Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P. No.57365/2023

Dr. Rehana Kausar *Versus.* Province of Punjab, etc.

JUDGMENT

Date of hearing: 31.05.2024.

Petitioner by: Hafiz Tariq Nasim, Advocate.

Respondents by: Rana Shamshad Khan, Additional Advocate General, Punjab for respondent No.1 alongwith Mian Zahid, Law Officer, Higher Education Department.

Mr. Gohar Mustafa Qureshi, Advocate for respondents No.2 to 4 assisted by Mr. Ali Ahmed Toor, Advocate.

Shujaat Ali Khan, J: - Through this single judgment, I intend to decide W.P. No.57365/2023 **("this petition")** as well as Crl. Org. No.27444-W/2024 **("contempt petition")** having commonality of law and facts.

2. Unnecessary details apart, the facts, as spelt out in this petition, are that pursuant to an advertisement got published by the Lahore College for Women University, Lahore **(hereinafter to be referred as "the University")** for recruitment against two posts of Professor of Urdu (BS-21), the petitioner, along with one Dr. Rubab Azmat,

applied against the said post. The Selection Board in its 55th meeting, held on 21.03.2018, interviewed said two applicants but did not find any of them fit for appointment. As a result, the Selection Board recommended to re-advertise the subject post. In the light of decision of the Selection Board, the University again advertised two posts of Professor of Urdu (BS-21), on 23.09.2018. According to the internal evaluation and remarks of the Director Research, the petitioner, along with Dr. Azmat Rubab, were declared eligible for the said post. Resultantly, their cases were put up before the Sub-Committee of the Selection Board. The Sub-Committee suggested that the previous external evaluation of both the candidates, which was conducted pursuant to advertisement, dated 15.12.2017, be used. Later on, the Selection Board in its 57th meeting, conducted on 28.05.2019, interviewed the applicants and recommended the petitioner for appointment against the post of Professor of Urdu (BS-21). The recommendations of the Selection Board finalized in its 57th meeting, were placed before the Syndicate in its 71st meeting held on 06.08.2019. Before any decision in the matter by the Syndicate, the Higher Education Department imposed ban against appointments in the Universities where either the remaining tenure of the Vice Chancellor was less than six months or the Vice Chancellor was assigned look after charge. In the wake of the ban imposed by the Higher Education Department, the Syndicate decided to refer back the

matter to the Selection Board for review of its recommendations. Being aggrieved of the decision of the Selection Board, recommending the name of the petitioner against the post of Professor of Urdu and promotion of the petitioner as Associate Professor from a retrospective date and letter issued by the Higher Education Department asking the Vice Chancellor to rectify the draft minutes of the 75th meeting of the Syndicate, Dr. Azmat Rubab (co-applicant) filed three Writ Petitions (bearing Nos.39468/2019, 22916/2020 and 22947/2020) before this Court. The Selection Board in its 58th meeting held on 05.011.2019 reviewed the case for appointment against the post of Professor of Urdu and recommended re-advertisement of the posts. The recommendations of the Selection Board, finalized in its 58th meeting, were placed before the Syndicate in its 75th meeting held on 29.01.2020. Since consensus could not be arrived at between the members of the Syndicate on 29.01.2020, the matter regarding appointment of Professor of Urdu in the University was again taken up in 76th meeting of the Syndicate but no decision could be taken due to pendency of writ petitions filed by and Dr. Azmat Rubab. After decision of the aforesaid writ petitions filed by Dr. Azmat Rubab, the issue relating to appointment of Professor of Urdu was taken up by the Syndicate in its 81st meeting held on 30.06.2021 and, while approving the name of the petitioner, referred the matter to the Chancellor for ultimate decision on the ground that

the recommendations of the Selection Board and those of Syndicate were at variance. The Chancellor, through order, dated 17.01.2023, while concurring with the recommendations of the Selection Board, finalized in its 58th meeting, ordered for re-advertisement of the post of Professor of Urdu (BS-21). Pursuant to order passed by the Chancellor, the Syndicate in its 88th meeting held on 16.06.2023 referred the case to the Selection Board for recommendations against the post of Professor of Urdu. The said decision of the Syndicate was circulated through Notification, dated 04.07.2023, however, the Syndicate in its 90th meeting held on 15.08.2023 decided to get re-evaluation of the cases of the petitioner and Dr. Azmat Rubab (co-applicant) to adjudge their suitability for appointment as Professor of Urdu (BS-21), which decision was circulated through Notification, dated 04.09.2023. The petitioner being aggrieved of the decision of the Chancellor as well as Notifications, dated 04.07.2023 and 04.09.2023, has filed this petition.

3. Insofar as factual background of the contempt petition is concerned, suffice it to note that in the said petition the petitioner has agitated non-compliance of order, dated 25.04.2024, passed by this court in miscellaneous application (C.M.No.1/2024) filed in the main writ petition.

4. The submissions made by the learned counsel for the petitioner at bar and those presented in written form can be summed up in the words that once the name of the petitioner was recommended by the Selection Board for appointment against the post of Professor of Urdu, her case could not be sent back by the Syndicate to the Selection Board for review as the said exercise is alien to the provisions of Lahore College for Women University, Lahore Ordinance, 2002 **("the Ordinance 2002")** and the service Statutes made thereunder; that it is a case of clear cut discrimination inasmuch out of 111 persons, recommended by the Selection Board, 110 persons have already been appointed whereas the petitioner's name was left out for the reasons best known to the University Authorities; that *mala fide* conduct of the University authorities is evinced from the fact that they tried to deprive the petitioner of appointment against the subject post on the basis of a letter issued by the Higher Education Department on 28.06.2019 conveying ban on recruitment in the Universities where either remaining tenure of Vice Chancellor was less than six months or Acting Vice Chancellor was assigned role to look after the charge despite the fact that name of the petitioner was recommended by the Selection Board for appointment against the post in question much prior to the issuance of the said letter by the Higher Education Department; that though letter, dated 28.06.2019, was withdrawn by the Higher Education Department through its

subsequent letter, dated 06.09.2019, but University Authorities did not bother to issue formal appointment letter in favour of the petitioner just out of *mala fide* and callousness; that recommendations of the Selection Board apart, since the petitioner has been working as Head of the Department of Urdu, her suitability for appointment against the post of Professor of Urdu could not be doubted and that the Selection Board considered the earlier evaluation of the petitioner in the light of the fact that the subsequent advertisement was issued within one year from the first advertisement thus the same was as good as fresh evaluation, hence adverse opinion cannot be formed against the petitioner on the said ground. To fortify his contentions, learned counsel has relied upon the cases of *Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Syed Sadiq Shah and others* **(2021 SCMR 747)**, *Muhammad Tariq Javed v. The Agricultural and Research Department through Secretary and 2 others* **(2018 PLC (CS) 1052)**, *Ghulam Rasool v. Government of Pakistan through Secretary, Establishment Division Islamabad and others* **(PLD 2015 SC 6)**, *Muhammad Ashraf Tiwana and others v. Pakistan and others* **(2013 SCMR 836)**, *Muhammad Rasheed v. Government of Punjab and others* **(2006 SCMR 1082)** and *Mst. Sumaira Akram v. Secretary Education, Gilgit Baltistan and 6 others* **(2017 PLC (CS) 1321)**.

