

2025 SCMR 322

[Supreme Court of Pakistan]

Present: Qazi Faez Isa, C.J., Naeem Akhtar Afghan and Shahid Bilal Hassan, JJ

ALL PUBLIC UNIVERSITIES BPS TEACHERS ASSOCIATION (APUBTA)
through its President ---Petitioner

Versus

The FEDERATION OF PAKISTAN through Secretary Federal Education and
Professional Training, Islamabad and others ---Respondents

Constitution Petition No. 7 of 2024, decided on 24th October, 2024.

(a) Constitution of Pakistan---

---Arts. 4, 9, 25, 25A & 184(3)---Constitution petition before the Supreme Court---
Maintainability---Public Sector Universities---Posts of Vice-Chancellors, Pro Vice-
Chancellors, Rectors, Presidents, Vice-Presidents, Registrars, Heads of Faculties
and Departments, Controller of Examination, Director Finance and other tenured
positions either lying vacant and/or held on acting charge basis---Decision making
bodies of the public sector universities, i.e., their board of trustees, board of
governors, syndicates, senates and academic councils not meeting periodically and/
or compliance not being made in holding the minimum prescribed number of
meetings as stipulated in their respective laws---Matters raised in the present
petition are within the ambit of clause (3) of Article 184 of the Constitution---
Issues which have been raised are of public importance affecting the interest of all
those attending these universities---People's taxes help run public sector
universities, therefore, they expect that they be run in accordance with applicable
laws and efficiently, and their taxes do not go to waste---Other pre-condition in
clause (3) of Article 184 is that the petition must seek the enforcement of any of the
Fundamental Rights---This requirement is also met---Article 25 of the Constitution
mandates that citizens are entitled to equal treatment and to equal protection of the
law, but if compliance is not made with the laws governing public sector
universities, the citizens' Fundamental Rights are violated---Article 25A of the
Constitution requires that children upto the age of 16 years must be educated,
which demonstrates the importance the Constitution attaches to education---
Position of a Vice-Chancellor of a university must not be left vacant, and if
appointment to this position is delayed it adversely affects the functioning of the
university, which attracts Article 9 of the Constitution-right to life-as life has been
construed to include all of life's attendant benefits, including that of education
provided by the law---Article 4 of the Constitution stipulates that citizens have an
inalienable right to be treated in accordance with the law, but if public sector
universities, funded by the taxpayers do not operate in accordance with laws
governing them, then citizens are not being treated in accordance with the law---
Constitution petition was held to be maintainable.

Aamir Raza Ashfaq v. Minhaj Ahmed Khan 2012 SCMR 6 ref.

(b) Constitution of Pakistan---

---Art. 184(3)---Constitution petition before the Supreme Court---Public Sector Universities---Posts of Vice-Chancellors, Pro Vice-Chancellors, Rectors, Presidents, Vice-Presidents, Registrars, Heads of Faculties and Departments, Controller of Examination, Director Finance and other tenured positions either lying vacant and/or held on acting charge basis---Decision making bodies of the public sector universities, i.e., their board of trustees, board of governors, syndicates, senates and academic councils not meeting periodically and/or compliance not being made in holding the minimum prescribed number of meetings as stipulated in their respective laws---Legality---From the information provided by the Higher Education Commission (HEC) and the Federal Ministry of Education very serious transgressions committed by some Federal public sector universities were brought to the Supreme Court's attention---Supreme Court issued the following directions to all Federal and Provincial public sector universities ('the universities'), the Federal Ministries of Education, Science and Technology and Defence, the Provincial Ministries of Education, the HEC and the Provincial Higher Education Departments ('HEDs'):

- (i) Governing bodies of the universities, respectively referred to in their respective laws whether as board of governors, board of trustees, syndicates, senates and academic councils, must meet (at least) the minimum prescribed times;
- (ii) Appointments be made to all tenured positions in the universities as prescribed in their respective laws, including those of Vice-Chancellors, Registrars, Directors-General, Deans, Treasurers/Directors of Finance, Controllers of Examinations, Chairpersons and others specified therein, and this must be done transparently and on merit, by stipulating their respective criteria and inviting appointments through their respective websites and advertisements;
- (iii) Vacant tenured positions must not be held for more than six months on acting-charge-basis and such temporary charge be given to that person who is specified in the applicable law and, in the absence thereof to a person of equivalent seniority, failing which to the person next in seniority;
- (iv) The Federal Ministries of Education, Science and Technology and Defence, the Provincial Ministries of Education, the HEC and the HEDs of the Provinces must collate requisite information about the universities under their respective jurisdictions, and periodically check if they are compliant with their respective laws. Such information should be made publicly accessible on their websites;
- (v) The universities should not exceed the academic to non-academic staff ratio prescribed by HEC, and those universities which have exceeded the same must not hire further non-academic staff, unless absolutely necessary after specific permission is granted by their respective governing bodies;

