ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3048 of 2019
Dr. Farmanullah Wazir
Versus
Vice Chancellor, Shaheed Zulfiqar Ali Bhutto Medical University and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.10.2021	**Mr. Amaad Nasir Kundi, Advocate for the petitioner,** **Mr. Muhammad Soban Hayat, Law Officer, S.Z.A.B.M.U.**

Through the instant writ petition, the petitioner, Dr. Farmanullah Wazir, impugns the decision dated 26.08.2019 passed by the Syndicate of the Shaheed Zulfiqar Ali Bhutto Medical University **("S.Z.A.B.M.U.")**, whereby his representation / appeal against the recovery of the monetization allowance, was turned down.

2. This is the second round of litigation between the petitioner and S.Z.A.B.M.U. Earlier, vide order dated 29.10.2018, writ petition No.3285/2017 filed by the petitioner was disposed of by this Court with the direction to S.Z.A.B.M.U. to decide the petitioner's pending departmental appeal against the recovery of the monetization allowance that had been paid to him up to April 2017.

3. Through the impugned letter dated 26.08.2019, S.Z.A.B.M.U. turned down the petitioner's appeal against the decision to recover the monetization allowance paid to him. The said decision has been assailed by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner submitted that the petitioner had to forego a lucrative employment in Saudi Arabia in order to gain employment in S.Z.A.B.M.U.; that the petitioner had not maneuvered the payment of monetization

allowance to him; that the petitioner should not be made to suffer for the mistake regarding the payment of monetization allowance committed by S.Z.A.B.M.U.; that the recovery of the monetization allowance from the petitioner was unlawful; that other Professors in the employment of S.Z.A.B.M.U. were receiving monetization allowance; and that the petitioner has been meted out discriminatory treatment due to non-payment of monetization allowance. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned decision dated 26.08.2019 to be set-aside.

5. On the other hand, the Law Officer of S.Z.A.B.M.U. submitted that it was not obligatory on S.Z.A.B.M.U. to adopt the monetization policy of the Federal Government; that employees of S.Z.A.B.M.U. in BS-20 to 22, who were civil servants, were receiving monetization allowance on the strength of the letter dated 12.12.2011 from the Cabinet Division; that the petitioner is not a civil servant and therefore, cannot be paid monetization allowance unless the monetization policy is adopted by the competent authority in S.Z.A.B.M.U.; that at no stage has the monetization policy been adopted by the Syndicate or the Board of Governors of S.Z.A.B.M.U.; that S.Z.A.B.M.U. stopped paying monetization allowance to the petitioner after the Audit Officer raised an objection to such payment on the ground that the monetization policy had not been adopted by the competent authority in S.Z.A.B.M.U.; and that the petitioner had submitted an undertaking to the effect that if the monetization policy is not adopted by S.Z.A.B.M.U., he would return the monetization allowance received by him. The Law Officer of

S.Z.A.B.M.U. prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the petitioner and the Law Officer of S.Z.A.B.M.U. and have perused the record with their able assistance.

7. The facts forming the background of the dispute were set out in sufficient details in the said order dated 29.10.2018 passed in writ petition No.3285/2017, but for the purposes of this petition, the essential facts are that on 04.08.2016, the petitioner was appointed as Professor (Physiology) (BS-21) with effect from 01.10.2015 at S.Z.A.B.M.U. Letter dated 04.08.2016 from S.Z.A.B.M.U. to the petitioner shows that his employment was to be governed by the appropriate rules of the University applicable to its employees from time to time.

8. The Cabinet Division, vide letter dated 12.12.2011, approved *"compulsory monetization of transport facility for civil servants in BS-20 to 22"* to be implemented from 01.01.2012.

9. Since the petitioner was not a civil servant, he could not be paid monetization allowance on the strength of the Cabinet Division's said letter dated 12.12.2011. However, the civil servants in BS-20 to 22 working in the Pakistan Institute of Medical Sciences (the predecessor of S.Z.A.B.M.U.) were paid monetization allowance.

10. Vide Office Memorandum ("O.M.") dated 11.02.2013 issued by the Cabinet Division, it was directed that all Ministries / Divisions may allow the Semi-Autonomous / Autonomous Bodies, Corporations, etc. under their administrative control to decide whether or not to adopt the monetization policy with the approval of their competent forum / authority i.e. Board of Governors, Principal Accounting Officers, etc.

