

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**

**Writ Petition No. 4125 of 2013**

Raja Hamid Nawaz and others  
*Versus*  
International Islamic University and others

Petitioners By:	Hafiz Farman Ullah, Advocate
Respondents By:	Mr. Rehan ud Din Golra, Advocate M. Bilal, Assistant Director, IIUI
Date of Hearing:	22.07.2020

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**Ghulam Azam Qambrani, J:** This writ petition has been filed with the following prayer:-

*"It is very humbly and respectfully prayed that the impugned office order No. Estab. 15(16)2002-IIU-2516 dated 20.10.2006 to the extent of considering seniority of the petitioners from 16.10.2006 and not from the date of regular appointment, and the impugned orders No.Hr-11.15(15)/2001-IIU-3570 and No.HR-11.15(15)/2001-IIU-3571 dated 20.08.2013 may kindly be set-aside as being void, illegal, arbitrary, unlawful and having no legal effect and respondents may kindly be directed to consider promotion of the petitioners w.e.f the date of regular appointment of the petitioners with all back benefits."*

2. Brief facts of the case are that petitioner No.1 was appointed against the project post of "Assistant (BPS-11)" vide order dated 15.11.2001 in Sharia Academy of the respondent organization. He was initially appointed as "LDC" on 12.09.1994 and remained on ad-hoc as "LDC" till 30.11.1998 and remained as "UDC" on contract

basis till 15.11.2001. So, he has served for seven years before joining the post of Assistant; that petitioner No.2 was also initially appointed as UDC on 01.01.1999 and remained UDC on contract basis till his appointment as Assistant; So, he has served the respondent/ university for two years before joining the post of assistant. It is the averments of the petitioners that all the employees who were appointed on regular basis against Dawah activities grant and research and training grant of Sharia academy were given option either to opt pension scheme or to continue to be governed under CP-Fund Scheme vide letter dated No. Estab.15(16)2002-IIU-2516. The petitioners opted the option of pension scheme of the University and in pursuance of which the impugned Office Order No.Estab.SA (IIU)-2 (106)/2006-2403 dated 22.11.2006 was issued. It is further averred that the petitioners have been considered for Pension Scheme w.e.f their date of regular appointment vide impugned letter No. Estab SA (IIU)-2(106)/2006-2403 dated 22.11.2006 but in the above said letter and in their seniority list their promotion was considered w.e.f 16.10.2006. Further the petitioners feeling aggrieved from the above action of the respondents; filed departmental appeals before the Chairman Board of Governors- International Islamic University- Islamabad which were decided/ refused vide order No.HR-II.15(15)/2001-IIU-3570 and vide No.HR-11.15(15)/2001-IIU-3571 dated 20.08.2013, hence this petition.

3. Learned counsel for the petitioners has contended that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily but it can be achieved by following the rule of justness and fairness as enshrined in Articles 4 & 25 of the Constitution. That the impugned orders passed by the respondent are patently void, ab-initio and contrary

to law, therefore, the same are liable to be set-aside and declared of no legal effect.

4. On the other hand, learned counsel for the respondents/ university contends that university was established under International Islamic University, Islamabad Ordinance, 1985 which is fully autonomous body and under Section 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 & regulations of the university employees, which have been declared as non-statutory by different pronouncements of the superior Courts, therefore, instant writ petition is not maintainable. He further contended that the petitioners were appointed against the project post, then on ad-hoc appointments, thereafter, they were appointed on contract upto the year 2001; that the petitioners' services were regularized under the policy specifically made for employees like the petitioners in order to count their previous service purely contingent/ project posts to give benefit to them with the condition that the seniority of other employees already determined will not be disturbed and their seniority will be determined from the date of regularization of their post and not from their initial appointments. The learned counsel further contended that the petitioners accepted the Office Orders dated 26.10.2006 & 22.11.2006 and agreed that their seniority will be determined from the date of their regularization. Lastly, the learned counsel argued that the departmental appeals of the petitioners were carefully examined and decided on the above-mentioned conditions.

