

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P. No.395 of 2017

Dr. Shamaila Sajjad

**Versus**

The Higher Education Commission and others

**Date of Hearing:** 01.02.2018

**Petitioner by:** Raja Muhammad Farooq, Advocate.

**Respondents by:** Mr. Rehan ud Din Golra, Advocate for  
respondents No.2 to 7

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Dr. Shamaila Sajjad, who is serving as Chairperson, Department of Physics, Female Campus, International Islamic University, Islamabad ("I.I.U.I."), has voiced her grievance against the procedural irregularities in constituting the Departmental Tenure Review Committee ("D.T.R.C."), constituted for the selection of candidates against the post of Associate Professor.

2. Learned counsel for the petitioner submitted that the petitioner was entitled to be given accelerated promotion; that cases of accelerated promotion were to be considered by the D.T.R.C.; that vide notification dated 30.06.2016, the President of I.I.U.I, constituted the D.T.R.C. for the department of physics, faculty of basic and applied sciences; that the Members of the said Committee were surreptitiously changed, vide subsequent notification dated 24.10.2016; that the petitioner made a representation to the President, I.I.U.I. against the change in the constitution of the said D.T.R.C.; that two of the Members of the new D.T.R.C. were co-authors of the research papers with the candidates who were to be considered for the post of Associate Professor; that the presence of Professor Kashif Sabeeh and Muhammad Nasir Ali Khan on the D.T.R.C. would cause grave prejudice to the petitioner; and that the above named Members of the D.T.R.C. had a strong nexus with the candidates competing with the petitioner for the post of Associate Professor. Learned

counsel for the petitioner prayed for the writ petition to be allowed, and for the constitution of the D.T.R.C. through notification dated 24.10.2016 to be declared unlawful.

3. On the other hand, learned counsel for respondents No.2 to 7, without going into the merits of the case, raised an objection to the maintainability of the instant petition. Learned counsel submitted that since the petitioner has raised the matter with respect to her service/promotion, and since the applicable Rules/Statutes of the I.I.U.I, did not have a statutory force, the instant writ petition is liable to be dismissed. He drew the attention of the Court to section 17 of the International Islamic University Ordinance, 1985 ("the 1985 Ordinance"), and submitted that other than the Secretary, Ministry of Education, the 17 other Members of the Board of Trustees were not federal government servants; that the Statutes of the I.I.U.I. were proposed by the Board of Governors for the approval of the Board of Trustees; that the Federal Government had no role in the making of the Statutes, Rules, and Regulations of the I.I.U.I; and that I.I.U.I could not be termed as a "person" to perform functions in connection with the affairs of the Federation. Learned counsel for respondents No.2 to 7 prayed for the writ petition to be dismissed as not maintainable.

4. I have heard the contentions of the learned counsel for the contesting parties.

5. In the first instance, I propose to decide the question regarding the maintainability of the instant writ petition. Indeed, the petitioner has raised a matter pertaining to the terms and conditions of her service. The petitioner seeks accelerated promotion to the post of Associate Professor, but is aggrieved by the presence of two members of the Committee, which is supposed to consider the petitioner's case for accelerated promotion. The petitioner feels that two of the members of the said Committee have a close nexus with the candidates competing against her for the said post.

6. The 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, Ummul 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.*

7. 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.

8. 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.

9. 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 the 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. The Tenure Track Rules, 2008, have been made with the approval of the Board of Governors. These Rules apply to all Assistant Professors and Associate Professors appointed through the Tenure Track System, the method of appointment etc. under the Tenure Track System has also been set out in these Rules. Rules 11 and 12 of these Rules provide for the constitution of the University Selection Board and Departmental Tenure Committee.

10. 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. The sources under which the said 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 respondents No.2 to 7 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.

11. 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 respondents No.2 to 7 succeeds. Resultantly, this petition is dismissed as not maintainable.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2018.**

**JUDGE**

*Qamar Khan\**

*Uploaded By : Engr. Umer Rasheed Dar*