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### Article Title

## Maintainability of Writ Jurisdictions in Case of Public Sector Universities in Pakistan: An Appraisal of Master and Servant Doctrine Interpreted by Apex Courts

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### Abstract

*The maintainability of writ jurisdiction in case of public sector universities is actually an accountability mechanism as Public sector universities get public funds in the form of budget support. These public institutions must be answerable before public as they are getting benefit of tax. The writ jurisdiction on the basis of statutory and non-statutory rules has become a bone of contention for university employees. No legislative mechanisms had been provided in post Eighteenth amendment era to address the grievances of university employees, therefore; courts had to fill the gap between Higher Education Institutions and their employees by interpreting the doctrine of Master and Servant sagaciously. There is a dire need to devise an effective & efficient regulatory and legislative framework for higher education sector while taking on board all major stakeholders i.e. Federal Government, Provincial governments, representative of universities, National Finance Commission and Council of Common Interest.*

**Keywords:** Writ Jurisdictions, Public Sector Universities, Master and Servant Doctrine Legislative Framework, Higher Education, Supreme Court, High Court

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### Title

## Maintainability of Writ Jurisdictions in Case of Public Sector Universities in Pakistan: An Appraisal of Master and Servant Doctrine Interpreted by Apex Courts

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### Abstract

*The maintainability of writ jurisdiction in case of public sector universities is actually an accountability mechanism as Public sector universities get public funds in the form of budget support. These public institutions must be answerable before public as they are getting benefit of tax. The writ jurisdiction on the basis of statutory and non-statutory rules has become a bone of contention for university employees. No legislative mechanisms had been provided in post Eighteenth amendment era to address the grievances of university employees, therefore; courts had to fill the gap between Higher Education Institutions and their employees by interpreting the doctrine of Master and Servant sagaciously. There is a dire need to devise an effective & efficient regulatory and legislative framework for higher education sector while taking on board all major stakeholders i.e. Federal Government, Provincial governments, representative of universities, National Finance Commission and Council of Common Interest.*

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**Keywords:** [Writ Jurisdictions](#), [Public Sector Universities](#), [Master and Servant Doctrine](#) [Legislative Framework](#), [Higher Education](#), [Supreme Court](#), [High Court](#)

### Introduction

The maintainability of writ jurisdiction in the case of public sector universities is actually an accountability mechanism as Public sector universities get public funds in the form of budget support. These public institutions must be answerable before the public as they are getting

the benefit of tax. Recently, the Supreme Court of Pakistan in its verdict categorically cleared that there is a relationship of Master and servant between the University and its employees and the only remedy available is to claim damages in the shape of compensation while negating the rule of equity, fairness, and justice. 2021 SCMR 730 Prior

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to that application of this doctrine was limited to the domestic employees working in houses in the United Kingdom. The philosophy behind the doctrine of Master and Servant was that if an aristocrat did not want to continue the services of their barber, cook, or washerwoman, the aristocrat could not be compelled to reinstate the services of these household employees. Unfortunately, the Supreme Court of Pakistan applied this doctrine of Master and Servant to employees of public sector universities in Pakistan without elucidating the difference between "Institutional Services" and "Personal Services". Supreme Court of Pakistan gave its verdict that employees of Public Sector Universities have no relief except claiming damages in the shape of compensation and they will not be entitled to reinstate their position. 2022 PLJ 85; 2018 PLC Service Note 104 Consequently, the Higher Courts are not entertaining most of the time the writ petitions of university employees, and the lower courts are not granting injunctions to them on a usual basis. Moreover, the Courts are differentiating the rules of Public sector universities into statutory and non-statutory basis by applying the "Functional Test". 2022 PLC service 1028 It seems that courts are showing reluctance to entertain the cases of public sector universities and leaving them at the whims of high officials. In the case of Muhammad Tariq vs. University of Agriculture Faisalabad, the court held that it could not interfere in the internal affairs of the university, including matters related to admissions and examinations. In another case Muhammad Aslam vs. University of Agriculture Faisalabad, the court held that the appointment of a vice chancellor was a matter within the sole discretion of the university's governing body; therefore, courts will not interfere in the internal matters of the public sector universities as these public sector universities have non-statutory rules and there exist master and servant relationship between Public Sector Universities and their employees. 2024 MLD 130

### **Research Methodology**

This research employed a mixed interdisciplinary approach, utilizing both quantitative and qualitative research techniques. The predominant focus was on qualitative methods, which are part of the conventional legal methodology of analyzing

primary and secondary legal sources. Integral parts of this research include case laws, acts, and ordinances of the universities; therefore, the provisions of the world constitutions, laws related to the higher education sector, and important case laws of higher courts while shedding light on the irregularities of the regulatory framework of higher education sector in Pakistan have been discussed. The theoretical framework encompasses the application of regulatory ritualism theory. Drahos Peter, [2017](#) Additionally, this research includes arguments based upon data from several publications regarding various regulatory systems that have been published by national and international authors.

### **Framing of Legal Issues**

Whether the Court has tried to fill the gap between Higher Education Institutions and their employees by interpreting master and servant doctrine.

Whether the Court has tried to fill the gap between Higher Education Institutions and their employees by misinterpreting the notion of master and servant.

Whether judgments or decisions of higher courts have impacted and shaped the post-18<sup>th</sup> amendment legislative framework of the Higher education Sector in Pakistan.

### **The Concept of Statutory and non-Statutory Rule**

Before proceeding further it is imperative to comprehend the concept of Statutory and non-statutory rules. Then we would be able to critically analyze the role of the court to fill the gap between employer and employee particularly the employees of public sector universities in Pakistan. There are several landmark judgments of apex courts elucidating statutory and non-statutory rules. We would like to elaborate on a few of them while critically examining the ground realities attached to this notion. In a landmark judgment (2023 PLC SERVICE 662; Writ Petition No.5801 of 2022; Date of Decision: 12/05/2022) a few important questions of law were raised and answered by the Honorable Court i.e. Muhammad Tahir Nawaz Cheema case in which the Honorable court clarifies the statutory and non-statutory rules exhaustively which were already elaborated in PIAC case. PLD [2010](#) SC 676

The court introduced the "Function Test" for determining the statutory and non-statutory rules. The "Function Test" 2013 SCMR 1383; 2015 SCMR 1257; 2013 SCMR 1707; 2019 SCMR 1

(2015 SCMR 1257; 2013 SCMR 1707; 2019 SCMR 1: 2013 SCMR 1383) includes the three most important points. The functions placed upon the institutions are those of the state, which involve the exercise of sovereign power; control of the institutions is in the hands of the government; and, last but not least, the state provides funding to manage its affairs. This function test was reaffirmed by so many other important judgments like Abdul Wahab vs HBL (2013 SCMR 1383; 2019 SCMR 1) and Pir Imran Sajid case (2013 SCMR 1707) (PLD 2005 SC 806). In another landmark judgment, the August Supreme Court elaborated the statutory rules that to check the validity of statutory rules that rules have statutory force the determining factor will be the force under which they have been framed (2023 PLC Service 662). Statutory rules have been defined in so many different ways like an "exercise of the delegated legislative power by the rule-making authority" (2010 SCMR 1495, State life Insurance case). It was held that statutory regulations have three traits including rules framed by the statutory body framed underneath the authority or powers conferred within the statute and having governmental approval (2013 SCMR 642). Prior to the function test, it was categorically clarified by the August Supreme Court in 1984 in the Cadet College case (PLD 1984 SC 170) that "rules could not be regarded as statutory but mere instructions for guidance unless approved by the government" (2017 SCMR 2010). Later on, the Court broadened the scope of statutory rules by adding mere government approval is not sufficient rather it depends upon the nature and efficacy of the rules to determine their status (PLD 2016 SC 377; 2017 SCMR 571).

### **Impact of Statutory and Non-Statutory Rules on Employees of Public Sector Institutions**

In the case of Muhammad Tahir Nawaz Cheema, (2023 PLC Service 662) the key legal question is how statutory rules affect the rights of employees. The law is well-settled that employees of a statutory body, whose conditions of service are not regulated by rules/regulations framed under the

statute but only by internal rules or instructions, cannot normally enforce any violation of those internal rules. However, there are certain exceptions to this rule: If the statutory body has breached its own service rules or regulations formulated under the powers granted by the act, and there is no sufficient or effective remedy. If the body has disregarded the procedural requirements and principles of natural justice while taking action in a service matter. Additionally, the doctrine of master and servant does not apply in cases where there is a violation of any law. This can be considered an extension of the third exception, where "violation of law" is not limited to a specific statutory provision, but includes all that is treated as law, including judicial precedents laid down by superior courts (2024 SCP 44; WP No.7372/2022 in the case titled as Syeda Samar Kazmi v. FOP; WP No.7717/2022; WP No.9569/2022; Mazhar Hussain Jami v. FOP; WP No.11130/2022; Rana Natasha Shoaib Awan vs FOP).

### **Limited Judicial Interference in Educational Institutions**

There are so many other landmark judgments of the Supreme Court of Pakistan in which the Court decided that no interference will be made in the internal affairs of the university. (2024 SCP 44; C.Ps No.2270, 4783 and 4784 of 2019, C.Ps No.1228 to 1230, 1295 to 1298, 1555, 1781 to 1783, 1807, 456-P and 496-P of 2020, C.P.5871/2021, C.P.5872/2021, C.P.2291/2022, C.P.2782/2022, C.P.3811/2022 to C.P.3813/2022 and C.P.1438/2019).

For ready reference, we would like to quote the relevant paragraph from judgment (2024 SCP 44).

"The judgment highlights that the process of regularization is a policy matter and falls under the Executive's prerogative. Courts should refrain from interference unless a policy violates fundamental rights. Citation: The court cites the concept of institutional autonomy and refers to the Magna Charta Universaitum 2020 (Para 7) ( 2024 SCP 44).

Likewise in other cases Court also endorsed the same idea of not interfering in the affairs of educational institutions by holding Courts lack the skills and experience necessary to intervene in such policy problems. Further, it was decided that under this autonomous realm, educational institutions are entitled to deference when making any decisions

related to their mission. At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would be against the spirit of art. 7 as it is not the role of the Courts to interfere in policy decisions (2024 SCP 44 in the case titled Vice Chancellor Agriculture University, Peshawar Versus Muhammad Shafiq, etc. (In CP 2270/2019).

However, in another landmark judgment of Irfan Ullah vs FOP through Higher Education, Islamabad it was concluded by the court if service rules framed by statutory bodies under statutory powers have no adequate remedies, they can be enforced through writ jurisdiction. However, if the conditions of service for employees of a statutory body are not regulated by rules framed under the statute, but only by internal rules, then any violations cannot be enforced through writ jurisdiction and would instead be governed by the principle of master-servant relationship. Furthermore, the court held that for all public employments created by statutory bodies and governed by statutory rules, the principles of natural justice cannot be dispensed with in disciplinary proceedings, unless the appointments are purely contractual in nature (2013 SCMR 1707), (WP No. 2838-P/2021 with IR titled as Irfan Ullah vs FOP Date of Decision 10.11.2022).

In another landmark judgment the "Functional Test" has been elucidated. Functional Test has a direct nexus with statutory and non-statutory rules. Statutory rules are rules which are framed under a statute or with government approval. Candidly speaking, it is not possible for parliament to make laws and rules for each and every department; therefore, power is delegated to other corporations to make rules to run their functions smoothly (WP No. 3320/2022; 2024 PLC Service 170).

Functional Test has been endorsed and further developed in the case of Munda Eleven Cricket Club vs FOP (PLD 2017 Lahore 802) that it does not solely depend upon whether the framing of rules requires approval of government instead it depends upon nature and efficacy of rules and regulations. It was determined that when a university develops rules and regulations that provide instructions for its internal control and management processes, those would be classified as non-statutory rules. (PLD 2017 Lahore 802) The same "Functional Test"

was also discussed and endorsed in the Aown Abbas Bhatti vs FOP case (PLD 2018 Lahore 435).

### **Whether a Rule of PUBLIC SECTOR University can be Non-Statutory in Nature when the University was Established by the act of Parliament**

The debate surrounding statutory and non-statutory rules has entered an interesting phase, with courts delving deeper into the distinction between the two. A well-established principle has emerged that contract employees do not have a vested right to be regularized. (2013 SCMR 13; 2016 MLD 95)

This principle has been endorsed in several notable cases, such as the VC of BB University case. (2016 MLD 95) Writ Petition, 2018 In Asif Abbasi's case the university's counsel argued that the rules framed by the university are non-statutory in nature therefore the writ petition is not maintainable. The honorable court acknowledged that the university is a public sector entity receiving funds from the Government of Sindh, pursuant to Section 47(2) of the Sindh Act No. III of 1977. The government exercises powers in connection with the affairs of the university, including the appointment of the Vice-Chancellor (2017 SCMR 347; Paragraph No 7; Zaman case).

The court relied on the Supreme Court's judgment in Civil Appeal No.654/2010 Shafique Ahmed Khan v NESCOM which provided guidance on the test for determining whether rules or regulations are statutory or non-statutory. The key factor is not solely whether their framing requires the approval of the Federal Government but rather the nature and efficacy of such rules or regulations. The court must examine whether the rules or regulations in question deal with instructions for internal control or management, or if they are broader and complementary to the present statute in matters of crucial importance. The former are considered non-statutory while the latter are deemed to be statutory (2017 SCMR 347).

The below tables show the number of cases the employees of public sector organizations have been deprived off to be reinstated at their position and how many times courts have accepted the writs of public sector university employees in Pakistan. We articulated the available data while mentioning the

tendency of courts to accept or reject the writ petitions between employees and public sector higher education institutions in Pakistan. Broadly speaking, there are several issues going on between public sector universities and their employees including but not limited to reinstatement of contractual as well as permanent

employees, disciplinary proceedings against employees, service matters, recruitment, promotion, and termination of employees. The researchers would like to discuss a few of them to show the tendency of courts and the implementation of statutory & non-statutory rules.

**Table 1**

*Statutory Rules Enunciated by Courts*

CATEGORIZATION OF CASES	CASE LAWS	ISSUE INVOLVED/ DECISION OF CASE
WP No. 2477 of 2021 regarding wrongful termination/ dismissal titled Muhammad Azad vs Vice-Chancellor Mirpur University Of Science And Technology	2024 MLD 130	The petitioner was awarded a major penalty i.e. dismissal from services. The court observed that the petitioner had an alternative and effective remedy available vide sec. 17 of the Act. (Punjab Employees Efficiency, Discipline and Accountability Act, 2006) Which provides for revision before the Chancellor So it was decided to avail that remedy. Vires of the Pakistan Medical Mission Act was challenged. Issue of regularization of services in Pakistan Medical Mission. Guidelines were provided in this case: All employees appointed under the Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, no vested right to continue services, and the PMC Ordinance is intra-vires to the Constitution. In another case the lecturer of MUST was dismissed from service on the basis of serious allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. An inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of the university and dismissed the petition.
	2023 PLC Service 75	
	2012 PLC (C.S.) 1366	
	2019 SCR 226 Azad Jammu and Kashmir Interim Constitution, 1974, Article 44.	
	2014 PLC (C.S.) 386	
	2011 SCMR 842	
	PLD 2010 SC 969	
	2023 PLC Service 103	
	PLD 2020 Islamabad 130	
	2024 SCMR 527	
Regularization of Contractual Employees Petition accepted  Farmanullah vs Gomal University	2017 PLC Service Note 116	The petitioners were initially appointed on a fixed pay/contract basis for a period of six months, with subsequent extensions granted periodically. Despite the fact that their services were aligned with budgetary-sanctioned posts, they have continued to be employed on a contract basis within the respondents' universities. The court highlighted that similar fixed-pay employees in comparable situations had been assimilated into sanctioned budgetary positions. Consequently, the court directed
	WP No.960-D/2016	
	WP No320-D/2014	
	WP No.22-D/20147	

CATEGORIZATION OF CASES	CASE LAWS	ISSUE INVOLVED/ DECISION OF CASE
	2016 SCMR 1375 WP No.25-D/2017	the respondents to regularize the petitioners' employment.

**Table 2**

*Non-Statutory Rules Enunciated by Courts*

CATEGORIZATION OF CASES	LAWS	ISSUE INVOLVED/ DECISION OF CASE
Writ Petition No. 2477 of 2021 regarding wrongful termination/ dismissal Muhammad Azad vs Vice-Chancellor Mirpur University Of Science And Technology	2024 MLD 130	The petitioner was awarded a major penalty i.e. dismissal from services. The court observed that the petitioner had an alternative and effective remedy available vide sec. 17 of the Act, (The Punjab Act on Employee Efficiency, Discipline, and Accountability (2006) which provides for revision before the Chancellor So it was decided to avail that remedy. Vires of the Pakistan Medical Mission Act was challenged. Issue of regularization of services in Pakistan Medical Mission. Guidelines were provided in this case: All employees appointed under the Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, no vested right to continue services, and the PMC Ordinance is intra-vires to the Constitution. In another case the lecturer of MUST was dismissed from service on the basis of serious allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. An inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of the university and dismissed the petition. Supreme Court emphasized it is the prerogative of the employer to decide terms and conditions of employment. The appointing authority may renew the contract. There is no inherent right for contractual employees to claim regularization. In another case, the court observed that institutional
	2023 PLC Service 75	
	2012 PLC (C.S.) 1366	
	2019 SCR 226 Azad Jammu and Kashmir Interim Constitution, 1974, Article 44.	
	2014 PLC (C.S.) 386	
	2011 SCMR 842	
	PLD 2010 SC 969	
Regularization of Contractual Employees Petition Dismissed	2023 PLC Service 103	
	PLD 2020 Islamabad 130	
Vice-chancellor Bacha Khan University Charssada vs Tanveer Ahmad	2024 PLC Service 323	
	2022 PLC Service 85 2021 SCMR 977	

<b>CATEGORIZATION OF CASES</b>	<b>LAWS</b>	<b>ISSUE INVOLVED/ DECISION OF CASE</b>
Sadiq Amin vs Bacha Khan University Charssada	2021 PLC Service 1295  PLD 2011 SC 132  2005 SCMR 642	autonomy must be respected. Regularization could not be effective retrospectively. Therefore, the claim of employees regarding regularization and ante-date regularization is dismissed.
Reinstatement of Employment Abbas Vs KP Govt. Ali Hassan vs FOP through MOD	CP No. 670- 671/2020 2022 PLJ 85  2018 PLC Service Note 104	The principal of Government College failed to reinstate the employee and offered lump sum pension benefits. The court decided that the jurisdiction of the court is not abridged when an order is illegal
Promotion Mrs. Jehan Ara vs Gomal University	2023 PLC Service 938 Constitutional Petition No. 922 to 926 & 928  2017 PLC Service 1342  2017 PLC Service Note 99	Peshawar High Court, DI Khan Bench accepted the petition in 2017 PLC Service Note 99 and directed the university to promote the employee. It was decided that promotion is not a vested right rather it is the discretion of the competent authority. The notification which was issued by VC under pressure from the Joint Action Committee was declared null and void. The issue of eligibility and fitness was decided by the court exhaustively.
Pension and Gratuity benefits Abdul Shakoor v. AIOU through Vice-Chancellor Muhammad Rafiq vs Vice- Chancellor, Allama Iqbal Open University Muhammad Rafi v. FOP	2020 PLC (C.S.) 1050  2023 PLC SERVICE 277  WP No.1079 of 2021  2023 PLC SERVICE 1143	It would be considered as involvement in the internal affairs and policy matters of AIOU. However, the Court directed AIOU to expeditiously decide the pensionary benefits issue, considering the observations and in accordance with the law. The decision was to be communicated to the petitioner and this Court within one month. The court also acknowledges the pensionary benefits as a fundamental right to life.
Ijaz Saleem Retired Private Secretary Bs-18, Mirpur vs Vice- Chancellor Mirpur University Of Science And Technology	2021 SCMR 730  2021 PLC (C.S.) 1226	Recognizing the invocation of constitutional jurisdiction against a public authority for service regulations violation, even if non-statutory. The Court directed MUST to release the petitioner's entire pension, including contributions from the Electricity Department, leave encashment, and other outstanding dues. The university was also ordered to issue a Pension Payment Order (PPO) in the petitioner's favor. Similarly, in another case court directed the University of Malakand to count the contractual service for pensionary
Multan Shah vs Vice-Chancellor University Of Malakand	2018 SCMR 736  PLD 2007 SC 35  2005 SCMR 292	

CATEGORIZATION OF CASES	LAWS	ISSUE INVOLVED/ DECISION OF CASE
	PLJ 2014 Peshawar 225	benefits. In the case of Muhammad Rafique the Court directed AIOU to expeditiously decide the pensionary benefits & award of pensionary benefits timely.
	2024 PLJ 47	
	2021 SCMR 730	
	2018 SCMR 736	
	PLD 2007 SC 35 2005 SCMR 292	
	2024 PLC SERVICE 302	The court directed to appoint the candidate who fulfilled the whole procedure. Though He/she stood second on the merit list the top position candidate intended not to join the post of Game Supervisor. In the case of Dr. Akhtar Nawaz Gomal University withdrew the notice of appointment of Professors. However, the court declared the withdrawal notification as illegal. In the case of Muhamad Iqbal Khan who was appointed as Assistant Professor at Gomal University by the syndicate on the recommendation of the Selection Board. Later on, the Governor/Chancellor of the university set aside the decision of the Syndicate. The applicant challenged the order and prayed to the court to restore the order of the Syndicate. The court accepted the petition. In this case (1995 CLC 510) the issue of qualification for appointment of Lecturer Law and Assistant Professor Law was discussed at Length. In another case the process of appointment at university was challenged, the court dismissed the petition, finding that the selection process was fair, transparent, and without mala fide. The appellant was appointed as a Lecturer but contested the appointment of Assistant Professors, alleging pre-planned appointments and discrepancies in qualifications. After hearing both of the parties the Court found no merit due to acquiescence and non-impleadment of the university as a necessary party. The petitioner challenged the appointment of two Assistant Professors appointed by Punjab University by alleging that the appointment was made without fulfilling the codal formalities. The Court dismissed the WP as being devoid of merit.
	2013 SCMR 264	
	Civil Appeal No. 160 of 2018	
New Appointment Razi Rizwan vs Vice-Chancellor, Gomal University	2023 PLJ 58	
	2000 SCR 97	
Dr. Akhtar Nawaz Vs vice- Chancellor, Gomal University	2004 SCR 467	
	1996 SCR 161	
Hafiza Bushra Gul Versus University Of Science And Technology, Bannu Through Vice Chancellor, Bannu	PLJ 1990 SC AJ&K	
Sh. Muhammad Sadiq v. Federal Public Service Commission	2014 SCMR 997	
	2014 SCMR 157	
Muhammad Hammad-UI-Islam vs Vice-Chancellor, University Of Management Sciences & Information Technology, Kotli	2008 SCMR 960	
	2015 PLC (C.S.) 393	
Writ Petition No. 65 of 1992 Muhammad Iqbal Khan vs Chancellor, Gomal University	2013 PLC (C.S.) 864	
	2014 PLC SERVICE 526	
	2014 PLC SERVICE 318	

CATEGORIZATION OF CASES	LAWS	ISSUE INVOLVED/ DECISION OF CASE
	2010 PLC SERVICE 657	
	2010 PLJ 166	
	1995 CLC 510 2024 PLJ 347	
	2024 SCMR 443	
	WP No. 205-M of 2021 2023 PLD 40	The admission was refused by the Gomal University on the basis of new regulations adopted by the Syndicate. The court accepted the petition and directed the university to allow the petitioners to complete their degrees. A case involved a dispute over a university's cancellation of a student's admission due to a fake mark sheet. It was decided that Courts should generally defer to universities' decisions on internal governance and discipline matters. However, the court accepted the petition and upheld LUMHS's cancellation of the student's admission due to the fake mark sheet. The Court emphasized the importance of maintaining high standards in medical education and universities' right to regulate admissions. The admission of an MBBS student was denied. The court directed me to get admission to MBBS. The general rule is that no interference would be made in policy matters of educational institutions. However, the court would assume jurisdiction in case of involvement of law point. In another case university canceled the admission due to non-fulfillment of the prerequisite degree on time even after an extended time. The court concluded that the petitioners did not complete their studies within the permissible time frame as per university regulations. The petition lacked substance, and the court dismissed it without a regular hearing.
	2017 YLR Note 429	
New Admission/ cancellation Liaquat University Of Medical And Health Sciences (LUMHS) Jamshoro vs Muhammad Ahsan Shakeel	2021 PLC (C.S.) 1168	
	2020 SCMR 2129	
	2017 YLR 353	
Muhammad Usman Farooq Vs Rawalpindi Medical University, Rawalpindi Through Vice Chancellor	PLD 2019 SC 509	
Salman Khan vs University Of Swat Through Vice-Chancellor	1992 MLD 2029	
	WP No. 4660- P/2020	
Writ Petition No.103 of 1991	PLD 1979 SC 32	
Writ Petitions 115, 119,130/91	2012 SCMR 6	
	2015 SCMR 445	
	2015 MLD 220	
	PLD 2011 Lahore 555	
	2005 SCMR 961	
	PLD 2001 SC 219	

The available data and relevant case laws showed that there is no clear roadmap to address the grievances of university employees after the Eighteenth Amendment. The courts are deciding

the cases on the basis of statutory and non-statutory rules. However, no benchmark has been decided yet to demarcate what rules are statutory and what are non-statutory. Due to the non-

availability of a clear road map courts are assuming jurisdiction and declining jurisdiction on the same issues; therefore, there is a dire need to devise a plausible legislative framework for HEI. Since 1984 courts have defined statutory rules without elucidating a clear legal framework. Primarily, it was decided by the court that the rules of public sector universities are statutory when approved by the government. Later on, it was added that approval is not sufficient rather it depends upon efficacy to determine the status of rules. Generally, Courts do not interfere in the internal matters of public sector universities. Courts generally defer to educational institutions' internal governance (Yasir Nawaz v. Higher Education Commission, PLD 2021 SC 745). Exception: Court intervention when minimum requirements of natural justice or legal principles are violated (Yasir Nawaz v. Higher Education Commission, PLD 2021 SC 745). Another exception is court intervention when a fundamental right is infringed (Fakheryar Khan v. Agriculture University, Peshawar, PLD 2016 Peshawar 266). As a general rule, the writ jurisdiction is available when there is no adequate alternative remedy (2011 SCMR 1813).

After examining the cases thoroughly, we reached the conclusion that courts have demarcated the rules of public universities into statutory and non-statutory basis. For that purpose the "Functional test" (2013 SCMR 1383; 2015 SCMR 1257) has been introduced in which three conditions mentioned supra have been prescribed for rules to be called statutory rules otherwise rules would be non-statutory if failed to fulfill all three conditions. Further, it gave its verdict that if power has been delegated to any public sector institutions then rules framed by respective institutions could be considered as non-statutory rules. There is a dire need to devise a plausible regulatory and legislative framework for the higher education sector in post Eighteenth Amendment era.

### **Doctrine of "Master and Servant": A Critical Analysis**

Master and Servant is a legal doctrine that governs the relationship between autonomous statutory bodies and their employees. Due to the application of the Master and Servant doctrine the professors and staff of public sector universities are at the mercy of their employers. Further, the verdict of the

Supreme Court of Pakistan in the Naimatullah case (2022 PLC service 1028; Altaf Junior Clerk; Naimatullah case No. 4576, 4588, 4589 of 2022) paved the way for chaos and anarchy among officers and officials of the university. Consequently, the high courts are not entertaining the cases between universities and their employees on the basis of non-statutory rules of public sector universities as envisaged in the case of Munda Eleven Cricket Club vs FOP (PLD 2017 Lahore 802) and the lower courts are not granting injunctions to university employees. Succinctly stated that petitioners were appointed at the university on a contract basis where they served for thirteen years and approached the court for regularization of their service. The court ordered that they did not have a vested right to be regularized under the KPU Act (KPU Act 2012 amended in 2015 & 2016)

by relying upon the "*ratio decided*" of the August court regarding contractual employees. There is no inherent right for contractual employees to claim regularization due to the master-and-servant relationship between Peshawar University and its employees. There are at least twenty cases (WP Nos 3258, 4893-P/2018; WP Nos.5195, 5274,6055,7281-P /2019; WP Nos. 2281,2610,3176,3504/2020 Date of Decision 12.01.2021) in which common question of law was answered by the Justice Roohul Amin Khan in original WP No.1598-P/2018. (2022 PLC service 1028) The Court applied the Master and Servant rule without differentiating "Personal Services" from "Institutional Services" (particularly in the case of public sector institutions. In another case it was stated that there is no vested right to be regularized for contractual employees; they have remedy only in the shape of compensation (2017 SCMR 1979; 2013 SCMR 304; 2005 SCMR 642).

Moreover, they do not have the right to approach the High Court for regularization and no automatic right of regularization for contractual employees as well as no vested right for contractual employees (2016 MLD 95; 2013 SCMR 13;2013 SCMR 304).

Likewise, no vested right of regularization; reinstatement; continuation, or extension for contractual employees under the umbrella of master and servant doctrine (CP NO. 4504 of 2017).

The new term was coined in the shape of statutory and non-statutory rules. Many rules of statutory corporations and public sector institutions like universities have been declared as non-statutory, consequently, depriving their employees of filing writ petitions before higher foras (2022 PLC service 1028; Altaf Junior Clerk; Naimatullah case No. 4576, 4588, 4589 of [2018](#)).

On the same footing, the courts subordinate to the High Courts are not granting injunctions to university employees. The top officials of universities have been vested with unchecked power where university employees are turning into personal fiefdom and they have been reduced to minions. This doctrine lacks a solid statutory foundation. The proponent of this theory argued that a contract between a university and its employees is a contract to render personal services. Therefore, this contract cannot be specifically enforced under section 56(f) of the Specific Relief Act of 1875 nor its breach can be prevented through an injunction. Fallaciously, personal services are intermingled with institutional services by the Courts without apprehending that personal services are rendered to natural persons instead of juridical persons. The basic idea behind this doctrine was that if an aristocrat did not want to take the services of his barber, cook, and washerwoman, he could not be compelled to do so. Carolyn Steedman, [2007](#) The application of master and servant doctrine is a complete misreading of the foundational text of English Law. The depth study of this doctrine would realize that this doctrine was meant to be a private law doctrine. William, [2023](#)

Blackstone commentaries upon laws of England published in 1765, chapter XIV deals with the rule of "Master and Servant". William Blackstone A fair reading of Blackstone revealed that the doctrine of Master and Servant was meant to be a doctrine of "Private Law" not public law. Fallaciously, the interpretation of this doctrine by Pakistani judges and lawyers has gone such a disingenuous twist showing a post-colonial despotic mindset, that even Blackstone will be shocked. On the positive side, the lower judiciary should grant injunctions to the employees of public sector universities. No doubt that the higher funds are overburdened but it does not mean to deprive the major chunk of youth and masses working at public sector universities. The Pernicious doctrine of Master and servant which is

devoid of a solid legal foundation needs to be revisited (Umer Gillani, [2021](#)).

## **Recommendations**

To address the grievances of university employees it is imperative to devise Policy guidelines for universities to make more effective, efficient, and transparent laws. Obviously, there are lacunas in university laws; there comes the responsibility of courts to interfere to satisfy the aggrieved parties while making true interpretations. To the extent of appointment at a higher level courts tried to fill the gap to some extent; however, on other issues courts are not entertaining the cases by making narrow interpretations of master and servant doctrine. 2023 PLC SERVICE 277 All this happened due to the non-availability of the legislative framework after the Eighteenth Amendment; therefore, there is a dire need to devise a plausible regulatory and legislative framework. Another suggestion is that an independent judicial mechanism for accountability within university premises should be comprised of honest and trustworthy persons equipped with sound knowledge of law and rules of equity. Without true interpretation, the chaos among officers and officials of the university may lead to rebellion. Universities should have their own governing legislation while defining qualifications, experience, and expertise for all appointments and removals. Public sector universities should not escape from judicial accountability because, without strong accountability mechanisms, the situation could not be better at Higher Education Institutions. For smooth functioning, there should be a strong accountability mechanism so that no one could take the law into their own hands. The lower judiciary should grant injunctions to the employees of public sector universities wherever is needed. No doubt that the higher funds are overburdened but it does not mean to deprive the major chunk of youth and masses working at public sector universities. The Pernicious doctrine of Master and servant which is devoid of a solid legal foundation needs to be revisited.

## **Findings and Conclusion**

Regarding the maintainability of writ jurisdiction in the case of public sector universities the courts have tried to implement the rule of Master and servant on university employees, which was

applicable at the domestic level to sort out the disputes of domestic servants in the United Kingdom. In this paper, the historical perspective of statutory and non-statutory rules with reference to the Master and Servant doctrine as interpreted by the Supreme Court has been elucidated. Gradually, this concept was broadened by the Supreme Court. However, recently the Courts most of the time declined their jurisdiction to entertain the cases of university employees on the basis of statutory and non-statutory rules. This could have drastic consequences as there is chaos among university employees. There is no better remedy than to file a suit before the Court. If this remedy is snatched, people will take the law into their own hands. On one side those who hold power would manipulate their employees consequently, employees would suffer and there is a possibility of rebellion. All landmark judgments regarding employees of universities have been discussed and critically examined. No proper legislation in Higher Education laws has been made after the Eighteenth Constitutional Amendment to address the grievances of employees of universities. A vacuum had been created after the Eighteenth Amendment and the courts tried to fill the gap to some extent. For a plausible Legislative and regulatory framework, all major stakeholders i.e., the Federal Government, Provincial governments, representatives of universities, the National Finance Commission, and the Council of Common Interest should be made part of devising an effective and efficient regulatory and legislative framework for the higher education sector. The role of the HEC should be circumscribed within the ambit of the law to have a plausible regulatory and legislative framework for the Higher Education sector in Pakistan. To address all challenges, it is imperative to lay the foundation of consistent guidelines and thorough procedures for appointment and dismissal to be followed in all universities. Charlotte Danielson, [2009](#) Last but not least, political interference should be reduced to the minimum in running the affairs of the university. This approach

would pave the way for greater accountability and transparency in the higher education sector. We mentioned earlier, that there is no specific section of the law that deals with the doctrine of master and servant in many countries, including Pakistan, USA, UK, Japan, India, and Malaysia. The principles of master and servant are based on common law principles that have developed over time recognized and applied by the courts in employment disputes. However, there are various labor laws and regulations in each country that govern the employment relationship between employers and employees and provide for the rights and obligations of both parties. To conclude, the true interpretation of the doctrine of Master and servant according to the rules of equity and justice would pave the way to restore the confidence of officials in apex courts. A new regulatory and legislative framework should encompass the remedy for university officials with strong accountability mechanisms so that no one can take the law into their own hands. The lower judiciary should grant injunctions to the employees of public sector universities. The high courts should not deprive university employees of filing writ petitions. The universities should have a strong accountability mechanism to address the grievances of university employees. For that purpose, an independent judicial body consisting of independent persons equipped with sound knowledge of the law be arranged. The Pernicious doctrine of Master and servant which is devoid of solid legal foundation needs to be revisited. This approach would pave the way to build the confidence of officers of the university in the judiciary; ultimately may lead to greater accountability and transparency in the higher education sector. No plausible remedy for employees if higher fora restrict their jurisdiction; therefore, in the absence of any rule courts should not decline their jurisdiction and if it is not possible to issue a writ due to burdensome may suggest alternate remedies in the shape of Alternate Dispute Resolution mechanisms (ADR) backed by the Courts.

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