

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1318 of 2020
Sajid Mehmood Janjua
Versus
Allama Iqbal Open University

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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09.07.2020

Mr. Muhammad Yaqoob Javaid, Advocate for the petitioner,
M/s Hafiz Arfat Ahmad Ch., Kashifa Niaz Awan,
Tariq Zaman Ch., Advocates for A.I.O.U.,
Mr. Fazal-e-Rabbi, Deputy Registrar (Legal)
A.I.O.U.

Through the instant writ petition, the petitioner, Sajid Mehmood Janjua, assails the notification dated 06.03.2020, whereby major penalty of removal from service, was imposed on him under Rule 4(1)(b)(iii) of the Government Servants (Efficiency & Discipline) Rules, 1973 ("the 1973 Rules").

2. Learned counsel for the petitioner submitted that the petitioner has 31 years of meritorious service with Allama Iqbal Open University ("A.I.O.U."); that although the petitioner is not a workman, he has remained the leader of the employees' welfare association; that the petitioner's responsibilities in the said association brought him in conflict with the management of A.I.O.U.; and that this conflict resulted in the issuance of a show cause notice dated 16.01.2020, which lead to the issuance of the impugned notification dated 06.03.2020.

3. Learned counsel for the petitioner further submitted that it is well settled that major penalty cannot be imposed on an employee without conducting a regular inquiry; that at no material stage, was a regular inquiry as envisaged in the 1973 Rules conducted against the petitioner; and

that at no material stage, was the petitioner confronted with the material against him. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In support of his submissions, learned counsel for the petitioner placed reliance on the judgments reported as 2020 PLC (C.S.) 28, 2018 PLC (C.S.) 907, 2018 PLC (C.S.) 325, 2014 PLC (C.S.) 575 and PLD 1996 Lahore 672.

4. On the other hand, learned counsel for A.I.O.U. submitted that since the A.I.O.U. (General Conditions of Service) Statutes, 1978 have already been declared by this Court as non-statutory, the instant petition is liable to be dismissed as not maintainable; and that since the petitioner had already availed the alternative remedy provided by Section 31 of the Allama Open University Act, 1974 ("the 1974 Act") by filing an appeal before the Executive Council against the impugned notification dated 06.03.2020, the instant petition is liable to be dismissed as not maintainable.

5. Furthermore, learned counsel for A.I.O.U. submitted that the petitioner has on many occasions disrupted the academic activities at A.I.O.U.; that the petitioner had been enticing other employees of A.I.O.U. to participate in an illegal gathering on 24.10.2019; that the decision of the authorized officer to dispense with the inquiry did not suffer from any legal infirmity; that there was cogent material in the form of audio/video recording showing that the petitioner had made a hate speech; and that Rule 5(1)(iii) of the 1973 Rules, empowers the authorized officer to dispense with the inquiry in such cases. Learned counsel for A.I.O.U. prayed for the writ petition to be dismissed.

6. In rejoinder learned counsel for the petitioner submitted that since the impugned notification had been issued with the approval of the Vice Chancellor of A.I.O.U., an appeal before the Executive Council which is chaired by the Vice Chancellor would not be an adequate and efficacious remedy for the petitioner. He further submitted that since the 1973 Rules are statutory in nature, this petition is maintainable.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

8. I deem it appropriate, in the first instance, to decide the objections taken by the learned counsel for A.I.O.U. to the maintainability of this petition.

9. The A.I.O.U. (General Conditions of Service) Statutes, 1978 (**"the 1978 Statutes"**), were made pursuant to Section 24 of the 1974 Act, which provides *inter alia* that Statutes may be made to regulate or prescribe the matters including ***"efficiency and discipline of University employees."*** Statute 16 of the 1978 Statutes provides that till such time as A.I.O.U. Employees (Efficiency and Discipline) Statutes are framed, the Efficiency and Discipline Rules applicable to the employees of the Federal Government shall be applicable to the employees of A.I.O.U. Till date the A.I.O.U. Employees (Efficiency and Discipline) Statutes have not been framed. Therefore, it would be safe to hold that the 1973 Rules have been adopted pursuant to Statute 16 (*ibid*) until such time that A.I.O.U. frames its Statute governing the Efficiency and Discipline of its employees.

10. Indeed this Court in the judgment dated 09.07.2019 passed in writ petition No.3485/2018

titled ***“Abdul Shakoor Vs. Allama Iqbal Open University through its Vice Chancellor”*** has already held that the 1978 Statutes are non-statutory. In this regard, paragraph 10 of the said judgment is reproduced herein below:-

“By filing the instant writ petition, the petitioner in effect seeking the enforcement of his right under the proviso to Rule 5(i) of the A.I.O.U. (General Conditions of Service) Statutes, 1978. These Statutes were made in exercise of the powers under Section 24 of the A.I.O.U. Act, which provides inter-alia that Statutes may be made to regulate or prescribe the matters including “the scales of pay and other terms and conditions of service of officers, teachers and other employees of the University”. It was in exercise of the powers conferred by Section 24 of the A.I.O.U. Act that A.I.O.U. (General Conditions of Service) Statutes, 1978 were made. Rule 5(1)(2) of the said Statutes provides that they shall come into force with immediate effect (12th of October, 1978) and as approved by the Pro- Chancellor from time to time. According to Section 9(I) of the A.I.O.U. Act, the Pro Chancellor of the University is the Federal Minister In-charge of the Ministry of Education. The A.I.O.U. (General Conditions of Service) Statutes, 1978, have neither been made by the Federal Government, nor are they required to be approved by the Federal Government. The Federal Minister In-charge of the Ministry of Education is not synonymous with the term “Federal Government” as held in the case of Mustafa Impex Vs. Government of Pakistan (PLD 2016 S.C. 808). Consequently, it is safe to hold that the A.I.O.U. (General Conditions of Service) Statutes, 1978, of the respondent/University are not statutory and therefore, a writ petition filed by an employee of the respondent/University seeking the enforcement of any of the provisions of the said Statutes, is not maintainable.”

11. The mere fact that the 1973 Rules have been adopted by reference through Statute 16 of the 1978 Statutes (which are non-statutory) would not *ipso facto* mean that the petitioner was proceeded against or major penalty was imposed on him under any statutory rules. The 1973 Rules were not applicable to the disciplinary proceedings initiated against the petitioner on their own force but by virtue of Statute 16 of the 1978 Statutes.

Therefore, I am of the view that the petitioner cannot agitate his grievance *qua* the non-adherence with the 1973 Rules in the disciplinary proceedings against him in the Constitutional jurisdiction of this Court.

12. In view of the above, the instant petition is dismissed as not maintainable. I have refrained from giving any observation on the merits of the petitioner's case lest it may prejudice the petitioner's challenge to the impugned notification dated 06.03.2020 before the appropriate forum.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Sultan**