

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT.

W.P No. 1771/2019

Doctor Syed Hasnain Abbas Naqvi vs. International Islamic University,
Islamabad etc.

Petitioner by: Syed Javed Akbar, Advocate

Respondents by: Mr. Rehan-ud-Din Khan Golra, Advocate

W.P No. 1772/2019

Doctor Shazad Ashraf vs. International Islamic University, Islamabad
etc.

Petitioner by: Syed Javed Akbar, Advocate

Respondents by: Mr. Rehan-ud-Din Khan Golra, Advocate

Date of Decision: 11.11.2019.

MOHSIN AKHTAR KAYANI, J. By way of this common judgment, I intend to decide captioned writ petitions having similar question of law and facts.

2. Through the W.P No.1771/2019, petitioner (Doctor Syed Husnain Abbas Naqvi) has assailed the office order dated 17.08.2018, issued by respondent No. 2/President, International Islamic University, Islamabad, which was subsequently confirmed by respondent No.3/Board of Governors of International Islamic University, Islamabad vide order dated 25.04.2019, whereby the services of the petitioner were terminated.

3. Through the W.P No.1772/2019, petitioner (Doctor Shazad Ashraf) has assailed the office order dated 17.08.2018, issued by respondent No. 2/President, International Islamic University, Islamabad, which was subsequently confirmed by respondent No.3/Board of Governors of International Islamic University, Islamabad vide order dated 25.04.2019, whereby the services of the petitioner were terminated.

4. Brief and consolidated facts of the captioned writ petitions are that the petitioners have alleged that they are highly educated and were

appointed in International Islamic University, Islamabad as Lecturers (BPS-17) on 13.09.2003 and on 24.12.2005 in Computer Sciences Department respectively. Both the petitioners were later on promoted as Assistant Professors (BPS-19) in Computer Sciences Department. On 03.05.2018 and 04.05.2018, they have received Show Cause Notices dated 02.05.2018 and 03.05.2018 respectively with the allegations that they have committed misconduct as defined under the International Islamic University Employees E & D Statutes 1987, in which it has been alleged that both the petitioners have disseminated baseless propaganda before the public at large, either orally or through social media, damaging the prestige and dignity of the University and its President. In response to said Show Cause Notices, the petitioners have submitted their written replies and have also claimed the record on the basis of which, the Show Cause Notices were issued. The respondents after considering the written replies of the Show Cause Notices, issued the office order dated 17.08.2018, whereby the services of the petitioners were terminated on the charge of misconduct under Section 4(1)(b)(iv), IUI E & D Statutes 1987. The petitioners have assailed the said order in appeal, which was also dismissed through the impugned letter dated 25.04.2019, issued on the basis of decision by the Board of Governors of the International Islamic University, Islamabad.

5. Learned counsel for the petitioners contends that the petitioners were appointed as Assistant Professors (BPS-19) by the Board of Governors of the University as provided under section 21(2)(i) of the International Islamic University Ordinance, 1985 and as such the Board was the only authority to terminate services of the petitioners U/s 21(2)(j) of the said Ordinance, but not without any inquiry; that respondents/University has leveled vague and false allegations, which require to be justified through a regular inquiry, which was not held by the University Administration in sheer disregard of the proposition of fair trial as well as in violation of Article 10-A of the Constitution of Islamic

Republic of Pakistan, 1973; that Board of Governors has neither substantiated the decision on the basis of any record nor even discussed the evidence against the petitioners, through which it could be assumed that the petitioners have committed any act of misconduct.

6. Conversely, learned counsel for the respondents/University contends that University was established under International Islamic University, Islamabad Ordinance, 1985, which is fully autonomous body and U/s 17 of the International Islamic University, Islamabad Ordinance, 1985, the Board of Trustees is supreme authority of the University, whereas the Board of Governors is competent to frame the Rules and Regulations of the University employees, which are declared as non-statutory by different pronouncements of the superior Courts, hence these writ petitions are not maintainable. He further contends that the petitioners have been dismissed from their service while applying the complete transparent process and procedure provided under the International Islamic University, Islamabad Employees (Efficiency & Discipline) Statutes 1987), who are guilty of initiation of false propaganda campaign against the International Islamic University on print, social and electronics media to malign the image and integrity of the University and its President. Both the petitioners have shared and disseminated different false reports and documents, which caused the huge loss to the reputation of the President of University among the public at large. It has lastly been contended that the petitioners have filed W.P No. 3233/18 (Dr. Syed Husnain Abbas Naqvi Vs.. President International Islamic University, Islamabad etc) and W.P No. 3234/18 (Dr. Shahzad Ashraf Vs. President International Islamic University, Islamabad etc.), the same were disposed of vide judgment dated 31.12.2018, whereby the respondents/University has given right of hearing to the petitioners U/s 38 of IIUI Ordinance, 1985 alongwith other enabling provisions of the Statutes and the Board of Governors has adjudicated the matter against the petitioners.