5. While opposing the submissions made by the learned counsel for the petitioner, learned counsel appearing on behalf of the respondent-University contends that since certain facts have not been clarified by the petitioner, he has put the record straight while filing reply to the contempt petition; that since pursuant to the advertisement, dated 15.12.2017, no candidate was found suitable for appointment against the post of Professor of Urdu, fresh advertisement was got issued by the University, on 23.09.2018, thus, evaluation of the applicants pursuant to advertisement, dated 15.12.2017, became redundant, hence no recommendations could be based thereon, thus, the petitioner could not claim herself fit for appointment against the subject post on the basis of recommendations of the Selection Board, dated 28.05.2019, which were based on external evaluation undertaken pursuant to advertisement, dated 15.12.2017; that *bona fide* of the University Authorities is established from the fact that though the Selection Board ordered for re-advertisement of the post but the Syndicate only recommended for re-evaluation of the applicants, including the petitioner, to adjudge their suitability for appointment against the subject post; that though there are certain procedural lapses on the part of the University Authorities while dealing with the case relating to appointment against the post of Professor of Urdu but the same cannot be used to nullify the *bona fide* act of the Syndicate for re-evaluation of the petitioner along with

other applicant; that *bona fide* conduct of the University Authorities is discernable from the fact that though Chancellor has also ordered for re-advertisement of the post of Professor of Urdu but they are all out to accommodate the petitioner and other applicant on account of their experience gained during their lengthy careers; that the minutes of meeting of the Syndicate, referred by the learned counsel for the petitioner, do not come to her rescue as her name was recommended by the Syndicate for the reasons enshrined therein and that since the petitioner did not challenge the recommendations of the Syndicate taken in its 76th meeting, no interference is called for by this Court. Relies on *Federation of Pakistan through Secretary Establishment Division, Islamabad and another v. Misri Ladhani and others* **(2023 SCMR 915)**, *Secretary Establishment Division, Government of Pakistan, Islamabad v. Aftab Ahmed Manika and others* **(2015 SCMR 1006)**, *Syed Muhammad Arif and others v. University of Balochistan and others* **(PLD 2006 S.C. 564)** and *Dr. Habibur Rehman v. The West Pakistan Public Service Commis Sion, Lahore and 4 others* **(PLD 1975 SC 144)**.

6. Learned Law Officer, while supporting the learned counsel for the respondent-University, states that since valid reasons have been given in the order passed by the Chancellor, the same are immune from interference by this Court rather it is to be complied with in its

letter and spirit; that this petition is not maintainable for the reason that earlier Dr. Azmat Rubab filed Writ Petition No.22619/2020 which was dismissed by this Court on the ground that the same was not maintainable on account of non-statutory nature of service rules governing the terms and conditions of employees of the University.

7. Learned counsel for the petitioner, while exercising his right of rebuttal, submits that since name of the petitioner was recommended by the Syndicate in its 81st meeting, held on 30.06.2021, she was not supposed to challenge the recommendations of the Syndicate taken in its 76th meeting. Adds that this Court can look into any malfeasance on the part of the executive in relation to appointment against any post.

8. I have given anxious consideration to the arguments advanced by the learned counsel for the parties and have also gone through the documents appended with these petitions in addition to the case-law cited at the bar.

9. Firstly, taking up the objection raised by the learned Law Officer that since the rules/statutes governing the terms and conditions of the petitioner are non-statutory in nature this petition is not maintainable, I am of the view that if any issue relating to terms and conditions of her service has been challenged by the petitioner, the bar referred by the learned Law Officer, is very much attracted but when

she has agitated her grievance relating to her appointment as Professor of Urdu as a result of fresh recruitment, the objection raised by the learned Law Officer holds little water. Reliance, in this regard can be placed on the case reported as *Jawad Khan and others v. National Database and Registration Authority (NADRA) through Chairman at Islamabad and others* (**2022 PLC (C.S.) 94**) wherein a learned Division Bench of Peshawar High Court, while responding to an objection relating to non-maintainability of constitutional petition in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 on account of non-statutory nature of the applicable service rules, has *inter alia* concluded as under:-

> *"9. The other objection of respondents regarding the fact that the instant constitutional petitions have not been maintainable due to the reason that service rules of the petitioners have not yet been clothed with the attire of statutory rules. It is sufficient to say that grievances of the petitioners have been arising from unfair treatment meted to them at the time of their appointments. Their grievance has not arisen when the rules of NADRA authorities had become applicable to them. In other words, they have not been agitating any of the grievance of violation of un-statutory rules of NADRA……*
>
> *……*
>
> *The above reproduced section clearly shows that NADRA has been performing governmental functions, directly under the authority of the Federal Government which is also evident from section 3 of the Ordinance and thus there has been no doubt that NADRA has been amenable to the constitutional jurisdiction of this Court. The question that writ petition of an employee in respect of violation of non-statutory rules of NADRA, is not maintainable is a different question altogether. If grievance of an employee arose out of any adverse*

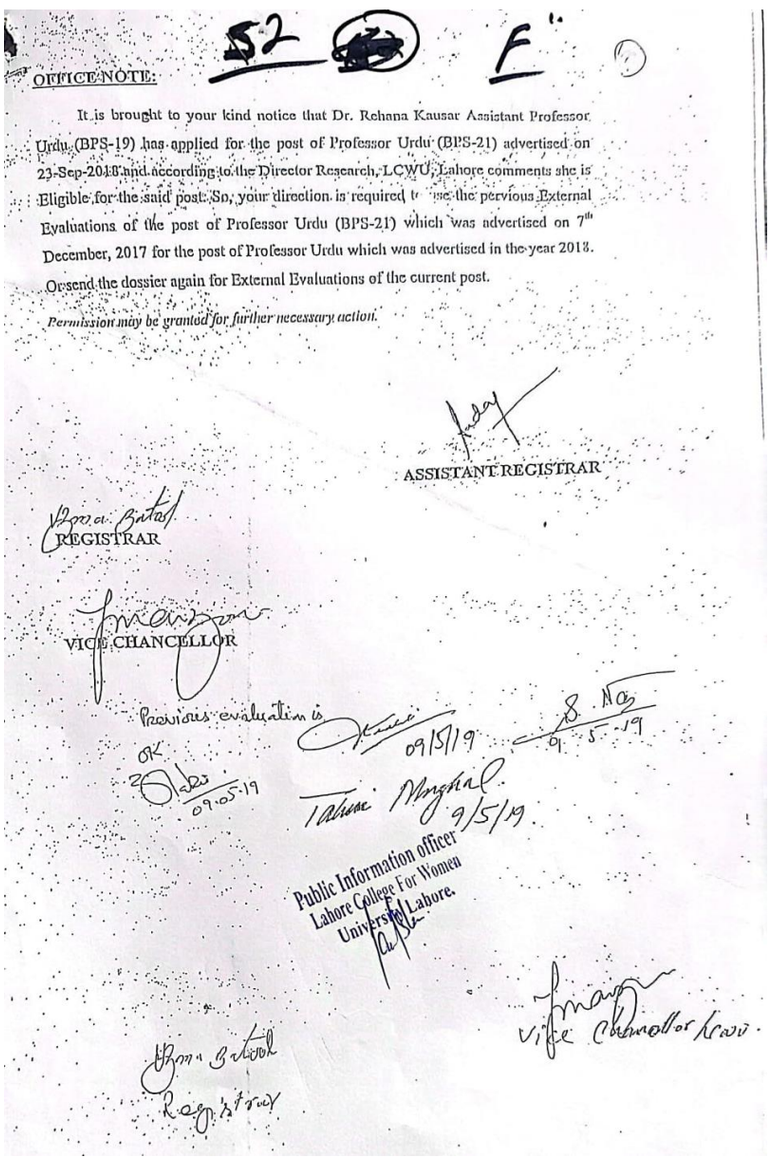
> *order passed against him during his service, under the un-statutory rules, a writ petition before a High Court would no doubt be non-maintainable according to ratios of judgments in the case of "Chairman NADRA Islamabad through Chairman and another v. Muhammad Ali Shah and others" reported as 2017 SCMR 1979 as well as in the case of "Maj. (Retd.) Syed Muhammad Tanveer Abbas and another v. Federation of Pakistan through Secretary, Ministry of Interior and another" reported as 2019 SCMR 984, but as stated earlier grievances of the petitioners have not been arising out of violation of the un-statutory rules but their very appointments in NADRA.……*
> *……*
> *……*
> *Since grievances of the petitioners in the instant constitutional petitions have not been arising out of violation of any service rules of NADRA, but has been arising out of their first appointment in NADRA, facts of these cases would therefore be distinguishable from facts of cases of the private parties in the judgments reported as 2017 SCMR 1979 and 2019 SCMR 984."*