- (vi) Student unions be revived in universities but it must be ensured that they are inclusive and not divisive, ethnic or sectarian;
- (vii) HEC and HEDs should annually rank the universities in their respective jurisdictions pursuant to internationally recognized criteria;
- (viii) The Shariah Academy, the Dawah Academy and the Iqbal International Institute for Research and Dialogue of the International Islamic University be made fully functional in compliance with their respective statutes;
- (ix) A safe and harassment free environment, free of psychotropic drugs and weapons must be ensured in the universities. Transgressors and those who destroy universities' properties must be dealt with strictly;
- (x) Hostels meant for the students enrolled in the universities must not be allowed to be occupied by those who have completed their studies and by outsiders;
- (xi) Community service, sustainable living, good environmental practices, inter-university competitions, sports, games and debates should be encouraged;
- (xii) Research culture and research based publications should be promoted;
- (xiii) The lands of the universities must be demarcated, if not already demarcated, and if their land or any part thereof is encroached upon, encroachments therefrom be removed. Universities must also secure their lands. Iron grills and steel mesh boundaries can be installed quickly and cheaply and do not require much maintenance and also do not block vision, however, if a solid brick or block wall is required it would be best not to plaster and paint it to avoid periodical and perpetual drain of resources. The universities' ownership of land must be recorded in the record of rights.

Umer Ijaz Gilani, Advocate Supreme Court for Petitioner.

Malik Javed Iqbal Wains, Additional Attorney-General for Pakistan Supreme Court, Mohyuddin Wani, Secretary M/o F.E&P.T., Abdul Sattar Khokhar, Senior Joint Secretary, M/o F.E&P.T. and Dr. Agha Haider, Deputy Director, (Legal), M/o F.E&P.T. for Respondents No. 1 to 2.

M. Nazir Jawwad, Advocate Supreme Court and Dr. Zia-ul-Qayyum, Executive Director, H.E.C for Respondent No. 3.

Khalid Ishaq, Advocate-General, Punjab, Barrister M. Mumtaz Ali, Additional Advocate-General, Punjab and Abdul Rehman Ch., Senior Law Officer, HED, Lahore for Respondent No. 4.

Shah Faisal Ilyas, Additional Advocate-General, Khyber Pakhtunkhwa, Ghulam Saeed, Special Secretary, HED, Khyber Pakhtunkhwa and Qazi Ayyaz, Senior Officer (Litigation) for Respondent No. 5.

Hassan Akbar, Advocate-General, Sindh, Saifullah, Additional Advocate-General Sindh, Moeen-ud-Din Siddiqui, Secretary, HEC and Ms. Naheed Haider, Deputy Director, Legal HEC, Sindh for Respondent No. 6.

Muhammad Ayaz Swati, Additional Advocate-General, Balochistan and Hafiz Muhammad Tahir, Secretary Education, Balochistan for Respondent No. 7.

On Court's Notice:

Dr. Saeed-ud-Din, Rector for Sindh Institute for Technology MS.

Professor Dr. Akhtar Ali Malik, Vice-Chancellor and Nazeer Chishti, Director (Legal) for National Fertilizer Corporation Institute.

Attaullah Hakim Kundi, Advocate Supreme Court and Dr. Zabita K. Shinwari, Vice Chancellor for Federal Urdu University.

Rizwan Shabbir Kayani, Advocate Supreme Court for National College of Arts.

Dr. Muhammad Mukhtar, Vice-Chancellor for National Skills University.

Muhammad Munir Paracha, Advocate Supreme Court and Dr. Niaz Ahmed Akhtar, Vice-Chancellor for Quaid-e-Azam University.

Rehan-ud-Din Golra, Advocate Supreme Court, Anis M. Shahzad, Advocate-on-Record, Professor Dr. Samina Malik, Rector and Atiq-ur-Rehman Chughtai, Director, HR for International Islamic University.

Khalid Mehmood Iraqi, Vice-Chancellor for University of Karachi.

Kamal-ud-Din, Advocate Supreme Court and Mir Qasim Jat, Advocate-on-Record for Shaheed Muhtarma Benazir Bhutto University.

Dr. Mujeeb Memon, Vice-Chancellor for Shaheed Zulfiqar Ali Bhutto University of Law.

Abdus Salam Memon, Advocate Supreme Court and Professor Ikram-ud-Din Ujjan, Vice-Chancellor for Liaquat University of Medical and Health Sciences.

Professor Dr. Gulshan Ali, Vice-Chancellor for People University of Medical and Health Sciences.

Professor Dr. Arabella Bhutto, Vice-Chancellor for University of Sufism.

Professor Dr. Yousaf Khushk, Vice-Chancellor for Shah Abdul Latif University.

Applicant in person (in CMA. No. 10026 of 2024).

Date of hearing: 20th September, 2024.