7. Arguments heard, record perused.
8. From the perusal of record, it reveals that both the petitioners have been given Show Cause Notices on the ground of misconduct with the specific allegations that:-

*And whereas, you have collaborated in creation of Facebook page, which was used by yourself and others to malign the image of the university and propagate a false propaganda against the IIUI, which is tantamount to **misconduct**.*

*And whereas, you have also collaborated in creation of Whatsapp group, which was used by yourself alongwith Dr. Shahzad Ashraf, Assistant Professor, IIU to malign the image of the university and propagate a false propaganda against the IIUI, which is tantamount to **misconduct**.*

*And whereas, you have collaborated with Dr. Shahzad Ashraf, Assistant Professor, in circulating a letter dated 14.09.2017 through e-mail using inappropriate language and questioning personal integrity of the President, IIUI. This act on part is also tantamount to **misconduct**.*

*And whereas, on media you have spoken yourself against the university interests and made baseless propaganda against the higher authorities, which is also tantamount to **misconduct**.*

9. Both the petitioners have denied such allegations rather submitted the detailed replies of the Show Cause Notices dated 02.05.2018 and 03.05.2018, in which they have taken a specific stance that they have been victimized by the respondents/ Authority. However, both the petitioners have been terminated from their service through office order dated 17.08.2018 while considering their replies to the Show Cause Notices being unsatisfactory, even it has been written in the termination order that an opportunity of hearing was given, but the petitioners have refused to acknowledge the right of hearing in person, whereafter major penalty of removal from service was imposed upon them under Section 4(I)(v)(iv), IIUI E & D Statutes 1987. The petitioners have filed an appeal against the said order, in which the petitioners have put appearance before the Board of Governors and after giving a personal hearing to the petitioners as well as right of cross-questioning qua the alleged defence. The Board of Governors has unanimously rejected the appeals and upheld the decision taken under E & D Statutes 1987.

10. In order to resolve the controversy, it is necessary to first of all decide the question of maintainability, which is the key factor in such type of cases, whereby I have honored to take the advantage from the judgment of this Court rendered by my learned brother Miangul Hassan Aurangzeb J. in **W.P No. 395/2017 (Dr. Shamaila Sajjad Vs. The Higher Education Commission and others and W.P No. 3852/2017 (Hafiz Muhammad Saqib Munir Vs. Rector, Islamic International University and others** as well as judgment of this Court i.e. **W.P No.1145/2012 (Muhammad Jamil Vs. President International Islamic University, Islamabad, etc)**, whereas in all these cases, it has unanimously been held that the Rules and Regulations of the International Islamic University, Islamabad are non-statutory in nature. In order to justify the arguments in this regard, the relevant extract of the judgment dated 26.12.2018, passed in **W.P No. 3852/2017 (Hafiz Muhammad Saqib Munir Vs. Rector, Islamic International University and others** is hereby reproduced:-

"The Islamic International University, Islamabad ("I.I.U.I.") was established under the provisions of the 1985 Ordinance. The President of the Islamic Republic of Pakistan is the Chancellor of the I.I.U.I. The I.I.U.I. is the custodian of the Faisal Mosque, Islamabad and the buildings attached to the said Mosque, and is responsible for its supervision, control and maintenance. Section 5(3) of the 1985 Ordinance provides that the I.I.U.I shall be a fully autonomous body which governs its academic functions in order to achieve its objectives. Section 12 of the 1985 Ordinance provides that the Rector of I.I.U.I shall be appointed by the Chancellor on such terms and conditions as he may determine. The Rector is supposed to exercise general control and supervision over the affairs of the I.I.U.I., and to preside over the meetings of the Board of Trustees. The Board of Trustees are listed in section 17 of the 1985 Ordinance. The Members of the Board of Trustees of the I.I.U.I, are as follows:-

"17 Board of Trustees. – There shall be a Board of Trustees consisting of the following ex-officio members, namely:-

- i. Chancellor
- ii. Pro-Chancellor
- iii. Rector.
- iv. President
- v. Sheikh of Al-Azhar, Cairo.
- vi. Secretary-General, Rabita al-Alam-al-Islami.
- vii. Chairman, International Islamic Charitable Foundation, Kuwait.
- viii. Chief Justice, Supreme Court of Pakistan.

