

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

W.P.No.1086 of 2021  
Allama Iqbal Open University  
**Versus**  
Federation of Pakistan and others

**Dates of Hearing:** 31.08.2022, 01.09.2022 & 13.09.2022  
**Petitioner by:** Hafiz Arfat Ahmed Chaudhry, M/s Kashifa Niaz Awan and Fazal-e-Rabbi D.R.(L) A.I.O.U.  
**Respondents by:** Mr. Asim Shehbaz Malik, Advocate for respondent No.3  
Dr. G.M. Chaudhry, Advocate for respondent No.2 in W.P.No.1086/2021  
Malik Waheed Akhtar, Advocate for respondent No.2 in W.P.No.3297/2021  
Malik Shaukat Nawaz, learned Assistant Attorney-General

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition the petitioner, Allama Iqbal Open University (“A.I.O.U.”), impugns the order dated 10.12.2020 passed by the President of Pakistan whereby the representation filed by A.I.O.U. under Article 32 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (“the 1983 Order”) against the revised order / findings dated 28.08.2020 of the Wafaqi Mohtasib (“the Ombudsman”) was dismissed. Through the said revised order dated 28.08.2020, the Ombudsman accepted the complaint filed by respondent No.2, Shahid Jamil, and recommended that an amount of Rs.9,26,168.50 deducted by A.I.O.U. from respondent No.2’s pension be refunded to him. Earlier the Ombudsman had rejected respondent No.2’s complaint vide order dated 17.06.2020.

**FACTUAL BACKGROUND:-**

2. The record shows that Nisar Ahmad Aziz (“Mr. Aziz”) had been awarded scholarship for Ph.D in Business Administration at a university in the United Kingdom for a period of five years out of the income from the endowment fund of A.I.O.U. At that time Mr. Aziz was serving as Assistant Professor in the Department of Business Administration at A.I.O.U. On 02.08.2000, Mr. Aziz had executed a surety bond assuring A.I.O.U. that he shall inform A.I.O.U. of the date of his return to Pakistan

and shall serve A.I.O.U. for a period of five years. Mr. Aziz had also assured A.I.O.U. that in case of the breach of any of the terms and conditions of the surety bond by him, respondent No.2 and Iqbal Hussain as the guarantors would be held responsible for the payment of damages as detailed in paragraph (b) of the said bond. For the purpose of clarity, paragraph (b) of the said bond is reproduced herein below:-

***“(b) AND THE SCHOLAR HEREBY FURTHER CONVERANTS***

*That in case of breach of any of the above terms and conditions by his/her or on his/her Or on his/her failure to return to and stay in Pakistan, the scholar/trainee shall, on the breach of the above agreement, be bound to compensate the A.I.O.U. by making a refund of the total amount of expenditure incurred on him/her in foreign currency or Pakistan rupees. In addition to the above the scholar/trainee will have to pay/refund the salary/allowance paid during the study period as well as the liquidating damages approved by the executive Council in 1st 57<sup>th</sup> meeting held on 7.2.98 vide Notification No.21-80/97-Refg.239 dated 20.2.98 as under.*

***“I. FOREIGN STUDY/TRAINING***

<i>S.No</i>	<i>Duration of Study/Training</i>	<i>Period of Service in Allama Iqbal Open University after return from study/training</i>	<i>Damages</i>
<i>1</i>	<i>Over one month but not more than 3 month</i>	<i>One Year</i>	<i>Rs.50,000/-</i>
<i>2</i>	<i>Over 3 months but not more than 6 months</i>	<i>1 ½ Year</i>	<i>Rs.75,000/-</i>
<i>3</i>	<i>Over 6 months but not more than 12 months</i>	<i>2 Years</i>	<i>Rs.1,00,000/-</i>
<i>4</i>	<i>Over 12 months but not more than two years</i>	<i>4 Years</i>	<i>Rs.3,00,000/</i>
<i>5</i>	<i>Over two years</i>	<i>5 Years</i>	<i>Rs.5,00,000/</i>

*In addition to Salary/Leave/Allowances perquisite other expenditure and amount of scholarship.””*

3. The said surety bond also contains a guarantee by respondent No.2 which reads thus:-

***“(c) GUARANTEE TO THE ALLAMA IQBAL OPEN UNIVERSITY***

*I, Shahid Jamil S/o Ch. Shah Muhammad do hereby guarantee the payment of any such sum as the above scholar/trainee may be called upon to re-fund/pay to the Allama Iqbal Open University for the breach of any the terms and conditions of the above agreement and I hereby undertake to pay such sum on demand in the event of the scholar/trainee making a default in the payment of the same and bind myself and each of my heirs, executors and administrators jointly and severally.”*

4. After availing the said scholarship and obtaining a Ph.D degree, Mr. Aziz returned to Pakistan and resumed his duties at A.I.O.U. on 15.06.2006. Mr. Aziz is said to have taught at A.I.O.U. between 15.06.2006 and 13.01.2009. On 13.01.2009, he again proceeded to the United Kingdom on leave which had been sanctioned for a period of 19 days *i.e.*, up to 31.01.2009. His application dated 01.02.2009 for an extension in his leave period by five weeks was turned down by A.I.O.U. vide email dated 02.02.2009. Mr. Aziz did not return to Pakistan and on 24.07.2009 sent his resignation to A.I.O.U. Vide office order dated 16.07.2012, the Vice Chancellor of A.I.O.U. accepted Mr. Aziz's resignation with effect from 24.07.2009, "*in anticipation of approval of the Executive Council*" of A.I.O.U. In the said office order, it was mentioned that an outstanding amount of Rs.18,52,336.66 would be recovered from Mr. Aziz or his guarantors, and that the period from 01.02.2009 to 24.07.2009 had been treated as unauthorized absence from duty.

5. On 09.06.2014, respondent No.2, who was the guarantor for Mr. Aziz's obligations under the surety bond, retired from service. He was serving as System Analyst, Computer Centre, A.I.O.U. at the time of his retirement. A.I.O.U.'s office order dated 03.07.2014 shows that there was nothing outstanding against respondent No.2 except Rs.9,26,168.50 being the 50% share of the amount outstanding against Mr. Aziz due to the breach of his obligations under the surety bond. A.I.O.U. withheld the said amount from respondent No.2's pension.

