

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Adnan-ul-Karim Memon** and **Agha Faisal, JJ.**

Constitution Petition D 5192 of 2016

Prof. Dr. Pirzada Jamaluddin Ahmed Siddiqui
vs.
The Federation of Pakistan and Others

For the Petitioner	Mr. Muhammad Ali Lakhani Advocate
For the Respondent No.1	Mr. Salman Talibuddin, Additional Attorney General Muhammad Iqbal Deputy Secretary Ministry of Federal Education Javed Memon Higher Education Commission
For the Respondent No.2	Mr. Ali Ahmed Turabi, Advocate
For the Respondent No.3	Chaudhry M. Latif Saghar, Advocate
For the Respondent No.5	Mr. Mehmood-ul-Hassan, Advocate
Date of hearing	13.08.2018

JUDGMENT

Agha Faisal, J: Through the present petition, the Petitioner has *inter alia* sought a declaration that he is the only person eligible for the post of Director, Centre of Excellency in Marine Biology, University of Karachi ("**Director**") and has sought further orders to the effect that the respondent No.5 or any other person could not be appointed to the said position.

2. Mr. Muhammad Ali Lakhani, learned counsel for the Petitioner submitted that the Petitioner is the premier authority in the field of coastal oceanography and marine biology and has unparalleled credentials in such regard. It was submitted that in the year 2010, the University of Karachi ("**UK**"), being the respondent No.2 herein, sought to appoint Prof. Dr. Ghazala Siddiqui ("**Dr. Siddiqui**"), being the respondent No.5 herein, as the Director and the same was challenged before this Court in *Constitution Petition D 3163 of 2010* titled *Dr. Pirzada Jamaluddin Ahmed Siddiqui versus The Federation of Pakistan and Others* ("**Pirzada 1**"), in determination whereof the notification for the appointment of Dr. Siddiqui was set aside. It was next submitted that vide office order dated 28.11.2011, the UK appointed the Petitioner as the Director of Centre of Excellency in Marine Biology, University of Karachi ("**CEMB**") for a period of four years.

3. Per learned counsel, at the time of expiration of the Petitioner's tenure the post of Director was advertised, on 22.11.2015, for which the *inter alia* the Petitioner and Dr. Siddiqui submitted their applications. It was submitted that during the course of the said process, Dr. Siddiqui was appointed as the acting director, which act was challenged before this Court in *Constitution Petition D 7570 of 2015* titled *Dr. Pirzada Jamaluddin Ahmed Siddiqui versus The Federation of Pakistan and Others* ("**Pirzada 2**"). It was further submitted that *Pirzada 2* was decided vide a consent order dated 30.03.2016 and in proceedings subsequent thereto Dr. Siddiqui was appointed as Director, which was challenged in the present petition. Learned counsel drew the Court's attention to the order dated

28.09.2016 wherein it was stated that the appointment of Dr. Siddiqui would be subject to the final orders passed herein.

4. Learned counsel submitted that the appointment of Dr. Siddiqui was in due dissonance with the Centre of Excellence Act, 1974 ("**Act**"), as amended by the Centre of Excellence (Amendment) Act, 1976 ("**Amending Act**"). It was submitted that the appointment of Dr. Siddiqui was without the issuance of a new advertisement, without the required consultation of the Vice Chancellor of UK and without there having been a proper assessment of whether Dr. Siddiqui was in fact the most qualified candidate for the post of Director. Learned counsel challenged the appointment of Dr. Siddiqui and also prayed that the Court enter into an exercise to determine the most suitable person for the post of Director.

5. Mr. Salman Talibuddin, learned Additional Attorney General, opened the arguments for Federation and drew the Court's attention to the consent order dated 30.03.2016 passed in case of *Pirzada 2*. It was submitted that there was no need for a fresh advertisement as the names of the candidates for the post of Director were already stipulated in paragraph (ii) of the aforesaid order. It was also contended that since the aforesaid order was a consent order, wherein the name of Dr. Siddiqui was clearly stated, therefore, the Petitioner's challenge to the eligibility of Dr. Siddiqui was without foundation.

