JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No. 907 of 2024

AIOU

Versus

Prof. Dr. Syed Zafar Ilyas, etc.

Appellant by	:	Hafiz Arfat Ahmed Ch., Advocate and Ali Shehryar, Advocates. Fazal-e-Rabbi, Deputy Registrar (Legal).
Respondent No.2 by	:	M/s. Kamran Murtaza and Hassan Kamran, Advocates
Date of Hearing	:	22.04.2025

MUHAMMAD ASIF, J. Through the instant Intra-Court Appeal, the appellant, Allama Iqbal Open University/AIOU (hereinafter referred to as "**the Appellant University"**), has impugned the judgment dated 29.07.2024 passed in W.P. No. 855 of 2023, whereby the learned Single Judge in Chambers allowed the Writ Petition, filed by respondent No.1, Professor Dr. Syed Zafar Ilyas, directing the release of his pensionary benefits without further delay.

2. The brief facts of the instant appeal are that the Respondent No.1 was initially appointed as a Professor of Physics at the University of Balochistan (hereinafter referred to as **"UoB"**), Quetta, where he served from 1987 to 2009. On 01.07.2009, he joined the Appellant University on deputation for a period of two years, pursuant to a request made by the Appellant University, vide letter dated 14.04.2009. Subsequently, upon responding to an advertisement issued by the Appellant University for the post of Professor on a permanent basis, Respondent No.1 applied through proper channel, and got permanently appointed on 14.07.2011. He served the Appellant University until his superannuation on 27.01.2023, culminating in a total public service of 36 years. The Appellant University issued Office Order No. F.3-

72/2009-Admn/42 dated 26.01.2023, wherein the monthly net pension was fixed at Rs.46,613/-, and the gross monthly pension was assessed at Rs.995,424/-. Additionally, the commuted portion of the pension was calculated at Rs.3,726,381/-. Aggrieved by what he perceived to be partial and inadequate pensionary disbursement, the respondent No.1 expressed his grievances to Appellant University, which allegedly fell on deaf ears. He consequently approached this Court by filing W.P. No.855/2023. The learned Single Judge allowed the writ petition and directed the release of all pensionary dues. Hence, the present Intra Court Appeal.

3. Learned counsel for the appellant submits that Respondent No.1 was employed by Respondent No.2, the UoB, from the year 1987 to 2011. During this period, Respondent No.1 was deputed to the Appellant University for a duration of two (02) years. Subsequently, Respondent No.1 was appointed as a Professor (BPS-21) at the Appellant University. The Appellant University, through various letters, requested UoB to transfer the pensionary contributions pertaining to Respondent No.1; however, no such contributions have been received to date. It is further submitted that the Appellant University can only be held liable for the pensionary benefits accrued during the period of service rendered by Respondent No.1 under its employment and not for any period served under UoB.

4. Respondent No.1 appeared in person and submitted that he is mainly concerned with the pensionary benefit, which is not an act of grace or bounty on the part of the appellant and Respondent No.2, but a statutory right arising from lawful deductions made from his salary during his service.

5. Learned counsel for the Respondent No.2/UoB raised a preliminary objection regarding maintainability of the instant appeal, and argued that the UoB was not impleaded in the writ petition and hence cannot be added at the appellate stage. Furthermore, it was submitted that under the governing rules, UoB is not liable to pay the

pension amount once the employee has been absorbed by another institution.

6. We have heard the learned counsel for the parties and perused the record with their able assistance.

7. It is an admitted position on record that Respondent No.1 remained in the service of the UoB from 1987 to 2011, during which period, pension contributions were duly deducted from his salary by UoB. His subsequent appointment in the Appellant University was processed through proper channel, without any objection, and in accordance with the prescribed legal procedure. It is also a matter of record that despite repeated requests made by the Appellant University through various official letters, UoB has failed to transfer the pensionary contributions deducted during Respondent No.1's tenure with them. These contributions were essential for the calculation of the respondent's complete pensionary benefits, to which he is lawfully entitled. The UoB was under an obligation to remit the deducted pensionary amount to the Appellant University upon the respondent No.1's permanent appointment therein, which took effect on 14.07.2011.

8. With regard to the objection raised by the learned counsel for the Respondent No.2 that the UoB was not the party in the proceedings before the learned Single Judge, therefore, the same could not be joined in Intra Court Appeal. It is a well-recognised principle of law that procedural rules serve to facilitate justice and should be interpreted in a manner that promotes fair adjudication rather than hinders it. In this context, Order 1 Rule 10 (2) CPC grants the Court the authority to mandate, at any stage during the proceedings, the inclusion of a party who is necessary and proper and whose presence before the Court is essential for the thorough and comprehensive resolution of all issues pertinent to the proceeding. The phrase "*at any stage of the*

proceedings" clearly indicates that this discretion is not confined solely to the Court; it also encompasses appellate forums, including an Intra Court Appeal under the Latters Patent of the applicable statutory framework. In the instant case, the record reveals that the UoB had withheld and deducted pensionary contribution of the Respondent No.1, which forms the very basis of the controversy. The outcome of the proceedings necessarily affects the rights, duties, and liabilities of the UoB. Hence, the UoB is not only a proper party as its presence enables a complete and effective resolution of the dispute, but also a necessary party, as no effective order can be passed in its absence. It is a settled rule of practice that an appeal is merely is a continuation of original proceedings and the appellate court retains the same procedural power as the original Court unless expressly curtailed, therefore, the addition of the UoB at the appellate stage is not only legally permissible but also necessary to avoid multiplicity of the proceedings, and the denial of fair hearing to the affected party.