6. On 13.03.2020, respondent No.2 filed a complaint before the Ombudsman seeking a direction to A.I.O.U. to release the withheld pension amounting to Rs.9,26,168.50. A.I.O.U., in its reply dated 19.05.2020, took the position that the Executive Council of A.I.O.U. in its 93<sup>rd</sup> meeting held on 16.08.2012 had decided not to accept the resignation submitted by Mr. Aziz till the settlement of his outstanding liabilities to A.I.O.U. On 17.06.2020, the Ombudsman closed the investigation in the matter. The Ombudsman in its order had recorded that Mr. Aziz had failed to deposit the damages for breach of the terms of the surety bond furnished by him and therefore an amount of

Rs.9,26,168.50 had been recovered from respondent No.2 vide A.I.O.U.'s office order dated 03.07.2014. Respondent No.2 filed a review application before the Ombudsman on 16.07.2020. On 28.08.2020, the Ombudsman accepted respondent No.2's complaint and recommended that the amount deducted from respondent No.2's pension be refunded to him. A.I.O.U.'s representation to the President of Pakistan against the said order dated 28.08.2020 was turned down vide order dated 10.12.2020. The said concurrent orders passed by the Ombudsman and the President of Pakistan have been assailed by A.I.O.U. in the instant writ petition.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-**

7. Learned counsel for A.I.O.U., after narrating the facts leading to the filing of the instant petition, submitted that respondent No.2 had stood as a guarantor for the fulfillment of Mr. Aziz's obligations under the surety bond dated 02.08.2000; that one of Mr. Aziz's obligations was that upon the completion of his scholarship, he would return to Pakistan and serve A.I.O.U. for a period of five years; that although Mr. Aziz did return to Pakistan after the completion of his scholarship and served in A.I.O.U. from 15.06.2006 to 13.01.2009 but before completing five years of service he went abroad on leave which was sanctioned only for 19 days and never returned to rejoin his duties; that he sent his resignation from abroad which has not been accepted by the Executive Council of A.I.O.U.; that Mr. Aziz was bound to repay the amount spent by A.I.O.U. on his scholarship and on his default, respondent No.2, being one of the two guarantors, was liable to return half of the said amount i.e., Rs.9,26,168.50; that on 17.06.2020, the Ombudsman had rejected respondent No.2's complaint against the deduction of the said amount from his pension but subsequently the review application filed by respondent No.2 was allowed by the same incumbent vide order dated 28.08.2020 without specifying whether there was any error apparent on the face of the earlier order dated 17.06.2020; that the Ombudsman and the President of Pakistan concurrently erred by not appreciating that a suit had been instituted by Mr. Aziz regarding the amount in dispute with A.I.O.U.; that respondent No.2 had appeared as the petitioner's witness

in the said suit and had deposed that the amount of Rs.9,26,168.50 which A.I.O.U. had sought against Mr. Aziz in its counterclaim had already been deducted by A.I.O.U. from respondent No.2's pension; that this deposition of respondent No.2 was instrumental in A.I.O.U.'s counterclaim against Mr. Aziz being defeated; that the Ombudsman and the President of Pakistan concurrently erred by not appreciating that respondent No.2's complaint was grossly time barred; and that since the orders passed by the Ombudsman and the President of Pakistan suffer from jurisdictional errors, they are liable to be set-aside. Learned counsel for A.I.O.U. prayed for the writ petition to be allowed in terms of the relief sought therein.

**CONTENTIONS OF THE LEARNED COUNSEL FOR RESPONDENT NO.2:-**

8. On the other hand, learned counsel for respondent No.2 submitted that since A.I.O.U. did not accept Mr. Aziz's resignation, does this mean that he is still an employee of A.I.O.U.? He also submitted that if Mr. Aziz is still an employee of A.I.O.U., why are the guarantors being held liable for his default in not serving A.I.O.U. for a period of five years upon his return from abroad? He further submitted that A.I.O.U. has not explained the present legal status of Mr. Aziz's employment with A.I.O.U.; that A.I.O.U. has never passed an order regarding Mr. Aziz's dismissal from service or his superannuation; that in the service parlance, there is no concept of '*anticipatory approval*'; that upon the acceptance of Mr. Aziz's resignation on 24.07.2009, respondent No.2 could not be held liable for Mr. Aziz's failure to complete five years of service with A.I.O.U. after his return to Pakistan; that after Mr. Aziz's return to Pakistan, respondent No.2's liability under the guarantee came to an end; that it is A.I.O.U. that permitted Mr. Aziz to proceed abroad on leave; that respondent No.2 cannot be held liable for Mr. Aziz's default in rejoining his duties after the completion of his ex-Pakistan leave period of 19 days; that A.I.O.U. did not take any action against Mr. Aziz for the recovery of damages or the amount spent on his education abroad; that A.I.O.U. should have filed a civil suit for recovery against Mr. Aziz; and that it is only when Mr. Aziz refused to make payment that recourse could have been made to the guarantors.

9. Furthermore, it was submitted that it was respondent No.2's fundamental right to receive his pension upon his retirement on 09.06.2014; that under Section 11 of the Pensions Act, 1871, respondent No.2's pension could not have been withheld; that pension is a matter of right and not a bounty of the State; that even for the execution of a money decree, pension cannot be stopped; that the provisions of the Allama Iqbal Open University Act, 1974 as well as the rules made thereunder do not authorize the Executive Council of A.I.O.U. to withhold a retired employee's pension; that the delay in filing of the complaint before the Ombudsman was because respondent No.2 had filed an application dated 14.07.2014 asserting therein that his pension had been illegally withheld; that this fact is clearly mentioned in respondent No.2's complaint as well as in the Ombudsman's order; that A.I.O.U. had constituted a committee which never took a decision on respondent No.2's grievance; that proceedings pursuant to the complaint filed by respondent No.2 were closed due to the COVID-19 pandemic; and that after respondent No.2 filed a review application, the case was examined on its merits by the Ombudsman. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE OMBUDSMAN'S SECRETARIAT:-**

10. Learned counsel for the Ombudsman's Secretariat submitted that the fact of the civil suit instituted by Mr. Aziz against A.I.O.U. was not brought to the notice of the Ombudsman; that had the Ombudsman been informed about the said civil suit, the proceedings pursuant to respondent No.2's complaint would have been dropped; that A.I.O.U., in its reply to respondent No.2's complaint, did not mention anything about the litigation between Mr. Aziz and A.I.O.U.; that even in the instant writ petition, it has not been asserted that respondent No.2's complaint was not competent on account of such litigation; that the objection as to the maintainability of respondent No.2's complaint has only been raised by A.I.O.U. in arguments before this Court; that liability of respondent No.2 under the guarantee is a contractual liability and has no nexus with respondent No.2's service with A.I.O.U.; that in paragraph 7 of the review application, respondent No.2 had pleaded that A.I.O.U. had constituted a committee in 2014 to decide whether respondent

No.2's pension could be withheld to satisfy his liability under the guarantee; that the maladministration committed by A.I.O.U. was not to decide respondent No.2's application dated 14.07.2014 for the release of his pension despite the constitution of a committee; and that the delay in deciding an application for the release of pension is also an act of maladministration. Learned counsel for the Ombudsman's Secretariat submitted that the instant petition may be decided in accordance with the law.

