

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**Before:**

Mr. Justice Omar Sial

Mr. Justice Adnan-ul-Karim Memon

**C.P. No.D-1970 of 2019**

Dr. Gulshan Ali Memon

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Petitioner

VERSUS

Province of Sindh & others

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Respondents

**C.P. No.D-978 of 2020**

Dr. Gulshan Ali Memon

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Petitioner

VERSUS

Province of Sindh & others

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Respondents

**Date of hearing:**

**23.09.2020**

**Date of Decision:**

**30.09.2020**

Mr. Sarmad Hani, Advocate for Petitioner assisted by Barrister Jawad Ahmed Qureshi & Mr. Zarar Qadir Shoro Advocate.

Mr. Suresh Kumar, Advocate for Respondent No. 4

Mr. Khadim Hussain Soomro, Advocate for Respondent No.5 in C.P. No. D-1970 of 2019.

M/s. Allah Bachayo Soomro, & Muhammad Ismail Bhutto, Additional Advocate General Sindh

Prof. Dr. Shamsuddin Shaikh, present in person

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** In the captioned Petition bearing No.D-1970 of 2019, the only issue involved is the issuance of two Corrigendum dated 11.03.2019 & 16.6.2019 respectively relating to advertisement dated 18.1.2019, published by the Government of Sindh, Universities & Boards Department (Boards).

2. The Petitioner has assailed the legality of the above-specified Corrigendum whereby Respondent-Board changed the academic qualification of candidates as well

as the upper age limit from 62 to 65 years for the post of Vice-Chancellor of Peoples University of Medical and Health Sciences for Women, Shaheed Benazirabad hereinafter referred to as PUMHSW.

3. The perusal of advertisement dated 18.1.2019 explicitly shows the qualification of candidates for the post-Vice-Chancellor as under: -

- (i) Not less than **a post-graduate fellowship** in a medical field or a Ph.D. in relevant areas from HEC/PMDC recognized University.
- (ii) At least 25 quality research publications in national and international HEC recognized research journals.
- (iii) 20 years' experience in teaching/academic position with substantial experience of working in senior/ administrative positions relevant to the medical profession.
- (iv) Must possess outstanding and inspiring leadership with strong interpersonal and influencing skills and proven academic excellence.
- (v) Candidates must not be **above 62 years of age** on the closing date of application.

4. Subsequently, the subject Corrigendum was published in daily Dawn dated 11.03.2019, whereby the academic qualification for the post of Vice-Chancellor, PUMHSW, was altered as under: -

“With reference to advertisement appeared in daily Dawn on 18<sup>th</sup> January 2019 and daily Jang on 19<sup>th</sup> January 2019 for the post of Vice-Chancellor, Peoples University of Medical & Health Sciences for Women, Shaheed Benazirabad, the qualification and research publications may be read as under: -

- Not less than **post Graduate qualification equal to fellowship** in a medical field or a Ph.D in relevant areas from HEC/PMDC recognized University.
- At least 25 quality research publications in national and international in HEC/PMDC recognized research journals.

Other terms and conditions mentioned in the earlier advertisement will remain the same.

The last date for the submission of applications may be treated as **25<sup>th</sup> March 2019.**”

5. However, the Respondent-Board published another Corrigendum dated 16.6.2019, whereby the upper age limit of the candidates was changed from 62 to 65 as well as the date of submission of applications for the post of Vice-Chancellor, PUMHSW was extended to 1<sup>st</sup> July 2019, which reads as under: -

“With reference to advertisement appeared in Daily Dawn and Daily Jang for the post of Vice-Chancellor, Peoples University of Medical & Health Sciences for Women, Shaheed Benazirabad, the age of candidates may be read as under: -

- Candidates must not be **above 65 years** of age of the closing date of application.

Other terms and conditions mentioned in the earlier advertisement will remain the same.

The last date for the submission of applications may be treated as **1<sup>st</sup> July 2019.**”

6. Petitioner being aggrieved by and dissatisfied with the issuance of the aforesaid Corrigendum filed the instant petition on 29.07.2019.

7. Notices were issued to the Respondents who filed para-wise comments and controverted the allegations leveled against them.

8. Mr. Sarmad Hani, learned Counsel appearing on behalf of the Petitioner has vehemently contended that the Petitioner is a proposed candidate for the post of Vice-Chancellor PUMHSW, Shaheed Benazirabad. It has been argued that on 18.1.2019, Respondent-Board published an Advertisement inviting applications for the post of Vice-Chancellor in Respondent-university. Subsequently, on 16.6.2019, Respondent-Board published a Corrigendum changing the academic qualification as well as the upper age limit from 62 to 65 years. Per learned counsel the amendment in qualification does not in any manner abridge the right of candidates who were held qualified earlier for the interview; that the right which had already been accrued to the candidates could not be snatched later on through purported corrigendum; that constitutional jurisdiction of this Court to judicially review the vires of corrigendum, cannot be curtailed; that Respondent-Board has changed the upper age limit of the candidates including the Petitioner from 62 to 65 to accommodate their favorites candidates; that the Petitioner was/is eligible in all respect and was/ is entitled to be considered for the aforesaid post; that the official Respondents to accommodate their blue-eyed persons had issued the person-specific corrigendum dated 16<sup>th</sup> June 2019. This act of official Respondents indicates malice and favoritism; that any change in the eligibility criteria after submission/closure of date and initiation of process is prima facie tainted with malice; that once the candidates were shortlisted there was no justification and / or occasion to issue the corrigendum; that even otherwise the eligibility criteria introduced in the corrigendum was an exception to the criteria issued in the entire Sindh for the post of Vice-Chancellor; that, on one hand, the candidates who had applied according to the advertisement were shortlisted and their interviews were being conducted by Respondent No.3, and on the other hand, the official Respondents to bring their favorite candidates published the corrigendum changing eligibility requirement for the post of Vice-Chancellor; that the entire exercise ex-facie is, therefore, ultra vires the powers conferred upon the official Respondents and is without jurisdiction; that Respondent No.2 could not have changed the eligibility criteria by way of issuance of corrigendum and that too once the submission date had expired and candidates had already been shortlisted who were issued interview letters; that the main object of issuance of corrigendum is to correct a mistake/error in a document and not to change its contents; that Respondent No.2 by issuing the corrigendum has basically altered the eligibility criteria as laid down in the advertisement dated 18<sup>th</sup> January 2019; that Respondent No.2, under the law was

estopped to introduce a new condition under the garb of corrigendum; that the malicious intent of official Respondents is apparent from the fact that through corrigendum they have extended the date of submission of applications till 1<sup>st</sup> July 2019 although the Petitioner had already been interviewed by Respondent No.3 before 18<sup>th</sup> June 2019; that a vested right had been created in favour of Petitioner and other four candidates who were shortlisted and interviewed by Respondent No.3, therefore, could not have been set at naught by way of issuance of corrigendum. He lastly prayed that the corrigendum being detrimental to the rights of the Petitioner cannot be given effect to.

9. Mr. Suresh Kumar, learned counsel for Respondent No. 4 has argued that the Petitioner is not an aggrieved person; that no fundamental right of the Petitioner is violated on account of corrigendum; that the age limit for the post of Vice-Chancellor is 65 years as described in Schedule-A; that the mistake was corrected by the competent authority which was notified on 16.06.2019; that the interview of Petitioner and other candidates was conducted on 18.06.2019; that the Petitioner and all other candidates were well aware of the said correction / corrigendum; that after corrigendum through advertisement fresh applications were invited; that five candidates were shortlisted and the interview of said candidates including private Respondents was conducted on 23.07.2019; that Petitioner was non-suited by the Search Committee due to his ineligibility for the post of Vice-chancellor; that the Petitioner has filed this petition on false and frivolous facts and grounds; that the post of Vice-Chancellor, Peoples University of Medical & Health Sciences for Women (PUMHSW) has been lying vacant since 07.01.2010 and on this account the PUMHSW is facing hardship / difficulties; that though the Petitioner was at second number in seniority list and on 18.04.2019 he was given the charge to continue as acting Vice-Chancellor till regular appointment by ignoring senior-most Professor namely Dr. Atta Muhammad, therefore, he is not entitled for the relief on the aforesaid account; that the subject petitions filed by the Petitioner namely Dr. Gulshan Ali Memon are liable to be dismissed as there was transparency in the selection procedure for the aforesaid post without any favoritism or otherwise ; the competent Authority has the power to appoint Vice-Chancellor, PUMHSW based on the recommendation of Search Committee to maintain transparency. Petitioner has malafidely, to mislead this Court portrayed an incorrect picture; the aforesaid post is contractual/tenure and for a specified period as explicitly specified in the advertisement; that the advertisement is not challenged in the instant petitions; The Petitioner has no vested right to challenge the award of marks made by Search Committee; that in the instant matter, the absolute power of appointment was not given to the competent authority i.e. Chief Minister Sindh to appoint any person of his 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 for appointment for the post of Vice-chancellor which was / is on the

basis of preference; thereafter the Chief Minister, Sindh is competent to appoint one candidate out of the three candidates in exercise of his powers under the Sindh Universities and Institutes Laws (Amendment) Act, 2018.

10. Mr. Khadim Hussain Soomro, learned Counsel for Respondent No. 5 has adopted the arguments of Mr. Suresh Kumar, learned counsel for Respondent 4.

11. Mr. Allah Bachayo Soomro, learned Additional Advocate General, Sindh has raised the question of maintainability of the instant petition and argued that the Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, this Court has no jurisdiction to interfere through Writ Petition. He added that the corrigendum has been issued within the ambit of the relevant statute, therefore, this Court cannot sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the Regulations making body of Government of Sindh; that Respondent-Board took the initiative and advertised the post of Vice-Chancellor, PUMHSW; and, the aforesaid recruitment process was conducted fairly and transparently. He lastly prayed for the dismissal of captioned petitions.

12. During arguments, we have been informed that the Petitioner and other four candidates were issued interview letters dated 31.5.2019 to appear before Respondent No.3 for a preliminary interview on 18.6.2019. Learned counsel for the Petitioner drew our attention that before the date of the interview, Respondent-Board published a corrigendum in which the academic qualification was altered as well as the age limit for the post of Vice-Chancellor was extended from 62 to 65 with extension in the date of submission of applications up to 1<sup>st</sup> July 2019; that on 18<sup>th</sup> June 2019 Petitioner appeared before Respondent No.3 for the interview but his candidature was not considered; however, three other candidates (blue-eyed) who applied after issuance of corrigendum were recommended for the post of Vice-Chancellor. The said action of Respondent No.3 is also impugned in C.P. No. D-978 of 2020.

13. In exercising the right of rebuttal, on the maintainability of the aforesaid Petition, learned counsel for the Petitioner pointed out that prima facie the competent authority to extend favor to one candidate namely Professor Dr. Shamsuddin Shaikh, who had crossed the age of 62 years from the date of submission of application for the post of Vice-Chancellor i.e. 20.02.2019, issued Corrigendum dated 16.6.2019; that resultantly the academic qualification and experience of the candidates was also changed as under:

(i) Not less than post Graduate qualification **equal to fellowship** (previously was post-graduate **fellowship**)

(ii) **20 years' experience in teaching/academic position with substantial experience of working in senior/ administrative positions relevant to the medical profession.**

(iii) **Must possess outstanding and inspiring leadership with strong interpersonal and influencing skills and proven academic excellence.**

(iv) Candidates must not be **above 62 years** of his age (now 65 years) on the closing date of application.