- ix. Chief Justice, Federal Shariat Court, Pakistan.
- x. Chairman, University Grants Commission, Pakistan.
- xi. Director-General, ISESCO, Rabat.
- xii. Secretary, Federal Ministry of Education, Government of Pakistan.
- xiii. Rector, Ommul Qura University, Makkah.
- xiv. Rector, International Islamic University, Malaysia.
- xv. Rector, Cairo University.
- xvi. Rector, Al-Azhar University.
- xvii. Rector, Muhammad Ibn Saud University Riyadh.
- xviii. Such other ex-officio members as may be elected by the Board of Trustees

The President of the I.I.U.I is appointed by the Board of Trustees out of a panel to be recommended by the Rector. Section 28 of the 1985 Ordinance provides that Draft of the Statutes shall be proposed by the Board of Governors for the approval of the Board of Trustees.

Section 29 of the 1985 Ordinance mandates that the draft Regulations shall be approved by the Board of Governors in consultation with the Academic Council of the I.I.U.I. Section 30 of the 1985 Ordinance provides inter-alia that the Board of Governors may make Rules to regulate any matter relating to the affairs of the I.I.U.I. which under the 1985 Ordinance are not specifically required to be provided by the Statutes or Regulations.

The Statutes of the I.I.U.I. were made in 2006. These Statutes provide that the I.I.U.I. shall have faculties, including faculty of Basic and Applied Sciences. It is also provided that each faculty shall have a Board of Faculty consisting of the Dean, the Professors and the Chairman of teaching departments comprised in the faculty, one Assistant Professor and one Associate Professor, each to be appointed by rotation, three teachers to be nominated by the Academic Council and one expert to be nominated by the President, I.I.U.I. The said Statutes also provide for the composition and functions of the Selection Board.

A survey of the scheme of the 1985 Ordinance shows that the power to regulate the terms and conditions of service of the I.I.U.I's employees does not vest in the Federal Government. The Federal Government also does not play any role in the making of the Statutes, Rules and Regulations of the I.I.U.I. have been framed show that they do not have any statutory force. Learned counsel for the petitioner could not controvert the contentions of the learned counsel for the respondents that the terms and conditions of the petitioner's service with the I.I.U.I. are not regulated by any statute or statutory rules. It is well settled that a constitutional petition under Article 199 of the Constitution would be competent, if the Rules/Regulations governing the terms and conditions of the employees of the organization in question, are statutory or where the act or proceedings against which the petitioner voices his/her grievance are in violation of the statutory Rules/Regulations.

Since I do not find the Statutes, Rules and Regulations of the I.I.U.I. to be statutory in nature, the objection to the maintainability of this petition raised by the learned counsel for the respondents succeeds. Resultantly, this petition is dismissed as not maintainable. Since I have held that the instant petition is not maintainable, it is not necessary to give any findings on the merits of the case. The petitioner is at liberty to agitate his grievance before an appropriate forum.

11. The above referred view has left nothing in favour of the petitioners to challenge or raise the delicate question of decorum and prestige of International Islamic University through constitutional jurisdiction in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, especially when the Rules and Regulations of the International Islamic University as discussed above have been declared as non-statutory and it is settled law that when the Rules and Regulations are non-statutory in nature, the writ is not competent as held by the Apex Court in reported judgment as **2017 SCMR 2010 (Pakistan Defence Officers Housing Society Vs. Mrs. Itrat Sajjad Khan and others)**. Even otherwise, the question of exercise of jurisdiction by the Board of Governors under the relevant Statutes is absolute and once the Board of Governors have given unanimous decision, the same could not be assailed, as the High Court cannot sit as Court of appeal while dealing with the internal affairs of the University.

12. The epitome of the whole discussion is that both the captioned writ petitions i.e. **W.P No. 1771/2019 (Doctor Syed Husnain Abbas Naqvi vs International Islamic University, Islamabad etc.)** and **W.P No. 1772/2019 (Doctor Shazad Ashraf vs. International Islamic University, Islamabad etc.)** are **DISMISSED** for being not maintainable without giving any findings on merits of the case qua the allegations. The petitioners are at liberty to agitate their grievance before any proper forum.

(MOHSIN AKHTAR KAYANI)
JUDGE