11. Learned counsel for A.I.O.U. in rejoinder submitted that the provisions of the Pensions Act, 1871 do not apply to autonomous / statutory bodies; that even otherwise provisions of the said Act provide a mechanism for recovery of pension; and that respondent No.2 has not complied with the procedure prescribed for the recovery of pension.

12. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 6 above and need not be recapitulated.

**WHETHER THIS COURT CAN DECLARE THE PROCEEDINGS PURSUANT TO RESPONDENT NO.2'S COMPLAINT TO BE WITHOUT JURISDICTION DUE TO MATTER HAVING BEEN DECIDED BY THE LEARNED CIVIL COURT:-**

13. I propose in the first instance to address the objection taken by the learned counsel for A.I.O.U. to the maintainability of respondent No.2's complaint before the Ombudsman on the ground that the said complaint was with respect to a matter which was *sub-judice* before a Court.

14. Article 9(1) of the 1983 Order, and clause (a) of the *proviso* to the said Article reads thus:-

***"9. Jurisdiction, functions and power of the Mohtasib.---(1) the Mohtasib may, on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees:***

***Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matters which:***

***(a) are sub-judice before a court of competent jurisdiction or judicial tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him;"***

15. The proviso to Article 9(1) of the 1983 Order removes from the pale of the Ombudsman's jurisdiction "*matters which are sub-judice before a Court of competent jurisdiction etc.*" It does not require for the complainant to be a party to any proceedings which are *sub-judice* before a Court of competent jurisdiction.

16. It is not disputed that on 15.10.2012, Mr. Aziz had instituted a suit for declaration, permanent and mandatory injunction against A.I.O.U. before the Court of the learned Civil Judge, Islamabad. In the said suit, it was pleaded *inter alia* that A.I.O.U. had been demanding payment from the sureties of Mr. Aziz despite the fact that his services had not been terminated (paragraph 20 of the suit). Furthermore, it was pleaded that since A.I.O.U. had failed to pay the full scholarship amount to Mr. Aziz, it was estopped from claiming any money or compensation under the terms of the surety bond (paragraphs 22 and 23 of the suit). It was also pleaded that A.I.O.U. had been asked by Mr. Aziz to refrain from taking adverse action against Mr. Aziz's sureties (paragraph 40 of the suit). In the said suit, Mr. Aziz had prayed for a declaration to the effect that the surety bond dated 02.08.2000 was null and void and inoperative on the rights, interests and legal status of Mr. Aziz and his sureties.

17. A.I.O.U. had filed a written statement in the said suit on 15.01.2013. Perusal of the said written statement shows that A.I.O.U. had sought recovery of Rs.18,52,336.66 against Mr. Aziz by way of set off/counterclaim. It may be mentioned at this stage that half of the said amount i.e. Rs.9,26,168.50 has been deducted by A.I.O.U. from respondent No.2's pension. The other half has been deducted from the pension of the other surety, who was also an employee of A.I.O.U. Had the said set off been allowed by the learned Civil Court, there would have remained no reason for A.I.O.U. to withhold the pension of respondent No.2 and the other surety any further.

18. Respondent No.2 had appeared as PW.1 in the said suit and in his affidavit-in-evidence filed on 24.01.2015, he had deposed *inter alia* that he had given a surety that Mr. Aziz would serve A.I.O.U. for a period of five years and that A.I.O.U. had deducted Rs.9,26,168.50 from respondent No.2's pension. The trial in the said suit culminated in the judgment and



decree dated 27.06.2019 whereby Mr. Aziz's suit as well as A.I.O.U.'s counter-claim were dismissed. The finding of the learned Civil Court on the issue pertaining to A.I.O.U.'s prayer for the recovery of Rs.18,52,336.66 against Mr. Aziz is as follows:-

*"12. During the course of evidence, the plaintiff produced one Shahid Jamil as PW-1, who was one of the guarantor, and he specifically deposed that university has already deducted an amount of Rs.926,168 (half of the surety amount) from his pension, further, the plaintiff has claimed that entire amount of surety has already been deducted by the university from the pensions of two sureties, and the university has not rebutted this contention of the plaintiff, therefore, they are not entitled to claim the same amount again. Resultantly, this issue stands answered in negative."*

19. As can be gathered from the learned Civil Court's findings referred to herein above the testimony of respondent No.2, who had appeared as a witness for Mr. Aziz, was instrumental in A.I.O.U.'s counterclaim being dismissed. But for respondent No.2's testimony, A.I.O.U.'s counterclaim may not have been defeated.

20. The reason why it was essential to narrate respondent No.2's role in the proceedings in the suit instituted by Mr. Aziz against A.I.O.U. is that he would be deemed to be aware as to the surety bond dated 02.08.2000 to be the subject matter of the said suit when he, on 13.03.2020, filed a complaint before the Ombudsman against A.I.O.U. It may also be mentioned that Mr. Aziz has assailed the said judgment and decree dated 27.06.2019 in regular first appeal No.220 of 2019 before this Court.

21. It is well settled that an appeal is a continuation of proceedings instituted before the original forum. The matter pertaining to the liability of Mr. Aziz as well as that of respondent No.2 under the surety bond was *sub-judice* when respondent No.2 filed a complaint on 13.03.2020 before the Ombudsman. In the said complaint, respondent No.2 did not make any disclosure as to Mr. Aziz's liability under the surety bond having been adjudicated upon and decided by the learned Civil Court. This was a material concealment by respondent No.2. Learned counsel for the Ombudsman's Secretariat had submitted in unequivocal terms that had respondent No.2 or even A.I.O.U. disclosed the factum as to the judgment and decree dated 27.06.2019 having been passed by the learned Civil Court, the proceedings pursuant to respondent No.2's complaint would have been dropped. True, the representatives of A.I.O.U. had been most unfair by not

mentioning in the reply to respondent No.2's complaint or representation to the President of Pakistan the fact about the said judgment and decree or the filing of the regular first appeal by Mr. Aziz but this non-disclosure on the part of A.I.O.U. would not result in vesting jurisdiction in the Ombudsman over the matter which was clearly barred in terms of proviso (a) to Article 9(1) of the 1983 Order. Where a mandatory condition for the exercise of jurisdiction by a Court or Tribunal is not fulfilled, the assumption of jurisdiction in such a matter is liable to be declared as without lawful authority. It is also well settled and not open to any dispute that a defect of jurisdiction goes to the root of the matter and strikes at the very authority of the Court or a Tribunal to pass an order and this cannot be cured by the consent or waiver of the parties. In holding so, reliance is placed on the following case law:-

