of Sindh through Chief Secretary & others Vs Ghulam Shabbir and others 2023

SCMR 686 wherein it is held that to stretch or continue acting charge or ad-hoc arrangement on OPS for an extensive period is highly destructive and deteriorative to the civil service structure. On the aforesaid point learned counsel representing the private respondents has submitted that some minor irregularities, if any, in the appointment of private respondents on the subject posts were not sufficient for the issuance of a Writ of Quo Warranto against private respondents. Further, the Supreme Court in the case of the *Province of Sindh and others Vs. Ghulam Fareed and others* (2014 SCMR 1189) while dealing with OPS posting not only discouraged such practice but also noted that only in exigencies the Government makes such appointments as a stop-gap arrangement whereas in the present case, recruitment rules are already in the field but the respondent-university deemed it fit to post the private respondents on OPS which act on the part of respondent-university is against the law and dicta laid down by the Supreme Court in the case of “*Khan Muhammad Vs. Chief Secretary, Government of Balochistan Quetta and Others*” (2018 SCMR 1411).

16. In view of the above, the competent authority of respondent-university is directed to make appointments for administrative positions amongst the administrative cadre officers through a competitive process, under the recruitment rules as discussed supra. In the meanwhile, no stopgap arrangement shall be made/ allowed; and out of Cadre postings shall not be made and the syndicate shall see all the affairs of the university, particularly the request of the petitioners as made in the prayer clauses to be decided on merits within 30 days, keeping in view the findings given in the preceding paragraphs, after providing them meaning full hearing. Let a copy of this order be transmitted to the competent authority of respondents for compliance within time and ensure that the judgment of the Supreme Court and this Court shall be enforced in its letter and spirit.

17. This petition stands allowed in the above terms with no order as to costs.

JUDGE

JUDGE

*Ihsan/ **