

IN THE FEDERAL SHARIAT COURT
(ORIGINAL JURISDICTION)

PRESENT.

HON: MR. JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE
HON: MR. JUSTICE DR. FIDA MUHAMMAD KHAN, JUDGE
HON: MR. JUSTICE SAEED-UR-REHMAN FARRUKH, JUDGE

Shariat Petition No. 32/I of 1992.

Dr. Muhammad Aslam Khaki --- Petitioner

Versus

Govt. of Punjab & another --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Shariat Petition No. 33/I of 1992

Dr. Muhammad Aslam Khaki --- Petitioner

Versus

Govt. of Punjab & another --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Shariat Petition No.34/I of 1992

Dr. Muhammad Aslam Khaki --- Petitioner

Versus

Govt. of Punjab & another --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Shariat Petition No. 40/I of 1992

Dr. Muhammad Aslam Khaki --- Petitioner

Versus

Govt. of N.W.F.P & another --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Shariat Petition No. 41/I of 1992

Dr. Muhammad Aslam Khaki --- Petitioner

Versus

Govt. of N.W.F.P & another --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Shariat Petition No. 42/I of 1992

Dr. Muhammad Aslam Khaki --- Petitioner

Versus

Govt. of N.W.F.P & another --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Shariat Petition No.49/I of 1992

Dr. Muhammad Aslam Khaki --- Petitioner

Versus

Govt. of Punjab & another --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Shariat Petition No. 50/I of 1992

Dr. Muhammad Aslam Khaki --- Petitioner

Versus

Government of Punjab & anothers --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Shariat Petition No.51/I of 1992

Dr. Muhammad Aslam Khaki, --- Petitioner

Versus

Govt. of N.W.F.P & others --- Respondent

Counsel for petitioner --- Dr. Muhammad Aslam Khaki,
Advocate

Counsel for Federal Govt. --- Sardar Abdul Majeed,
Advocate

Counsel for Punjab Govt. --- Mr. Shafqat Munir Malik,
Assistant Advocate General
Punjab.

Counsel for Sindh Govt. --- Mr. Arshad Lodhi,
Assistant Advocate General
Sindh.

Counsel for Balochistan Govt. --- Mr. Shoaib Abbasi,
Advocate

Counsel for N.W.F.P. Govt. --- **Mr. Muhammad Sharif Janjua**
Advocate

On behalf of Colleges	---	Mr. Zahoor Nawaz, District Officer Colleges, Rawalpindi
Counsel for Engineering University Lahore	---	Mr. Sajjad Hussain, Advocate
On behalf of Higher Education Commission	---	Mr. Shamsad Ali, (HEC) Deputy Director
On behalf of University of Agriculture, Faisalabad	---	Mr. Muhammad Lateef, O.S.D, Litigation, University of Agriculture, Faisalabad.
In Shariat Petition No.33/I of 1992	---	Mr. Nazir Ahmad Chishti, Assistant Registrar, Legal.
In Shariat Petition No.40/I of 1992	---	Mr. Bilqias Khan, Assistant Law Officer.
In Shariat Petition No.41/I of 1992	---	Mr. Abdul Qadir Khatak Advocate & Mr. Mushtaq Ahmad, Law Officer.
On behalf of University of Agriculture, Peshawar	---	Dr. Nawab Ali, Registrar, University of Agriculture, Peshawar.
On behalf of Punjab University, Lahore	---	Mr. Rehmat Ali Qureshi, Assistant Registrar, University of Punjab, Lahore.
On behalf of Islamia University Bahawalpur	---	Mr. M. Aftab Anwar, Assistant Legal Adviser, Islamia University, Bahawalpur.

In Shariat Petition No.51/I of 1992 --- Mr. Zubair,
Assistant Registrar.

Date of hearing --- 3.6.2004

Date of decision --- 16.12.2004

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Shariat Petition No.32/I of 1992

JUDGEMENT

SAEED-UR-REHMAN FARRUKH, J.-. By this judgment

we propose to dispose of the following nine shariat petitions as

common questions of law and facts arise therein:-

1. Shariat Petition No.32/I of 1992
Muhammad Aslam Khaki Vs. Govt. of Punjab & another
2. Shariat Petition No.33/I of 1992
Dr. Muhammad Aslam Khaki Vs. Govt. of Punjab and another
3. Shariat petition No.34/I of 1992
Dr.Muhammad Aslam Khaki Vs. Govt. of Punjab and another
4. Shariat Petition No.40/I of 1992
Dr. Muhammad Aslam Khaki Vs. Govt. of NWFP and another.
5. Shariat Petition No.41/I of 1992
Dr. Muhammad Aslam Khaki Vs. Govt. of NWFP and another.
6. Shariat Petition No.42/I of 1992
Dr. Muhammad Aslam Khaki Vs. Govt. of NWFP and another.
7. Shariat Petition No.49/I of 1992
Dr. Muhammad Aslam Khaki Vs. Govt. of Punjab and another.
8. Shariat Petition No.50/I of 1992
Dr. Muhammad Aslam Khaki Vs. **Government** of Punjab and another.
9. Shariat Petition No.51/I of 1992
Dr.Muhammad Aslam Khaki Vs. Govt. of NWFP and another

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2. The impugned provisions of law, in these Shariat petitions, occurring in related statutes, reproduced in-extenso, (in the appendix, which is to be read as part of this judgment) would show that these are almost identical with sections 23 and 41 of University of Engineering and Technology, Lahore./ (Shariat Petition No. 32/I of 1992) which ^{Act, 1974.} read as under:-

Section 23. Syndicate

(1) The Syndicate shall consist of:-

- (i) The Vice-Chancellor, (Chairman);
- (ii) Five member of the Provincial Assembly of the Punjab, one from each division, to be ~~electd/~~ ^{electd/} nominated by ~~members~~ of the Provincial Assembly from amongst themselves;
- (iii) Two members of the Senate to be elected by the Senate;
- (iv) One Dean to be elected by teachers of the University;
- (v) One professor and two Associate Professors to be elected by the teachers of the University from amongst themselves;
- (vi) Four Assistant Professors or Lecturers to be elected by the teachers of the University from amongst themselves;
- (vii) Two nominees of the Chancellor;
- (viii) The Chairman or a member of the Public Service commission to be nominated by the Chairman;
- (ix) The Education Secretary and the Director Public Instruction, Punjab, and
- (x) One student representative of the University Students Union.

Section 41 appeal to and review by the syndicate. (1) Where an order is made

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punishing any officer (other than the Vice Chancellor) teacher or other employees of the University or altering or interpreting to his disadvantage the prescribed terms or conditions of his service, he shall where the order is made by the Vice- Chancellor or any other officer or teacher of the University, have the right to appeal to the Syndicate against the order and where the order is made by the Syndicate, have the right to apply to the Chancellor for review of that order. The appeal or application for review shall be submitted to the Vice Chancellor and he shall present it to the Chancellor with his views.

3. It is submitted by the petitioner that the above provisions of law are repugnant to the injunctions of Holy Quran and Sunnah and merit to be declared as such with consequential direction to the concerned Provincial Government to suitably amend them so as to be brought in conformity with the Injunctions of Islam.

4. The thrust of the arguments of the petitioner is that the Vice Chancellor, having himself imposed punishment upon the delinquent employee of the university, could not be legally permitted to attend the meeting of the Syndicate at the time of adjudication of his appeal. It is argued that it would amount to making the Vice Chancellor judge in his own cause which would lead to unsavoury, rather

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unacceptable consequences. He, being the Head of the administration of the University, was most likely to exert overt / covert influence on those members of the Syndicate who happened to be his subordinates.

The ultimate verdict of the Syndicate would be violative of the Injunctions of Islam.

5. In support of the above submissions, the petitioner has referred to and relied upon the following case law:-

- (i) [PLD 1989 Federal Shariat Court 84]
Zafar Awan versus The Islamic Republic of Pakistan
- (ii) [PLD 1989 Supreme Court 6]
"Pakistan through Secretary, Ministry of Defence versus
The General Public"
- (iii) [PLD 1986 Federal Shariat Court 200]
Muhammad Ramzan Qureshi versus Federal
Government and others"
- (iv) [PLD 1987 Supreme Court 304]
" Pakistan and others versus Public at Large and others"
- (v) [PLD 1985 Federal Shariat Court 365].
" In re: The Pakistan Armed Forces Nursing Services
Act, 1952, Etc."

6. The learned Standing Counsel for the Federal Government, conceded that, in all fairness, the Vice Chancellor should not sit in the

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meeting of the Syndicate to decide the appeal in which the impugned order had been passed by him.

7. On the other hand, the learned counsel for the respondent Universities, while bitterly opposing these petitions, urged, inter-alia :-

i. It was preposterous on the part of the petitioner to assume that a person occupying such a high office as Vice Chancellor of the University would stoop so low and attempt to secure a biased decision from the Syndicate by influencing some the members of the Syndicate to veer them around to his view point qua the merits of the case.

ii. In any case, the decision of the syndicate was to be by majority of the members and the individual opinion of the Vice Chancellor could hardly make any difference about the ultimate result of the appeal.

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- iii. One of the member of the syndicate as per section 23(1) of the University of Engineering and Technology Lahore Act 1974 (as amended) was to be the Chief Justice of the Lahore High court , Lahore or his nominee from amongst the Judges of the Lahore High Court. Likewise, Secretary to the Government of the Punjab, Education Department; one member of the provincial assembly of the Punjab and two members of the Senate other than employees of the University were also to participate in the meeting of the syndicate. None of them was expected to lend his ear to the views of the vice chancellor in case he tried to defend his impugned decision during the meeting.
- iv. Lastly, by virtue of enforcement of University laws (amendment) Ordinance No. IX of 1983, section 10-A has been added in the original statute which reads as under:-

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10-A. The Chancellor may, of his own motion or otherwise, call for and examine the record of any proceedings in which an order has been passed by any Authority for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order and may pass such orders as he may deem fit.

“Provided that no order under this subsection shall be passed unless the person to be affected thereby is afforded an opportunity of being heard.”

The plea being raised is that an aggrieved employee has been conferred right of filing a revision petition before the Chancellor against the decision of the syndicate rejecting his appeal. The said decision, even if it suffered from any illegality / irregularity, due to the participation of the Vice Chancellor in the relevant meeting, it would be open to be revised by the Chancellor and necessary relief would be granted to the employee. Therefore, impugned section 41 can not be annulled, as being contrary to the Injunctions of Islam.

8. When we examine this issue on the touchstone of Islamic Injunctions we find that Islam lays emphasis on maintaining justice and equity. The Qazi has to decide the case according to the Islamic Principles of Qaza. He must be impartial and should decide the cases

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on the basis of equity, justice and upright testimony. The object of Islamic Justice system is the removal of injustice from the society. The Holy Prophet (Peace be upon him) was the first one to demonstrate impartiality during the administration of justice. Because of his impartiality and uprightness, very often, the non-Muslims used to bring their disputes before him for adjudication.

9. The Muslims in general have been commanded by Allah to maintain justice and equity in their affairs. It is ordained in Holy

Quran (١٦:٩٥) "إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ"

It appears in the tradition of the Holy Prophet (Peace be upon him) "Behold! Each one of you is a king and each of you will be asked about his subject" (Al-Bukhari Katabul -Ahkaam).

10. In the light of this tradition of the Holy Prophet(Peace be upon him) it is not necessary that the person before whom the dispute is brought for decision must occupy the office of Qazi. The phrase "each

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one of you is a king” In the tradition makes it abundantly clear that any functionary occupying judicial, quasi-judicial or administrative post /capacity who wields the power of rendering decision on any dispute, brought before him, squarely falls within the definition of Qazi. Judged in this light the syndicate, as a body, while dealing with the appeal of any aggrieved employee of the University is to be equated with Qazi.

11. In Islam there is no particular structure of judiciary; changes can be brought in it at any stage to meet the requirement of the age.

From the above discussion it transpires that shariah is not hinged by procedural technicalities. The main object, which is required to be achieved is to maintain justice and equity.

If any Muslim, by consent of the parties, hears and decides any matter, his decision would be lawful and operative.

The Qazi/ ul-ulamar may direct any person to decide a particular case and the decision so rendered by him would be with

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jurisdiction. We are fortified by Hadith of the Holy Prophet (Peace be upon him), as detailed in the sequel.

During his life time, two parties approached him to get their case adjudicated. The Holy Prophet (Peace be upon him) referred the case to an engineer. He visited the place and decided the case. He earned the admiration of the Holy Prophet (Peace be upon him)

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 "کیر دیوی کا اسلامی حکم" (by Maulana Razi-ud-Din Ahmad Fakhri,

page 144, print at Karachi in January, 1991).

12. Right of appeal is recognized by the Holy Quran as well as Sunnah of Holy Prophet. In Shariat Suo Moto No.85/82 a tradition has been quoted which has relevancy to the subject in hand. Two persons approached the Holy Prophet (Peace be upon him). One of them charged that the latter's cow had killed his donkey. The Holy Prophet ordered Hazrat Abu Bakr to decide the matter, who held that animals do not incur any liability for their acts. The Holy Prophet then directed Hazrat Umar to decide the matter, who affirmed the decision

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of Hazrat Abu Bakr. Finally, the Holy Prophet ordered Hazrat Ali to decide the case. He found, after hearing the parties that at the relevant time the donkey was tied and the cow was free. The owner of the cow was held liable to pay damages to the owner of the donkey. This decision earned approval of the Holy Prophet (Peace be upon him) (Adab-ul-Qazi by Mawardi, Vol.VI page 388 print at Baghdad, 1972).

13. On this tradition of Holy Prophet (Peace be upon him) the concept of appellate and revisional jurisdiction in Islamic jurisprudence was established as he set aside the judgments of Hazrat Abu Bakr and Hazrat Umar and directed rehearing by Hazrat Ali. Thus, power was also conferred for remanding a case, in the given situation, on the appellate / revisional court. See “ The Pakistan Armed Forces Nursing Services Act, 1952, Etc.”[PLD 1985 FSC 365] and “ Pakistan through Secretary, Ministry of Defence versus The General Public” [PLD 1989 SC 6].

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14. From the above discussion four things become abundantly clear, (i) right of appeal is always there in Islam (ii) the shariah gives less importance to the procedural issues and lays emphasis in maintaining justice and equity (iii) no person can be penalized without giving him a chance to be heard (iv) the appellate court/ forum is under legal obligation to decide the appeal itself and question of association of the trial Judge/ Qazi in the proceedings of the appeal does not arise.

The above quoted tradition of the Holy Prophet (Peace be upon him) clinches the core issue involved in these petitions for all times to come. He, in the three rounds of appellate proceedings did not direct/permit the three righteous companions to participate therein. These appeals were exclusively decided by the Holy Prophet (Peace be upon him) himself.

15. Under the impugned section 41, the Vice Chancellor of the University, in exercise of his administrative powers takes disciplinary

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action against an employee of the University and, subsequently, presides over the appellate forum i.e. syndicate to hear the appeal of the said employee.

16. In Shariah, the jurists are unanimously agreed on the point that a Qazi cannot hear his own case nor deliver judgment in his own favour. If he does so his act would create suspicion in the minds of the people (Zaidan; Nizamul Qaza page 272). In this respect Allama

Qarrafī writes ^{للصحة} "ولا ينبغي له أن يفتي في دعواه أو في دعوى من عياله أو في دعوى من عياله" ^{للصحة}

" (it would not be desirable to give a judgment in a dispute amongst his family members and his opponents though the opponent, express his consent). Al-Farooq Vol.4 page 43-44

17. There are numerous incidents wherein the Khulafa despite possessing administrative and judicial powers, referred their cases to independent judges for its adjudication.

Hazrat Umar, the second Caliph of Islam was the man of authority and enjoyed judicial powers, side by side his executive

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command. He wished to extend Masjid-e-Nabwi and asked Hazrat Abbas to sell his house for this purpose but he refused to do so. Hazrat Umar did not use his judicial / executive powers only for the reason that the dispute had occurred between the person in authority (Ulul Amr) and a member of muslim community. He preferred to place the dispute before Hazrat Ubi Ibn Kaab { Al-Samhudi: Wafa-al-wafa part 2 page 482-483 print Egypt).

In similar situation Hazrat Ubi Ibn Kaab had some dispute of property with Hazrat Umar, who placed the case for decision before Hazrat Zaid Ibn Thabat (Muhammad bin Hayyan: Akhbar al-Qudat Vol.1 page 108 print Beirut.)

Once Hazrat Ali lost a coat of mail belonging to him on his way to Siffin. After the termination of the war he returned to al-Kufah and there he saw his armour in the hands of a Jew and claimed the armour which was refused. Instead of deciding the matter himself the Caliph took the Jew to the court of Shurayh, who decided the matter

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in favour of the Jew. At this the Jew exclaimed " I testify that there is no god but God and that Muhammad is his Apostle and that this armour is thy armour" (Hazrat Ali Ibne Abi Talib by Arman Serhadi page 267).

18. On the basis of above cited Quranic verse, the traditions of the Holy Prophet , juristic views, and incidents it becomes manifestly clear that the adjudicating authority, while deciding the cases between citizens inter-se or between citizen and state functionary, must be independent and should not be one who himself is directly or indirectly party to the case or otherwise delivered judgement therein.

19. It is well settled that justice should not only be done but it should also appear to be done.

In "Anwar versus The Crown" [PLD 1955 F.C. 185],

Muhammad Munir C.J. has observed that:-

" If a Judge is functioning under an influence about his own act....., which has the effect of paralyzing his judicial faculties, there is no fair trial." He further added that " there is a species of bias which vitiates judicial proceedings irrespective of the correctness or otherwise of the result, but that is not because bias,

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whatever form it may assume, avoids the result of judicial proceedings, but because the Judge with that kind of bias is, on grounds of public policy, disqualified to be a Judge. Thus no Judge can be a Judge in his own cause, or in a cause in which he is personally interested, not because his decision must invariably be in his own favour but on the principle that justice must not only be done but seen to be done, and however right the Judge deciding a cause in his own favour may be, neither the public nor the aggrieved party will be satisfied with the adjudication....." (underlining is ours)

In "Mubarik Ali Bhatti versus Fiaz Ali Khan and others" [PLD

1963 Lahore 8], the above principle was applied. Mubarik Ali Bhatti

who was working under the West Pakistan Board was screened out by

Faiz Ali Khan Chairman of the screening committee for unsatisfactory

work. Rule 6 of the Public conduct (scrutiny) Rules 1959 provided

that against such an order appeal would lie to the appointing authority.

Thereafter Faiz Ali Khan himself heard the appeal. The learned

Division bench of High Court hold that hearing of the appeal by the

authority who had himself participated in the original proceedings was

against natural justice with the result that the appellate order was

quashed. Also see Rehmatullah versus Govt. of West Pakistan [PLD

1965 Lahore 112].

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In Mohammad Mohsin Siddiqi's case [PLD 1964 S.C. 64]

Supreme Court of Pakistan has held:-

“The whole proceedings in a departmental enquiry is required by the rules to be conducted in accordance with the principles of justice. The superior Courts will not tolerate, and certainly not within the frame-work of the judicial administration itself, conditions in which officials can be made prosecutors, Judges and punishing authorities when they themselves are the complainants, merely on the ground that the power of removal is vested in them as appointing authorities under the rules. There is power and there are facilities available, to place the conduct of the enquiry and the report thereon in other hands and

In Muhammad Abdullah versus R.T.C. [PLD 1964 Lahore

743] another principle was laid down to the effect that the person/ functionary who decided the matter at initial stage would become disqualified to hear the same matter at any level i.e. appellate/ review proceedings. The mere presence of such a person in these proceedings “ renders it incompetent to function as such and “ it is immaterial in appellate/ revisional forum what part that particular member played in the proceedings of the tribunal and how far he was

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able to influence its decision.” Also see Dr. Abdul Hafeez versus Chairman M.C. [PLD 1967 Lahore 1251].

Another principle evolved on the subject merits to be noticed from a judgment delivered by Griffith C.J. of Australia High Court in “ Dickanson versus Edwards” [10 CLR 243] whereunder participation of a disqualified person in the proceedings of the tribunal was held to render the same to be vitiated as a whole. Relevant portion reads as under:-

“ It is said the District Chief Ranger did not take any part in the proceedings. I am willing to give the fullest credit to that, but I do not think it is material. He was a member of the tribunal that tried the case; he was present when it was heard, and, applying the ordinary rules, I cannot say that his being there did not vitiate the proceedings altogether..... For these reasons I think the findings of both the District Judicial Committee and the District Appeal Committee were vitiated by the presence of the District Chief Ranger.”
(The underlining is ours).

20. The employee having been penalized by the Vice Chancellor, could not in the ordinary course of human behaviour, have faith in him, when he presides over the meeting of the syndicate to decide his appeal. Whether or not the vice chancellor sits there with open mind,

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~~unbiased~~ by his previous decision in the matter is immaterial, as

Islamic system of justice requires that the aggrieved person (herein

the employee) should not harbour any apprehension in his mind that

he would not be able to receive fair and impartial decision of his

appeal. The possibility of the lurking fear in his mind that some

members of the syndicate, might be influenced by the presence of the

Vice Chancellor cannot be ruled out. It was mainly for this reason that

Hazrat Umar, just and upright though he was, deemed it proper to

refer the case between himself and the opponent to third person for

decision as Qazi. This principle of administration of justice was

affirmed by the apex court of the country in Muhammad Nawaz's

case [PLD 1973 S.C. 327] wherein their Lordships have laid down

that it is of paramount importance that parties arraigned before courts

should have confidence in the impartiality of the courts.