- (i) In the case of Executive District Officer, Schools and Literacy Vs. Qamar Dost Khan (2006 SCMR 1630), the Hon'ble Supreme Court held *inter alia* that the question of jurisdiction goes to the root of the case and could be raised for the first time even while appearing before the highest Court of the country. Furthermore, it was held that *"justice according to law is the duty of the Court which can neither be abdicated in favour of the whims or ignorance of the litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the root of the case was not raised promptly."*
- (ii) In the case of Mansab Ali Vs. Amir (PLD 1971 SC 124), it has been held as follows:-  
*"It is an elementary principle that if a mandatory condition for the exercise of jurisdiction by a Court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction. Any order passed in continuation of these proceedings in appeal or revision equally suffer from illegality and are without jurisdiction."*
- (iii) In the case of Muhammad Sadiq Vs. Pakistan, through Collector, Rawalpindi (1988 CLC 123), it has been held as follows:-  
*"Term 'Jurisdiction', which refers to the legal authority and competence of the Court to administer justice, is conferred by law only. Jurisdiction can neither be conferred nor ousted by consent. Nor submission shall confer jurisdiction on the Court, when it does not exist. ... It is settled statement of law that decision given without jurisdiction is a total nullity."*

22. Since neither respondent No.2 nor A.I.O.U. made a disclosure to the Ombudsman or the President of Pakistan about the matter regarding Mr. Aziz's liability under the surety bond having been decided by the learned Civil Court, there was no way for the Ombudsman or the President of Pakistan to have been aware of this fact. The non-disclosure of the said material fact either by respondent No.2 or A.I.O.U. would not render inoperative the bar contained in proviso (a) to Article 9(1) of the 1983 Order.

**WHETHER RESPONDENT NO.2 HAD FILED THE COMPLAINT BEFORE THE OMBUDSMAN BEYOND THE LIMITATION PERIOD PROVIDED BY LAW:-**

23. Insofar as the question whether the complaint filed by respondent No.2 before the Ombudsman was barred by limitation is concerned, Article 10(3) of the 1983 Order provides that a complaint shall be made not later than three months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint but the Mohtasib may conduct any investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which make it proper for him to do so.

24. Learned counsel for respondent No.2 tried to justify the delay in filing of the complaint by submitting that the committee constituted by A.I.O.U. to consider respondent No.2's application dated 14.07.2014 for the release of his pension never decided the said application and this fact was stated by respondent No.2 in his complaint to the Ombudsman. It was also submitted that the Ombudsman had also, in his order dated 28.08.2020, recorded respondent No.2's contention that such a committee had not taken a decision.

25. Respondent No.2 had retired from service on 09.06.2014. In A.I.O.U.'s office order dated 03.07.2014 which was also marked to respondent No.2, it was mentioned that his outstanding dues were Rs.9,26,168.50 being 50% share of the amount payable by Mr. Aziz under the surety bond. Respondent No.2's grievance against A.I.O.U. regarding the non-payment of pension to him would be deemed to have arisen in July, 2014. It was not until 13.03.2020 i.e., more than five and a half years later, that he filed the complaint before the Ombudsman. Even if it is assumed that A.I.O.U. had constituted a committee on respondent No.2's application dated 14.07.2014

and that it did not decide the said application this would not be a plausible ground for ignoring the inordinate delay in filing the complaint. I say so because Article 10(3) of the 1983 Order requires an aggrieved person to file a complaint not later than three months from the day on which he *“first had the notice of the matter alleged in the complaint.”* Since A.I.O.U.’s office order dated 03.07.2014 was marked to respondent No.2, and at no stage after his retirement on 09.06.2014 did he receive any pension, he would be deemed to have had first notice as to non-payment of pension in July, 2014. In these circumstances, it was obligatory on the Ombudsman to have first determined whether respondent No.2 had filed his complaint within the limitation period provided in Article 10(3) of the 1983 Order regardless of whether or not A.I.O.U. had taken an objection as to the complaint being time barred. Failure on the part of the Ombudsman to do so renders his order dated 28.08.2020 unsustainable. In holding so, reliance is placed on the following case law:-

- (i) Recently, in the case of the Bank of Punjab Vs. Messrs Super Trunk House (PLD 2022 Lahore 564), the Division Bench of the Hon'ble Lahore High Court has held that the question of limitation is as important as jurisdiction of the Court.
- (ii) In the case of Muhammad Khan Kurd Vs. Arbab Muhammad Hashim (PLD 2020 Balochistan 38), it was held *inter alia* that *“if the proceedings brought before the Court are barred by time, the Court cannot assume jurisdiction and shall have no jurisdiction in the matter unless the delay is condoned first, and disposal of the suit on merits alone is not sufficient for presuming that the delay was condoned.”*
- (iii) In the case of Nazia Fazal Vs. Pakistan International Airlines Corporation (2020 PLC 233), this Court *inter alia* held as follows:-

*“12. It is well settled that a Court or a tribunal is bound to notice and consider the question of limitation, irrespective of the fact whether or not it was agitated by the respondent. The question of limitation could not waived, and even if waived could be taken up again by a party waiving it, and even by the Court itself. Law to this effect has been laid down in the judgments reported as 2007 SCMR 621, 2006 SCMR 170, 2003 SCMR 1815 and PLD 1985 SC 153.”*

- (iv) In the case of Muhammad Iqbal Vs. Muhammad Ahmed Ramzani (2014 CLC 1392), Mr. Justice Nadeem Akhtar of the Hon'ble High Court of Sindh held as follows:-

*“12. In the above context, we would like to observe that the jurisdiction of a court is always subject to limitation. If the proceedings brought before a court is barred by time, the court cannot assume jurisdiction and shall have no jurisdiction in the matter, unless the delay is condoned first. Till such time, the jurisdiction of the court will be restricted only to the extent of deciding the question of limitation. In case such question is decided by the court by declining to condone the delay, the proceeding shall remain time barred and the matter will end there. On the other hand, if the delay is condoned, only then shall the court have the jurisdiction to proceed further in the matter. Thus, it is mandatory for the court to decide the question of limitation before entertaining the matter and before passing any other order therein. Since the court shall not have jurisdiction in a time-barred proceeding in view of our above observations, all steps taken and orders passed in any such time-barred proceeding, and in all proceedings arising therefrom, shall be void and without jurisdiction.”*

26. Although the Ombudsman can entertain a time barred complaint and conduct an investigation, the law requires him to state the *“special circumstances which make it proper for him to do so.”* The Ombudsman’s order dated 28.08.2020 does not mention any special circumstance which caused him to entertain respondent No.2’s time barred complaint.

