

IN THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha

C.P.L.A. No. 1042-K of 2025

(Against the order dated 13.06.2025, passed by the High Court of Sindh at Karachi in Const. P. D-1851/2014)

University of Karachi through its Registrar & others

.....Petitioners

Versus

Dr. Feroz Alam Jafri & others

.....Respondents

For the Petitioners : Mr. Khalid Javed, ASC

For Respondent No. 1 : Mr. Shamshad Ali Qureshi, ASC
Ms. Abida Parveen Channar, AOR
alongwith respondent No. 1

For Respondent No. 2 : Ms. Amna Usman, Asst. AG Sindh

Respondent Nos. 3 to 5 : In-person

Assisted by : Muhammad Younus Shaikh, Law Clerk

Date of Hearing : 18.05.2026, 17.06.2026, 24.06.2026 &
02.07.2026

ORDER

Muhammad Karim Khan Agha, J.- This petition for leave to appeal, instituted before the Supreme Court of Pakistan and transferred to this Court in terms of Article 175-F(2) of the Constitution of the Islamic Republic of Pakistan, 1973 [**“Constitution”**], is directed against the judgment dated 13.06.2025 passed by a learned Division Bench of the High Court of Sindh

[**“Impugned Judgment”**], whereby the constitution petition filed by respondent No.1, Dr. Feroz Alam Jafri, was partly allowed.

2. The instant *lis* emanates from the process of selection and appointment to the posts of Professor and Associate Professor in the Department of Food Science and Technology [**“Food Department”**] of the University of Karachi [**“University”**]. The recommendations made by the University’s Selection Board [**“Board”**] in its meetings held on 27.06.2022 and 21.12.2023, were subsequently approved by the Syndicate of the University [**“Syndicate”**] in its meetings held on 27.10.2022 and 05.04.2024, respectively. The University and its authorities have, therefore, challenged the judgment primarily on the ground that the constitution petition before the High Court was not maintainable under Article 199 of the Constitution, and that, even otherwise, the learned High Court was not justified in setting aside the selection process and the approval accorded by the Syndicate.

Facts:

3. The material facts, necessary for determination of the question before us, are that respondent No.1 is serving as Assistant Professor in BPS-19 in the Food Department. Pursuant to the advertisement dated 26.12.2014, respondent No.1 applied for appointment to the post of Associate Professor and Professor. His candidature was initially objected to on the ground of alleged deficiency in the requisite research publications. Respondent No. 1 disputed the said objection by filing representation before the University authorities that he possessed the requisite number of publications and was otherwise eligible for consideration. Upon allowing of such representation, he was permitted to appear before the Board in its

meeting held on 27.06.2022 [**First Board Meeting**] for selection to the said post. The Board recommended another candidate instead of the respondent No. 1. Such recommendation was approved by the Syndicate in its meeting held on 27.10.2022 [**First Syndicate Decision**].

4. Respondent No. 1 thereafter preferred representations before the competent authorities of the University alleging irregularities in the scrutiny and selection process, seeking copies of referee reports, and objecting to the manner in which his candidature had been considered. He further alleged that Dr. Shahina Naz, who according to him was the Chairperson of the Food Department, Head of the Scrutiny Committee and Member of the Board, bore personal hostility towards him and had thereby prejudiced his candidature.

5. Independently of the aforesaid process, the University issued another advertisement dated 13.02.2019 inviting applications for the posts of Professor and Associate Professor in various departments, including the Food Department. Respondent No. 1 applied for both posts and his applications were accepted, along with that of other applicants, and were placed before the Board in its meeting held on 21.12.2023 [**Second Board Meeting**]. Respondent No. 1 was not recommended for either post, whereas other candidates were recommended for appointment against the posts in question. The matter was subsequently placed before the Syndicate, in its meeting held on 05.04.2024 [**Second Syndicate Decision**], which approved the recommendations of the Board. Aggrieved by the recommendations made on 21.12.2023, respondent No.1 submitted representations dated 26.12.2023, 09.01.2024 and 29.03.2024 before the

University authorities. The gravamen of his grievance was that the selection process stood vitiated by non-compliance with the applicable rules, non-consideration of his objections, bias and want of transparency.