Indeed reasonable apprehension would arise in the mind of

aggrieved employee that the presence of Vice Chancellor in the

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meeting of the syndicate would adversely affect the decision of the appeal against his order. It provided ample justification for transfer of the Lis to another forum of competent jurisdiction, which, in the scheme of the Act, is non-existent.

21. At this stage it is necessary to examine the plea raised on behalf of the respondent-University that since against the decision of the syndicate the employee can now avail of remedy of revision petition before Chancellor, in terms of Section 10(a) of the Act (University of Engineering and Technology, Lahore Act 1974), quoted hereinabove, therefore section 41 does not call for any change / amendment. This provision of law is akin to section 115 of Code of Civil Procedure which reads as under:-

115. Revision...(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears..
- (a) to have exercised a jurisdiction not vested in it by law, or
 - (b) to have failed to exercise a jurisdiction so vested, or
 - (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.
- The High court may make such order in the case as it thinks fit.

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[Provided that, where a person makes an application under this sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court, and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court]

[Provided that such application shall be made within ninety days of the decision of the Subordinate Court which shall provide a copy of such decision within three days thereof, and the High Court shall dispose of such application within three months].

[(2) The District Court may exercise the powers conferred on the High Court by sub-section (1) in respect of any case decided by a Court subordinate to such District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.

(3) If any application under sub-section (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.

(4) No proceedings in revision shall be entertained by the High Court against an order made under sub-section (2) by the District Court].

A plain reading of both the provisions, which are para-materia,

makes it abundantly clear that scope of the revisional power is quite limited and it would be exercised only in cases involving illegal assumption, non-exercise, or irregular exercise of jurisdiction by the lower court / forum. It cannot be invoked against conclusions of law or facts, which do not in any way affect the jurisdiction of the lower

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court, no matter, howsoever erroneous or wrong its decision may be on a question of law or facts unless it involves a matter of jurisdiction.

See. " Muhammad Boota and 48 others versus Allah Ditta and 14 others" [1998 SCMR 2764], " Shahid Maqbool versus the State" [1997 SCMR 1138] and " Abdul Hameed versus Ghulam Muhammad etc" [PLJ 1987 S.C. 288].

It may also be kept in view that the revisional jurisdiction is discretionary in nature and the revision, if preferred, might be turned down / rejected in limine in the secrecy of his chamber by the Chancellor without even calling the employee for hearing and or sending for the record of the case. See Sabir Hussain's case [2001 MLD 368 at 372]. This remedy thus might prove quite illusory for the employee with the bitter feeling that justice has been denied to him. Such a situation cannot be countenanced in the Islamic system of justice for adjudication of dispute. The plea raised by the respondent University is repelled, as being devoid of force.

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22. The cumulative effect of the above discussion is that, we uphold the contention of the petitioner that sections 23 and 41, in their present form, are violative of Injunctions of Islam to the extent that these permits the Vice Chancellor to participate in the proceedings of the syndicate for decision of the appeal of any employee of the University who had been punished, in any manner, by him.

We, accordingly, allow these shariat petitions. Respondent No.1 is directed to suitably amend sections 23 and 41 of the University of Engineering and Technology, Lahore Act, 1974, so as to incorporate provisions therein that the Vice Chancellor would be debarred from participating in the meeting of the syndicate before which the appeal of an employee of the University, challenging his adverse order, passed qua him, is presented for adjudication.

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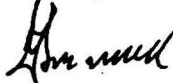
✓ The necessary amendments shall be carried out within six months i.e. before the 15th June 2005, failing which the impugned provisions i.e. sections 23 and 41 would cease to have legal effect. ✓

23: Similar directions are being issued in the connected shariat petitions, vide judgments of even date, passed therein.

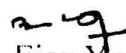
24. Parties to bear their respective costs.



(Saeed-ur-Rehman Farrukh)
Judge

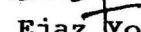


(Dr.Fida Muhammad Khan)
Judge

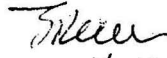

(Ch. Ejaz Yousaf)
Chief Justice

Islamabad, the 16.12.2004.
Zia

Announced in open court


(Ch. Ejaz Yousaf)
Chief Justice

Approved for reporting


16-12-2004.