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

**Writ Petition No. 4510-2010:**

G.M. Chaudhry  
Versus  
Dr. Kamran Jehangir Etc:

**Writ Petition No. 1055-2011:**

Dr. Kamran Jehangir  
Versus  
Rector, National University Etc:

**Date of Hearing:** 28<sup>th</sup> February, 2012:  
**For Petitioners: -** G. M. Chaudhry Advocate in person and Hafiz S. A. Rehman, Sr. ASC:  
**For Respondents: -** M/s Mr. Muhammad Munir Paracha, Mr. Noman Munir Paracha, Mr. Mir Aurangzeb and Dr. Muhammad Azam Advocates:

**MUHAMMAD ANWAR KHAN KASI. J:**

Listed petitions due to having identical controversy are being dealt with and decided by way of a common Judgment.

2- Initially, G. M. Chaudhry, Advocate/petitioner filed a petition calling in question appointment of Dr. Kamran Jehangir, Ex-DG NUML (hereinafter to be referred as petitioner) and prays for a direction to respondent NUML to appoint him by replacing the petitioner due to having prescribed requisite qualifications on the main ground that it is in contravention of Section 11 of the NUML Ordinance 2000 (Ordinance No. XVIII of 2000) which requires "A language qualified Brigadier of Arms Education Corps to be appointed as DG".

3- The respondent University in their written comments to above petition raised certain preliminary objections respecting maintainability of the instant petition. On facts, it was their stance that as per provisions of NUML Ordinance, post of DG NUML is to be filled in by appointment of a serving Brigadier from Education Corps of Pakistan Army and for obvious reason through deputation for the reason that the University imparts education, not only to the general public, but to students from foreign states, particularly belonged to armed forces, officers of Pakistan Army,

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therefore, specific education environment at NUML requires a peculiar et of mind and discipline. They admitted that petitioner (Dr. Kamran Jehangir, is holding a Master degree in the discipline English. He is not a language expert, and is not a Brigadier of Army Education Corps and that his appointment was made in exigency of service as a stopgap arrangement and that appointment of DG NUML shall be made according to provision of Section 11 of NUML Ordinance, 2000 on the first available opportunity. (Underlined by me)

4- During the pendency of above petition, by a notification dated 3<sup>rd</sup> of May, 2011, Brigadier Azam Jamal (hereinafter to be referred as respondent No.2) was appointed by transfer by the Chairman, Board of Governors as DG, NUML and on assumption of his charge, it was directed that petitioner (Dr. Kamran Jehangir) shall resume duty as Director Planning & Coordination with immediate effect.

5- The petitioner then by way of separate petition (No. 1855 of 2011) assailed above Notification dated 3-5-2011 with the following facts:-

- a- He was permanently appointed as Director Planning and Coordination (BS-19) at the respondent University vide order dated 24-5-2003;
- b- The post of Director Planning and Coordination was upgraded to BS-20 alongwith other posts of Directors in the University in the year 2005 for the then "present incumbents" as one time measure;
- c- That the petitioner was thus promoted in pursuance of recommendations of Selection Board in BS-20 w.e.f 20-02-2005 vide Notification dated 10-3-2005;
- d- That the petitioner was re-designated as Registrar by the Chairman Board of Governors in the same scale i.e. BS-20 w.e.f 31-7-2007 vide Notification dated 30-7-2007;
- e- That the petitioner was appointed as DG BS-21 by promotion by the Competent Authority with

the approval of Board of Governors under section 11 of the University Ordinance, 2000 w.e.f 1-10-2008 vide Notification dated 1-10-2008;

- f- That the petitioner after assuming the charge as DG BS-21 continued to work against said post till 3-5-2011 when by a Notification dated 3-5-2011, issued by the Director Administration, he was directed to resume duty as Director Planning and Co-ordination with immediate effect and one Brigadier Azam Jamal (respondent No.2) was appointed by the Chairman through transfer as DG, NUML, Islamabad,
- g- That the petitioner being a BS-21 Officer could not think that he has been relegated in position and status without due process of law, assumed the charge of the post of Director Planning and Coordination on 3-5-2011;
- h- That on receipt of pay slip, he came to know that he has been down graded and reduced in rank from BS-21 to BS-20 and was paid the emoluments of the post of BS-20;
- i- That the petitioner preferred a representation to the Chancellor on 4-5-2011, but the same is still un-responded, therefore, he preferred this petition.

6- The respondent University in its reply objected upon the maintainability of the petition due to having non statutory rules. On facts, it was their stance that petitioner was not qualified for the post of DG as he was not a Brigadier of Army Education Corps nor he was a language qualified person. The Chairman after receipt of notice of WP No. 4510/2010 of G. M Chaudhry re-examined the issue of appointment of petitioner as DG and after examining the law he came to the conclusion that the

petitioner was not qualified to be appointed as DG, his order of appointment was re-called.

7- The respondent No. 2 through separate comments resisted the petition by maintaining that his appointment is in accordance with Section 11 of the NUML Ordinance.