If the objection, under discussion, is considered in the light of afore-quoted judgment the same is not worth consideration and is thus spurned.

10. While pressing the objection against maintainability of this petition, learned Law Officer placed reliance on the order of this court whereby writ petition, filed by Dr. Azmat Rubab against the recommendations of the Selection Board in favour of the petitioner, was dismissed. Perhaps, the learned Law Officer has referred to said decision in oblivion of the fact that this Court can take care of any act of the executive in relation to recruitment against a particular post when the same is not covered under the relevant law or rules. If any

case-law is required, reference is made to the decision of the Hon'ble Supreme Court reported as *Rashid Ali Channa and others v. Muhammad Junaid Farooqui and others* (**2017 PLC (C.S) 1187**).

11. Now taking up the plea raised by the learned counsel for the respondent-University that since nobody was recommended by the Selection Board pursuant to advertisement, dated 15.12.2017, the evaluation made by the external evaluators under the said advertisement became redundant, I am of the view that perhaps learned counsel for the respondent-University has raised said plea in oblivion of the Office Note (Annexure-E) which for convenience is imaged below:-



OFFICE NOTE:

It is brought to your kind notice that Dr. Rehana Kausar Assistant Professor Urdu (BPS-19) has applied for the post of Professor Urdu (BPS-21) advertised on 23-Sep-2018 and according to the Director Research, LCWU, Lahore comments she is Eligible for the said post. So, your direction is required to use the pervious External Evaluations of the post of Professor Urdu (BPS-21) which was advertised on 7th December, 2017 for the post of Professor Urdu which was advertised in the year 2018. Or send the dossier again for External Evaluations of the current post.

Permission may be granted for further necessary action.

ASSISTANT REGISTRAR

REGISTRAR

VICE CHANCELLOR

Previous evaluation is OK

09.05.19

09/5/19

9/5/19

Public Information officer
Lahore College For Women
University Lahore.

Registrar

Vice Chancellor

From above, it is crystal clear that Vice Chancellor himself decided that previous evaluation of the candidates was sufficient for determination of their suitability against the post under fresh advertisement then as to how University Authorities can raise any objection against the reliance of the Selection Board on the previous evaluation of the petitioner and co-applicant which was conducted pursuant to advertisement, dated 15.12.2017.

12. It is important to mention over here that order of the Vice Chancellor that previous evaluation of the petitioner and other applicant was sufficient to determine their suitability for appointment against the said post, was endorsed by the Sub-Committee of Selection Board in its meeting held on 09.05.2019 by *inter-alia* recommending as under:-

> *"The members of the Committee discussed the agenda regarding external evaluation for the post of Professor Urdu (BPS-21) advertised on 23 Sep, 2018. The Member of the committee unanimously agreed to use the previous evaluation for the post of Professor Urdu (BPS-21) advertised on 7th Dec, 2017 as there is less than 1 year time difference between both advertisements."*

From above quoted portion from the minutes of meeting of the Sub-Committee of the Selection Board, it is more than clear that Sub-Committee proceeded to rely upon the previous evaluation of the applicants on the ground that difference between two advertisements was less than a year. In this scenario, it does not lie in the mouth of

the University Authorities to raise objection against the eligibility of the petitioner for appointment against the post of Professor of Urdu on the ground that her fresh evaluation was not got conducted pursuant to second advertisement.

13. Learned counsel for the respondent-University put much emphasis on the fact that since the recommendations of the Selection Board in favour of the petitioner suffered from serious procedural flaws, the same could not be used to appoint the petitioner against the subject post but has not been able to convince this Court that under which provision of the Ordinance, 2002 or the service Statutes of the University, the Syndicate was empowered to refer the matter back to the Selection Board for review of its earlier recommendations. Section 21 of the Ordinance, 2002 deals with the powers and duties of the Syndicate. According to clause (xvii) of sub-section 2 of Section 21 of the Ordinance, the Syndicate has to appoint University teachers and other officers on the recommendations of the Selection Board. Further according to Statute 7 of the Schedule relating to the First Statute, the Selection Board has to recommend the names of the persons against various posts. Moreover, as per service Statute 7(2), in the event of unresolved difference of opinion between the Selection Board and the Syndicate, the matter is to be referred to the Chancellor for final decision. In this backdrop, if the Syndicate was not in

agreement with the recommendation of the Selection Board finalized in its 57th meeting, the proper course was to send the matter to the Chancellor for final decision but under no provision of the Ordinance 2002 or any service Statute the Syndicate could refer the matter to the Selection Board for review of its earlier recommendations.

14. It is well established by now that power of review can only be exercised by a forum or authority under relevant law or rules and when the applicable law/rules do not provide for remedy of review against any order, the same cannot be assumed by an authority or a forum *suo-moto*. Reliance in this regard is placed on the cases reported as *Mian Ghulam Mustafa and another v. Chief Conservator of Forest Punjab and others* **(2004 PLC CS 1527)** and *Khalid Rashid Sheikh and others v. Judicial Officer, Punjab Cooperative Board for Liquidation and others* **(2018 CLC 1955)**. In the former judgment, the Hon'ble Supreme Court of Pakistan, while taking note of the exercise power of review by the Punjab Service Tribunal, in absence of any explicit provision in the relevant law, has *inter-alia* concluded as under:-

> *"5.***** it is to be noted that power of review cannot be exercised by way of discretion unless conferred upon a forum by some law or statute. No such power is conferred upon the Service Tribunal. It was not the question of rectification simplicitor because order dated 14.11.2000 could not be rectified without reviewing the same and no such review could have been made by the*

Service Tribunal as no such provision is available in the relevant law….."