6. Thereafter, respondent No.1 invoked the constitutional jurisdiction of the High Court of Sindh wherein the Impugned Judgment was passed. The University contested the petition and raised a preliminary objection that the petition was not maintainable, as the relationship *inter-se* the University and its employees was governed by the ordinary principle of ‘master and servant’ and the service rules relied upon were non-statutory.

7. The learned High Court repelled the objection to maintainability. It held, in substance, that respondent No.1 was not seeking enforcement of ordinary terms and conditions of service, but was challenging the legality of the selection and appointment process in a public sector university on the ground of violation of law and applicable rules. Hence, the High Court held the petition to be maintainable. The material part of the Impugned Judgment, in this regard, reads as follows:

*“The issue that University **does not have statutory rules of service is without force, as instant petition does not involve the question of terms and conditions of service of its employees, but challenges the appointment of teaching faculty in a public sector University in violation of law and rules**, which can be inquired by this Court under its writ jurisdiction and if appointment is found in violation of law or rules a writ can be issued to rectify the wrong.”*

(Emphasis Added)

8. Having held the petition maintainable, the learned High Court interfered on merits mainly on the grounds that Rule 6(5) of the First Statutes under the University of Karachi Act, 1972 [the “**Act**”] regarding consultation of three experts was violated due to the existence of a dissenting

expert report; Rule 6(4) of the Act was offended on account of Dr. Shahina Naz's participation in the Selection Board despite being an aspirant for the post of Professor; and the respondent No.1 was declared unsuitable without reasons being reflected in the minutes. While declining to interfere with the First Board Meeting and First Syndicate Decision on the ground of delay and laches, the learned High Court partly allowed the petition in respect of the Second Board Meeting and Second Syndicate Decision dated 05.04.2024, only to the extent of the Food Department. Hence, the present proceedings.

Arguments by the learned counsel for the petitioners:

9. Learned counsel for the petitioners contended that the learned High Court erred in entertaining the constitution petition. The learned counsel submitted that respondent No.1 was, in substance, seeking enforcement of an alleged right to be recommended or appointed, which could not be agitated under Article 199 of the Constitution, particularly when the service rules of the University are non-statutory and the relationship is governed by the principle of 'master and servant'.

10. Learned counsel further submitted that, even otherwise, the learned High Court misread the record while interfering on merits. It was argued that Rule 6(4) was not violated, as Dr. Shahina Naz did not participate in the proceedings relating to the post of Professor for which she was a candidate, and joined the Board only for consideration of the post of Associate Professor. It was also submitted that Rule 6(5) merely requires consultation/co-option of three experts and does not require unanimous or favorable reports from all experts. Learned counsel therefore prayed that the Impugned Judgment be set aside.

Arguments by the learned counsel for the respondent No. 1:

11. Conversely, learned counsel for respondent No.1 supported the Impugned Judgment and submitted that the objection to maintainability was rightly dealt by the learned High Court as his grievance was directed against the legality of the selection process undertaken by a public sector university. Learned counsel submitted that the process stood vitiated on account of violation of Rule 6(4) and Rule 6(5) of the First Statutes of the Act, non-consideration of requisite expert opinion, bias, and failure of the Syndicate to consider the objections placed before it. It was argued that where a public authority acts in violation of law, rules, fairness or natural justice, constitutional jurisdiction is properly attracted. He therefore prayed that the petition be dismissed.

Arguments by the respondent Nos. 2 to 5:

12. The learned Law Officer appearing for respondent No. 2, as well as respondents No. 3 to 5, who appeared in person and filed separate concise statements in support of the instant petition, adopted the arguments advanced on behalf of the petitioners. Respondents No. 3 to 5 further highlighted that their appointments as Associate Professors had also been made through the same selection process.