6. It was submitted that a summary was moved for the Cabinet recommending the appointment of Dr. Siddiqui for the post of Director and the said summary was duly accepted by the Cabinet and the Prime Minister. It was stated that the said summary was moved pursuant to the meeting of the selection board of the Ministry of Federal Education

and Professional Training, which included the vice-chancellor of the UK, wherein there was a unanimous recommendation for the Dr. Siddiqui to be appointed as the Director, and finally vide Notification dated 01.06.2018, Dr. Siddiqui was appointed as the Director.

7. Learned Additional Attorney General submitted that the selection process for the Director is undertaken by competent persons authorized by law to act in such regard. It was hence argued that the Petitioner's prayer requiring the Court to assume such authority and render such an assessment is contrary to the norms of law. It was further stated that Petitioner had sought a declaration determining him to be sole eligible candidate for the post of Director and such a prayer is even otherwise unreasonable and unsustainable under the law.

8. It was submitted that no re-advertisement was required pursuant to the consent order dated 30.03.2016 in *Pirzada 2* as the issue of candidates had been determined. It was also demonstrated from the record that a fresh summary was moved to the Cabinet for the appointment of Dr. Siddiqui so as to ensure that the requirements elaborated by the honorable Supreme Court in the case of *Mustafa Impex* were duly complied with. It was thus prayed that this Court may be pleased to dismiss the subject petition.

9. Mr. Ali Ahmed Turabi, Mr. Mehmood-ul-Hassan and Ch. Muhammad Latif Saghar, being the respective learned counsel for the Respondents Nos. 2, 3 and 5, adopted the arguments advanced by the learned Additional Attorney General.

10. We have considered the arguments of the respective learned counsel and have also reviewed the record demonstrated before us. Prior to deliberating upon the merits of the Petitioner's case, it may be

prudent to collate and encapsulate the documented facts relevant in regard herein.

11. The appointment of Director is governed by the Act and it may be prudent to reproduce the relevant portion therefrom:

“2. Definitions. In this Act, unless there is anything repugnant in the subject or context,-

(a) “Board” means a Board of Governors referred to in sub-section (I) of section 5;

(b) “Centre” means a Centre of Excellence established under section 3;

(c) “Commission” means the University Grants Commission established or to be established under the law providing for the establishment of such Commission;

6. Director.—(1) The Director shall be appointed by the Federal Government on the recommendation of the Commission on such remuneration and other terms and conditions of service as may be determined by the Federal Government.

(2) The Director shall be the academic and executive head of the Centre and Secretary of the Board, and shall be responsible to the Board for carrying out the objectives of the Centre.

(3) The Director shall perform such other functions and exercise such powers as may be assigned or delegated to him by the Board.

(4) The Director may, by writing under his hand addressed to the Chairman, resign his office.”

12. The Act was amended by the Amending Act and the relevant portion therefrom is reproduced herein below:

“6. Director:—(1) The Director shall be appointed by the Federal Government after consultation with the Commission and the Vice-Chancellor of the University in which the Centre concerned is established on such remuneration and other terms and conditions of service as may be determined by the Federal Government.

(2) The Director shall be the academic and executive head of the Centre and secretary of the Board and shall be responsible to the Board for carrying out the objectives of the Centre.

(3) The Director shall perform such other functions and exercise such powers as may be assigned or delegated to him by the Board.

(4) The Director may, by writing under his hand addressed to the Chairman, resign to his office.”

13. The controversy regarding the appointment to the office of Director was the subject matter of litigation before this Court in *Pirzada 1* and *Pirzada 2* and for the present purposes it may be prudent to reproduce the contents of the consent order dated 30th March, 2016 delivered in *Pirzada 2*:

“The Petitioner and Respondent No.5 claim their entitlements to the office of Director, Centre of Excellency in Marine Biology, University of Karachi. The Petitioner claims that Respondent No.5 has been illegally appointed as Acting Director; whereas Respondent No.5 while denying such assertion says that the Petitioner himself has retained such office as Acting Director for almost five years.

Without going into such controversy, we dispose of this petition through following consent order:

- (i) Respondent No.2 would give acting charge of Director of Centre of Excellency in Marine Biology to Prof. Dr. Arif Kamal, as proposed by the Vice Chancellor of Karachi University.
- (ii) The names of Petitioner (Prof. Dr. Jamaluddin Ahmed Siddiqui) alongwith other candidates namely Prof. Dr. Alia Munshi and Dr. Ahsan Illahi have been sent by Respondent No.2 to the Federal Government for its consideration and appointment in terms of Section 6 of the Act No. XXIV of 1974 amended to Act No. IX of 1976.

D.A.G says that the process of such appointment would be completed within thirty days. Once such recommendation is made, Director would be appointed accordingly. It is made clear that neither the Petitioner nor Respondent No.5 would interfere in the office of Director of Centre of Excellency in Marine Biology and if any complainant is made consequences accordingly would be followed.

Petition stands disposed of in the above terms.”

14. It is seen that subsequent to the aforesaid order, the process of determination of a suitable candidate for the post of Director was undertaken and resulted in the unanimous recommendation of the selection board in favour of Dr. Siddiqui. This recommendation, ostensibly with the consultation of the vice-chancellor of the UK, is reproduced herein below:

“MINUTES OF THE MEETING OF SELECTION BOARD TO CONSIDER RECRUITMENT TO THE POST OF DIRECTOR, CENTRE OF EXCELLENCE IN MARINE BIOLOGY (BS-20/21) UNIVERSITY OF KARACHI.

In order to conduct interviews for the post of Director, Centre of Excellence in Marine Biology (BS-20/21), University of Karachi, the meeting of Selection Board was held on 30th June, 2016 at 11.00 a.m under the Chairmanship of Secretary, Ministry of Federal Education & Professional Training, Vice Chancellor, University of Karachi, Vice Chancellor Government College Women University, Faisalabad, Vice Chancellor, Hazara University, Joint Educational Advisor and Director General Higher Education Commission also attended the meeting as Members.

2. Following candidates appeared for the interview;

- i. Prof. Dr. Alia Bano.
- ii. Prof. Dr. Ghazala Siddiqui.
- iii. Prof. Dr. Pirzada Jamaluddin Ahmed Siddiqui.
- iv. Dr. Ehsan Elahi Valeem.

After going through the educational background, research work, taking into account the performance, experience, skill, personality and inter personal communication skills of the candidates in the interview, the Selection Board unanimously recommended Prof. Dr. Ghazala Siddiqui for appointment against the vacant post of Director, Centre of Excellence in Marine Biology (BS-20/21) University of Karachi.

(Muhammad Rafique Tahir)
Joint Educational Advisor/
Member

(Muhammad Raza Chohan)
Director General HEC/Member

(Prof. Dr. Naureen Qureshi)
Vice Chancellor, Government
College Women University of
Faisalabad/Subject Expert

(Prof. Dr. Habib Ahmed)
Vice Chancellor,
Hazara University
Subject Specialist

(Muhammad Humayun)
Secretary/Chairman
Selection Board

(Prof. Dr. Muhammad Qaiser)
Vice Chancellor/Member
University of Karachi”

15. The summary for the Cabinet, as referred to supra, was initiated and the relevant segment therefrom is reproduced herein below:

“SUMMARY FOR THE CABINET

Subject: APPOINTMENT OF DIRECTOR (BS-21), CENTRE OF EXCELLENCE IN MARINE BIOLOGY, UNIVERSITY OF KARACHI.

Under Clause 6 (1) of the Centre of Excellence (Amendment) Act, 1976 Federal Government has been empowered to make appointment of Director, Centre of Excellence in Marine Biology, University of Karachi (Annex-I). The Ministry of Education was developed after of 18th Constitutional Amendment in 2011. Cabinet Division had transferred the administrative control of the Centre of Excellence/Area Study Centers to respective Universities without any change in the Act.

.....

3. The subject post was advertised on 22nd November, 2015 (Annex-IV) and following candidates applied for the post who were interviewed by the Selection Board of the Centre on 30th June, 2016 in accordance with notification dated 6th April, 2010 (Annex-V) of the Ministry of Education (defunct):

- i. Prof. Dr. Alia Bano.
- ii. Prof. Dr. Ghazala Siddiqui.
- iii. Prof. Dr. Pirzada Jamaluddin Ahmed Siddiqui.
- iv. Dr. Ehsan Elahi Valeem.

4. The Selection Board recommended Prof. Dr. Ghazala Siddiqui for the post of Director (BS-21), Centre of Excellence in Marine Biology, University of Karachi (Annex-VI) which has been endorsed by the Board of Governor of the Centre in its meeting held on 19th August, 2016 (Annex-VII). C.V of Prof. Dr. Ghazala Siddiqui is attached (Annex-VIII) and she currently holds the post of Professor/Acting Director of said Centre.

5. The Prime Minister was pleased to approve the appointment of Prof. Dr. Ghazala Siddiqui against the post of Director (BS-21), Centre of Excellence in Marine Biology, University of Karachi vide Para-8 of the Summary (Annex-IX).

6. The case could not be submitted to Establishment Division for issuance of notification in the light of Sindh High Court Karachi's order dated 28.09.2016 in C.P No.D-5192 of 2016 filed by Prof. Dr. Pirzada Jamaluddin Ahmed Siddiqui which records that the appointment of Prof. Dr. Ghazala Siddiqui against the subject post, if any, shall be subject to the final order of the Court as to whether the claim of the Petitioner is correct or

the respondent No.8 (Dr. Ghazal Siddiqui) fulfill the qualification to be appointed on the said post (Annex-X).

7. The Additional Attorney General for Pakistan at Karachi vide letter diary No.3994-K/17-AGP dated 13th July, 2016 advised this Ministry to issue the notification for the appointment of Dr. Ghazala Siddiqui against the said post. The notification should state that as per the order of the Sindh High Court Karachi passed in C.P No.D-5192 of 2016 dated 28.09.2016, the appointment of Prof. Dr. Ghazala Siddiqui is subject to the final orders of the Court in the said petition (Annex-XI).

8. The Establishment Division was requested vide this Ministry's O.M dated 24th July, 2017 to issue notification for appointment of Prof. Dr. Ghazala Siddiqui against the subject post in the light of aforementioned advice of Additional Attorney General of Pakistan. The Establishment Division vide O.M dated 21st February, 2018 informed that under sections 10(1) of the Centre of Excellence (Amendment), the appointing authority for the post of Director (BS-21) Centre of Excellence in Marine Biology, University of Karachi is Federal Government and fresh approval of the Cabinet is required in the instant case. In terms of Article-90 of the Constitution of Islamic Republic of Pakistan, 1973 and Supreme Court of Pakistan's Order dated 18.08.2016 passed in Civil Appeals No. 1428/2016 and 1436/2016, the Federal Government is defined as the Federal Cabinet. The Establishment has therefore advised to move a summary for the Cabinet for approval of the subject appointment (Annex-XII).

9. Approval of Cabinet is solicited for appointment of prof. Dr. Ghazala Siddiqui against the post of Director (BS-21), Centre of Excellence in Marine Biology, University of Karachi under Section 6 of the Centre of Excellence (Amendment) Act, 1976.

10. The Minister for Federal Education & Professional Training has seen and authorized submission of the Summary."

16. It is demonstrated from the notification dated 1st June, 2018 that the Federal Cabinet approved the appointment of Dr. Siddiqui for the post of Director and in pursuance thereof the subject appointment was notified. It may be prudent to reproduce the said notification herein below:

"NOTIFICATION

No.F.1-9/2015-E-II. In pursuance of recommendations of the Selection Board duly endorsed by the Board of Governors and approval of the

Federal Cabinet sought in its meeting held on 3rd May, 2018. Prof. Dr. Ghazala Sididqui has been appointed as Directed (BS-21) Centre of Excellence in Marine Biology, University of Karachi with immediate effect under section 6 of Centre of Excellence (Amended) Act 1976.

The appointment is subject to the final orders of the Sindh High Court in the C.P No.D-5192 of 2016.”

17. The entire chain of events leading up to the notification of Dr. Siddiqui as the Director has been catalogued in chronological order to appreciate whether the said appointment was in due consonance of the law or otherwise. It appears that the candidates under consideration for the post of Director were clearly identified vide the consent order dated 30.03.2016 rendered in *Pirzada 2*. The name of Dr. Siddiqui was a constituent of the aforesaid order and hence it would follow that her candidacy was not liable to be called into question, least of all by the Petitioner who was party to the said consent order.

18. The selection board, comprised of persons competent to undertake the exercise of determination of the most suitable candidate while being empowered by the relevant rules in such regard and including the Vice Chancellor of the UK, unanimously recommended Dr. Siddiqui for the post of Director. This unanimous recommendation was sanctioned with the approval of the Prime Minister and also that of the Federal Cabinet and hence the notification appointing Dr. Siddiqui as the Director was issued by the competent authority.

19. Learned counsel for the Petitioner was unable to point out any infirmity in the appointment process, as aforesaid, especially when it was demonstrated from the record that the even the requirement of consultation with the Vice Chancellor of the UK was also complied with. Learned counsel then sought to stress that the assessment by the selection board, deeming Dr. Siddiqui to be the most suitable

candidate, was perhaps erroneous in view of the stellar credentials of the Petitioner and that any competent assessment in such regard could only conclude in favor of the Petitioner. In order to appreciate the thrust of the Petitioner's argument in their true perspective, it may be pertinent to reproduce the prayer clause herein below:

1. "Declare that the Petitioner is the only eligible candidate for the post of Director CEMB under the Act of 1974 (as amended) and rules/regulations of 1997 (as amended).
2. Declare that the Respondent No.5 cannot be appointed as Director (and/or Acting Director) of the Respondent No.3 as the Petitioner is the only eligible candidate for such post.
3. (Without prejudice to the foregoing) Declare that any selection to the office of Director CEMB is to be enforced in terms of the Advertisement dated 22.11.2015.
4. Grant a permanent injunction regarding the Respondents No.1-4 from issuing any appointment letter and/or appointing or handing over charge of the post of Director (and/or Acting Director) CEMB to the Respondent No.5 and/or any other person/s.
5. Any other appropriate relief which this Honourable Court deems fit appropriate in the circumstances of this case (including but the limited to considering the Petitioner's credentials etc. if the need so arises)...."

20. It is prima facie manifest from a perusal of the prayer clause that the Petitioner appears unwilling to accept the appointment of any person other than himself as the Director. Even though the appointment of Dr. Siddiqui was unanimously recommended by a selection board, comprising of individuals proficient in such regard, the said assessment is called into question since it did not conclude in favour of the Petitioner.

21. The Petitioner has been unable to demonstrate the existence of any vested right for himself to be appointed as Director and it is apparent that the selection process unanimously recommended Dr.

Siddiqui after having considered the eligibility of the Petitioner, and others, for the said position. The Petitioner has also been unsuccessful in identifying any infirmity with respect to the process of the appointment of Dr. Siddiqui as the Director meriting the interference of this Court.

22. In view of the reasoning and rationale herein contained it is the considered view of this Court that the present petition is devoid of merit. Therefore, this petition, along with listed application, is hereby dismissed with no order as to costs.

JUDGE

JUDGE