27. If this Court is to accept the argument of the learned counsel for the Ombudsman’s Secretariat that delay on the part of an agency in deciding applications amounts to maladministration and that the Ombudsman correctly assumed jurisdiction on respondent No.2’s complaint as A.I.O.U. had left respondent No.2’s application dated 14.07.2014 undecided for a long time, the Ombudsman should have confined itself to directing A.I.O.U. to decide the said application but could not have taken upon itself to decide whether A.I.O.U. was justified in withholding respondent No.2’s pension. The assumption of jurisdiction by the Ombudsman on respondent No.2’s time barred claim for the payment of pension was without lawful authority.

**WHETHER THE OMBUDSMAN’S ORDER DATED 28.08.2020 WAS BASED ON MISREADING AND NON-READING OF THE DOCUMENTS / MATERIAL ON THE RECORD:-**

28. The Ombudsman, in his revised order, observed that there was neither any provision in the contract nor A.I.O.U. Rules under which a guarantor could be made to pay *“for the violation committed by the contractee.”* This

observation is based on ignoring the surety bond altogether which has the force of a contract not just between Mr. Aziz (principal debtor) and A.I.O.U. (creditor) but also respondent No.2 (guarantor). This finding is also in stark contrast to the terms of the surety bond. Paragraph 2(a)(vii) provides that *“the scholar / trainee shall serve the Allama Iqbal Open University, Islamabad for a period of five years.”* This is one of the conditions on which A.I.O.U. had awarded the scholarship to Mr. Aziz. One of the covenants in the said surety bond was that in case of breach of any of the terms and conditions of the surety bond, the scholar would be bound to compensate A.I.O.U. by making a refund of the total amount of expenditure incurred on him in foreign currency or Pakistan rupees. Additionally, the scholar was also obligated to refund the salary / allowances paid during the study period as well as the liquidated damages quantified in paragraph b(i) of the surety bond.

29. Respondent No.2 had guaranteed the payment of any such sum as the scholar may be called upon to refund A.I.O.U. *“for the breach of any of the terms and conditions”* of the surety bond. The Ombudsman by recording a finding that respondent No.2 as a guarantor could not be made to pay for the violation of the terms of the surety bond committed by the scholar has clearly misread the terms of the surety bond and relieved respondent No.2 from his contractual obligations as a guarantor. This would render the Ombudsman’s order dated 28.08.2020 to be not sustainable.

30. The Ombudsman has attached weight to Mr. Aziz’s return to Pakistan and rejoining his duties at A.I.O.U. after obtaining a Ph.D. degree by holding that the role of respondent No.2 as a guarantor was over due to Mr. Aziz’s return. Indeed Mr. Aziz had rejoined his duties in A.I.O.U. and had served for 31 months before proceeding on ex-Pakistan leave on 13.01.2009 which had been sanctioned only for 19 days. But admittedly he did not return to rejoin his duties so as to complete five years of service with A.I.O.U. as committed by him in the surety bond. Paragraph 2(a)(vii) of the surety bond clearly provides that *“the scholar / trainee shall serve the Allama Iqbal Open University, Islamabad for a period of five years.”* The breach of the terms mentioned in the surety bond bound Mr. Aziz to compensate A.I.O.U. by making refund of the total amount of expenditure incurred on him in foreign

currency or Pakistan rupees. Additionally, Mr. Aziz was also bound to refund the salary / allowances paid to him during the study period as well as liquidated damages. These liquidated damages are also quantified in the surety bond. Respondent No.2 and Iqbal Hussain stood as guarantors for the fulfillment of all of Mr. Aziz's obligations under the surety bond, including Mr. Aziz's commitment to serve A.I.O.U. for a period of five years after his return to Pakistan. The Ombudsman's decision that respondent No.2's role as a guarantor was long over upon Mr. Aziz's service for 31 months after his return to Pakistan is a result of clear non-reading or misreading of the surety bond and in particular Paragraph 2(a)(vii) thereof read with respondent No.2 guaranteeing the fulfilment of Mr. Aziz's obligations thereunder.

31. Indeed, Mr. Aziz had proceeded on ex-Pakistan leave for a specified period but the grant of such leave in the exigency of service also did not put an end to Mr. Aziz's obligation to complete five years of service with A.I.O.U., which would include the period when he was on sanctioned ex-Pakistan leave. The obligation of respondent No.2 as a guarantor was not just restricted to ensuring Mr. Aziz's return to Pakistan after obtaining the Ph.D. degree but also to complete five years of service after his return to Pakistan.

32. I do not find force in the argument of the learned counsel for respondent No.2 that A.I.O.U. should have instituted proceedings against Mr. Aziz for the recovery of the amount due to A.I.O.U. under the surety bond and it is only after Mr. Aziz's failure to pay A.I.O.U. the amount adjudged to be due to the latter could respondent No.2 be required to make payment of such amount as a guarantor. It is well settled that any forbearance on the part of a creditor to sue the principal debtor or enforce any remedy against him does not discharge the surety. Reference in this regard may be made to the law laid down in the case of Central Exchange Bank Ltd. Vs. Zaitoon Begum (PLD 1968 S.C. 83). In the case at hand, A.I.O.U. did, vide letter dated 26.07.2010, call upon Mr. Aziz to pay Rs.18,52,336.66. Perusal of the said letter shows that the gross amount of Rs.23,76,650.66 was determined by A.I.O.U. to be payable by Mr. Aziz under the following heads:-

<b>"Sr. No.</b>	<b>Detail of outstanding amount</b>	<b>Amount</b>
1.	House Building Advance	Rs.01,23,341.00

2.	<i>Tuition fee &amp; living expenses</i>	<i>Rs.06,94,900.00</i>
3.	<i>Amount paid to you during study leave period from 26.11.2000 to 14.06.2006</i>	<i>Rs.06,40,263.66</i>
4.	<i>Payment made during the period from 01.02.2009 to 31.05.2009 unauthorizedly.</i>	<i>Rs.02,58,808.66</i>
5.	<i>Amount paid on account of first class first increments</i>	<i>Rs.00,71,198.00</i>
6.	<i>03 months pay in lieu of notice period</i>	<i>Rs.00,88,140.00</i>
7.	<i>Liquidated damages charges as you served only 01-year and 09-days against the total period of 05-years after obtaining Ph.D degree</i>	<i>Rs.05,00,000.00</i>
<i>Gross amount.</i>		<i>Rs.23,76,650.66"</i>

33. The amount which was due to be paid by A.I.O.U. to Mr. Aziz for his service was determined to be Rs.5,24,314/-. The adjustment of this amount with the amount that had been determined as payable by Mr. Aziz caused the net amount recoverable from Mr. Aziz to be Rs.18,52,336.66. A.I.O.U. wants each of the two guarantors to pay half of the said amount. In this way, the liability of respondent No.2 as a guarantor has been determined as Rs.9,26,168.50.