9. Adverting to the second objection raised by the learned counsel for Respondent No.2 that since no relief has been sought against the UoB, therefore, in the instant Intra Court Appeal, no direction can be issued to the respondent No.2. Learned counsel referred to the 26th Amendment in the Constitution of the Islamic Republic of Pakistan 1973, which was made on 21.10.2024. However, the cause of action in the present matter arose much earlier, specifically on 14.07.2011, when Respondent No.1 was appointed to the Appellant University through the proper channel and in accordance with prevailing rules. The Constitution of the Islamic Republic of Pakistan, 1973 provides in Article 12 as follows:

> "*(1) No law shall authorize the punishment of a person—*
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> *(a) for an act or omission that was not punishable by law at the time of the act or omission; or*
>
> *(b) for an offence by a penalty greater than, or of a kind*

> *different from, the penalty prescribed by law for that offence at the time the offence was committed.*
>
> *(2) Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence."*

10. Whether a law can operate retrospectively is for the court to decide by looking into the specific wording of the law. A general principle is provided on page 215 of *"Maxwell on Interpretation of Statutes*", also cited in Judicial Review of Public Actions, volume 2, second edition by *Justice (R) Fazal Karim*. It says *"For the determination of that question, the fundamental rule is that the statutes are construed as operating only on cases and on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule that no statute shall be construed as having retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."*

11. In Amir *Ashfaq Kureshi v. University of Engineering & Technology* (**1992 CLC 2186**), the Lahore High Court approvingly used the above principle of Maxwell and observed that this principle has been "*so frequently quoted with approval that it now enjoys almost judicial authority*."

12. Recently, in the case of *Muslim Commercial Bank Limited v. Punjab Labour Appellate Tribunal* (**2025 SCMR 303**), the Hon'ble Supreme Court of Pakistan affirmed a settled principle of law that retrospective application of law is only going to be done on laws related to procedural elements. When it comes to laws that affect, curtail, or prejudice vested rights, then the same shall apply prospectively only and not retrospectively.

13. This Court has also, in numerous petitions, consistently taken exception to the lethargic, inexcusable, and arbitrary conduct of public functionaries in discharging their statutory and fiduciary obligations toward retiring employees. Such conduct, particularly in the context of pensionary benefits, constitutes a violation of the fundamental rights guaranteed under Articles 9 and 14 of the Constitution of the Islamic Republic of Pakistan, 1973. The delay or denial in the disbursement of pensionary entitlements not only undermines the dignity of the individual but also deprives them of the right to life in its broader sense, encompassing the right to livelihood, security, and pensionary benefits after years of service.

14. Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973, enshrines the inviolability of the dignity of a man as a fundamental right and expressly prohibits torture or any form of cruel, inhuman, or degrading treatment. The denial or undue withholding of pensionary benefits to a retired and elderly individual, who is entirely dependent on such entitlements for basic subsistence, not only constitutes administrative apathy but also amounts to degrading treatment. Such conduct is wholly incompatible with the constitutional imperative to uphold human dignity and reflects a callous disregard for the respect and care owed to those who have served the State.

15. In light of the above discussion, the judgment passed by the learned Single Judge is modified, and the instant Intra Court Appeal is disposed of in the following terms:

> **i**. Respondent No.2/UOB is directed to calculate, in coordination with the Secretary Finance, Balochistan and remit the pensionary contributions of Respondent No.1 to the designated bank account of Appellant University within one month from the date of this judgment. The calculations, as mentioned earlier, will be carried out in accordance with the

rules of Respondent No. 2/UOB.

ii. The Appellant University, upon receipt of the said amount, shall include its own share of deductions and calculate the full and final pensionary entitlements of Respondent No.1, and disburse the same within two months thereafter without fail.

A copy of this judgment shall be transmitted to the Registrars of the UOB, Appellant University, as well as the Secretary, Finance Balochistan, for immediate compliance. Such reports shall be submitted to this Court through the Deputy Registrar (Judicial) within the stipulated timeline for our perusal in Chambers. We clarify that non-compliance with this order shall be deemed as defiance, which is tantamount to an offence as enshrined under Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973.

(KHADIM HUSSAIN SOOMRO)
JUDGE

(MUHAMMAD ASIF)
JUDGE

Announced in open court on 22.07.2025

(MUHAMMAD AZAM KHAN)
JUDGE

(KHADIM HUSSAIN SOOMRO)
JUDGE

APPROVED FOR REPORTING
BLUE SLIP ADDED

SHOAIB