If the fate of the order passed by the Syndicate referring the matter back to the Selection Board for review of its recommendations, without backing of the relevant law and subsequent recommendations of Selection Board in its 58th meeting, are seen in the light of the afore-referred judgment of the Hon'ble Supreme Court, there leaves no ambiguity that when the Selection Board was not clothed with the power of review, the Syndicate could not send the matter to it for review of its earlier recommendations rather if the Syndicate did not endorse the recommendations of the Selection Board, the proper course was to refer the matter to the Chancellor for final decision but having not done so the University authorities violated the provisions of the Ordinance 2002 as well as service Statutes.

15. There is no cavil with the fact that the Syndicate of the University is at higher pedestal as compared to the Selection Board but it does not mean that the Selection Board is bound to act upon the orders of the Syndicate which are not supported by the relevant law. Insofar as the case in hand is concerned, it is admitted position that the Selection Board does not enjoy the power to review its own recommendations but the Selection Board instead of desisting against the order of the Syndicate asking for review of its recommendations, proceeded to recommend re-advertisement of the posts in its 58th

meeting. It is classical example of misuse of authority by a body which did not enjoy the power to do an act. It is well settled by now that what cannot be achieved directly cannot be allowed to be attained indirectly. Reference in this regard can be made to the cases reported as *Haji Muhammad Boota and others v. Member (Revenue), Board of Revenue, Punjab and others* (**PLD 2003 SC 979**) wherein the proposition, under discussion, has been responded in the following manner:-

> *"Apart from the above if the plea of the petitioners is accepted, it would amount to frustrating the age-old established principle that a person cannot get indirectly what he has failed to get directly. The petitioners started litigation in the year 1952 claiming title to the disputed property, The trial Court after scanning the entire evidence rejected their claim. Said determinations were maintained by the learned First Appellate Court the learned Single Judge of the Lahore High Court. The petitioners have failed in getting the above determinations set aside by all the Courts below and now simply by withdrawing their appeal before this Court or for that matter withdrawing the suit would not frustrate/wash away the well-reasoned determinations of all the Courts. The decree passed in this case by the Court below is binding on all the parties. The aggrieved party can only seek remedy against it by having a decree set aside on merits. A five lines order allowing withdrawal of the suit cannot be termed as a decision on merits or a judgment so as of nullify the judicial pronouncements of competent Courts. This Court while allowing withdrawal of suit had not at all dilated upon the determinations of the Courts below on merits. At the cost of repetition, it may be stated that the age-old principle is that what is not permitted to be done directly cannot be achieved through circumvention of law by indirect means. After losing the case right up to the level of the High Court the petitioners cannot be allowed to say that the effect of decided cases against them has been*

> *washed away simply by securing an order from this Court allowing them to withdraw the suit."*

16. It is ironical that Selection Board recommended the name of the petitioner for appointment against the post of Professor of Urdu, in its 57th meeting, held on 28.05.2019 and after placing its recommendation before the Syndicate, it became *functus-officio*, thus its subsequent recommendations did not carry any sanctity, hence, the recommendations of the Selection Board, in its 58th meeting, were inconsequential especially when the Syndicate never approved them. Even today, learned counsel for the respondent-University has taken specific plea that the University authorities did not agree with the recommendations of the Selection Board or the findings of the Chancellor regarding re-advertisement of the post of Professor of Urdu rather they decided to get re-evaluation of the applicants.

17. It is very relevant to note that the University Authorities have treated it a case of difference between the recommendations of the Selection Board and findings of the Syndicate but the record speaks otherwise inasmuch as not only the Selection Board in its 57th meeting recommended the name of the petitioner for appointment against the post of Professor of Urdu but also the Syndicate in its 81st meeting, approved the appointment of the petitioner against the said post. In such eventuality, the only option with the University Authorities was to issue formal appointment letter in favour of the petitioner

irrespective of what happened after 57th meeting of the Selection Board till 81st meeting of the Syndicate but instead of discharging their duties, they made the petitioner a rolling stone on one pretext or the other. This fact alone is sufficient to believe that the University Authorities were/are all out to keep the petitioner aloof from the appointment against the post of Professor of Urdu.

18. In my humble opinion, the University Authorities took recommendations of Selection Board finalized in its 58th meeting but did not bother to consider that when said recommendations were not backed by relevant law or service Statutes, the same were inconsequential upon the rights of the petitioner and the same being inexecutable could not be used for any future reference.

19. While addressing the Court, learned counsel representing the University has repeatedly argued that *bona fide* of the University Authorities is evinced from the fact that though not only the Selection Board recommended for re-advertisement of the post but also the Chancellor ordered for re-advertisement but the University Authorities, in view of the lengthy career of the petitioner and her experience, ordered for her re-evaluation only against which she should have no qualm. In this regard, I do not agree with the learned counsel for the respondent-University for the reason that neither the Selection Board nor the Syndicate of the University or the Chancellor

has the powers to violate any provision of Ordinance, 2002 or service Statutes made thereunder rather they are supposed to comply them in letter and spirit, hence, magnanimity of the University Authorities, being portrayed by the learned counsel for the respondent-University, cannot be lauded as adherence to the relevant law, rules/statute is hallmark for good administration whereas the acts of the University Authorities speak otherwise. Moreover, the actions/inactions on the part of the University Authorities are suggestive of the fact that the affairs of the University, in particular in relation to appointment against the post of teaching faculty, are not being run fairly.

20. Learned counsel for the petitioner categorically stated that four members of the Syndicate, raised objections against the minutes of 75th meeting of Syndicate, therefore, the same could not be used to the disinterest of the petitioner. While scanning the file, I have come across communication bearing No.SO(Univ.)13-3/2018-P, dated 10.02.2020, addressed by the Deputy Secretary (UNIV), Higher Education Department (one of the members of the Syndicate) to the Vice Chancellor of the University wherein he raised certain objections against the minutes of 75th meeting of Syndicate with the suggestion that the same be rectified according to the relevant law/rules/Statutes. The said communication, for convenience of reference, is imaged below:-

MOST URGENT

NO. SO(Univ.) 13-3/2018-P
GOVERNMENT OF THE PUNJAB
HIGHER EDUCATION DEPARTMENT
Dated Lahore, the 10th February, 2020

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To,

The Vice Chancellor,
Lahore College for Women University,
Lahore.

Subject: MINUTES OF 75TH MEETING OF THE SYNDICATE

Reference LCWU's letter No. Reg/LCWU/285 dated 04-02-2020 on the subject cited above. The following corrections/observations are pointed out:-

i. CASE OF PROFESSOR OF URDU

It is observed that the case of Dr. Rehana Kausar has been incorrectly / inadequately recorded in the minutes. The Syndicate had the opinion that the Review Selection Board observation that all members should give 50% marks, does not hold ground and is not backed by any statutes/rules. The said policy can be made effective for future recruitments and this cannot be made on retrospectively basis, while overruling the recommendations of First Selection Board. The House had also taken a majority decision that the First Selection Board's recommendations were appropriate. However, upon this, worthy VC, LCWU pointed out that the case needs to be referred back to the Review Selection Board to settle the observation that the updated external reports were not presented at the time of interview. This referral was only to the extent of placement of updated evaluation reports of the candidate and not for a fresh interview/marking by the Review Selection Board (as the purpose is to review and not to reevaluate). The viewpoint of three female MPA's and other members including the undersigned that Dr Rehana Kausar should not suffer and go through same procedure once again was not recorded in the minutes.

