

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-1940 of 2014

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Petitioner Prof. Jan Muhammad Memon, through
Mr. Muhammad Ali Waris Lari Advocate.

Respondents No .4: Through Ms. Benish Qureshi &
Mr. Musharraf Azhar Advocates

Respondent No.1 to 3: Through Mr. Shehryar Mehar, AAG.

Dates of hearing: 19.03.2018, 27.03.2018, 10.04.2018 and
10.05.2018

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - By invoking extraordinary Constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, the Petitioner seeks the following relief(s):-

- i) Make declarations that the rules and regulations as well as the eligibility criteria framed and fixed by the HEC for the appointment to the post of Vice Chancellor, in the Universities of Pakistan, including in the Shaheed Mohtarma Benazir Medical University Larkana, is mandatory and cannot be altered with or amended in any manner, by any authority, what so ever.***
- ii) Declaration that the advertisement dated 17.01.2014 is based on favoritism, pick and choose, arbitrary and unilateral, in order to accommodate, out of the way, the Respondent No.4 Mr. Channa to force his way to the high position of the Vice Chancellor.***
- iii) Declarations that the impugned notification dated 01.04.2014, appointing Mr. Ghulam Asghar Channa, is discriminatory, illegal and abinitio void from the beginning and is based on malafide process of advertisement and selection; thus is neither here nor there.***

2. Brief facts of the case are that the post of Vice Chancellor Shaheed Mohtarma Benazir Bhutto Medical University Larkana (hereinafter referred to as SMBBMU) fell vacant in the month of October 2013 and the Government of Sindh advertised the same in Daily renowned Newspapers on 31.10.2013 for appointment. Prescribed qualification and experience contained in the advertisement is as under:-

Qualifications and Experience

Applicants having qualification not less than post graduate fellowship preferably a PhD or Fellowship from highly recognized university. The candidates will be assessed according to their academic and leadership abilities and attainments, as well as significant evidence of scholarship, administration, meaningful research, strategic planning, financial management and resource development. A holistic understanding of issues pertaining to the higher education sector, including enhancement of pedagogy and quality assurance, research and development, impact on economy, development of human and financial resources and constructive social interaction with communities, will be considered as a major asset. Candidates must not be more than 65 years of age and has not completed the two tenures as Vice Chancellors.

3. The Chief Minister's Secretariat, Sindh, Karachi, vide Notification No. SO(U)/CMS/15-14/2013, dated 23.10.2013, constituted the Search Committee for selection of competent and qualified person(s) for the post of Vice Chancellor in the Public Sector Universities in Sindh, which comprised the following:-

1. Dr Azra Fazal pechuho (Member Search Committee)
2. Dr. Asim Hussain (Member Search Committee)
3. Dr. Mazhar-ul-Haq Siddiqui (Member Search Committee)
4. Dr. Pof. Abdul Ghaffar Billo (Member Search Committee)
5. Dr.Mashoor Alam Shah (Co-Opted Member)
6. Dr Riaz Ahmed Memon Secretary, (Search Committee).

4. The general terms of references of the search committee as per criteria set forth by the Higher Education Commission are as under:-

i) To scrutinize and shortlist the applications in the light of eligibility criteria given in the advertisement.

ii) To hold interview of the shortlisted candidates having a proven track record of leadership in the fields of academia, administration and management. The Committee shall consider the applicant integrity, professional experience and contribution of public service.

iii) To recommend a panel of three most suitable candidates (in alphabetical order) to the Chief Minister, Sindh. The Chief Minister, Sindh may, select the most suitable candidate after interviewing the three candidates, considering their integrity, academic excellence, administrative experience and the abilities necessary to perform the job.