11. On 08.06.2017, the Syndicate of S.Z.A.B.M.U. resolved to recommend / approve the monetization allowance for faculty of basic medical sciences of S.Z.A.B.M.U. and referred the matter to the Higher Education Commission ("H.E.C.") with a request to consider the same within a period of two weeks. Furthermore, it was resolved that the Vice Chancellor of S.Z.A.B.M.U. can also pay the monetization allowance from its own resources.

12. The matter whether monetization allowance could be paid to the employees of S.Z.A.B.M.U. was considered by the Syndicate of the said University on 31.07.2019, and it was to constitute a two-member committee to examine the salaries of Professors in other medical / non-medical universities and submit a report to the Vice Chancellor for further perusal of the H.E.C. on whether further allowances should be admissible. The committee, in its report dated 19.12.2019, suggested that S.Z.A.B.M.U. would face budgetary constraints if any allowance in excess of the prevalent pay and allowances was allowed. The said report shows that the pay and allowances paid by S.Z.A.B.M.U. to its Professors were compatible with universities in Islamabad and Rawalpindi.

13. The fact remains that till date a decision has not been taken by the Syndicate to pay monetization allowance to Professors. On the contrary, the Syndicate discussed the matter regarding payment of monetization allowance in its 13th meeting held on 31.07.2019 and decided that monetization allowance was not admissible to the employees of S.Z.A.B.M.U. or the H.E.C.'s employees.

14. Since it is not obligatory on the Syndicate of S.Z.A.B.M.U. to adopt the monetization policy for civil servants in BS-20 to 22 set out in the Cabinet

Division's letter dated 12.12.2011, this Court cannot direct S.Z.A.B.M.U. to pay monetization allowance to its employees who are not civil servants in BS-20 to 22.

15. The next question that needs to be decided is whether S.Z.A.B.M.U. can recover the monetization allowance already paid to the petitioner. Apparently, S.Z.A.B.M.U. paid monetization allowance to the petitioner in anticipation of a decision by the Syndicate to adopt the monetization policy for civil servants in BS-20 to 22. The Law Officer of S.Z.A.B.M.U. placed reliance on an undertaking submitted by the petitioner on stamp paper to the effect that if the monetization policy is not adopted by S.Z.A.B.M.U., he would refund the whole amount of the monetization allowance paid to him. The petitioner, in fact, wants this Court to relieve him from his liability to return the monetization allowance even though the monetization policy has not, at any material stage, been adopted by the Syndicate of S.Z.A.B.M.U. for its Professors holding posts equivalent to BS-20 to 22. The said undertaking shows that the petitioner was conscious of the fact that in case the monetization policy is not adopted by the Syndicate of S.Z.A.B.M.U., he would be liable to return the amount paid to him as monetization allowance. The petitioner must be held by his undertaking.

16. In exercise of the powers conferred by Section 30 of the Shaheed Zulfiqar Ali Bhutto Medical University Act, 2013 **("the 2013 Act")**, the Senate, on the recommendations of the Syndicate of S.Z.A.B.M.U., has made the Shaheed Zulfiqar Ali Bhutto Medical University (Employees Service) Rules, 2020 **("the 2020 Rules")**. These Rules are contained a notification dated 21.10.2020 (SRO

1161(I)/2020). Rule 113 of the 2020 Rules provides that the allowances, including over time allowance and perquisites shall be admissible to employees on the rates and conditions as specified in the said Rules. Paragraph 12 of the Appendix-4 titled *"Allowances and Requisites"* of the said Rules provides that Grade-19 to 22 officers of the University shall be entitled to draw transport monetization allowance subject to surrender of transport facility on the rates as prescribed by the Government from time to time.

17. The Law Officer of S.Z.A.B.M.U. brought on record extract from the proceedings on the 20th meeting of the Syndicate of S.Z.A.B.M.U. held on 27.07.2021, which shows that it had been decided that the payment of the transport monetization allowance had been deferred. The said decision of the Syndicate is not under challenge in this petition. The only matter that this Court has to decide whether the decision of S.Z.A.B.M.U. to recover the monetization allowance already paid to the petitioner is correct or not. I have already held that since the competent authority in S.Z.A.B.M.U. had, at no stage, adopted the monetization allowance for its employees in posts equivalent to BS-20 to 22, and since the petitioner had already given an undertaking that he would repay the monetization allowance received by him, if S.Z.A.B.M.U. did not adopt the monetization policy, the decision to recover the monetization allowance already paid to him does not suffer from any legal infirmity.

18. In view of the above, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE