JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 1015/2020

MST. GHOUSIA SHABBIR ULLAH

Vs

NATIONAL UNIVERSITY OF MODERN LANGUAGES, ETC

Petitioner by	**:**	**Mr. M. Asghar Abbasi, Advocate.**
Respondents by	**:**	**Mr. Nauman Munir Paracha, Advocate.**
Date of hearing	**:**	**25.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, Mst. Ghousia Shabbir Ullah **("Petitioner")** has assailed the Notification No.ML-10-4/2000-Admin-645 dated 23.02.2017 **("Impugned Termination Notification")** issued by the Respondents.

2. The brief facts leading to the filing of the present Writ Petition are that the petitioner remained serving the Respondent University with effect from 03.01.2006 as Lecturer (BPS-18) in the department of Mass Communication and as per the seniority of Lecturers list Notification dated 8.2.2009, the Petitioner's name appeared at serial No. 58 out of 231 Lecturers and her services stood confirmed by the Respondents being satisfied by the services rendered by the petitioner. The petitioner applied for study leave for a doctoral program (Ph.D) studies at LMU, Germany, and after fulfillment of all codal formalities as per rules and regulations of the Respondent University, the petitioner was granted study leave with average pay from 24.2.2012 to 23.2.2015 and one year study leave without emoluments from 24.2.2015 to 23.2.2016. The petitioner completed her thesis in February 2016 and handed it over to her superiors for evaluation. The petitioner submitted an application dated 21.6.2016 to the superiors for extension of study leave for completion of thesis evaluation. That application for extension of study leave was duly acknowledged by Respondent No.2 and in response, a letter dated 13.7.2016 from Respondent No.2 was received by the petitioner and to further proceed with the leave extension request, the petitioner was required to provide a detailed program

of the Ludwig Maximilians University (LMU) Munich, Germany i.e. duration of study and progress report. In response, the petitioner provided the details of the study program of (LMU) and the duration for completion of her studies, requesting further extension of study leave from 24.2.2016 to 23.8.2017 without pay. Instead of providing an extension of study leave for completion of her study program for Ph.D, a show cause notice dated 06.9.2016 was issued by Respondent No.2 which was received on 26.9.2016 stating that the Petitioner was absent from duty with effect from 24.2.2016. The Petitioner has responded in detail to the show cause notice, but no response thereof was received from the Respondents, and lastly, the Impugned Termination Notification was sent to the residential address of the Petitioner at Rawalpindi. The Petitioner filed a departmental appeal on 6.11.2018, but in response, instead of denying the appeal, Respondent No.1 vide letter dated 21.8.2019 conveyed its reply. As the Respondents failed to decide the appeal of the Petitioner then the Petitioner served a Legal Notice dated 28.9.2019 to Respondent No. 1. Being aggrieved by the Impugned Termination Notification dated 23.02.2017, the Petitioner has filed the instant petition.

3. The learned counsel for the Petitioner argued that Respondents sent the Impugned Termination Notification at the address of Rawalpindi in spite of the knowledge that the Petitioner is in Germany pursuing her Ph.D studies and not residing at Rawalpindi, and that the Petitioner found the Impugned Termination Notification when she came back to Pakistan; that the Impugned Termination Notification lacks details and reasons for termination of the Petitioner which is against law and facts of the case; that the Supervisor of the Petitioner's Ph.D program Dr. Thomas Hanitzsch, Chair and Professor of Communication, informed the Respondents, communicated vide letter dated 19.6.2016 and confirmed that the Petitioner was pursuing her doctoral degree at (LMU) under his supervision and above letter was followed by another letter dated 22.7.2016 which communication establishes that Ph.D of the Petitioner was in progress, therefore, extension of required leave was justified; that in the circumstances, the Petitioner was entitled to an extension of study leave and in spite of clear correspondence between the Respondents and the supervisor, chair and Professor of communication of (LMU), there was no occasion for the Respondents to refuse the same, culminating in termination; that the Impugned Termination Notification is illegal, void *ab initio*, against the settled principles of law and violative of provisions of the Constitution;

that the show cause notice was issued in compliance with Efficiency & Discipline Rules, 1973, therefore revised leave rules 1980 are also applicable, and extraordinary leave without pay could be granted by the competent authority in a genuine case, that too retrospectively; that it was not possible for the Petitioner to leave the Ph.D study in midstream, which fact constrained the Petitioner to apply for extension of leave for study till its completion which requirement was also endorsed by the faculty at LMU, Munich Germany **,** who in clear words declared that the Ph.D of the Petitioner cannot be completed before June, 2017; that if the Petitioner had prior information regarding non-extension of requisite leave, then the Petitioner could have availed other options , i.e., Maternity leave and sabbatical leave, etc; that the Respondents failed to decide the appeal of the Petitioner, and she was condemned unheard, hence the acts of the Respondents are violative of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973; that the Petitioner has no alternate, efficacious and speedy remedy against the adverse act of the Respondents except to invoke the Constitutional jurisdiction of this Honorable Court. Lastly, it is prayed that appropriate writ may be issued and the Impugned Termination Notification No. ML-10-4/2000-Admin-645 dated 23.2.2017 may kindly be declared as illegal, void *ab-initio*, without any lawful authority and jurisdiction, against the law on the subject and rules and regulations framed there under and having been passed without hearing the parties, same may be set aside and the Petitioner may be reinstated to her post with all benefits with retrospective benefits.