5. The search committee found none of the candidates suitable for the job. The post was then re-advertised on 17.1.2014. In response thereof, 10 applications were received including seven applicants who were interviewed earlier. The Search Committee interviewed the shortlisted candidates and after considering their integrity, academic excellence and administrative experience, as per the criteria discussed supra, unanimously recommended two names (in alphabetical order) to the Chief Minister Sindh for recommending one name to the Chancellor / Governor Sindh for appointment as Vice Chancellor SMBBMU, Larkana.

i. Prof. Iqbal Ahmed Memon

ii. Prof. Ghulam Asghar Channa

6. Per learned Assistant Advocate General Sindh, the Chief Minister after interviewing the above two candidates, recommended the name of Prof. Ghulam Asghar Channa to the Chancellor/Governor Sindh for appointment as Vice Chancellor, SMBBMU, Larkana. The Governor Secretariat issued Notification dated 1.4.2014 for appointment of Prof. Ghulam Asghar Channa as

Vice Chancellor SMBBMU, Larkana for four years. Petitioner, being aggrieved and dissatisfied with the impugned recommendations of the Chief Minister Sindh, and Notification dated 1.4.2014 preferred this Petition, which was presented before this Court on 15.4.2014.

7. On issuance of notice, the Respondents filed para-wise comments.

8. Mr. Muhammad Ali Waris Lari, learned counsel for the Petitioner has argued that the Petitioner is the only PhD candidate amongst the short listed candidates and the recommendation in favour of the Respondent No.4 for the position of Vice Chancellor, SMBBMU, Larkana is based on malafide intention, without considering merits of the candidates; that fresh advertisement was made on 17.01.2014, for the same post viz the Vice Chancellor Shaheed Mohtarman Benazir Bhutto Medical University Larkana, by making substantial changes in the prescribed qualification and experience which was done arbitrarily and malafidely in order to accommodate the Respondent No.04 who did not fulfill the criteria of qualification and experience as mentioned in the advertisement dated 17.01.2014; that a discriminatory treatment has been meted out with the Petitioner as after proper scrutiny of his papers he was called for interview vide letter dated 10.02.2014 and he rendered interview in a quite befitting and in a satisfactory manner; that no plausible explanation or reasoning has been assigned by the Chief Minister Sindh for selecting the Respondent No.4. That the Respondent No.1 acted beyond its mandate and power as provided under the law by ignoring the academic qualification of the candidates and arbitrarily recommending a candidate, who stood at Sr. No. 02 in the merit list, which action is

illegal, unlawful and without jurisdiction; that in the present matter merit has been bypassed since nepotism and favoritism has prevailed, which is in violation of principle of structured discretion; that the Petitioner has been condemned unheard and has been accorded a hostile discriminatory treatment in violation of his constitutional rights guaranteed under Articles 4,8,9,14,18,25(1) and 38 of the Constitution of the Islamic Republic of Pakistan 1973. Learned counsel has emphasized that the entire process of selection appears to be engineered, which shows arbitrariness, ambiguity and whimsical approach; that the position of Vice Chancellor is a public office and thereby appointing a person on such high post, who is not eligible for such position which caused grave loss to the public at large; that the appointment of Mr. Asghar Ali Channa/Respondent No.4 for the position of Vice Chancellor is without lawful authority and without jurisdiction. Learned counsel for the Petitioner in support of his contention has relied upon the case of Pakistan Medical Association (Center) Vs. Chancellor Dow University of Health Sciences and others (2016 PLC CS 1232) and argued that discretion has to be exercised according to rational reasons. He added that the action of the official Respondents is arbitrary and misuse of powers. He further added that the Search Committee interviewed three candidates for the position of Vice Chancellor and the Petitioner was entitled to be considered for the position of Vice Chancellor and not the Respondent No.4, but the summary for the Chief Minister of Sindh, explicitly shows that the such committee recommended two candidates only for consideration of the Chief Minister Sindh excluding the Petitioner which is against the basic spirit of law . He

further argued that a wrong advice was given to the Governor / Chancellor for appointment of the Respondent No.4 without any reason; that it was bounden duty of the Chief Minister to recommend the candidate for the position of Vice Chancellor on merits. Learned counsel has further contended that the rules and regulations, as framed by the HEC, being statutory and mandatory for the appointment to the post of Vice Chancellor are binding upon all the institutions and departments including on the Universities of Pakistan and on the Respondents 1 to 3 also. Learned Counsel for the Petitioner has further argued that the Respondent No.4 is not qualified to hold a public office of Vice Chancellor of SMBBMU, Larkana; that as per Public Notice, dated 01.07.2014 for the appointment of Vice Chancellor of SMBBMU, Larkana, qualification and age is provided whereas the Respondent No. 4 is a retired employee and does not have the minimum qualification for the position of Vice Chancellor therefore, he cannot hold the said post; that his appointment is called in question under Article 199 (1)(b)(ii) of the Constitution of Islamic Republic of Pakistan 1973, being a holder of Public Office without lawful authority. He lastly prays for issuance of Writ in the nature of quo-warranto against Respondent No.4 to meet the ends of justice. In support of his above contention, the learned counsel placed reliance upon the case of Dr. Muhammad Rafiq & others Vs. Shaheed Mohtarma Benazir Bhutto Medical University & others (2017 SBLR 1906) and Pakistan Tobacco Board and others Vs Tahir Raza and others (2007 SCMR 97), unreported order dated 15.05.2017 passed by the Hon'ble Supreme Court of Pakistan in Civil Petitions No. 989 to 994 and 250-K to 253-K of 2017 in the

case of Shaheed Mohtarma Benazir Bhutto Medical University Vs. Dr. Muhammad Rafiq & others and argued that the Judgment dated 22.03.2017 passed by this Court Bench at Sukkur in C.P. No. D-2090, D-2136, D-2181, D-2182, D-3114, D-3200 of 2015 was maintained by the Hon'ble Supreme Court of Pakistan, as such the Competent Authority is bound to give reasons for not-recommending the Petitioner and ask as to why the name of the petitioner was not forwarded by the search committee as per the law; that nothing has been placed on record relating to the exercise carried out by the Search Committee regarding not recommending the Petitioner and forwarding two names only to the Competent-Authority of their own choice. He further submitted that the Government of Sindh constituted three members search committee but as per the record the members participated in the search committee were more than three, which shows malafide intention of the official respondents. He lastly prayed for allowing the instant Petition.

9. Mr. Shahryar Mehar, learned Assistant Advocate General, Sindh, representing the Respondents No.1 and 3, has argued that the Search Committee after interviewing the candidates recommended following two suitable candidates in alphabetical order for the post of Vice Chancellor SMBBMU, Larkana.

- i. Prof. Dr. Iqbal Ahmed Memon.**
- ii. Prof. Ghulam Asghar Channa**

He next argued that summary was floated to the Chief Minister Sindh to recommend one candidate to the Chancellor / Governor Sindh for appointment as Vice Chancellor, SMBBMU,

Larkana. He further added that the Government of Sindh/Chief Minister recommended one of the suitable candidates, namely Prof. Ghulam Asghar Channa for the position of Vice Chancellor, SMBBMU, Larkana, to the Worthy Chancellor for issuance of Notification of appointment. He added that there is no malafide intention on the part of Government as everything was done in accordance with law and on merits. In support of his contention, he relied upon the case of Rana Amir Raza Ashfaq and others Vs. Dr. Minhaj Ahmed Khan and others (2012 SCMR 6), Prof. Dr. Razia Sultana and others Vs. Prof. Dr. Ghazala Yasmeen Nizam and others (2016 SCMR 992) and argued that the discretionary power of recommending candidate out of the other candidates recommended by the Search Committee lies with the Competent Authority viz. Chief Minister, Sindh, under the law; and to advise the worthy Governor / Chancellor for appointment of Vice Chancellor of SMBBMU, Larkana. He lastly contended that the judgment passed in the case of Pakistan Medical Association & others Vs. Chancellor Dow University of Health & Sciences & others (2016 PLC CS 1232) and the case of Dr. Rafiq & others Vs. Shaheed Mohtarma Benazir Bhutto Medical University & others (SBLR 2017 Sindh 1906) relied upon by the learned counsel for the Petitioner are distinguishable on the facts and circumstances of the present case, therefore, the instant Petition is liable to be dismissed.

10. Ms. Benysh Qureshi, learned counsel for the Respondent No.4 has drawn our attention that the absolute/discretionary power lies with the Chief Minister, Sindh, as per the amendment made in the Sindh Universities and

Institutes Laws (Amendment) Act 2013, as amended upto date. She further argued that the case in hand is fully covered by the case law referred to hereinabove by the learned AAG; that the Judgment reported in the case of Pakistan Medical Association (Center) through General Secretary and others Vs. Chancellor Dow University of Health Sciences and others (2016 PLC CS 1232) relied upon by the learned counsel for the Petitioner is distinguishable on the facts and circumstances of the present case. Learned counsel has refuted the claim of the Petitioner that the Respondent No.4 is not qualified to hold the position of Vice Chancellor Shaheed Mohtarma Benazir Bhutto Medical University and referred to the parawise comments filed on behalf of the said Respondent No.4 and his Curriculum Vitae and demonstrated that the Respondent No.4 fully met the criteria of eligibility, as set forth in the public Notice dated 17.01.2014. She next argued that fellow of College of Physician & Surgeon Pakistan (FCPS) is a postgraduate Degree upon completing specialized training in chosen area of specialization and passing the examination on that specific specialty. She attempted to convince this Court that Petitioner is a Postgraduate fellowship having qualification of Elected Fellow of International College of Surgeon (FICS), College of Physician and Surgeons Bangladesh (FCPS) (B.D), College of Physician and Surgeon Pakistan (FCPS) and MMBS Degree from Liaquat Medical College in 1978 having PMDC Registration Certificate No. 126-S. She further argued that that the Respondent No.4 has held various positions e.g Professor and Chairman JPMC Karachi, Registrar College of Physician and Surgeon Pakistan etc. and have ample professional experience. At this stage Mr.

Muhammad Waris Lari, learned counsel for the Petitioner has objected the positions and qualification of the Respondent No.4 and argued that he does not meet the qualification as prescribed for the position of Vice Chancellor. Be that as it may, we are of the considered view this Court cannot determine the claim and counter claim of the parties at this stage, on the issue raised by the parties regarding qualification of the Respondent No.4. She in support of her case has placed reliance upon the cases of Chaudhary Nazir Ahmed Vs. Government of Punjab & others (PLD 2013 Lahore 621), Dr. Azeem-ur-Rehman Khan Meo Vs. Government of Sindh & another (2004 SCMR 1299) and argued that this Court cannot issue writ in the nature of quo-warranto by removing a person from public office as the Respondent No.4 in the present case did not suffer from any disqualification to hold a public office. She further argued that the case of Dr. Muhammad Rafiq & others, as discussed supra which deals regarding appointment of Professors, whereas the present case deals with the issue of appointment of Vice Chancellor of SMBBMU and a separate procedure has been given as such the referred case is quite distinguishable from the facts of the present case. She further argued that the quorum of such committee was complete and so far as the issue of age is concerned the public notice dated 17.01.2014 provided 65 years age and not 60 for the position of Vice Chancellor of SMBBMU. She lastly prayed for dismissal of the instant petition.

11. We have heard learned counsel for the parties and have also perused the material available on record and the case law cited at the bar as well.

12. Questions, which agitate the controversy at hand could be reduced to the following:-

- i) Whether the Competent Authority / Chief Minister Sindh, has discretion to appoint Vice Chancellor of Shaheed Mohtarma Benazir Bhutto Medical University any one from the penal of candidates recommended by the Search Committee?**
- ii) Whether the Search Committee interviewed the Petitioner for the position of Vice Chancellor Shaheed Mohtarma Benazir Bhutto Medical University?**
- iii) Whether the Search Committee was required to put up a penal of three names for approval of the Competent Authority for appointment of Vice Chancellor?**
- iv) Whether the Respondent No.4 is qualified to hold the position of Vice Chancellor of Shaheed Mohtarma Benazir Bhutto Medical University?**

13. To commence with the first proposition as referred to hereinabove, as per Section 11(1) of the Shaheed Mohtarma Benazir Bhutto Medical University Larkana Act 2008 and under Section 12 of Sindh Universities and Institutes Laws (Amendment) Act 2013, the powers for appointment of Vice Chancellor were vested with the Chancellor/Governor on the recommendation of the Government of Sindh/Chief Minister in light of the recommendations of the Search Committee, who recommends a name to the Chancellor/ Governor for issuance of Notification relating to the appointment of Vice Chancellor.

14. We have noted that Section 11(1) of the Shaheed Mohtarma Benazir Bhutto Medical University Larkana Act 2008 has been amended vide Sindh Universities and Institutes Laws

(Amendment) Act, 2013 Sindh Act No. XLIII of 2013 and sub-Section (1) has been substituted in the following manner:-

“A person having medical background shall be appointed as Vice Chancellor by the Chancellor on the advice of Government for a period of four years, which may be extended for one more term, on such term and conditions as Government may determine.”

15. Pursuant to the order of this Court dated 24.11.2016, a copy of minutes of meeting of Search Committee for scrutiny of credentials of candidates applied for the post of Vice Chancellor, SMBBMU, Larkana was placed on record by the learned AAG. Prima-facie, the minutes of the meeting of the Search Committee/Selection Committee for selection of Vice Chancellor Shaheed Mohtarma Benazir Bhutto Medical University show that the Search Committee constituted by the Government of Sindh for the selection of Vice Chancellor in the Public Sector University conducted interviews of nine candidates for the post of Vice Chancellor, SMBBMU, Larkana. Record further reflects that the Search Committee did not recommend any of the candidates as discussed supra and decided to interview only the new applicants. Accordingly the following three candidates were interviewed:-

- i. Professor Ghulam Asghar Channa.**
- ii. Professor Dr. Iqbal Ahmed Memon.**
- iii) Professor Jan Muhammad Memon.**

16. The minutes of the Search Committee meeting explicitly reflects that only the following two candidates were then recommended by the Chief Minister for selection as Vice Chancellor Shaheed Mohtarma Benazir Bhutto Medical University.

- i. Professor Iqbal Ahmed Memon.**
- ii. Professor Ghulam Asghar Channa.**

However the name of the Petitioner was not forwarded to the Chief Minister Sindh, for recommending one name to the Chancellor / Governor Sindh for appointment as Vice Chancellor SMBBMU, Larkana without assigning any reason. We are of the considered view that Petitioner is entitled to know the ground on which the Search Committee has not recommended him and recommended another candidate. As per the decision of 2nd Chancellor Committee Meeting held on 11th May 2006, which explicitly show that the Search Committee is required to put up a penal of three names for approval of the Competent Authority for appointment of Vice Chancellor in the public universities, an excerpt of the same is reproduced as under:-

Minutes/decisions of 2nd Chancellors Committee Meeting

“The 2nd Chancellor’s Committee meeting was held on 11th May 2006, at Residents Secretariat (Camp Office), Rawalpindi. Following decisions were taken:-

The HEC quality criteria for appointment and promotion of faculty members, criteria for . Phil/ PhD Programs and other governance issue should be strictly implemented by all the universities without any amendments within four (4) months, and in future finding by HEC to universities should be linked to strict adherence to all HEC Quality Assurance Criteria.

No decisions by the Universities should be made that would lower the quality of Higher Education.

There should be no fragmentation of the higher education system. All matters dealing with higher education in the various professional disciplines including Engineering Law, Agriculture and Medicine etc. will be dealt with only by the Higher Education Commission.

Higher Education Commission should take steps to encourage females to avail HEC Scholarships abroad. A major program in hydroponics should initiated by the HEC in collaboration with the Pakistan Agriculture Research Council.

Provinces will provide roads, water, electricity and other services etc., to the lands made available for the establishment of the six new Engineering Universities, the three Technology Universities and Law Universities in the Provinces within 3-6months.

Vice Chancellors of Provincial Public Universities should be appointed after advertisement through a Search committee process. The Search Committee will be required put up a panel of 3 names for approval of the Chancellor from whom the Vice Chancellor may be selected.

Vice Chancellors should be awarded MP-II grade with immediate effect.

Universities established in the private sector that do not meet the Cabinet criteria approved in February 2002 will be given until 30th June, 2008 to conform to the criteria. HEC shall continue inspection and advertise the current status of these standard Universities aggressively in national newspapers.

**HEC will jointly carry out inspections with the Provincial Committees of the new institutions desiring Charters in the various Provinces and Charters will only be granted once the universities meet the HEC criteria.”
(Emphasis added)**

17. We have noted that the Search Committee recommended the above position of the candidates to the Chief Minister Sindh for the appointment as Vice Chancellor without resorting the decision of 2nd Chancellor’s Committee Meeting dated 11th May 2006 duly approved by the Higher Education Commission. Record does not reflect that the Chief Minister Sindh conducted the interview of the above two candidates as per summary for Chief Minister Sindh dated 18.12.2014 which clearly show that Secretary to the Chief Minister for Universities and Boards prepared note as under:-

“The Search Committee has unanimously recommended following two candidates for consideration of the Chief Minister Sindh to recommend other of the one to be appointed as Vice Chancellor Shaheed Mohtarma Benazir Bhutto Medical University Larakana.

- i) **Prof Dr. Iqbal Ahmed Memon.**
- ii) **Prof. Ghulam Asghar Channa.**

In view of above it is proposed that the Honourable Chief Minister Sindh may like to appoint either the two recommended candidates for the post of Vice Chancellor, Shaheed Mohtarma Benazir Bhutto Medical University, Larkana and advise the Governor Sindh under article 105 of the Constitution of Islamic Republic of Pakistan and Section 11 (1) of Shaheed Mohtarma Benazir Bhutto Medical University Larkana Act 2008, for his concurrence and return of the original summary so that notification can be issued by this Secretariat under Rule 5 (i) (iii) and (V) of the Sindh Government Rules of Business 1986”

18. The Competent Authority of the Chief Minister Sindh passed order on the aforesaid summary as under:-

“Professor Ghulam Channa may be appointed Vice Chancellor SMBBMU”

And recommended to the Chancellor the name of Prof. Ghulam Asghar Channa for appointment as Vice Chancellor SMBBMU, Larkana, whose name was listed at Serial No. 2, by the Search Committee.

19. There is no cavil to the proposition that the discretionary power under Section 11(1) of the Shaheed Mohtarma Benazir Bhutto Medical University Larkana Act 2008 and Section 10 (1) of Sindh Universities and Institutes Laws (Amendment) Act, 2013, is in line with discretionary powers under Article 105 of the Constitution of the Islamic Republic of Pakistan 1973, given to the Government of Sindh/ Chief Minister to advise the Chancellor to appoint Vice Chancellor for a period of four years, which may be

extended for one more term, on such terms and conditions, as Government may determine.

20. We in the above background will deal with the question, whether the Petitioner can claim a right to be appointed as Vice Chancellor of SMBBMU, Larkana. The record reveals that the Petitioner though was interviewed along with two candidates but his name was not forwarded/ recommended by the Search Committee and only the names of two candidates as discussed supra were forwarded which in our view the law requires that the Search Committee is required to put up a penal of three names for approval of the Competent Authority/ Chief Minister Sindh for appointment of Vice Chancellor of SMBBMU as discussed in the preceding paragraph.

21. We are of the view that the recommendations of Search Committee are not binding and the Chief Minister has been assigned discretion to nominate one candidate for the position of Vice Chancellor, after interviewing amongst the candidates recommended by the Search Committee (in alphabetical order).

22. In the instant case, the Petitioner, on the hypothesis, claims his appointment for the position of Vice Chancellor, SMBBMU, Larkana, therefore, his claim cannot be acceded to, as the tenure of four years' of service of the Respondent No.4 has been completed from the date of his appointment, though we have certain reservation against the conduct of the Search Committee for the simple reason that they appear to have deliberately

withheld the name of the Petitioner to be forwarded to the Competent Authority for his consideration in accordance with law.

23. Prima facie the conduct of the Respondent No.4 as Vice Chancellor of the SMBBMU has not been appreciated by this Court in the case of Dr. Muhammad Rafiq & others Vs. Shaheed Mohtarma Benazir Bhutto Medical University and another (SBLR 2017 Sindh 1906). The relevant portion of the Judgment dated 22.03.2017 at paragraph No.35, is reproduced as under:-

“After considering all the aspects of the instant matters, we came to the conclusion that the Vice Chancellor of the University being the Chairman for the Selection Board is solely responsible for all the illegal acts done in the instant matters.”

24. The aforesaid Judgment dated 22.03.2017 was impugned before the Hon’ble Supreme Court of Pakistan in Civil Petitions No. 989 to 994 and 250-K to 253-K of 2017 by the Vice Chancellor of SMBBMU and others. The same was dismissed vide order dated 15.05.2017 as under:-

“The provision reproduced above shows that Selection Board shall consist of as many as eight members as is provided by section 6(1) of the statute. Five members shall form the quorum for the selection of a professor or an Associate Professor. A look at the minutes of the meeting would reveal that the members whose presence in the Board could ensure impartial, independent and objective assessment of the merit are conspicuous by their absence. The experts who could assess and evaluate the professional competence of the candidates are also conspicuous by their absence. Quorum no doubt was complete but how the merit or professional competence of each of the candidates recommended or rejected was assessed is not supported by any record. Another thing militating against the transparency of the selection is that the candidates were selected and notified before their selection was approved by the syndicate. The entire process when seen from this perspective

appears to be a façade to cover the foregone conclusion. The selection so may cannot be held to be transparent. The High Court thus rightly set it naught and sent the case back for selection afresh. We, therefore, do not fell persuaded to interfere within the impugned judgment.

6. *For the reasons discussed above, these petitions being without merit are dismissed and the leave asked for is refused.*

25. On the issue of discretion of the Competent Authority /Chief Minister Sindh, in this context, the law enunciated by the Hon'ble Apex Court in the case of Prof. Dr. Razia Sultana and others Vs. Prof. Dr. Ghazala 12 Yasmeen Nizam and others (2016 SCMR 992), covers the issue in hand. The relevant portion of the judgment is reported herein below:-

“In the instant matter, absolute power of appointment was not given to authorities i.e. the Chancellor/Governor to appoint any person of their choice but the Search Committee consisting of eminent professionals was constituted who after detailed scrutiny of the credentials and lengthy interview of each candidate, recommended three names which as per para-wise comments, was not on the basis of ay preference and the Chancellor/Governor , on the advice of the Chief Minister, appointed one candidate out of the three candidates in exercise of his powers, as mentioned above, Section 12(1) of the Khyber Pakhtunkhwa Universities act 2012 gives discretion to the Chancellor/Governor to appoint anyone out of the candidates recommended by the Search Committee on the advice of C.M.”

26. Reliance can also be placed in the case of Dr. Zahid Jawed vs. Dr. Tahir Riaz Chaudhary and others (PLD 2016 SC 637).

27. The case law cited by the learned counsel for the Petitioner thus is distinguishable on the facts and circumstances of the case in hand.

28. Reverting to the plea raised by the learned Counsel for the Petitioner that Chief Minister Sindh, has wrongly exercised his

discretionary powers without assigning any plausible reason to nominate Respondent No.4 for the position of Vice Chancellor of SMBBMU, without interviewing the Petitioner. Suffice to say that rank given by the Search Committee is with reference to the prescribed criteria. The Chief Minister during process of appointment of Vice Chancellor may exercise his discretion, by picking any of the recommended candidates by the Search Committee, which cannot be done in exercise of the judicial review as these are administrative decisions and unless it is shown that any fundamental right of the Petitioner has been infringed, this Court will not interfere. There is no material placed before us, by which, we can conclude that discretion has been wrongly exercised by the Chief Minister, Sindh. Reliance can be placed in the case of Arshad Ali Tabassum Vs. The Registrar Lahore High Court (2015 SCMR 112).

29. During the course of arguments learned counsel for the Petitioner has placed on record a copy of Notification dated 12.04.2018 whereby the Governor Sindh / Chancellor has allowed the Respondent No.4 to act as Vice Chancellor till the appointment of regular Vice Chancellor of SMBBMU. We are of the considered view that that as per public notice dated 17.01.2014 65 years age has been prescribed and the Respondent No.4 has already availed the tenure of four years as Vice Chancellor of SMBBMU and his continuous holding the post would be an impediment for appointment of a regular candidate for the said post, even if for arguments sake it is presumed that he is now holding the post for a temporary period till the appointment of a new Vice Chancellor.

We therefore direct the competent authority of SMBBMU to appoint a regular Vice Chancellor of SMBBMU in accordance with law by fulfilling all the legal and codal formalities within a period of two months time from the date of receipt of this order.

30. In result of foregoing discussion, the instant Petition is disposed of in the above terms along with the listed application(s).

JUDGE

JUDGE

Shafi Muhammad /PA