Apart from correction of minutes, it has subsequently came into notice of this Department, that the then Vice Chancellor had given written approval, that the earlier evaluation reports were recently obtained and the same may be used for the case under consideration (Copy enclosed). It is astonishing to point out that this true picture / complete facts were not presented before the Syndicate; neither in the Agenda nor in the meeting. The agenda is totally silent on this matter and the approval of the then VC should not only have been properly elaborated in agenda but also relevant documents should have been annexed as well because in view of written decision of subcommittee / VC, fresh reports were not required and Dr. Rehana Kasuar was eligible in all respects. Therefore, complete facts were not available otherwise the Syndicate might have decided to uphold recommendations of First Selection Board and record its difference of opinion with the "Review Selection Board" and refer the case to Honorable Chancellor for decision as per Statute 7(2) of LCWU Ordinance, 2002.

ii. CASE OF ASSOCIATE PROFESSOR OF EDUCATION

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The minutes for this case are not adequately recorded. The House unanimously agreed that there were two different seats advertised and the other candidate (Dr Afifa Khanum) has nothing to do with this post. The case of Dr. Ghazala was referred back to Selection Board to resolve difference of opinion, because Syndicate considered that the issue of Dr Afifa Khanum was wrongly clubbed with this case as well as the views of Syndicate on other observation of Review Selection Board already recorded in the draft minutes.

iii. CASE OF DR MUJAHIDA BUTT

While the case of Dr Mujahida Butt was presented, the undersigned had objected that VC, LCWU had constituted a Faculty Grievance Committee, headed by Dr Bushra Khan, Senior most Professor with a sitting Dean, and other senior members of the Faculty. The report of the said committee was not even mentioned in the agenda what to speak of its inclusion in Annexures. The said report categorically hold office of Registrar responsible for biased attitude in the case. The report should have been annexed and elaborated in the agenda for depiction of complete facts of the case. Unfortunately, the said observation has not been reflected in the minutes.

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Therefore, your goodself is requested to get minutes corrected as per observations raised in this letter. Furthermore, since the complete documents were not presented before the Syndicate in the case of Professor of Urdu, any action on the case of Professor of Urdu, may be stopped and the case may be brought up in the next Syndicate. Your good self is also requested to order an inquiry for fixation of responsibility as to how vital documents were neither detailed nor annexed in the Agenda and the Syndicate members may be apprised the names of the responsible person(s) in the next meeting.

(SH. MUHAMMAD TANZEEL UR REHMAN)
DEPUTY SECRETARY (UNIV.)

Copy for information and further necessary action to All Members of Syndicate, LCWU, Lahore.

Public Information officer
Lahore College For Women
University Lahore.

From above imaged letter, it is manifestly clear that Syndicate in its 75th meeting did not consider the case of the petitioner in line with the prescribed criteria. In the presence of such material objections, it cannot be believed that the University Authorities dealt with the case of the petitioner fairly and justly rather biasedness on their part against the petitioner is floating on the surface which cannot be let unnoticed rather deserves to be deprecated with full vigour.

21. Learned counsel for the petitioner, while addressing the Court, took specific plea that since the petitioner has been performing duties as Head of the Department of Urdu, since 30.06.2021, her suitability for appointment against the post of Professor of Urdu at this stage cannot be doubted. The said stance of the learned counsel for the petitioner remained un-rebutted as learned counsel for the respondent-University has not been able to refer to any document to counter said plea. In these circumstances, the decision of the University Authorities for re-evaluation of the petitioner through the Selection Board, without any support from the relevant law, seems to be an exercise in futility when especially visualized in the light of the fact that the Selection Board in its 57th meeting recommended the name of the petitioner, coupled with the approval of the name of the petitioner by the Syndicate in its 81st meeting.

22. The dubious conduct of the University Authorities is also established from the fact that they halted the recruitment against the post of Professor of Urdu in the light of letter, dated 28.06.2019, issued by the Higher Education Department despite the fact that name of the petitioner was recommended by the Selection Board on 28.05.2019, a month prior to the issuance of the said letter. Further, letter, dated 28.06.2019, relating to ban upon recruitment in the public sector universities was withdrawn by the Higher Education Department through letter, dated 06.09.2019, but the University Authorities did not issue formal appointment letter in favour of the petitioner rather delayed the matter on flimsy grounds. The narration of facts, given hereinabove, suggests that perhaps the University Authorities and the Selection Board were playing hide and seek with the petitioner inasmuch both the said bodies had been referring her matter to each other without the backing of relevant law and justification. In the presence of such undisputed facts, the conduct of the University Authorities, towards appointment of the petitioner against the subject post, cannot be considered above board.

23. It has not been denied by the learned counsel appearing on behalf of the respondent-University that the name of the petitioner was recommended by the Selection Board, in its 57th meeting. He has further admitted that the Selection Board did not enjoy the power to

review its own recommendations, meaning thereby that the Syndicate could either endorse the recommendation of the Selection Board or could refer the matter to the Chancellor with the reasons to differ with the recommendations of the Selection Board but when the recommendations of the Selection Board, contained in the minutes of its 57th meeting, coupled with the approval of the case of the petitioner by the Syndicate in its 81st meeting, the University Authorities were bound to issue appointment letter in favour of the petitioner. A learned Division Bench of the Peshawar High Court in the matter of *Engineer Siddiq Ullah v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 2 others* **(2013 PLC (C.S.) 1405),** while taking serious note of non-issuance of appointment letter in favour of the applicant, who was on top of the merit, has *inter-alia* concluded as under:-

> *"6. Thus, keeping in consideration the above stated position, the plea raised by the petitioner that he has topped the merit list is substantiated by the minutes of the meeting of Selection Committee produced by the respondents and when the entire process has been carried out as per terms and conditions prescribed for the post in question and when there is no allegation against the petitioner that his selection was not on merits or it was made in violation of any rules/regulations. Further, no reason much less plausible has been rendered by the respondents regarding the non-appointment of the petitioner as well as re-advertisement of the said post with certain attractive package, then we are of the view that after having been duly selected, a right had accrued to him for the job against the vacancy for which he was selected, which will not go un-noticed, moreso, when the petitioner including two others have*

> *participated in the test/interview/ presentation on the package announced in the initial advertisement, then depriving the petitioner of his vested right as well as re-advertisement of the post he applied for with attractive package is an act on the part of respondents, which is not sustainable in law, hence case for issuance a writ is made out."*

Further, the Hon'ble Supreme Court of Pakistan in the case of *Secretary, Revenue Division and others v. Muhammad Saleem* **(2008 SCMR 948),** in the similar set of circumstances, while deprecating inaction on the part of the departmental authorities to deal with future service prospect of a government servant, has *inter-alia* held as under:-

> *"5. We have also not found that the case in hand involves any substantial question of law of public importance as according to the facts of the present case, only a direction has been issued to get PERs of the respondent's case completed from another officer, with whom respondent had been working as subordinate, because the case of the respondent was of a special and an exceptional nature. As the Senior of the respondents were admittedly biased and not independent to evaluate his performance due to commencement of criminal proceedings amongst them, therefore, this direction was apt in the circumstances of the case. The law has provided it the duty of the department to get prepared the PERs of an officer, to keep it and to maintain it, so that the same could be used for the other prescribed purposes and at the time of promotion of an official. At the relevant juncture, as the department was neglectful of its duty to get fulfilled the PERs of respondent, therefore, respondent having no alternate and remedy was right to beseech the indulgence of the learned High Court through its writ jurisdiction as the department was bent upon to deprive the right of its own officer, due to its own inaction. Accordingly, the direction issued by the Lahore High Court cannot be considered to be in violation of the provisions of the above noted Article 212 of the*

Constitution of Islamic Republic of Pakistan. Therefore, the appeal is dismissed with no order as to costs."