JUDGMENT

QAZI FAEZ ISA, CJ, ---The petitioner is the All Public Universities BPS Teachers Association ('Association'), a registered charity, representing about fifty thousand teachers working in public sector universities. The Association filed this petition to ensure that the applicable federal laws, provincial laws and the statutes of public sector universities are complied with. Out of the 147 public sector universities it was stated that 60 are functioning without Vice-Chancellors, and the

tenured positions of Registrars, Directors-General, Deans, Chairpersons of Departments, Controllers of Examinations and Treasurers/ Directors of Finance lie vacant in most universities or are held on acting-charge basis. Another grievance aired by the Association is that the decision making bodies of the public sector universities, that is, their board of trustees, board of governors, syndicates, senates and academic councils do not meet periodically and/or compliance is not made in holding the minimum prescribed number of meetings as stipulated in their respective laws. Resultantly, the public sector universities are run and all decisions are being taken by paid employees, who have assumed control. Consequently, there is no supervision and accountability which, the Association stated, was also a serious violation of the applicable laws. The Association, it was submitted, is concerned with the under-performance of these universities, and resultantly students do not reach their potential. The learned Mr. Umer Ijaz Gilani, representing the Association, submitted that the universities are supposed to have academic freedom, research capabilities, and should operate in an environment in which education thrives, but the same is seriously undermined when applicable laws are violated by making temporary appointments on tenured positions and not holding the mandatory meetings of the governing bodies of the universities. Consequently, outside interference in universities increases to their detriment. A number of other issues of public importance were also raised.

2. The matters raised by the petitioner Association are within the ambit of clause (3) of Article 184 of the Constitution of the Islamic Republic of Pakistan ('the Constitution'), whereunder this petition is filed. The issues which have been raised are of public importance affecting the interest of all those attending these universities. The people's taxes help run public sector universities, therefore, they expect that they be run in accordance with applicable laws and efficiently, and their taxes do not go to waste. The other pre-condition in clause (3) of Article 184 is that the petition must seek the enforcement of any of the Fundamental Rights. This requirement is also met. Article 25 of the Constitution mandates that citizens are entitled to equal treatment and to equal protection of the law, but if compliance is not made with the laws governing public sector universities, the citizens' Fundamental Rights are violated. Article 25A of the Constitution requires that children upto the age of 16 years must be educated, which demonstrates the importance the Constitution attaches to education. This Court in *Aamir Raza Ashfaq v. Minhaj Ahmed Khan* (2012 SCMR 6) had held that the position of a Vice-Chancellor of a university must not be left vacant, and if appointment to this position is delayed it adversely affects the functioning of the university, which attracts Article 9 of the Constitution - right to life - as life has been construed to include all of life's attendant benefits, including that of education provided by the law. Article 4 of the Constitution stipulates that citizens have an inalienable right to be treated in accordance with the law, but if public sector universities, funded by the taxpayers do not operate in accordance with laws governing them, then citizens are not being treated in accordance with the law.

3. The Principles of Policy in the Constitution are not self-executory (clause (1)

of Article 30), however, this does not render them meaningless. These Principles represent what the nation aspires to. Their compliance is 'dependent upon resources being available for the purpose' (clause (2) of Article 29). Clauses (c) and (f) of Article 37 are the aspirational guiding lights with regard to technical, agricultural, professional, higher education and industrial training, and are reproduced hereunder:

'37. The State shall'

'(c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit;'

'(f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan;'

4. Notices were issued to the respondents and they were directed to submit their comments with regard to the public sector universities within their respective jurisdictions. They were also required to disclose those public sector universities in which the positions of Vice-Chancellors and the abovementioned tenured positions were vacant or were held on acting charge basis, and if so since when. The legal requirement of the periodic holding of statutorily prescribed meetings, and whether the public universities were compliant therewith was also sought.

5. It emerged that neither in the Federation nor in any Province the laws were being complied with. Therefore, it was ordered (on 15 May 2024), that:

'The posts of Vice-Chancellors, Pro Vice-Chancellors, Rectors, Presidents, Vice-Presidents, Registrars, Heads of Faculties and Departments, Controller of Examination, Director Finance which are mentioned in the applicable laws, wherever lying vacant, should be filled-in as soon as practicable and this be done in accordance with the applicable law.'

6. The Higher Education Commission ('HEC') had filed a concise statement (C.M.A. No. 9960 of 2024) which brought on record startling facts. The concise statement (C.M.A. No. 9930 of 2024) filed by the Ministry of Education and Professional Training, Government of Pakistan ('the Federal Ministry of Education') provided the requisite information about the twelve universities which were under its domain.

7. While tenured and academic positions in public sector universities were kept vacant, it transpired that there was excess employment of non-academic staff in most universities. The HEC has prescribed a ratio that the non-academic staff to academic staff should not be more than one and a half times, therefore, for instance if the academic staff numbers one hundred the non-academic staff should not be more than one hundred and fifty. Unfortunately, nearly all public sector universities are not compliant with the ratio prescribed by the HEC. The continuous increase in the non-academic staff has been for no good reason. And non-compliance with the

said HEC prescribed ratio adversely affected the financial viability of public sector universities, rendering some of them financially unsustainable.

8. From the information provided by the HEC and the Federal Ministry of Education very serious transgressions committed by some Federal public sector universities were brought to Court's attention. The salient information about the said twelve Federal universities is mentioned hereunder.

9. The National Fertilizer Institute of Engineering and Technology, Multan. This University was established under the National Fertilizer Institute of Engineering and Technology Act, 2012. Mr. Akhtar Ali Malik was appointed as its Vice-Chancellor, however, after his four year term of office had expired the University's Senate had extended it till his replacement was found but not later than two years, that is, till 2018. But he is still holding the position of Vice-Chancellor for the last over six years, and till date. Mr. Akhtar Ali Malik responded by referring to the documents filed by him (C.M.A. No. 9900 of 2024), but the same do not support his holding on to the position of Vice-Chancellor after 2018, and he is continuing in the position of Vice-Chancellor illegally. In addressing the Court he was inarticulate, contradictory and made some surprising statements which made us question whether he was an eminent academic as per the requirement that the Vice-Chancellor must be as stipulated in subsection (1) of section 11 of the National Fertilizer Institute of Engineering and Technology Act, 2012.

10. Mr. Akhtar Ali Malik informed us that his salary was about six hundred thousand rupees, but added that he does not occupy the official residence of the Vice-Chancellor, which he has declared to be a 'VVIP Rest House'. He did not explain his misguided benevolence with the property of the University. Therefore, we can only assume that he did this to cultivate his personal connections. The University is funded by the fees of its students and by the public exchequer and its property cannot be divested or diverted for any purpose other than that of the University. We also deprecate the usage of the acronyms VIP or VVIP and of referring to someone to be a very important person or very very important person. It was expected that in a place of learning the shackles of obsequiousness and mental enslavement would not exist, but Mr. Akhtar Ali Malik proudly wore them as a badge of honour. Moreover, Islamic politics rest on the principle of equality, to which the VIP or the VVIP culture is an anathema.

11. The Federal Ministry of Education and the HEC pointed out that Mr. Akhtar Ali Malik is illegally holding on to the position of Vice-Chancellor, but ironically demonstrated their helplessness, and could not even stop the salary which he was illegally taking since 2018. A sad reflection on the prevalent state of affairs. Mr. Akhtar Ali Malik has no legal authority (after 2018) to retain the position of Vice-Chancellor, therefore, the National Fertilizer Institute of Engineering and Technology is directed to stop all payments to him; and may consider recovering what he had paid to himself after completing his tenure in 2018. Since the University is without a Vice-Chancellor, the Federal Ministry of Education and the HEC are directed to ensure that a Vice-Chancellor is appointed in accordance with

the applicable law and rules as soon as possible to ensure that the functioning of the University is not disrupted. Till the appointment of the Vice-Chancellor, the Federal Ministry of Education and the HEC shall designate an appropriate person to attend to the Vice-Chancellor's responsibilities. Needless to state that anything done, orders passed and appointments made by Mr. Akhtar Ali Malik after this petition was filed will be of no legal effect, and his earlier decisions will be subject to review by the University's Senate or Syndicate, as the case may be.

12. The Federal Urdu University of Arts, Sciences and Technology. This University was established under the Federal Urdu University of Arts, Sciences and Technology, Islamabad Ordinance, 2002. The University has filed a concise statement (C.M.A. No. 9931/2024) which states that the Vice-Chancellor of the University has been appointed in March 2024. The Vice-Chancellor stated that an advertisement was placed in 2019 soliciting applications for different tenured posts and pursuant thereto some applications were received, however, no one was selected as the selection process was left incomplete. He stated that the University faces a dilemma, which is whether to re-advertise the said positions or only consider those who had earlier applied. The Secretary, Federal Ministry of Education, the representative of the HEC and the learned Additional Attorney-General for Pakistan ('AAG') stated that those who had applied pursuant to the earlier advertisement, provided they are still eligible, may also be considered together with those who may now apply pursuant to the fresh advertisement. Their suggestion is reasonable. Therefore, let the said posts be advertised again and those who are found eligible together with those who had previously applied and are eligible may be considered, and the much delayed appointments be made at the earliest.

13. The National College of Arts. This University was established under the National College of Arts Institute Act, 2021. The tenured positions which had remained vacant for a number of years were advertised on 25 August 2024 (after this Court took notice) and the process of appointments, we are informed, will be finalized soon. In view of the stated assurance no further order from this Court is required.

14. The National Skills University. This University is governed by the National Skills University Islamabad Act, 2018. The Secretary, Federal Ministry of Education and the learned AAG stated that the position of the Vice-Chancellor and other vacant positions have been advertised and the process for selection is ongoing and they expect the same to be completed soon and the requisite appointments will be made. In view of the stated assurance, no further order is required to be passed.