8- The main grounds urged by the learned counsel representing petitioner are condensed to the following points:-

- a- That petitioner could not have been downgraded without due process of law;
- b- That action of the respondent is in contravention of Articles 10-A and 4 of the Constitution which provides guarantee to a fair trial and due process and protection of law and no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- c- That the impugned Notification is also violated of Article 9, 14 and 25 of the Constitution;
- d- That the impugned Notification lacks reasons, which violates Section 24-A of the General Clauses Act, which provides while passing an adverse order or an order detrimental to the interest of individual, reasons have to be stated.

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- e- That the impugned order did not contain any reason for down grading the petitioner;
- f- That the impugned Notification is also violative of principle of locus poententiae ; and
- g- That the impugned notification is also violative of Section 27 Ordinance XVIII of 2000 and Statute 13 of NUML Service Statutes;

9- The learned counsel for the petitioner in order to brace his arguments, placed reliance upon following case law:-

2001 SCMR 1320,	2006 SCMR 678,
2002 SCMR 312	2011 PLC (CS) 419
2008 CLC 766	201 PLC (CS)266
PLD 2010 SC 554	1998 SCMR 2268
2010 PLC (CS) 276	1999 SCMR 2189
PLJ 2008 Lahore 718	PLD 1972 SC 332
2011 PLC (CS) 125	2004 SCMR 468
NLR 2008 Service 144	2003 SCMR 1128
1998 SCMR 2419 AND	2005 YLR 1719

10- The case law, quoted by the petitioner are on the point that public functionaries are under obligation to decide cases after proper application of mind and even administrative orders are open to review by the High Court, if the controversies between the parties are decided under statutory powers. It is further held that the order should always be speaking orders and must contain reasons. The reversion amounts to reduction in rank and cannot be ordered without hearing the parties.

11- Conversely, learned counsel for the respondent University as well as learned counsel for respondent No.2 fortified their arguments on the basis of case law, reported as 1988 SCMR 516. 1986 SCMR 1071 and the National University of Modern Languages (Amendment) Ordinance, 2011.

12- I have examined the case file, law on the subject and also considered the submissions advanced by both the sides.

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13- There is no second thought that bar under Article 199(3) of the Constitution is not attracted to a case where the authority involved in the case has acted without authority, malafide and corum non judice. *See: PLD 2009 SC 868.*

14- According to Section 11 of NUML Ordinance, 2000, "*A language qualified Brigadier of Army Education Corps* shall be appointed by the Chairman of the Board to be the Director-General. Subsequently through NUML (Amendment) Ordinance 2000 (XVIII of 2000), amendment in Section 11 was made whereby for the post of DG only requirement was of a *serving or retired Brigadier*. It is an admitted position that neither the petitioner is a language expert nor a retired or serving Brigadier from the Education Corps of Pakistan Army as specifically required under the NUML Ordinance 2000, therefore, under the law, petitioner could not have been appointed as DG for want of prescribed criteria.

15- In this respect, the stance of the respondent University was that the petitioner is not a language expert, and is not a Brigadier of Army Education Corps and that his appointment was made in exigency of service as a stopgap arrangement and that appointment of DG NUML shall be made according to provision of Section 11 of NUML Ordinance, 2000 on the first available opportunity. Therefore, in my view, the petitioner cannot claim restoration against the post of DG, against which he had no lawful right. Under the principle of locus poententiae, the competent authority is vested with powers to repeal an illegal order. Moreover, In case reported as Raunaq Ali V. Chief Settlement Commissioner PLD 1973 SC 236, the Hon'ble Apex Court held that the High Court was within its power to refuse relief in writ jurisdiction, where the impugned order before it had the effect of fostering justice and righting a wrong, even though the authority concerned had acted clearly without jurisdiction. Relief under writ jurisdiction cannot be extended in aid of injustice. *See 1998 SCMR 516.*

16- I, also minutely examined the case law referred to by the learned counsel but the same do not extend any help to the petitioner due to having distinct facts and circumstances.

17- In view of above discussion, the appointment of the petitioner as DG being void ab initio was rightly re-called by the respondent as the petitioner was not qualified for the said post which is meant to be filled

through director recruitment and the seniority or otherwise is irrelevant. The principle of *locus poententiae* is inapplicable to the case of the petitioner as the action has been taken against an illegal act. There arises no question of application of Section 27, as the petitioner was not holding the post of DG in a legal way. By way of impugned letter, the petitioner was not demoted but was relegated to his original post. As per respondent University, the appointment of the petitioner was just a stopgap arrangement. No penalty was imposed upon the petitioner; therefore, there was no question of any charge-sheet or inquiry.

18- Resultantly, It is held that appointment of the petitioner as DG was not in accordance with Sec 11 of the NUML Ordinance 2000 and it has rightly been cancelled-withdrawn by the department.

19- In view of above, both the petitions stand dismissed leaving the parties to bear their own costs.

**(MUHAMMAD ANWAR KHAN KASI)**  
**JUDGE**

Announced in Open Court, on 13<sup>th</sup> day of March, 2012:

**JUDGE**

M. Suhail

Approved for Reporting