Questions for determination:

13. Having heard the learned counsel for the parties and the learned Law Officer and examined the material available on record, the following questions arise for determination;

- i) Whether the constitution petition filed by respondent No.1 was maintainable under Article 199 of the Constitution, particularly in

view of the objection that the service rules of the University are non-statutory and the relationship is governed by the principle of ‘master and servant’;

- ii) Whether Rule 6(4) of the First Statutes was violated on account of participation of Dr. Shahina Naz in the Board proceedings relating to the post of Associate Professor, when she was admittedly a candidate for the post of Professor;
- iii) Whether the learned High Court was justified in holding that Rule 6(5) of the First Statutes was violated, despite consultation of three experts in the subject concerned; and
- iv) Whether the findings of the learned High Court regarding alleged bias, absence of reasons for declaring respondent No.1 unsuitable, and non-consideration of objections before the Syndicate were sufficient to disclose any patent illegality or violation of natural justice so as to vitiate the selection process?

Findings and reasons:

Question (i)

14. The principal objection raised by the petitioners is to the maintainability of the constitutional petition under Article 199 of the Constitution. Since the objection goes to the very root of the jurisdiction exercised by the learned High Court, it is appropriate to first examine the nature of the relief sought, the legal character of the right asserted by respondent No.1, and the limits within which the constitutional Court may interfere in a selection process undertaken by a public sector university.

15. Respondent No.1 was not, in substance, invoking a writ of *quo warranto* by calling upon respondents No.7 to 9 to show the legal authority under which they were holding public office. His grievance was directed against his own non-recommendation by the Board and the consequential approval in favor of other candidates accorded by the Syndicate. The relief sought was, therefore, in the nature of *mandamus/certiorari* arising out of a service-selection process. In such a case, respondent No.1 was required to show an enforceable legal or public law right in his favor and a corresponding duty on the part of the University.

16. It is settled that the mere fact that an institution is created by statute does not, by itself, make every dispute relating to its employees or candidates amenable to constitutional jurisdiction. In **Principal, Cadet College, Kohat v. Muhammad Shoab Qureshi** (PLD 1984 SC 170), the Supreme Court drew a clear distinction between a statutory body and statutory service rights. It held, in substance, that where the conditions of service are not governed by statute or statutory rules, the breach of internal regulations, instructions or administrative directions does not ordinarily attract Article 199 of the Constitution. This principle assumes particular significance in the university context. In **University of the Punjab v. Ch. Sardar Ali** (1992 SCMR 1093), where the Supreme Court examined a statutory scheme materially similar to the scheme now before us. Section 31 of the University of the Punjab Act, 1973, like section 28 of the University of Karachi Act, 1972, empowered the making of Statutes regarding, inter alia, the terms and conditions of service of officers, teachers and other employees of the University, as well as efficiency and discipline of university employees. The Supreme Court after examining the scheme of the University of the

Punjab Act, 1973 held that the service conditions of university employees were not governed by statutory rules and, therefore, the constitution petition was not competent.

17. The judgments relied upon by learned counsel for the petitioners also fall within the same settled line of authority. **Ijaz Hussain Suleri v. The Registrar and another** (1999 SCMR 2381), **Abdul Rashid Khan v. Registrar, Bahauddin Zakariya University, Multan and others** (2011 SCMR 944), **Muhammad Zahid Maqsood v. University of Karachi through Vice Chancellor and others** (2013 MLD 9), and **Amir Jamil v. University of Karachi through Registrar and others** (2018 PLC (C.S.) 542) are directly relevant, as they relate to university employees and proceed on the basis that, in the absence of statutory service rules, a constitution petition for enforcement of service-related claims is not ordinarily competent. **Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others** (PLD 2010 SC 676), **Abdul Wahab and others v. HBL and others** (2013 SCMR 1383), **Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed** (2013 SCMR 1707), and **Waqar Ahmed and others v. Federation of Pakistan through Cabinet Secretariat, Establishment Division, Islamabad and others** (2024 SCMR 1877) further explain that even where a body is amenable to constitutional jurisdiction, the grievance must still disclose violation of a statutory duty, patent illegality, mala fide, breach of natural justice or want of lawful authority. No such defect is apparent in the present case.

18. The general rule, therefore, is that a statutory body and statutory service rights are not the same thing. A university may be a public sector institution created under an Act, but an unsuccessful candidate cannot invoke constitutional jurisdiction merely because he was not recommended or because he considers himself more suitable.

19. The law has, however, not remained confined to a rigid or mechanical application of the ‘master and servant’ principle. The later development of jurisprudence recognizes that where the action of a statutory or public authority carries a public law element and is alleged to be arbitrary, mala fide, without lawful authority, in breach of natural justice, or in patent violation of the governing law or rules, the Constitutional Court may examine the legality of such action even if the service rules or regulations are non-statutory. This limited exception was recently noticed by this Court in **Muhammad Qutub-ud-Din and others v. Province of Sindh and others** (C.A. No.103-K of 2024), wherein it was held that Article 199 may be invoked where the act of a statutory authority is violative of service rules or regulations, even if such regulations are non-statutory in character. For ease of reference, the relevant part of the aforesaid judgment is hereby reproduced;

“10...The principle laid down in the above-noted judgments clearly establishes that the constitutional jurisdiction under Article 199 of the Constitution may be invoked where the act of a statutory authority is violative of service rules or regulations, even if such regulations are non-statutory in nature...”

20. The above exception, however, does not obliterate the settled distinction between statutory and non-statutory service rules. The Court in its constitutional jurisdiction may interfere only where the record discloses a patent illegality, violation of a mandatory rule, mala fide, bias, breach of

natural justice, lack of jurisdiction or any other defect of a public law character. In the absence of such defect, the matter remains within the domain of the competent academic bodies.

21. The same restraint assumes greater significance in matters relating to educational institutions. This Court has recently reiterated in **Shaheed Mohtarma Benazir Bhutto Medical College Lyari Karachi v. Province of Sindh through Chief Secretary and others** (C.P.L.A. No.534-K of 2024) that the scope of judicial review in academic and institutional matters is circumscribed, and that the Court does not sit in appeal over policy or academic choices unless the action is shown to be patently arbitrary, discriminatory, mala fide or contrary to law.

22. In the present case, respondent No.1 was an unsuccessful candidate whose case had been considered by the Board and approved by the Syndicate. He had no vested right for recommendation or appointment. The learned High Court, with respect, treated the mere allegation of violation of rules, bias and non-consideration as sufficient to attract constitutional jurisdiction. However, the law requires more than a bare allegation. The petition could be entertained only if the record disclosed a patent violation of a mandatory rule, mala fide, bias, breach of natural justice or want of lawful authority. No such jurisdictional defect was apparent on the face of the record. The constitutional petition, therefore, was not maintainable under Article 199 of the Constitution.

Questions (ii) and (iii)

23. Even otherwise, and without prejudice to the above finding on maintainability, we shall examine the principal grounds on which the

learned High Court interfered with the selection process, namely alleged violation of Rule 6(4) and Rule 6(5) of the First Statutes. This examination is being undertaken only to demonstrate that, even on the grounds relied upon by the learned High Court, the Impugned Judgment cannot be sustained.

24. Rule 6 of the First Statutes deals with the constitution and procedure of the Board. Since the controversy principally turns upon the construction of sub-rules (4) and (5), it would be advantageous to reproduce Rule 6 in its entirety:

“6. Selection Board:

(1) The Selection Board shall consist of:

(i) the Vice-Chancellor;

(ii) the Chairman, or a member of the Sindh Public Service Commission to be nominated by the Chairman;

(iii) the Dean of the Faculty concerned;

(iv) the Chairman of the Teaching Department concerned; and

(v) one member of the Syndicate and two other men of eminence, to be appointed by the Syndicate, provided that none of the three are employees of the University.

(2) The members mentioned in sub-clause (v) of clause (1) shall hold office for two years.

(3)(a) Four members shall form the quorum for the selection of a Professor or an Associate Professor, and three members for the selection of other Teachers.

(b) In case of officers other than teachers, the Selection Board shall consist only of members at sub-clauses (i), (ii) and (v) of clause (1).

(4) No member who is a candidate for the post to which appointment is to be made shall take part in the proceedings of the Board.

(5) In selecting candidates for the posts of Professors and Associate Professors, the Selection Board shall co-opt or consult three experts in the subject concerned, and in selecting candidates for other teaching posts, two experts in the subject concerned, to be nominated by the Vice-Chancellor, from a standing list of experts for each subject approved by the Syndicate on the

recommendation of the Selection Board and revised from time to time.”

(Emphasis Added)

25. The learned High Court found violation of Rule 6(4) *ibid* on the premise that Dr. Shahina Naz was herself an aspirant for the post of Professor and had also participated as member of the Selection Board. The language of sub-rule (4) *ibid*, however, is not a blanket disqualification from the entire meeting of the Board. It prohibits a member from taking part in the proceedings of the Board where such member is “*a candidate for the post to which appointment is to be made*”. The disqualification is, therefore, post-specific and is attracted only in respect of proceedings relating to the post for which the member is himself or herself a candidate.

26. The minutes of the Selection Board meeting dated 21.12.2023 show that Dr. Shahina Naz was not amongst the members present when the Board initially took up the agenda relating to the post of Professor. Her name also does not appear amongst the first seven members recorded as present for that part of the proceedings. The record further shows that she joined the Board later, after consideration of the post of Professor, and participated when the matter relating to the post of Associate Professor was taken up. Since she was not a candidate for the post of Associate Professor, her participation in that part of the proceedings did not attract the bar contained in Rule 6(4) *ibid*.

27. Rule 6(4) *ibid* is intended to prevent a person from participating in proceedings concerning his or her own candidature. That purpose stood satisfied once Dr. Shahina Naz did not participate when the post of Professor was considered. In the absence of any express language barring a member

from participating in proceedings relating to a different post, and in the absence of material showing that she influenced the proceedings relating to her own candidature, the learned High Court was not justified in treating Rule 6(4) *ibid* as having been violated.

28. We now turn to Rule 6(5) *ibid*. The learned High Court proceeded on the premise that the requirement of consultation/co-option of experts had not been properly complied with. With respect, this approach does not accord with the language of sub-rule (5) *ibid*. The provision requires the Selection Board to “co-opt or consult three experts in the subject concerned”. The operative requirement is consultation with three experts; it does not require unanimity, nor does it provide that all three expert reports must be favourable.

29. In the present case, three experts/referees were consulted. The record reflects that, in relation to the post of Professor, one referee report was not relied upon by the Board because contradiction was noticed between the marks assigned and the remarks recorded by that referee. This did not amount to non-consultation within the meaning of Rule 6(5) *ibid*. Once three experts had been consulted, the procedural requirement of the rule stood fulfilled.

30. Consultation, in ordinary legal parlance, means seeking opinion, advice or assistance. It does not mean concurrence, approval or unanimity unless the law expressly so provides. Had the framers of Rule 6(5) *ibid* intended that all expert reports must be favourable, or that one inconsistent or adverse report would defeat the selection process, the rule

would have said so in clear terms. Such a condition cannot be read into the provision by implication.

31. The expert reports were relevant material for the Board, but they did not replace the function of the Selection Board. The Board was required to consider the expert opinions along with the academic record, research credentials, interview, comparative merit and overall suitability of the candidates. The final recommendation remained within the domain of the Board, subject to approval by the Syndicate.