15. The Allama Iqbal Open University. This University is governed by the Allama Iqbal Open University Act, 1974. We were informed that the position of the Dean Faculty of Arabic and Islamic Studies had fallen vacant on 20 May 2024 but this position and other tenured positions have been filled-in.

16. The Quaid-i-Azam University. This University is governed by the Quaid-i-

Azam University Act, 1973. The Federal Ministry of Education submitted that on 26 August 2024 its Registrar was appointed on permanent basis and the summary for the appointment of Treasurer, which was lying vacant since 6 September 2017, was submitted to the Prime Minister on 30 August 2024 whose approval is awaited. We expect the needful to be done, if not already done, at the earliest. The vacant position of the Controller of Examinations was stated to be held on acting charge basis, however, the University has advertised the position and pursuant thereto the appointment will be made.

17. It was noted that the University's ratio of academic to non-academic staff was 1:4.73, which exceeds the ratio prescribed by the HEC. The explanation offered for exceeding the prescribed ratio was that it has a large campus which is not enclosed by a boundary wall which had necessitated employing a large number of security staff. The Vice-Chancellor submitted that the Syndicate of the University (in a meeting in which the Chief Justice of Pakistan was also present as a member) took up this matter and the University's land was finally demarcated and encroachments thereon were stopped, and that the boundary wall will be constructed soon.

18. The Vice-Chancellor of the University informed the Court that pursuant to the decision of its Syndicate, rules have been finalized to revive its students union, which had been banned during the undemocratic rule of General Muhammad Zia-ul-Haq, and that elections to the students union will be held during the current semester. Universities should have elected representatives of their students who can formally interact with the universities' administration so that problems can be addressed and resolved, rather than resort had to unnecessary protests and strikes. Therefore, other public sector universities should emulate the example set by the Quaid-i-Azam University and revive students union, but must ensure that student unions are inclusive and not divisive, ethnic or sectarian.

19. The Pakistan Institute of Fashion and Design, Lahore. This University was established under the Pakistan Institute of Fashion and Design Act, 2011. We were informed that it is one of the very few universities which is compliant with the law governing it with regard to appointments of tenured positions and the holding of stipulated meetings of its statutory bodies.

20. The National Textile University, Faisalabad. This University, we were informed, is also compliant with its governing law, the National Textile University Ordinance, 2002, in the matter of appointments of tenured positions. It also regularly holds meetings of its Senate, Syndicate and Academic Council. Moreover, the ratio of academic to non-academic staff is 1:1.5, which complies with the ratio prescribed by the HEC. The Federal Ministry of Education, however, pointed out that the position of its Vice-Chancellor recently became vacant, which has been advertised and will be filled-in by selecting the most competent person.

21. The International Islamic University. This University is governed by the International Islamic University Ordinance, 1985 ('the Ordinance'). The concise

statements submitted by the Federal Ministry of Education and the HEC, supported by the learned AAG, present a dismal picture of the University, and reveal the continuous and repeated violations of the Ordinance. The University has the largest student body of any Federal public sector university in the country and receives the most from the public exchequer. In the current financial year the Federal Government has paid over two billion rupees (Rs. 2,022,779,000) to the University and it has sought a further two billion and four hundred million rupees (Rs. 2,397,431,000) from the Federal Government. The University also received grants from Saudi Arabia and Kuwait. The Rector of the University, Dr. Samina Malik, has filed a concise statement (C.M.A. No. 9901/2024), which is co-signed by the University's Legal Advisor, Mr. Rehan-ud-Din Khan Golra, which surprisingly states that the University is a 'non-public sector university'. This assertion is irreconcilable with the Ordinance and also with the fact that the University receives the largest amount from the public exchequer and much more than any other university. Therefore, the Rector and the Legal Advisor's written statement that the University is not a public sector university raised very serious doubts about their understanding, ability and competence, and whether they are at all capable to continue holding these positions.

22. The contents of C.M.A. No. 9901 of 2024, filed by the Rector and the Legal Advisor also do not serve the interest of the University and do not provide requisite information. It instead seeks to scandalize the Court with a view to protect personal interests and benefits. Both the Federal Government and the HEC have raised serious concerns about the manner in which the University is being run and the HEC also complained that the Rector of the University does not attend meetings called by the Chairman of the HEC despite being in the same city.

23. The Board of Trustees, which is the highest body of the University, had last met on 11 December 2023, under the Chairmanship of its Chancellor, the then President of Pakistan, Dr. Arif Alvi, however, the minutes of the said meeting have still not been issued. The Rector and Legal Advisor audaciously stated that the minutes were not issued because they 'were not approved', although their approval by them was not required. In refusing to issue the minutes of the Board of Trustees meeting (held on 11 December 2023) till date of the hearing and not abiding by the decisions taken at such meeting, the Rector and the Legal Advisor have effectively rebelled against the University. The Legal Advisor's lack of understanding of the Ordinance and his conduct in Court cannot be condoned. His job is to ensure compliance with the Ordinance but instead facilitates its violation. Therefore, to save the University from further damage by his hands, he must be immediately removed and the University shall appoint a qualified and competent person, who is conversant with the law, as its Legal Advisor.

24. During the hearing, it transpired that when the former President of the University retired on 16 July 2024, Mr. Muhammad Sarwar was appointed in his place as the President of the University through the following office order dated 15 July 2024:

'OFFICE ORDER

Consequent upon the completion of four-year tenure of Dr. Hathal bin Hamoud Al-Otaibi as President, International Islamic University, Islamabad on 16th July, 2024, the Rector IIUI, in terms of subsection (2) of Section 13 IIU Ordinance, 1985 has been pleased to appoint Prof. Dr. Muhammad Sarwar, Vice-President (Administration and Finance) to perform the duties of the President, IIUI w.e.f. 17th July, 2024 till further orders.'

The Director (HR) of the University informed the Court that the above office order was issued on the direction of Mr. Muhammad Sarwar himself. The representative of the HEC and the learned AAG referred to subsection (2) of section 13 of the Ordinance and stated that the Rector does not have the power to appoint the President thereunder, which is applicable only when the President is temporarily unable to perform his functions, but not when the office of the President falls vacant, as in the present case. Employees of the University's first and foremost duty is to abide by the Ordinance, and they are not bound to obey orders which are manifestly illegal (*Syed Mahmood Akhtar Naqvi and others v Federation of Pakistan and others*, PLD 2013 Supreme Court 195). We were informed that Mr. Muhammad Sarwar's earlier appointment as the Vice-President (Administration and Finance) was also in contravention of the Ordinance because Vice-Presidents are to be appointed by the Board of Governors on the recommendation of the President, as stated in section 14 of the Ordinance, however, the Board of Governors did not appoint him. It was also pointed out that Mr. Muhammad Sarwar was initially appointed as a Professor in the University on 31 August 2022, on contract, for a period of two years, but this too was done without complying with the requisite competitive process, and a few days thereafter, on 9 September 2022, the Rector appointed him as the Dean Faculty of Education and extended his contract for two years on 22 September 2023. This appointment too was without the requisite competitive process, and was done despite Mr. Muhammad Sarwar's attaining the age of superannuation on 3 March 2025, which meant that his contractual employment would extend beyond his superannuation date.

25. We have examined the provisions of the Ordinance and it is clear that Mr. Muhammad Sarwar's appointments as Professor, Dean and Vice-President were not in accordance therewith. His appointment as the President of the University by the Rector was also illegal. Therefore, it is declared that Mr. Muhammad Sarwar's appointment as the President of the University, and the abovementioned office order appointing him, is of no legal effect. Since the position of the President is vacant, therefore, appointment thereto be made in accordance with subsection (1) of section 13 of the Ordinance, after framing the rules 'with the help of HEC through IIU's BOG... in a very rigorous and transparent manner' as was decided by the University's Board of Trustees in its 14th meeting, held on 30 June 2020. Till the appointment of the President, the most senior Vice-President of the University should hold the charge of the President of the University.

26. Despite being directed to attend Court, the Rector did not do so and claimed that she was indisposed. The Legal Advisor also raised untenable objections and

tried to scandalize the Court. Since neither the Rector nor the Legal Advisor provided the requisite information and the Federal Government and the HEC had levelled serious allegations against them, we wanted to provide the Rector and Mr. Muhammad Sarwar another opportunity to respond thereto. Therefore, we had kept aside this matter, and took it up again when the Rector came, but when she came, all that she said was that she was unwell. The Rector's failure to respond to the serious allegations, non-disclosure of material facts, not performing her functions in accordance with the Ordinance and being ill, make her unfit to continue holding the position of Rector. The Legal Advisor too had nothing to say, save to continue scandalizing the Court. What, however, they apparently did, was to provide to a YouTuber the recording of select portions from the meeting of the Board of Trustees held on 11 December 2023, and did so without its permission.

27. We were informed that the non-academic staff of the University exceeds the academic staff by over three and half times, the actual ratio is 1:3.61, which was considerably higher than the ratio prescribed by the HEC. In view of the substantial financial dependency of the University on the funds provided by the Federal Government to its excessive employment of non-academic staff for no justifiable reason is financially destroying the University. Therefore, further appointments of non-academic staff must be stopped, unless absolutely necessary and if so, they can only be employed, provided specific approval of the Board of Governors of the University is given in respect of each individual to be engaged.

28. The paid employees of the University appear to have taken over the control of the University and ruining it for their personal advantage and benefit by squandering its public funds. Therefore, it will be appropriate to appoint the Auditor-General for Pakistan to undertake a special financial audit of the University, and to advise on the steps to be taken for the proper utilization of the University's funds. The report of the Auditor-General be submitted to the Board of Governors of the University, to the Federal Ministry of Education and to the HEC.

29. The University, we were informed, was truly international in the past with about sixty per cent foreign students, but the number of foreign students has progressively gone down and now the University has only eight per cent foreign students (mostly from Afghanistan). The University was ranked to be third best university in Pakistan but its ranking has slumped down to number eleven and it was ranked in the top 250 universities of Asia, but is no longer ranked because it has fallen below the last number that receives a rank. In world ranking, as per World QS Ranking, the University was placed within the 1001 to 1200 group, but is no longer in this group and has fallen below the last ranked university.

30. The University's Shariah Academy has declined, and a retired professor has been given the additional charge of its Director-General who simultaneously holds the charge of the Dean of the Faculty of Shariah and Law. For the last about four years, neither the Shariah Academy nor the Faculty of Shariah and Law has, as required, been headed by a permanent Director-General and Dean, respectively. The University's Dawah Academy has been made redundant, as nearly all its teaching staff has been transferred to other departments. The Iqbal International Institute for

Research and Dialogue was highly acclaimed but for the last three years a non-academic is temporarily heading it, and all the research and academic activities of the Institute have stopped.

31. The learned AAG stated on behalf of the Government of Pakistan that it is very important to run the University in accordance with the Ordinance, transparently and efficiently, and all the more so also because it is an international Islamic centre of learning and friendly countries, like Saudi Arabia and Kuwait, extend financial support to it, which is appreciated by the Government of Pakistan.

32. As per record, Dr. Samin Malik, the Rector, committed a number of violations of the Ordinance, including:

- (a) Illegally withholding the minutes of the Board of Trustees meeting held on 11 December 2023;
- (b) Not convening meetings of other statutory bodies of the University, including the Board of Governors;
- (c) Withholding requisite information;
- (d) Failing to implement the decisions of the Board of Trustees, taken in its meeting held on 30 June 2020, to frame rules of the selection criteria for appointment of the President of the University;
- (e) Illegally appointing the President of the University without having the legal authority to do so;
- (f) Failing to attend the meetings which a Rector should attend; and
- (g) Leaving unattended the deterioration that has taken place (noted above).

The Rector has failed to, 'ensure that the provisions of the Ordinance, the Statutes, the Regulations, the Rules, policies and directions of the Board of Trustees are properly executed' as stipulated in subsection (3) of section 12 of the Ordinance. The Rector also stated that she is not keeping good health. Therefore, the Chancellor of the University may remove the Rector and, in the interregnum, to stop the Rector from further undermining the interests of the students and damaging further the reputation of the University, she is suspended. The Rector of the University holds the highest paid position, after the Chancellor in Pakistan. The Pro-Chancellor is a foreigner who resides in Saudi Arabia. Therefore, a competent and fit person must be appointed as the University's Rector.

33. The learned AAG referred to a Notification dated 30 December 2022 whereby the 'charge of the position of Vice Chancellor' of a university was given to the 'Executive Director, Higher Education Commission' temporarily 'till the appointment of regular Vice Chancellor', and the Secretary Federal Ministry of Education states that the same be done in the instant matter. Therefore, the Chairman of the HEC or his nominee, who is a permanent member of the HEC, be

appointed to hold the acting charge of the office till a permanent Rector is appointed and requisite notification in this regard be issued immediately by the Federal Ministry of Education.

34. There are three other universities under the Ministry of Federal Education but these have not yet started functioning.

- (1) The Hyderabad Institute for Technology and Management, Hyderabad was established in December 2021; its Rector has been appointed on 21 July 2023 but its Board of Governors has not yet been constituted. This University is paid one hundred and fifteen million rupees as operational costs and an amount of one billion and twenty-seven million rupees is earmarked for its civil works.
- (2) Pir Roshaan Institute of Progressive Sciences, Miran Shah was established under the Pir Roshaan Institute of Progressive Sciences Act, 2023 on 18 April 2023 but neither its Vice-Chancellor nor its Board of Governors has been appointed.
- (3) Kalam Bibi International Institute for Women, Bannu was established on 7 June 2023 under the Kalam Bibi International Institute for Women, Bannu Act, 2023, but as yet neither its governing body nor its Vice-Chancellor has been appointed.

35. The COMSATS University Islamabad is governed by the COMSATS University Islamabad Act, 2018. The learned AAG submitted that this University is under the administrative control of the Ministry of Science and Technology. He further stated that there are a number of other universities which are under the administrative control of the Ministry of Defence. However, no information was provided about these universities as it was stated that the Federal Ministry of Education does not keep such information. This is regrettable. It should have been ensured that the information which was sought should have been provided with regard to every university which comes under the Federal Government, including those under its Ministry of Science and Technology and Ministry of Defence.

