ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1079 of 2021
Muhammad Rafiq
Versus
The Vice Chancellor, AIOU, Islamabad, etc. .

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.11.2022	Petitioner in person. Muhammad Zahid Tanveer, Advocate for respondent. Khalid Mehmood Dhoon, AAG. Fazal-e-Rabbi, Deputy Registrar (Legal) AIOU. Dr. Agha Ghulam Haider, DD (Legal) M/o FE&PT.

ARBAB MUHAMMAD TAHIR, J: Through the instant writ petition, petitioner namely *Muhammad Rafiq* has prayed for the following relief:-

i- To issue a revised pension payment order based on qualifying service of 40 years and 4 months w.e.f. 12.09.2011 i.e. the date of retirement, on the basis of which University claimed/actually received pension share from parent departments i.e. Pakistan Post.

ii- To pay the petitioner the amount of Rs. 706, 211/- received by the University from them or

iii- To return the amount received from GPO Islamabad for making payment of the same to the petitioner.

2- The subject matter of the instant writ petition is '*provision of pensionary benefits*' to the petitioner at par with his actual length of service i.e. 40-Years and 04-Months. The petitioner, aged about 70-years, stood retired from the service of the Allama Iqbal Open University ("**AIOU**") on attaining the age of superannuation on 12-09-2011 as Controller of Examinations (BS-19). Prior to joining the AIOU through proper channel on 01-04-1986, the petitioner served for 13 years in 03 different Federal Government departments without any break in the service in BPS 07 & 11. As per its rules, the AIOU collected pension share of the petitioner from the departments where he served previously except the Post Master General, Federal Circle/respondent No. 03. The petitioner requested the AIOU multiple times for doing the needful and ultimately his request was acceded to by the latter vide Letter dated 23-02-2015 and

pursuant thereto an amount of Rs. 706,211/- as pension dues for the period served by the petitioner with respondent No. 3 was received by the AIOU on 12-03-2019.

3- According to the petitioner, the AIOU till date neither disbursed the said amount to him nor did it revised the pensionary benefits as per the Finance Division OM dated 01-07-1986 wherein a civil servant retiring on or after 01-07-1986 shall be allowed additional benefit to the extent of 2% of his gross pension for each extra year of service beyond 30 years of qualifying service subject to maximum of 10% of his pension. The said benefit, as per the petitioner, was later extended to all the Civil Servants, who have retired even prior to 01-07-1986, vide Finance Division's OM dated 13-06-1991, but the petitioner has been denied the same benefit which constrained him to file the instant writ petition after availing remedy of application/appeal.

4- The AIOU-respondents 1&2 resisted the petition by filing written comments mainly on the point of maintainability, *inter alia*, asserting that the *Allama Iqbal Open University (General Conditions of Services) Statute 1978,* framed under Section 24 of the *Allama Iqbal Open University Act 1974,* dealing with different service related matters including but not limited to pension are non-statutory in nature as these were neither made nor approved by the Federal Government. In this context, reliance was placed upon case law reported as **2010 SCMR 1484** and **2020 PLC (CS) 1050**.

5- On merits, it was asserted that the benefit of 2-10% for extra years after completion of qualifying service as provided in O.Ms of 1986 and 1991 has been discontinued pursuant to Clause 16(c) of the Finance Division O.M dated 04-09-2001; therefore, petitioner is not entitled for the claimed benefits.

6- After filing of written response by the AIOU, petitioner filed two civil misc., applications (**CMA No. 1706 & 2177/2022**) for allowing him to

assail the referred OM dated 04-09-2001, made basis by the AIOU to reject the claim of the petitioner.

7- Heard, record perused.

8- At the inception, it is necessary to respond to the prayer made through the Civil Miscellaneous Applications for assailing the referred OM, suffice it to observe that by the proposed amendment, not only the nature of the *lis* will entirely change but the issue would also become more complex. Even otherwise, this Court cannot interfere in the policy matters; hence, request to this effect is declined.

9- Admittedly, a petition in terms of Article 199 of the Constitution is not maintainable against the AIOU in view of the law laid down by the Hon'ble Apex Court in the case reported as **PLD 1984 SC 170** and by this Court in the case of *"***Abdul Shakoor v. AIOU through Vice Chancellor" (2020 PLC (CS) 1050**). The *lis-at-hand* pertains to provision of pensionary benefits. The Hon'ble apex Court has time and again emphasized on timely award of pensionary benefits and its nexus with the fundamental right to life. Reliance is placed upon case law reported as **2021 SCMR 730, 2018 SCMR 736, PLD 2007 SC 35 and 2005 SCMR 292**.