5. I have heard the arguments of learned counsel for the parties and perused the record.

6. In order to resolve the controversy, it is necessary first to decide the question of maintainability, which is the key factor in such type of cases. In this regard i am fortified by the law laid down by this Court in W.P No.395/2017 titled as "Dr.Shumaila Sajjad Vs The Higher Education Commission & others" and W.P No.3852/2017 titled as "Hafiz Muhammad Saqib Munir Vs Rector, Islamic International University & others" as well as Judgment of this Court i.e W.P No. 1145/2012 titled as "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 this regard the relevant extract of the judgment dated 26.12.2018 passed in W.P No. 3852/2017 is hereby reproduced as under:-

*"The Islamic International University, Islamabad ( IIUI) was established under the provisions of the 1985 Ordinance. The President of the Islamic Republic of Pakistan is the Chancellor of the IIUI. The IIUI 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 IIUI 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 IIUI 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 IIUI, 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 IIUI 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, IEESCO Rabat.
- xii. Secretary, Federal Ministry of Education, Government of Pakistan,
- xiii. Rector, Ommul Qura, Universiy, 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 IIUI is appointed by the Board of Trustees out of a penal to be recommended by the Rector. Section 28 of the 1985 Ordinance provides that Draft of 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 IIUI. 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 IIUI which under the 1985 Ordinance are not specifying required to be provided by the Statutes or Regulations.*

*The Statutes of the IIUI were made in 2006. These Statutes provide that the IIUI shall have faculties, including faculty of Basic and Applied Science. 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, IIUI. The said Statutes also provide for the composition and functions of the Selection Board.*

*Survey of the scheme of the 1985 Ordinance shows that the power to regulate the terms and conditions of service of the IIUI 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 IIUI have been framed show that they do not have any statutory force. Learned counsel for the respondents that the terms and conditions of the petitioner's service with the IIUI are not regulated by any statute or statutory rules. It is well settled that a constitutional petition under Article Through this petition, the petitioner has invoked the Constitutional jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 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 IIUI 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, 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."*

7. The petitioners by invoking the constitutional jurisdiction of this Court in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seek setting aside of the impugned Office Order dated 20.10.2006 to the extent of considering their seniority from 16.10.2006 and not from the date of their regular appointment and the impugned order dated 20.08.2013 be declared illegal, arbitrary and that direction be issued to the respondents to consider the promotion of the petitioner from the date of their regular appointment with all back benefits.

8. Perusal of the record shows that the Statutes of the IIUI were made in 2006, which provide that the IIUI shall have faculties, including faculty of Basic and Applied Science and 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 are to be nominated by the Academic Council and one expert to be nominated by the President, IIUI. These Statutes also provide for the composition and functions of the Selection Board.

9. Survey of the scheme of the 1985 Ordinance shows that the power to regulate the terms and conditions of service of the IIUI 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 IIUI have been framed to show that they do not have any statutory force. The contention of the learned counsel for the respondents is that the terms and conditions of the petitioners' service with the IIUI are not regulated by any statute or statutory rules. It is well settled that this petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 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, this Court does not find the Statutes, Rules and Regulations of the IIUI to be statutory in nature, the objection to the maintainability of this petition raised by the learned counsel for the respondents succeeds. It is well settled law that when the rules and regulations are non-statutory in nature, the writ is not competent as held by the August Supreme Court in reported Judgment titled as "Pakistan Defence Officers Housing Society Vs Mrs. Itrat Sajjad Khan & others" (2017 SCMR 2010], wherein it has been held as under:-

(i) *Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in*

*absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.*

*(ii) Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.*

*(iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.*

*(iv) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*

*(v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.*

10. 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. The Hon'ble Division Bench of this Court vide its judgment dated 21.03.2019, passed in ICA No.67/ 2019 tilted as "Dr. Sana Ulah Vs. The International Islamic University" has already held that since the service rules of International Islamic University Islamabad are non-statutory, a writ petition cannot be filed by the employees of the said university to agitate a matter regarding their terms and conditions of service.



11. The upshot of above discussion is that the instant writ petition is **dismissed** being not maintainable without giving any findings on merits of the case. The petitioners are at liberty to agitate their grievance before appropriate forum.

**Ghulam Azam Qambrani**  
**Judge**

Announced in Open Court, on this 30<sup>th</sup> day of July, 2020.

**Judge**  
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*Rana M. Iqbal*