36. As regards the public sector universities in the Provinces, the following information was provided. In Balochistan, there are 11 public sector universities and 5 of them are without Vice-Chancellors. In Khyber Pakhtunkhwa, there are 34 public sector universities of which 19 are functioning without Vice-Chancellors. In Punjab, there are 34 public sector universities and 25 are functioning without Vice-Chancellors. In Sindh, out of the 27 public sector universities 7 are without Vice-Chancellors. The public sector universities in the Provinces are beset with some of the same problems as noted in respect of the Federal public sector universities, including making temporary appointments to tenured positions and not holding the prescribed meetings of their statutory bodies. We were informed that after this Court took notice, corrective measures are being taken and the public sector universities in the Provinces are endeavouring to ensure compliance with their respective laws.

37. Properly run universities have manifold benefits. They provide educated, trained and competent persons who may be inducted into the service of Pakistan or render service in the private sector. Having good universities in the country means that students who may go abroad for higher education may not do so, and resultantly valuable foreign exchange is saved, and good local universities attract foreign students and earn foreign exchange for the universities and for the country. And, most of all, education instills the ability of educated discourse and debate and contributes in stemming extremism, which often results in violence perpetuated by the uneducated easily impressionable mob.

38. We want to make it clear that this Court does not in any manner want to substitute itself with public sector universities' governing bodies and curtail their autonomy. However, since the Association drew our attention to the prevailing state of affairs which was found to be most unsatisfactory and as many public sector universities were not compliant with their applicable laws, this Court had no option but to ensure compliance therewith, and in cases of gross transgressions.

39. Therefore, for the aforesaid reasons, this petition is allowed and in addition to the specific orders and directions (as noted above) all Federal and Provincial public sector universities ('the universities'), the Federal Ministries of Education, Science and Technology and Defence, the Provincial Ministries of Education, the HEC and the Provincial Higher Education Departments ('HEDs') are directed as under:

- (a) Governing bodies of the universities, respectively referred to in their respective laws whether as board of governors, board of trustees, syndicates, senates and academic councils, must meet (at least) the minimum prescribed times.
- (b) Appointments be made to all tenured positions in the universities as prescribed in their respective laws, including those of Vice-Chancellors, Registrars, Directors-General, Deans, Treasurers/ Directors of Finance, Controllers of Examinations, Chairpersons and others specified therein, and this must be done transparently and on merit, by stipulating their respective criteria and inviting appointments through their respective websites and advertisements.
- (c) Vacant tenured positions must not be held for more than six months on acting-charge-basis and such temporary charge be given to that person who is specified in the applicable law and, in the absence thereof to a person of equivalent seniority, failing which to the person next in seniority.
- (d) The Federal Ministries of Education, Science and Technology and Defence, the Provincial Ministries of Education, the HEC and the HEDs of the Provinces must collate requisite information about the universities under their respective jurisdictions, and periodically check if they are compliant with their respective laws. Such information should be made publicly accessible on their websites.
- (e) The universities should not exceed the academic to non-academic staff ratio prescribed by HEC, and those universities which have exceeded

the same must not hire further non-academic staff, unless absolutely necessary after specific permission is granted by their respective governing bodies.

- (f) Student unions be revived in universities but it must be ensured that they are inclusive and not divisive, ethnic or sectarian.
- (g) HEC and HEDs should annually rank the universities in their respective jurisdictions pursuant to internationally recognized criteria.
- (h) The Shariah Academy, the Dawah Academy and the Iqbal International Institute for Research and Dialogue of the International Islamic University be made fully functional in compliance with their respective statutes.
- (i) A safe and harassment free environment, free of psychotropic drugs and weapons must be ensured in the universities. Transgressors and those who destroy universities' properties must be dealt with strictly.
- (j) Hostels meant for the students enrolled in the universities must not be allowed to be occupied by those who have completed their studies and by outsiders.
- (k) Community service, sustainable living, good environmental practices, inter-university competitions, sports, games and debates should be encouraged.
- (l) Research culture and research based publications should be promoted.
- (m) The lands of the universities must be demarcated, if not already demarcated, and if their land or any part thereof is encroached upon, encroachments therefrom be removed. Universities must also secure their lands. Iron grills and steel mesh boundaries can be installed quickly and cheaply and do not require much maintenance and also do not block vision, however, if a solid brick or block wall is required it would be best not to plaster and paint it to avoid periodical and perpetual drain of resources. The universities' ownership of land must be recorded in the record of rights.

40. Copy of this Judgment be sent to the HEC and the HEDs for onward transmission to the public sector universities under their respective jurisdictions for information and compliance. Copies for information and compliance be also sent to the Ministries of Education, Science and Technology and Defence of the Federal Government and to the Education Ministries in the Provinces.

41. In view of the public importance of this matter, this judgment is to be translated into Urdu, however, the English version shall be treated as the decision of this Court in terms of Article 189 of the Constitution.

MWA/A-47/SC Petition allowed.

;