34. It is well settled that the liability of a guarantor depends on the terms and language of the guarantee and that the guarantor cannot be made liable for an amount beyond the terms of the guarantee. Reference in this regard may be made to the law laid down in the case reported as United Bank Limited Vs. Pakistan Industrial Credit and Investment Corporation Ltd. (PLD 2002 S.C. 1100). The liability that Mr. Aziz was to discharge for the breach of any of the terms and conditions set out in the surety bond is mentioned in paragraph 2(b) thereof. For such breach, Mr. Aziz's liability was to compensate A.I.O.U. *"by making a refund of the total amount of expenditure incurred on him/her in the foreign currency or Pakistan rupees."* Additionally, Mr. Aziz was obligated to pay the salary / allowances paid to him during the study leave as well as the liquidated damages quantified in the surety bond. Under Section 128 of the Contract Act, 1872, the liability of a guarantor is co-extensive with that of the principal debtor but by no means can the guarantor be made to pay for the principal debtor's liability which does not arise from the contract of guarantee. The word *"co-extensive"* in Section 128 of the Contract Act, 1872 denotes the extent of liability and can



relate only to the quantum of the principal debt. The guarantor is liable to the creditor for the principal debtor's liability under an agreement or instrument referred to in the contract of guarantee. In the instant case, respondent No.2's liability as a guarantor is for Mr. Aziz's liabilities under the surety bond and none other. Respondent No.2 did not guarantee the payment of Mr. Aziz's dues to A.I.O.U. under the terms and conditions of his service *dehors* the terms and conditions of the surety bond. For instance, in the instant case, A.I.O.U. in determining the gross amount payable by Mr. Aziz has included Rs.1,23,341/- as house building advance; Rs.2,58,808/- as payment made to Mr. Aziz between 01.02.2009 to 31.05.2009 when he proceeded abroad on ex-Pakistan leave; Rs.71,198/- as amount paid on account of '*first class first increments*;' and Rs.88,140/- as three months' pay in lieu of notice period. Respondent No.2 could not be made liable to pay these amounts to A.I.O.U. since Mr. Aziz's liability to pay the said amounts does not arise from the terms and conditions of the surety bond. It is, however, an admitted position that at no stage did Mr. Aziz re-pay to A.I.O.U. the amount spent by the latter on his studies abroad or the liquidated damages quantified in the surety bond. In these circumstances, A.I.O.U. could not have been held by the Ombudsman to have committed maladministration in terms of Article 2(2)(i) of the 1983 Order for enforcing its rights against the guarantor / respondent No.2 under the terms of the guarantee embodied in the surety bond. By not appreciating the import of Paragraph 2(a)(vii) of the surety bond coupled with the fact that respondent No.2 had stood as guarantor to compensate A.I.O.U. for Mr. Aziz's breach of commitment to service A.I.O.U. for five years, the Ombudsman misread the material on the record, which justifies interference with the order dated 28.08.2020. In the case of Mst. Farhat Jabeen Vs. Muhammad Safdar (2011 SCMR 1073), the Hon'ble Supreme Court held that interference by the High Court in exercise of its jurisdiction under Article 199 of the Constitution with an order passed by the Family Court is to be restricted to cases of misreading and non-reading of material evidence which has bearing on the fate of the case. Additionally, in the case of Nazir Begum Vs. Qamarunnissa (1982 CLC 2271), the Hon'ble Lahore High Court has held that the term

*'misreading'* means holding non-existence of evidence when such evidence exists.

35. Where the relationship between the complainant and the *"agency"* as defined in Article 2(1) of the 1983 Order is of a contractual nature, and where the act or omission on the part of the agency with respect to which the complaint is filed is offensive to any law, rules or regulations, the Ombudsman would have jurisdiction in the matter on the basis of the abovementioned dictum. In the case of Capital Development Authority Vs. Zahid Iqbal (PLD 2004 SC 99), the Hon'ble Supreme Court held as follows:-

*"No provision either of the said President's Order No.1 of 1983 or of any other law for the time being in force took a matter out of the jurisdiction of the Mohtasib only because the same related to a contractual obligation. If as a result of the investigation conducted by the Mohtasib he came to the conclusion that the complained act was offensive of any law, rules or regulations then the Ombudsman was well within his powers to deal with the said matter in accordance with the provisions of the said Order 1 of 1983. The action of the President in setting aside the findings and recommendations of the Mohtasib only because the matter related to a contractual dispute was thus no reason or ground justifying interference with the findings and the recommendations of the Ombudsman."*

36. However, while exercising jurisdiction under no circumstances can the Ombudsman rewrite the contract between the complainant and the agency or ignore any of its terms and conditions. In the case at hand, the Ombudsman has termed A.I.O.U.'s action of withholding Rs.9,26,168.50 from respondent No.2's pension as an act of maladministration when A.I.O.U. by doing so acted to recover Mr. Aziz's liability under the surety bond which liability was co-extensive with that of respondent No.2 under the terms of the guarantee. The Ombudsman has not referred to any law, rules or regulations which were violated by this act of A.I.O.U in doing so.

37. Regulation 23(1)(q) of the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2013 (**"the 2013 Regulations"**) provides that the investigation of a complaint shall, with the approval of the Mohtasib, be closed when it is found that the complaint involves examination of witnesses, detailed interpretation of laws, rules, regulations or different clauses of contracts and their *inter se* relationship for which the proper forum is a Court of competent jurisdiction and not the office of the Ombudsman. In other words, a complaint that involves the interpretation of law or clauses of a contract ought to be left to be decided by a Court of plenary jurisdiction. In

this case, the complaint involved the interpretation of Section 128 of the Contract Act, 1872 which made respondent No.2's liability under the contract of guarantee to be co-extensive with the liability of Mr. Aziz under the terms of the surety bond. It also involved the interpretation of clause 2(a)(vii) of the surety bond which obligated Mr. Aziz to serve A.I.O.U. for a period of five years after his return to Pakistan. It was for the Ombudsman to have been cognizant of the requirements of Regulation 23(1)(q) of the 2013 Regulations before exercising jurisdiction in the matter and returning a finding of maladministration against A.I.O.U.