If the conduct of the University Authorities to linger on the matter of the petitioner, for appointment against the post of Professor of Urdu, for years and years is seen in view of the afore-referred judgments, the same do not sound reasonable rather speaks volumes about their lethargic conduct.

24. It is not the case of the University Authorities that the petitioner managed recommendations in her favour from the Selection Board or got approved her name for appointment against the post of Professor of Urdu from the Syndicate in its 81st meeting. Further, the learned counsel representing the respondent-University, while showing total professional approach, admitted that there are certain loop holes on the part of the University Authorities while dealing with her case for appointment against the post of Professor of Urdu. If there was any considerable flaw or material irregularity going to the root of the case of the petitioner, instead of making her a rolling stone, the persons/ authorities responsible for such deficiencies were to be taken to task. The High Court of Azad Jammu & Kashmir, in the case of *Shabraz Shabir v. District Education Officer (Male) Elementary and Secondary Education Muzaffarabad and 5 others* **(2023 PLC (CS) 718)**, while dealing with the consequences of withdrawal of

appointment letter which otherwise were result of some loop holes of departmental authorities, has *inter-alia* concluded as under:-

> *"VII ***** Beneficiaries of the orders passed by the departmental authorities could not be penalized for loopholes, inaction or procedural irregularity of the authorities."*

Further, this Court in its recent judgment reported as *Dr. Ghulam Sarwar v. Province of Punjab through Vice Chancellor and 5 others* **(2024 PLC (CS) 402)**, while dilating upon the subsequent declaration of appointment as *void ab-initio*, which otherwise was based upon the recommendations of the Section Board and approved by the Syndicate, has laid law to the following effect:-

> *"9. It is evidently clear that respondent-Chancellor has passed a speaking order as per law, however, there is only one aspect of the matter which needs reconsideration on part of the respondent-authorities i.e. whether petitioners procured their appointments through ill-will mala fide, fraud or illegal means and if the appointees are not at fault, the appointing authority ought to have been proceeded against as it is settled law that party should not be made to suffer for action or inaction of the authority, who was obliged to follow the law. The Hon'ble Supreme Court of Pakistan, vide judgment dated 11.06.2014, passed in C.P. No.51-L of 2014 titled Ahsan Jabbar v. Government of the Punjab and others has held that if some fault was committed by the departmental authorities while assessing eligibility for appointment, the employee could not be deprived from his job due to faults of the department.*
>
> *10. I am constrained to note with concern that it was the respondents i.e. Selection Board and Syndicate, who appointed petitioners to the posts in question, therefore, presumably, the applicable law / rules and regulations should have been on their sleeves at the time of appointment of petitioners. If respondents are of the*

> *opinion that appointment of petitioners was made without approval of the competent authority, then instead of de-notifying petitioners' appointment, respondents should have blamed themselves rather than claiming premium of their own wrongs. Reference can be made to Province of Punjab through Secretary, Agriculture, Government of Punjab and others v. Zulfiqar Ali (2006 SCMR 678).*
>
> *When confronted with the above, learned Legal Advisor for respondent-University, after taking instructions from the respondents, submits that respondent-University is ready to reconsider the matter on case to case basis and explore the possibility of creating new seats in favour of respondents, if such observation is made by this Court."*

If the case of the petitioner is considered in the light of the afore-quoted judgment of this Court, no other conclusion can be drawn except that when the Selection Board in its 57th meeting recommended the name of the petitioner and the Syndicate in its 81st meeting also approved her name, the presumption is that both the bodies supported the appointment of the petitioner against the post of Professor of Urdu in the light of the provisions of the Ordinance, 2002 and the service Statutes made thereunder. Thus, at this stage, the petitioner cannot be deprived of the appointment against the post of Professor of Urdu merely on the ground that the recommendations of the Selection Board suffered from any procedural flaw.

25. A cursory glance over the factual canvass of the matter in hand shows that the issue relating to appointment against the post of Professor of Urdu is lingering on for more than six years despite the fact that due to sluggish attitude of the University Authorities, on the

one hand, the University is deficient in respect of appointment of one Professor of Urdu and on the other, it is cause of a recurring heart burning and sense of deprivation for the petitioner which ultimately hampers her output. A learned Division Bench of the Sindh High Court in the case of *Muhammad Raheel Sarwar v. University of Sindh Jamshoro through Registrar and 3 others* **(PLD 2006 Karachi 82)**, while expressing concerns about inaction on the part of the executive with specific reference to the educational institutions, has *inter-alia* concluded as under:-

> *"Recurrence and relapse of similar episode, in different parts of country is in bitter tasting both for the Government as well as those affected. Slackness and indifferent attitude of the State functionaries to attend and remedy the malady promptly reflects adversely on the working of the executive and legislative machinery of the State. It is sad to record that; the State functionaries do not learn lesson from past. They wake up either, when much water is flown or situation slips out of their control. Neither, any executive decision has been taken nor, appropriate and remedial legislative measures were adopted at appropriate time. Large number of undesired litigation could be avoided, if fair executive decisions are taken promptly and law is amended at the right time when the flaw is encountered."*

If the conduct of the University Authorities is adjudged in the light of afore-referred judgment, it becomes inevitable to take stern action against them but with a view to maintain the goodwill of the educational institution, I am showing maximum restraint to refer the matter to any watchdog for thorough probe and action against the

delinquents which deprived the students of the services of a highly qualified person against the post of a Professor.

26. Learned Law Officer put much emphasis on the fact that since order of the Chancellor is well reasoned, it is not open for interference by this Court. In this regard, I am of the view that though the Chancellor has passed lengthy order but has not given even half a reason to the effect that as to how the Syndicate could refer the matter back to Selection Board for review and as to how the recommendations of the Selection Board, taken in its 57th meeting held on 28.05.2019 and those of the Syndicate finalized in its 81st meeting held on 30.06.2021 could be treated at variance. Thus, the order passed by the Chancellor cannot be considered as un-exceptionable.