10- The question of payment of pension, being related to right of life under Article 9 of the Constitution of the Islamic Republic of Pakistan, cannot be overlooked irrespective of the fact whether the service rules of an autonomous body are statutory or not. Reliance is placed upon case law reported as **Nasir Kamal v. Federation of Pakistan etc. (2021 PLC (CS) 1226))**. It was held by the Hon'ble Supreme Court in "**Pakistan Defence Officers Housing Authority & others v. Lt. Col. Syed Jawaid Ahmed" (2013 SCMR 1707**) that where action of a statutory authority in a service matter was in disregard of procedural requirements and is violative of principles of natural justice, can be interfered with in writ jurisdiction. In the case of "**Muhammad Rafi & another v. Federation of Pakistan etc." (2016 SCMR 2146**) it was held that an aggrieved person can invoke

constitutional jurisdiction of High Court against a public authority if the act of such authority is violative of service regulations even if they are non-statutory. The jurisdiction in terms of Article 199 of the Constitution in the matter of provision of pensionary benefits against the respondent-AIOU is, therefore, not barred.

11- Adverting to the merits, it is noticed that the petitioner, aged about 70 years, after serving for more than 40 years, stood retired from the service of AIOU on 12-09-2011. The receipt of pension contribution to the tune of Rs. 706,211/- proportionate share, from the previous department of the petitioner i.e. Pakistan Post by the AIOU is also an admitted fact. The dispute primarily involves non-provision of additional benefit of 2-10% for extra years of service beyond the period of 30 years qualified service.

12- The provision of pension is governed by the *AIOU General Conditions of Services Statutes 1978*. Clause 33 of the said Statutes states that AIOU is to accept the pension contribution from the parent department of a Federal Government employee, who leaves a pensionable job and joins the AIOU through proper channel, like the case of the petitioner, who after rendering service with the Respondent No. 3 (Post Master General) joined the AIOU without break in service and as such, the service rendered by the petitioner with Respondent No. 3, apparently is to be counted towards qualifying service for final settlement of pension. The AIOU is bound to expeditiously clear the pensionary benefits as per the said Statutes. It appears that the AIOU despite having received the amount of Rs. 706,211/- from the parent department in 2019 has not yet cleared the issue either by making payment to the petitioner or to return the same to the Respondent No. 3, as the case may be, by following the rules on the subject.

13- The Respondent No. 4 (Finance Division) in its Para-wise comments submitted that the AIOU is an autonomous body and thus, Government of Pakistan, Finance Division (Regulations Wing), Islamabad O.M No. F.1 (5) Imp/2001 dated 04-09-2001 is not *ipso facto* applicable to the employees of the AIOU. Though, the latter asserted to have not disbursed

the claimed benefits to the petitioner in terms of OM dated 04-09-2001 of the Finance Division, yet the fact remains that it is not clear as to whether the instructions contained in the referred OM were adopted and were duly approved to be as such by the competent authority i.e. the Executive Council of the AIOU. The applicability of the referred OM without any explanation appears to be unjustified. This view is supported by the fact that when the instructions under the said OM had already been in field and being followed then how come the AIOU requested the Respondent No. 3 in the year 2015 to provide proportionate share of pensionary benefits of the petitioner which, as per its own stance, pertained to the period beyond 30 years of service.

14- To sum up, it is concluded that the issue i.e. provision of pensionary benefit cannot be kept in lurch for indefinite period, under the law and even under the rules of the AIOU; it has to be decided expeditiously in accordance with the rules. In the case of the petitioner despite having received the contribution from the previous department where petitioner had served in the year 2019, the issue is still undecided by the AIOU for quite significant period.

15- In view of above, the instant writ petition is **disposed of** with direction to the respondents–AIOU to decide the issue expeditiously by taking into consideration the observations *ibid* preferably within a period of one month from the receipt of this order strictly in accordance with law on the subject through a speaking order after affording due opportunity of hearing to the petitioner under intimation to this Court through the Registrar for perusal in chambers.

(ARBAB MUHAMMAD TAHIR)
JUDGE

ISLAMABAD | 21. 11.2022
APPROVED FOR REPORTING

//Kamran//