32. The reference made by the learned High Court to another selection matter in which the Board had deferred consideration on account of a conflicting referee report also does not advance respondent No.1's case. A course adopted by the Board in another matter cannot be converted into a mandatory rule of law, particularly when Rule 6(5) *ibid* itself does not require unanimity or favourable reports from all experts. Therefore, the finding that Rule 6(5) *ibid* was violated cannot be sustained.

33. We accordingly hold that neither Rule 6(4) nor Rule 6(5) *ibid* was violated. Questions No. (ii) and (iii) are answered in favor of the petitioners.

Question (iv)

34. We may now advert to the remaining grounds on which the learned High Court interfered with the selection process, namely alleged bias, absence of reasons for declaring respondent No.1 unsuitable, and non-consideration of objections before the Syndicate. These grounds, even if examined independently, do not disclose any patent illegality, mala fide,

breach of natural justice or jurisdictional defect sufficient to vitiate the selection process.

35. The allegation of bias was principally founded upon the role attributed to Dr. Shahina Naz. As already held, she did not participate in the proceedings relating to the post of Professor for which she was a candidate, and her participation was confined to the post of Associate Professor, for which she was not an aspirant. No material was brought on record to show that she influenced the experts, controlled the Board, overpowered the decision-making process, or procured the recommendations in favour of respondents No.3 to 5. Allegations of bias or personal hostility, howsoever strongly made, cannot substitute proof. It is also significant that despite specific allegations against her, Dr. Shahina Naz was not impleaded as a party before the learned High Court. In such circumstances, no adverse finding affecting the validity of the selection process could safely have been founded upon unproved allegations against a person who was not before the Court.

36. The objection that respondent No.1 was declared unsuitable without detailed reasons also does not, in the facts of the case, vitiate the process. The matter was placed before the Board, the candidature of respondent No.1 was considered, and the Board formed its opinion on suitability. No provision of the Act or the First Statutes has been shown which required the Board to pass a detailed speaking order in respect of every candidate not recommended. Similarly, the objections or dissenting note placed before the Syndicate did not, by themselves, render the approval unlawful. The Syndicate was the competent body to consider and approve

the recommendations of the Board. Unless the statute requires unanimity, or unless the majority decision is shown to suffer from patent illegality, mala fide or want of jurisdiction, the approval cannot be set aside merely because one member recorded objections.

37. It is further relevant that respondents No.3 to 5 were selected and appointed as Associate Professors through the same process. There was no finding of fraud, misrepresentation, ineligibility or personal misconduct against them. Requiring them to undergo the selection process for a third time, without any proven illegality attributable to them, would not be justified.

38. We are, therefore, of the view that the remaining grounds relied upon by the learned High Court were not sufficient, in law, to vitiate the selection process. Question No. (iv) is answered in the negative.

39. Before parting, we deem it appropriate to add a note of caution. Public sector universities are expected to act fairly and in accordance with their governing framework; however, every grievance of an unsuccessful candidate cannot be converted into a constitutional cause merely by alleging unfairness, want of transparency or violation of rules. The constitutional jurisdiction is attracted only where the defect is patent, substantial and of such nature as to affect the legality of the process itself. Any wider approach would risk converting the constitutional Court into an appellate forum over academic selections, which is neither the object of Article 199 of the Constitution nor consistent with the autonomy of academic bodies.

40. In view of the foregoing discussion, the instant petition is converted into appeal and allowed; the Impugned Judgment dated 13.06.2025 is set aside; and the recommendations made by the Selection Board in its meeting held on 21.12.2023, as approved by the Syndicate in its meeting held on 05.04.2024, are restored.

Judge

Judge

Announced in Court
on 15/07/2026 at Islamabad.

APPROVED FOR REPORTING
(Muhammad Ahmad)