JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1767 of 2023
International Islamic University through its President and another
Versus
President's Secretariat (Public), Awain-e-Sadar and others

Date of Hearing:	28.09.2023
Petitioners by:	Mr. Rehan-ud-Din Khan Golra, Advocate.
Respondents by:	Mr. Rizwan Ahmad, Legal Assistant for respondent No.1. Mr. Fazal Rabbi, Deputy Director (Legal) for respondent No.3. Mr. Khurram M. Qureshi, Advocate for respondent No.4.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners assail the order dated 28.03.2023 passed by the President of Pakistan, whereby the representation filed by petitioner No.1, International Islamic University, against the order dated 29.03.2022 passed by the Wafaqi Mohtasib (**"Ombudsman"**), was turned down primarily on the ground that in the proceedings before the Ombudsman, petitioner No.1 had taken the position in its letter dated 15.03.2022 that petitioner No.1 will pay respondent No.4's share of the pension, lying with petitioner No.1 for the period that he had served at the said University.

2. Learned counsel for the petitioners submitted that in fulfillment of their commitment, the petitioners forwarded a post-dated cheque for an amount of Rs.885,705/- to the Allama Iqbal Open University / respondent No.3 where respondent No.4 gained employment after he served with petitioner No.1 with effect from 15.06.1985 to 11.08.1999; and that on account of the said payment, no further proceedings could be conducted by the Ombudsman against petitioner No.1.

3. Learned counsel for the petitioners further submitted that in his complaint before the Ombudsman, respondent No.4 had agitated a matter pertaining to the terms and conditions of his service; and that Article 9(2) of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (**"the 1983 Order"**), the Ombudsman could not assume jurisdiction on a complaint of a public servant or a functionary concerning any matter relating to an Agency in which he is, or has been, working in respect of any

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personal grievance relating to his service therein. Learned counsel for the petitioners prayed for the writ petition to be allowed and the concurrent orders passed by the Ombudsman and the President of Pakistan to be set-aside. In support of his submissions, learned counsel for the petitioners placed reliance on the judgment reported as ***PLD 2016 SC 940***.

4. On the other hand, learned counsel for respondent No.4 submitted that pension is a right and not a bounty; that the Hon'ble Supreme Court vide order dated 21.02.2023 in Civil Appeal No.48/2013 had held *inter alia* that government departments should not cause unnecessary hurdles or delay in finalizing the payment of pension and in future violation in this regard shall amount to criminal negligence and dereliction of duty; that petitioner No.1, in its letter dated 15.03.2022, referred to clause 2(viii) of the International Islamic University Pension Statutes, 2004 and took the position that it will pay the share of pension of respondent No.4 for the period he served with petitioner No.1; that vide earlier letter dated 12.03.2021, petitioner No.1 had taken a clear position that it will pay respondent No.4's proportionate share of pension amounting to Rs.84,32,090/- for the period he served with petitioner No.1 from 15.06.1985 to 11.08.1999; that in proceedings before the Ombudsman, petitioner No.1 had admitted respondent No.4's claim; and that the Ombudsman had closed the proceedings because petitioner No.1 had given an assurance that respondent No.4's grievances would be redressed. Learned counsel for respondent No.4 prayed for the writ petition to be dismissed.

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

6. The documents on the record show that respondent No.4 had served with petitioner No.1 from 15.06.1985 to 11.08.1999 as a Member of Faculty. Thereafter, he gained employment with Allama Iqbal Open University on 12.08.1999 and retired from service on 01.01.2020. In his complaint before the Ombudsman, respondent No.4 had sought a direction to petitioner No.1 to release his share of pension.

7. During the proceedings before the Ombudsman, petitioner No.1 submitted letter dated 15.03.2022 in which it was clearly stated that in accordance with clause 2(viii) of the International Islamic University Pension Rules, 2004, petitioner No.1 will pay respondent No.4's share lying

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with petitioner No.1 for the period that he served with the said petitioner. Allama Iqbal Open University through its letter dated 24.01.2020 had requested petitioner No.1 to transfer respondent No.4's proportionate share of pension amounting to Rs.84,32,090/-. Petitioner No.1, however, prepared a cheque for Rs.8,85,705/- in favour of the Registrar, Allama Iqbal Open University and the same was sent along with letter dated 30.05.2022 to the said University. Respondent No.4 along with his written comments has filed letter dated 12.03.2021 from petitioner No.1 in which it is stated that petitioner No.1 will pay the proportionate share of pension in respect of respondent No.4 amounting to Rs.84,32,090/- for period he served with petitioner No.1 from 15.06.1985 to 11.08.1999.