38. It is not disputed that respondent No.2 and Iqbal Hussain volunteered to be guarantors for the fulfillment of all the contractual obligations of Mr. Aziz under the surety bond. Before a person volunteers to be a guarantor he is expected to appreciate and understand the nature of all the obligations of the principal debtor under the underlying contract. A guarantor cannot be absolved from his liability, which is co-extensive with the principal debtor, merely because such liability is financially burdensome. In the instant case, respondent No.2 knew or ought to have known that if Mr. Aziz breached his obligation under paragraph 2(a)(vii) of the surety bond to serve A.I.O.U. for a period of five years after his return to Pakistan, Mr. Aziz would be bound to compensate A.I.O.U. by making a refund of the total amount of expenditure incurred on him in the foreign currency or Pakistan rupees in addition to the payment of salary / allowances paid during the study period and liquidated damages quantified in the said surety bond. In the event of a default on Mr. Aziz's part to pay A.I.O.U., respondent No.2's liability under the guarantee is triggered. Furthermore, if Mr. Aziz discharges or partially discharges his financial liability under the surety bond to A.I.O.U., respondent No.2's liability as a guarantor would be extinguished or scaled down *pro tanto*, as the case may be.

39. I am conscious that the impugned order dated 28.08.2020 of the Ombudsman and the order dated 10.12.2020 of the President of Pakistan are concurrent in nature. Mere concurrency in the findings recorded by the original and the appellate *fora* would not make such findings absolutely immune from interference by the High Court in exercise of the writ jurisdiction. What if the original and the appellate *fora* have concurrently

non-read or misread the evidence or have erroneously assumed certain facts or have misapplied the law or acted in excess of abuse of jurisdiction? Ordinarily, the High Court, in exercise of its writ jurisdiction, cannot interfere with the finding of fact recorded by a Court or a Tribunal. But where the view taken by such Court or Tribunal was not only contrary to the established principles of law but also to the evidence on record, the High Court, in exercise of writ jurisdiction, was competent and justified to interfere with the order under challenge. Reference in this regard may be made to the judgment in the case of Lal Din Masih Vs. Sakina Jan (1985 SCMR 1972). Indeed in such circumstances concurrent findings of fact would not be sacrosanct, and a writ Court would be obligated to interfere in the same.

**WHETHER THE PROVISIONS OF THE PENSIONS ACT, 1871 BARRED A.I.O.U. FROM MAKING DEDUCTIONS FROM RESPONDENT NO.2'S PENSION:-**

40. The President of Pakistan, while turning down A.I.O.U.'s representation against the Ombudsman's order dated 28.08.2020, held *inter alia* that the Pensions Act, 1871 envisages that no pension shall be liable to seizure, attachment or sequestration. Section 11 of the said Act reads thus:-

*"No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court in Pakistan, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court."*

41. The provisions of the Pensions Act, 1871 indicate that they are applicable to pensions and grants made by the Federal Government or the Provincial Governments as the case may be. Section 3A of the said Act provides that the expression "*the appropriate Government*" means, in relation to federal pensions, the Federal Government and in relation to other pensions, the Provincial Government. I am of the view that the provisions of Section 11 of the Pensions Act, 1871 would not be attracted in the present case for the reason that respondent No.2 was due to be paid his pension from his employer which is a university constituted under the provisions of the Allama Iqbal Open University Act, 1974. A.I.O.U., being the creature of a statute, has the status of an autonomous body and cannot be termed as the

Federal Government or Provincial Government. Thus, the President of Pakistan erred by relying on Section 11 of the Pensions Act, 1871 for holding that respondent No.2's pension could not be withheld.

42. Statute 33 of the Allama Iqbal Open University (General Conditions of Service) Statutes, 1978 ("1978 Statutes") provides that the Civil Service Regulations relating to pension and retirement benefits as applicable to federal government servants shall apply to employees of A.I.O.U. There is no provision in the Civil Service Regulations which bars the Government from withholding a retired employee's pension as adjustment of the employee's financial liability to the Government. On the contrary, Regulation 351-B of the Civil Service Regulations provides that the Government may, within one year from the date of issuance of Pension Payment Order, recover any of its dues from the pension granted to a civil servant subject to the condition that no recovery shall be made from the pension without the personal order of the head of the Ministry or Division or head of the Department, declared as such under S.R.2(10) and included in Appendix No.14, Vol. II of the Compilation of the Fundamental Rules and Supplementary Rules, as the case may be. In the case at hand, the President of Pakistan appears to have made no attempt to ascertain whether the decision to withhold respondent No.2's pension had been made with the personal order of the Head of the Department in A.I.O.U. where respondent No.2 had served.

**SCOPE OF THE OMBUDSMAN'S POWER OF REVIEW UNDER SECTION 13 OF THE FEDERAL OMBUDSMAN INSTITUTIONAL REFORMS ACT, 2013:-**

43. It is by now well established that a Court or a *quasi-judicial* authority cannot review its own order unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. Section 13(1) of the Federal Ombudsman Institutional Reforms Act, 2013 ("the 2013 Act") empowers the Ombudsman to review any findings, recommendations, orders or decisions on a review petition made by an aggrieved party within thirty days of the findings, recommendations, orders or decisions whereas Section 13(3) provides that in review, the Ombudsman may alter, modify, amend or recall the recommendation, order or decision. Section 24(1) of the 2013 Act gives an overriding effect to the provisions of the said Act to any

other law for the time being in force whereas Section 24(2) provides that in case there is a conflict between the provisions of the 2013 Act and the “*relevant legislation*” (which is defined in Section 2(c) of the 2013 Act to include the 1983 Order), the provisions of the 2013 Act, to the extent of inconsistency, shall prevail.

