JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,ISLAMABAD
JUDICIAL DEPARTMENT

Writ petition No. 804 of 2014

ShahjahanAzhar

Versus

International Islamic University &3 others

Petitioner By	:	Dr. Attique Tahir, Advocate
Respondents By	:	Mr. Rehan-ud-Din Golra, & Mr.Majid Bashir, Advocates. Mr. Ghulam Dastgir, AAO, POF, WahCantt.
Date of decision	:	26.01.2022

ARBAB MUHAMMAD TAHIR, J: Through the instant writ petition, petitioner prays for a direction to the respondents 1,3 & 4 to pay respective portion of the pension for the services rendered by late husband of the petitioner.

2- The relevant facts are that husband of the petitioner namely Dr. Azhar Javed served the respondent No.4 (POF Wah Cantt) from 02.01.1975 to 15.08.1989 and thereafter joined the respondent No.1-International Islamic University (IIU). He died on 24.04.2007 and thereafter family pension is being disbursed to the widow (petitioner). She alleges that the pensionary benefits for the entire service period of the late are to be disbursed but she is being paid only for the period served by the late with the IIU. Hence, instant writ petition.

3- The IIU in its comments recognized the services rendered by the late from 16.08.1989 to 24.04.2007, however, had taken the stance that the proportionate share of the pension was not received by the respondent No. 1, from the parent department of the late. Further Pension Statute 2004 is applicable in case of the petitioner which clearly stipulates that the IIU may accept the pension liability in respect of service rendered in another

organization of an employee who has joined the University's pensionable service through proper channel only if the former employer of such an employee pays to the University, the proportionate liability for the period for which said employee was on its strength.

4- Respondents 3 & 4 (parent department of the late) in separate comments maintained that the respondent No.3 being Government owned organization has only to pay pension contribution prescribed by the Finance Division O.M. dated 13.12.1981, calculated at Rs.31,650/- and are ready to pay the same.

5- The learned counsel for the petitioner reiterated the stance contained in the petition by referring various letters and also placed reliance upon the orders rendered by this Court to counter the objection upon the maintainability of instant writ petition, so raised by the learned counsel for IIU.

6- The learned counsel for IIU argued that under the prevalent rules, the IIU can only disburse pension to its former employee for the period served with the IIU and for rest of the period, contribution by the parent department is essential, which is lacking in this case.

7- Arguments heard, record perused.

8. The questionof maintainability being of paramount consideration is to be decided first. In this respect, guidance is taken from the case of ***Dr. Shumaila Sajjad v Higher Education Commission and others****(2020 PLC (CS) 796-Islamabad)* wherein it has been held that:-

> *"9. The Statutes of the I.I.U.I. were made in 2006. These Statutes provide that the I.I.U.I. shall have faculties including the faculty of Basic and Applied Sciences. It is also provided that each faculty shall have a Board of Faculty consisting of the Dean, the Professors and the Chairman of teaching departments comprised in the faculty, one Assistant Professor and one Associate Professor, each to be appointed by rotation, three teachers to be nominated by the Academic Council and one expert to be nominated by the President, I.I.U.I. The said*

Statutes also provide for the composition and functions of the Selection Board. The Tenure Track Rules, 2008, have been made with the approval of the Board of Governors. These Rules apply to all Assistant Professors and Associate Professors appointed through the Tenure Track System, the method of appointment etc. under the Tenure Track System has also been set out in these Rules. Rules 11 and 12 of these Rules provide for the constitution of the University Selection Board and Departmental Tenure Committee.

10. A survey of the scheme of the 1985 Ordinance shows that the power to regulate the terms and conditions of service of the I.I.U.I's employees does not vest in the Federal Government. The Federal Government also does not play any role in the making of the Statutes, Rules and Regulations of the I.I.U.I. The sources under which the said Statutes, Rules and Regulations of the I.I.U.I. have been framed show that they do not have any statutory force. 5 W.P.No.395/2017 Learned counsel for the petitioner could not controvert the contentions of the learned counsel for respondents No.2 to 7 that the terms and conditions of the petitioner's service with the I.I.U.I. are not regulated by any statute or statutory rules. It is well settled that a constitutional petition under Article 199 of the Constitution would be competent, if the Rules/Regulations governing the terms and conditions of the employees of the organization in question, are statutory or where the act or proceedings against which the petitioner voices his/her grievance are in violation of the statutory Rules/Regulations.

11. Since I do not find the Statutes, Rules and Regulations of the I.I.U.I. to be statutory in nature, the objection to the maintainability of this petition raised by the learned counsel for respondents No.2 to 7 succeeds. Resultantly, this petition is dismissed as not maintainable."

9- Same view was reiterated by learned Division Bench of this Court in Intra Court Appeal No. 341 of 2021 ***'Dilshad v. International Islamic University through its Rector, Islamabad and 2 others.'***

10- The question of maintainability is, therefore, answered in affirmative.

11- As far as merits of the case are concerned, it is evident from the comments submitted by the respondents that former employer of the late husband of the petitioner is ready to contribute in

pension prescribed by the Finance Division O.M. dated 13.12.1981, calculated at Rs.31,650/- while the IIU is also ready to collect the same, therefore, in presence of such admitted facts, it is mandatory for the respondents to perform their duty in due course and to disburse the due pension to the widow as per her entitlement.

12- In view of above, instant writ petition is accordingly **disposed of** with expectation that the respondents will honour their commitment mentioned above and to disburse family pension to the petitioner in due course.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on ____March, 2022

JUDGE

A.R ANSARI