8. It was on the basis of petitioner No.1's letter dated 15.03.2022 that the Ombudsman closed the proceedings. Petitioner No.1 had also assured the Ombudsman that respondent No.4's grievance would be redressed. Petitioner No.1's representation against the Ombudsman's order dated 29.03.2022 was turned down by the President of Pakistan on 28.03.2023.

9. Both the said orders dated 29.03.2022 passed by the Ombudsman and 28.03.2023 passed by the President of Pakistan do not mention the exact amount which was payable by petitioner No.1 as the proportionate share of respondent No.4's pension for the period that he served with petitioner No.1.

10. Respondent No.4 asserts that petitioner No.1 has wrongly calculated the pension share on the basis of basic pay drawn by respondent No.4 at the time when he was relieved by petitioner No.1 in the year 1999, whereas it should have been on the basis of his last drawn pay when he retired from service on 01.01.2020.

11. This Court is not to decide what exact amount was to be paid by petitioner No.1 to Allama Iqbal Open University as respondent No.4's proportionate share of pension for the period that respondent No.4 served with petitioner No.1. This Court is to decide the instant writ of *certiorari* directed against the concurrent orders passed by the Ombudsman and the President of Pakistan. The Ombudsman has initiated proceedings against the petitioners for not complying with its order. The vital question that needs to be determined is whether the Ombudsman had the jurisdiction to hear and decide respondent No.4's complaint.

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12. It is not disputed that respondent No.4's complaint pertains to his pension which is a matter concerning the terms and conditions of his service. Article 9(2) of the 1983 Order reads thus:-

> ***"Notwithstanding anything contained in clause (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matter relating to the agency in which he is, or has been, working in respect of any personal grievance relating to his service therein."***

13. Article 2(6) of the 1983 Order defines a "public servant" as a public servant as defined in Section 21 of the Pakistan Penal Code, 1860, including a Minister, Advisor, Parliamentary Secretary and the Chief Executive, Director, other officer or employee or Member of any Agency. "Agency" is defined in Article 2(1) as a Ministry, Division, Department, Commission or Office of the Federal Government or statutory body, Corporation or other Institution established or controlled by the Federal Government but does not include the Supreme Court, Supreme Judicial Council, the Federal Shariat Court or a High Court.

14. Petitioner No.1 is a statutory body being the creature of International Islamic University Ordinance, 1985. Respondent No.4 comes within the meaning of a "public servant" as he was an employee of petitioner No.1. Since the dispute agitated by respondent No.4 in his complaint before the Ombudsman pertained to the terms and conditions of his service with petitioner No.1, I am of the view that the Ombudsman did not have the jurisdiction to entertain respondent No.4's complaint.

15. The Superior Courts, in several cases, have interfered with the decisions made by the Ombudsman and / or by the President of Pakistan, where jurisdiction had been assumed in violation of Article 9(2) of the 1983 Order. Reference in this regard may be made to the judgments in the cases of Pakistan International Airlines Corporation Vs. Wafaqi Mohtasib (1998 SCMR 841), Muslim Commercial Bank Ltd. Vs. Momin Khan (2002 SCMR 958), Pakistan International Airlines Corporation Vs. Caption M.S.K. Lodhi (2002 SCMR 1004) and Civil Aviation Authority Vs. Wafaqi Mohtasib (Ombudsman) (PLD 2001 Karachi 304). Law to the said effect has also been laid down in the cases of Peshawar Electric Supply Company Ltd. Vs. Wafaqi Mohtasib (Ombudsman), Islamabad (PLD 2016 SC 940) and Sui Northern Gas Pipelines Limited Vs. President of Pakistan (2020 PLC (CS) 340).

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16. In view of the above, the instant writ petition is allowed, and the concurrent orders dated 29.03.2022 and 28.03.2023 passed by the Ombudsman and the President of Pakistan, respectively are set-aside as having been passed without jurisdiction. Respondent No.4 is at liberty to agitate his claim against petitioner No.1 regarding pension contribution for the period between 15.06.1985 to 11.08.1999 before the appropriate forum.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 03.10.2023.

(JUDGE)

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