44. Unlike Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (“C.P.C.”), the language of Section 13(1) of the 2013 Act does not restrict the Ombudsman’s power of review to cases where (i) there is a discovery of a new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not have been produced by him at the time when the order was passed, or (ii) there is some mistake or error apparent on the face of the record, or (iii) there is any other sufficient reason. Even though the power of review conferred on the Ombudsman under Section 13(1) of the 2013 Act does not carry the fetters envisaged by Order XLVII, Rule 1 C.P.C., the Ombudsman cannot be said to have unbridled power to come to a totally different conclusion from the one taken earlier on the basis of the very same material and facts that were placed before him earlier. The Ombudsman’s discretion to exercise its power of review conferred by Section 13(1) of the 2013 Act can be structured if he was to exercise that power only in cases where requirements contained in Order XLVII, Rule 1 C.P.C. are satisfied. I say so on the basis of the law laid down in the following cases:-

- (i) In the case of Sahib Rai Vs. Custodian of Evacuee Property, Karachi (PLD 1957 SC 63), an application was filed for review of the order passed by the Custodian of Evacuee Property confirming the order of the Assistant Custodian. The said application was filed under Section 36(5) of the Pakistan (Administration of Evacuee Property) Ordinance, 1949, which provided that the Custodian or Additional Custodian may, within the prescribed period, and after giving notice to the parties concerned and the Rehabilitation Authority, review his own order. One of the questions that arose for consideration in the said case was whether a review of the Custodian’s original order was justified on the basis of evidence which constituted new and important matter relevant to the case, and which was not available to the Custodian at

the time when he passed the original order. The Hon'ble Mr. Justice A.R. Cornelius (as he then was) agreed with the submission made by Mr. Khalid Ishaq, the learned counsel for the petitioner in the said case, that although the Pakistan (Administration of Evacuee Property) Ordinance, 1949 did not state in detail the circumstances in which a review of an order by the Custodian or Additional Custodian should be permissible, recourse could be had to the general law for ascertaining the principles governing the exercise of this power in the relevant respect. For the purposes of clarity, the relevant portion of the said judgment is reproduced herein below:-

*“By section 114 power is given to aggrieved persons to apply for a review of judgment, and in rule 1 of Order XLVII, the Code sets out in detail the circumstances in which such an application shall be competent. One of these circumstances is “the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within (his) knowledge or could not be produced (by him) at the time when the decree was passed.” Clearly, in order to meet the case covered by this provision, an elastic rule of limitation was necessary, and section 5 of the Limitation Act expressly provides such elasticity.*

*It is evident that in the present case, the application filed in 1955 by the evacuee brothers and the evidence which they produced constituted new and important matter relevant to the case, and furnished evidence which was not available to the Custodian at the time when the first orders were made in the case, including the order of the 10th May 1951. Mr. Khalid Ishaq in the course of his argument, very rightly admitted that although the Ordinance did not state in detail the circumstances in which a review of an order by the Custodian or Additional Custodian should be permissible, recourse could be had to the general law for ascertaining the principles governing the exercise of this power in the relevant respect.”*

**(Emphasis added)**

- (ii) The scope of review under the proviso to Section 14(2) of the Emigration Ordinance, 1979 came up for consideration before the Hon'ble Lahore High Court in the case of Al-Qamar Recruiting Agency Vs. Government of Pakistan (1989 MLD 3335). The proviso to Section 14(1) of the said Ordinance gave a right of appeal to the Federal Government from an order passed by the Director General or any other officer in exercise of the power delegated to him. The said proviso also provided that the decision of the Federal Government shall, subject to Section 14(2), be final. Section 14(2) provided that *“the Federal Government may review its decision under sub-section*

*(1) and the decision of the Federal Government in review shall be final.*” The Hon'ble Lahore High Court agreed with the submission made by Mr. S.M. Zafar that the provisions in Section 14(2) of the Emigration Ordinance, 1979 must be construed in the same manner as an ordinary power of review hemmed by the principles laid down in Order XLVII, Rule 1 C.P.C. The Hon'ble High Court held that the Federal Government, in exercise of its powers under Section 14(2) *ibid*, cannot reopen the whole matter and that the power of review is confined to discover errors apparent on the face of the record.

45. On the basis of the law laid down by the Hon'ble Supreme Court in the case of Sahib Rai Vs. Custodian of Evacuee Property, Karachi (*supra*), and Al-Qamar Recruiting Agency Vs. Government of Pakistan (*supra*) it must be held that the Ombudsman can exercise his power of review under Section 13(1) of the 2013 Act if the conditions enumerated in Order XLVII, Rule 1 C.P.C. are satisfied.

46. In the case at hand, the Ombudsman had, vide his earlier order dated 17.06.2020, closed the investigation in respondent No.2's complaint by specifically referring to Regulation 23(1)(b) of the 2013 Regulations, which provides that the investigation of a complaint shall, with the approval of the Mohtasib, be closed when it is found that the agency is not at fault as a particular procedure was to be adopted or formalities were to be followed by the complainant for redressal of his grievances. Respondent No.2 had filed an application for review of the said order dated 17.06.2020. Although, the Ombudsman, in his subsequent order dated 28.08.2020, has referred to the fact that the earlier investigation in respondent No.2's complaint had been closed but has not given reasons as to why based on the same set of facts and documents he feels obliged to come to a conclusion contrary to the one taken earlier. What the Ombudsman in fact did is to rehear the case in review jurisdiction and came to the conclusion that A.I.O.U. had indulged in maladministration. The gentleman holding the position of the Ombudsman on both the occasions was the same.

47. The power of review was indeed available to the Ombudsman but it was not to be exercised in order to give the complainant another shot at the case. In the case of Muhammad Khan Vs. Government of West Pakistan (PLD



1971 Baghdad-ul-Jadid 53), the Hon'ble Mr. Justice Anwarul Haq (as he then was) held that the power of review is not intended to enable a Court to reverse its previous judgment on the basis of a maturer appreciation of the arguments previously presented, or by reason of additional arguments which were previously omitted from being advanced by the party concerned, and such omission was not on account of any reasons mentioned in Order XLVII, Rule 1 C.P.C. In the case of Sh. Mehdi Hassan Vs. Province of Punjab (2007 SCMR 755), the Hon'ble Supreme Court held as follows:-

*“This is settled law that the points already raised and considered before the Court, cannot be re-agitated in review jurisdiction which is confined to the extent of patent error or a mistake floating on the face of record which if not corrected may perpetuate illegality and injustice. The mere fact that another view of the matter was possible or the conclusion drawn in the judgment was wrong, would not be a valid ground to review the judgment unless it is shown that the Court has failed to consider an important question of law.”*

48. One of the grounds taken by respondent No.2 in his review application was that on account of the COVID-19 pandemic he could not attend the hearing on 04.04.2020 which resulted in the order for the closure of the investigation. It is not disputed that in April, 2020 there was a surge of the COVID-19 pandemic but this ground cannot be read into the Ombudsman's order dated 28.08.2020 when the said order is silent as to the reasons for reviewing his earlier order dated 17.06.2020.

49. In view of the above, the instant petition is allowed; impugned order dated 28.08.2020 of the Ombudsman and the order dated 10.12.2020 of the President of Pakistan are set-aside; and the matter is remanded to the Ombudsman for a decision afresh on respondent No.2's review application strictly in accordance with the law. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN OPEN COURT ON 22/11/2022

(JUDGE)

APPROVED FOR REPORTING