27. While addressing the Court, learned counsel appearing on behalf of the respondent-University ferociously argued that since the petitioner did not challenge the decisions of the Syndicate, taken in its 76th meeting, she was debarred to challenge the decision of the Chancellor. It is matter of record that Syndicate in its 71st meeting, referred the matter of the petitioner back to the Selection Board. The said decision of the Syndicate being not covered under any provision of the Ordinance, 2002 or the Service Statutes was inconsequential upon the rights of the petitioner. Further, when the Syndicate, in its

81st meeting, approved the name of the petitioner for appointment against the post of Professor of Urdu, the earlier decision of the Syndicate became non-existent, hence, the petitioner was not supposed to challenge the same. Moreover, when recommendations of Selection Board, in its 58th meeting, which otherwise were inexecutable, were approved by the Syndicate in any subsequent meeting after 71st meeting, the same could not be used to the disinterest of the petitioner.

28. It is of paramount consideration that Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that every citizen should be dealt with in accordance with law. The relevant law in relation to the case of the petitioner is the Ordinance, 2002 and the Service Statutes made thereunder. Since the actions/ inactions of the Universities authorities run contrary to the relevant law, their conduct invites strict action against them so that they do not think about such unconstitutional acts in future. The Apex Court of the country in the matter of *Junaid Wazir v. Superintendent of Police, PRU/Dolphin Police, Lahore* **(2024 SCMR 181)**, while highlighting the importance of the fundamental rights of the citizens, in particular that everyone should be dealt with in accordance with law, has *inter alia* held as under:-

> *"9. To enjoy the protection of law and to be treated in accordance with the law is the inalienable right of every*

> *citizen. The purposefulness of Article 4 of the Constitution is to ascribe and integrate the doctrine of equality before law or equal protection of law, and no action detrimental to the life and liberty of any person can be taken without due process of law. Public functionaries are supposed to execute and perform their duty in good faith, honestly and within the precincts of their legally recognized powers so that the person concerned may be treated in accordance with law. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, explain and contest the claims against him before he is found guilty and condemned. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable, therefore it is incumbent that all judicial, quasi- judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principles of natural justice. In the case of Tariq Aziz-ud-Din, Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P and 14306-G to 14309-G of 2009 (2011 PLC (C.S.) 1130), this Court held that all judicial, quasi-judicial and administrative authorities must exercise power in a reasonable manner and also must ensure justice as per spirit of law and instruments regarding exercise of discretion [Ref: Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101 and Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997(7) SCC 622].”*

If the acts of the University authorities are seen in the light of the afore-quoted observations of the august Supreme Court of Pakistan

there leaves no doubt that they violated the constitutional mandate, hence, their actions cannot be validated.

29. During arguments, learned counsel appearing on behalf of the respondent-University opposed the request of the petitioner for appointment against the post of Professor of Urdu but conduct of his clients speak otherwise inasmuch as while filing report and parawise comment, in this petition, instead of submitting parawise reply to the contents of the petition, contented with the following reply:-

> *"Para-wise Reply*
>
> *All averments of facts contained in the petition, unless specifically admitted herein are denied. The correct factual and legal position has been stated in the Preliminary Objections, which may be read and treated as an integral part of the reply on merits.*
>
> *Reply to Facts & Grounds*
>
> *All the assertions and contentions made in the body of petition are vehemently denied being incorrect, false and for lack of record. The preliminary submissions and objections stated above may be read as an integral part to this reply. The answering respondent have only acted in compliance of the Order dated 12.04.2023 issued by this Honourable Court and no violation in any manner whatsoever has been done. The matter of the petitioner was duly placed before the Syndicate in its next meeting and the Syndicate further referred it to the Selection Board for re- evaluation as per fresh external reports but before it could be done, the present petition was filed to halt the ongoing process. The alleged recommendation of the Selection Board in favour of the petitioner was declared null and void after the ban was imposed by the HED on 28.06.2019. Even otherwise, the Selection Board or the Syndicate are duly empowered to recall or rescind their decision/recommendations unless*

> *they have not been acted upon by the Competent Authority.*
>
> *The University has already initiated the process of re-evaluation which may be followed by appointment, therefore halting the process at this stage would be detrimental not only for the other candidate but the University too."*

A birds' eye view of the afore-quoted portions from the report and parawise comments submitted on behalf of the University Authorities affirms that instead of replying the contents of this petition, they felt satisfied with evasive denial. It is well settled by now that evasive denial amounts to admission to the claim of the other party. Reliance in this regard is placed on the cases reported as *Ghulam Rasool through L.Rs. and others v. Muhammad Hussain and others* **(PLD 2011 SC 119)**, *Qalandar and 4 others v. Muhammad Rafi-ud-Din* **(2007 SCMR 1079)** and *Muhammad Ashraf v. Abdul Ghafoor and 4 others* **(1999 SCMR 2633)**.

30. Though learned counsel representing respondent-University, while utilizing legal expertise, has tried to explain certain facts in the reply to the contempt petition but in my humble opinion the contents of the said reply cannot be read as response in this petition. The sketchy nature of the report and parawise comments submitted on behalf of the University Authorities stands proof of the fact that either they have no reply to the grounds urged by the petitioner or they with a view to save themselves from any future action, did not opt to deny

the contents of this petition with reasoning. In this backdrop, the oral assertions made by learned counsel for respondent-University cannot be considered sufficient to deny the sought for relief to the petitioner.

31. A cursory glance over the report and parawise comments filed on behalf of the University Authorities shows that they have *inter-alia* taken objection that since the petitioner earlier filed W.P. No.1282/2023 before this Court, this petition is not maintainable. Perhaps, the University Authorities have raised such objection in oblivion of the fact that in the said petition, the petitioner assailed order, dated 17.01.2023, passed by the Secretary, Higher Education Department whereas in this petition, the petitioner has assailed the *vires* of the order of the Chancellor and the subsequent Notifications issued by the University Authorities. Thus, the orders challenged in both these petitions being entirely different, this petition cannot be dismissed on the point of maintainability simple for the reason that petitioner also filed an earlier Writ Petition.

32. It is matter of record that our educational institutions are lagging far behind as compared to the educational institutions in the region or at World level. Besides other factors, non-fulfillment of seats of the teaching faculty within time or from amongst the most suitable persons, is the major cause for decay of our educational system. It is very shameful for us as a nation that none of our national

universities figure amongst the top level universities in the World. The prime consideration, while making appointments against the posts of Assistant Professor, Associate Professor or the Professor in a public sector university, should be merit and the deserving candidates should be allowed to impart knowledge to the students while promptly making appointments against the vacant posts in the educational institutions in particular the Universities. The dismal picture of the affairs of the University, portrayed in this petition, speaks loud about the fact that instead of appointing the best of the best from amongst the available lot, the University Authorities are trying their level best to desist appointment of the petitioner against the post of Professor of Urdu which practice in my humble opinion would have negative impact upon the outcome of the public sector universities.

33. It is of common knowledge that in every region of the world, talented and intelligent individuals are desired. They are drawn to wealthy nations because of the higher incomes, superior living standards, availability of cutting-edge technology and more stable political and social environments. The majority of migration is from underdeveloped countries to western industrialized and advanced countries. Our country is example of a developing country that has been a victim of the brain drain. People with skills and competence find Pakistan an inhospitable place for their services *inter alia* on

account of step-motherly treatment by the persons at the helm of the affairs. While hearing the arguments advanced by the learned counsel for the parties as well as learned Law Officer, I have noted with heavy heart and anguish pain that the persons having exceptional educational background are being treated indifferently which in my humble opinion is one of the major causes of brain drain from the country. Brain drain being fleshing issue at national level, all the stakeholders are striving to know its causes and to eradicate them but none of them has so far felt the sensitivity of the repercussions of maltreatment towards the persons having brilliant academic record. It is natural that when a person is not given due respect for which he otherwise deserves he is justified to shift abroad where he not only receives due respect but also finds equal chances to flourish in respect of future career prospects. It is of common knowledge that overseas Pakistanis having professional/technical qualification are enjoying high positions in America, Europe and other parts of the World. The only reason behind it is the exceptional services being rendered by them to the citizens of the countries where they are settled. In case, they are given their due rights within the country, perhaps, they would not even think to shift abroad.

34. According to Article 3 of the Constitution of Islamic Republic of Pakistan, 1973 the State has the responsibility to eliminate all forms

of exploitations and fulfillment of fundamental rights of the citizens. If the conduct of the University Authorities is seen in the light of referred Article, it becomes manifest that instead of performing their obligations they were all out to exploit the petitioner by way of keeping her aloof from her appointment as Professor of Urdu despite the fact that her name was not only recommended by the Selection Board in its 57th meeting but also the Syndicate in its 81st meeting also approved her name. The Hon'ble Supreme Court of Pakistan in the case of *Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Maqsad Hayat and others* **(2023 SCMR 8)** while highlighting the importance of protection against any kind of exploitation by the departmental authorities in respect of the perks and privileges of the government servants, has *inter-alia* concluded as under:-

> *"*****The objective of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily without rhyme or reason, and/or without compos mentis, but such objective can only be met by adhering to the rules of justness, fairness and openness as enshrined under Articles 4 and 25 of the Constitution. In the case in hand, the non-payment and/or deduction of conveyance allowance from monthly perks during summer and winter vacations would be tantamount to the violation of fundamental rights. Article 3 of the Constitution casts an unavoidable and inescapable obligation upon the State to ensure the elimination of all forms of exploitation, and the gradual fulfillment of fundamental principles from each according to their ability, to each according to their work. Whereas under Article 38, it is provided that the*

> *State shall secure the wellbeing of the people, irrespective of sex, caste, creed, or race by raising their standard of living, by preventing concentration of wealth and the means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants. In the case of Ikram Bari and 524 others v. National Bank of Pakistan through President and another (2005 SCMR 100), this Court held that an Islamic Welfare State is under an obligation to establish a society which is free from exploitation and wherein social and economic 'justice is guaranteed to its citizens……"*

If the conduct of the University Authorities since the year 2018 is seen in the light of Article 3 *ibid*, it seems that they have left no stone unturned to exploit the petitioner in respect of her employment against the post of Professor of Urdu which cannot be approved of.

35. Learned counsel appearing on behalf of respondent-University adopted the plea that as the Syndicate did not approved the name of the petitioner for appointment against the post of Professor of Urdu, she cannot claim appointment against the said post as a matter of right. To appreciate the contention of learned counsel for the respondent-University, I have gone through Agenda Item No.3 relating to case of Dr. Azmat Rubab, Associate Professor wherein it was *inter-alia* resolved as under:-

> *"However, the members of the* ***Syndicate recommended that the Chancellor may kindly approve the appointment of Dr. Rehana Kausar as Professor Urdu as per decision of 57th Selection Board*** *and her joining would be after the approval of Chancellor / Governor*

> *decision. While in case of Dr. Azmat Rubab, the members of Syndicate recommended that the re-evaluation from the external evaluator should be done as her negative previous external reports were presented before the members of 57th Selection Board, which were used for the interview of Professor, advertised in December, 2017, where the both candidates were not recommended."* (emphasis provided)

The afore-quoted portion from the minutes of 81st meeting of the Syndicate renders it vividly clear that the name of the petitioner was approved for appointment against the post of Professor of Urdu, thus no contrary inference can be drawn at the whims of the University Authorities.

36. Now coming to the contempt petition, the grievance of the petitioner was that despite injunctive order issued by this Court, the University Authorities were all out to make recruitment against the post, subject matter of the titled Writ Petition. Since the main Writ Petition, out of which the contempt petition has arisen, has been decided, in my humble opinion no further proceedings are required in this petition.

37. Now coming to the case-law referred by the learned counsel for the respondent-University, I am of the view that the same is inapplicable to the peculiar facts and circumstances of the present case inasmuch as in the case of *Federation of Pakistan through Secretary Establishment Division, Islamabad and another* (supra), the question

mainly revolved around promotion/proforma promotion whereas the question involved in the present Writ Petition relates to appointment of the petitioner pursuant to an advertisement got published by the University. Similarly, in the case of *Secretary Establishment Division, Government of Pakistan, Islamabad* (supra), the question pertained to the power of the appointing authority to return the cases of the civil servants, whose names were recommended by the Selection Board, which has no connectivity with the matter in hand inasmuch as according to the Ordinance, 2002 and the service Statutes made thereunder, though the Syndicate can differ with the recommendations of the Selection Board but cannot send them back to Selection Board for review rather the proper course is to put up the matter before the Chancellor for final decision. Now coming to the case of *Syed Muhammad Arif and others* (supra), I am of the view that in the said case the recommendations of the Selection Board were not approved by the Syndicate and the aggrieved persons approached Balochistan High Court challenging the decision of the Syndicate whereas in the present case not only the Selection Board recommended the name of the petitioner in its 57th meeting but also the Syndicate in its 81st meeting approved the name of the petitioner for appointment against the subject post, thus the said case is polls apart from the referred case. As far as case of *Dr. Habibur Rehman* (supra) is concerned, suffice it to note that in the said case the aggrieved person challenged

the recommendations of the Public Service Commission despite having appeared in the subsequent recruitment held by the said forum whereas in the instant matter, the petitioner has been agitating the issue relating to her appointment as Professor of Urdu, since the year 2018.

38. As a necessary corollary to the discussion made herein above, I have no hesitation to hold that that the case of the petitioner has not been dealt with by the University Authorities in line with the provisions of the Ordinance, 2002 and the Service Statutes made thereunder. Consequently, this petition is **accepted** and impugned order, dated 17.01.2023, passed by the Chancellor and subsequent Notifications, dated 04.07.2023 and 04.09.2023, are **set aside**. As a result, the Vice Chancellor (respondent No.2) is directed to issue appointment letter in favour of the petitioner as per approval by the Syndicate in its 81st meeting. No order as to costs.

39. Now coming to the contempt petition, no further proceedings are required therein, consequently, the same is **disposed of**.

40. Before parting with this judgment, it would like to laud the professional conduct of the learned counsel for the parties during hearing of these matters, in particular that of Mr. Gohar Mustafa Qureshi, Advocate representing the respondent-University, who instead of covering the follies of the University Authorities, frankly

considered that there were certain loopholes on their part while dealing with the case of the petitioner for appointment against the post of Professor Urdu.

(Shujaat Ali Khan)
Judge

Announced in open court today i.e. **07.06.2024**

Approved for reporting.

Judge

*M.Tahir**