4. On behalf of Respondents, it is argued that the instant Writ Petition is hit by the principle of laches, therefore, the same is liable to be dismissed; that admittedly, the service rules governing the terms and conditions of employees of the university are non-statutory in nature and therefore, the relationship between the Petitioner and Respondent University is that of master and servant. The writ petition under Article 199 of the Constitution is not maintainable before this Court; that the National University of Modern Languages (NUML) is an autonomous body. Section 4 of the National University of Modern Languages Ordinance, 2000 empowers the University to create posts for teaching, research, administration and other related purposes and to appoint persons thereto. The service statute of the National University of Modern Languages categorizes the university service into two categories: Category 1 - Academic and Administrative Staff in BPS 17 and above. Category 2 - Academic and Administrative Staff in BPS 1 to 16. The appointment

in category 1 is to be made by the Board of Governors on the recommendation of the selection board, and the appointment in category 2 shall be made by the Rector. The Federal Government/Government of Pakistan does not play any role nor does it have any power to appoint employees of the University. Therefore, the writ petition is not maintainable; that Respondents (NUML University) did not violate any law or regulation, rather the actions taken by the university are strictly in accordance with the Service Regulations and NUML Ordinance 2000, therefore, writ petition under Article 199 of the Constitution is not maintainable; that the instant writ petition involves disputed questions of fact which cannot be resolved without recording of evidence, therefore, the instant Writ Petition is not maintainable; that the instant petition has been filed with *malafide* intentions, ulterior motives and concealment of real facts, therefore, the same is liable to be dismissed; that after February 2016, the leave of the Petitioner was regretted by the competent authority and she did not join the university despite repeated reminders dated 03-03-2016, 26-04-2016 and 10-05-2016. She was asked thrice to join the university as per rule, but she did not report back and absented herself from duty; that absence from duty is a misconduct and finally she was given a show cause notice under section 27 of NUML Ordinance on 06.09.2016 and the same notice was also advertised in the newspaper Daily Express on 23.06.2016. The Petitioner has not responded to any of the notices issued by the university, therefore, her case was placed in the 12th meeting of the BOG for termination and the BOG approved her termination with effect from 24.02.2016 vide notification dated 23.02.2017; that the Impugned Termination Notification dated 23.02.2017 was perfectly in accordance with law and the NUML, after fulfilling all the codal formalities, passed the Impugned Termination Notification strictly in accordance with law. The Impugned Termination Notification dated 23.02.2017 was issued by the Respondent University whereby the services of the petitioner were terminated with effect from 24.02.2016 and the same was communicated to the petitioner. She filed an appeal under Section 28, which was regretted by the Respondent University on 11.04.2017. Lastly, it is prayed that this writ petition may kindly be dismissed with costs in the interest of justice.

5. I have heard the learned counsel for the parties and perused the available record with their able assistance.

6. The Petitioner has filed the instant Writ Petition on 16.03.2020, feeling aggrieved by her termination from service by the decision of the Board of Governors

of the National University of Modern Languages vide the Impugned Termination Notification dated 23.02.2017. She challenged the decision through an appeal, which was also dismissed on 11.04.2017. She filed the instant Writ Petition almost after expiry of three years, therefore, the principle of laches will also come in the way of the instant Writ Petition. Secondly, NUML University is governed by the rules which are not statutory in nature, therefore, writ jurisdiction cannot be invoked in such situation. Reliance is placed upon the ruling of the august Supreme Court of Pakistan rendered in **Civil Appeal No.1504 of 2013** titled *"Muhammad Islam Vs. Quaid-e-Azam University and others"* and review against the said petition was also dismissed by the Worthy Supreme Court in Civil Review Petition No.75 of 2016 in Civil Appeal No.1504/2013. The Petitioner will be governed by the rule of master and servant and for that the only remedy is to file a suit for damages before the Civil Court. Reliance is placed on the cases of *"Principal Cadet College Kohat Vs. Muhammad Shoaib"* **(PLD 1984 Supreme Court 170)**, *"Anwar Hussain Vs. Agriculture Development Bank of Pakistan"* **(PLD 1984 SC 194)** and *"University of Punjab Vs. Sardar Ali"* **(1992 SCMR 1093)**.

7. On the other hand, the learned counsel for the Petitioner stated that the High Court under writ jurisdiction can entertain the grievance of a petitioner against a body which is not statutory in nature, if the impugned act is against natural justice. In the present case, the Petitioner remained absent from duty despite several notices by the University, and she failed to join her service, thus, the termination of her service by the Respondents due to her absence from duty cannot be termed as against natural justice.

8. For the foregoing reasons, the instant Writ Petition is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of May 2025.

JUDGE

Sajid/--