14. Learned counsel for the Petitioner has argued that the overaged candidate was made to qualify for the position of Vice-Chancellor in disregard of the provision of the PUMHSW, Act 2009 as amended up to date; therefore, the Petitioner has impugned the entire recruitment process initiated after the issuance of Corrigendum dated 11.03.2019 & 16.6.2019 respectively. Per Petitioner, the same is in infraction of the ratio of Judgment dated 04.03.2016 passed by this Court in C.P. No. D- 6723/2015 and other connected petitions; and, that the result is politically maneuvered and could not be relied upon on the premise that the private Respondent/beneficiaries are associated with political affiliation as such their qualification in the interview is tainted with malice and, that there was no transparency in the interview conducted by the Search Committee. He lastly prayed for the annulment of the recommendation made by the search committee to the competent authority for the post of Vice-Chancellor, PUMHSW, and disregard of the orders passed by the Hon'ble Supreme Court of Pakistan on the subject.

15. We have heard learned counsel for the parties and perused the material available on record and the case-law cited at the bar.

16. In view of the above, the pivotal questions before us are as under:-

- i) Whether the search committee by awarding marks to each candidate has violated the clear command of the Honorable Supreme Court vide unreported order dated 21.12.2017 passed in Civil Petition No.655-K of 2017 (Re-Prof. Abdul Razak Shaikh v. Province of Sindh and others)?
- ii) Whether the Petitioner can claim a right to be appointed for the post of Vice-Chancellor?
- iii) Whether the Respondent-Board could issue the impugned corrigendum especially after the expiration of the period of submission of applications?
- iv) Whether the Respondent-Board could change the eligibility criteria of candidates and take away the accrued rights of the candidates/Petitioner under the prescribed rules for the post of the vice-chancellor PUMHSW?
- v) Whether the Petitioner can be held disqualified to be considered for the post of Vice-Chancellor PUMHSW by the recommendation of three other candidates by the search committee?

17. To address the first proposition, in our view, the Hon'ble Supreme Court has settled the aforesaid proposition vide order dated 21.12.2017 passed in Civil Petition

No.655-K/2017 in the case of Professor Dr. Abdul Razaque Shaikh and held at paragraph-6 as under: -

“6. Indeed, it is true that while evaluating the various candidates before them, the Committee has assigned marks to each of them however such, it appears was done for their ease and convenience in making selection out of the seven (7) shortlisted candidates before them. Otherwise neither the terms of reference required, or mandated awarding of any mark to such candidates, nor was it so provided by law. On the contrary, and in order to avoid expression of any preference for any of the recommendee by the Committee it was specifically provided in the terms of reference that the names of the recommendees be placed or forwarded in alphabetical order, and as mentioned in the impugned judgment the name of respondent No.4 was recommended by the Chief Minister, after he has interviewed all three recommendees, such exercise of power/discretion is found by us to be in consonance with the provision of section 14(1) of the Sindh Universities and Institutes Laws (Amendment) Act, 2014. We, therefore, do not find any lacuna, factual or otherwise, in the impugned recommendation, or the impugned judgment. The petition is accordingly dismissed.”

18. It appears from the record that competent authority of Respondent-Boards, constituted the Search Committee, the composition of the search committee is as under:-

**Prof. Dr. Abdul Qadeer Rajput,**  
Chairman, Search Committee.

**Prof. Dr. A.Q. Mughal,**  
Member Search Committee.

**Prof. Dr. Nelofer Shaikh,**  
Member Search Committee.

**Prof. Dr. Muhammad Qaiser,**  
Member Search Committee.

**Mr. Muhammad Riazuddin.**  
Secretary, Universities & Boards  
Department / Sindh Higher Education Committee,  
Ex-officio Member Search Committee.

**Prof. Dr. Iqbal Memon,**  
Co-opted Member for Medical Universities.

19. The mandate of the Search Committee is as under:-

- i. Vice-Chancellors / Executive Director IBA, and Director Finance in Universities.
- ii. Chairman, Secretary, Controller of Examination and Audit Officer in Education Boards in Sindh.
- iii. Chairman and Secretary of Benazir Bhutto Shaheed Human Resource, Research, and Development Board. iv. Managing Director, Sindh TEVTA.”

20. The terms of references of the Search Committee were as under:-

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

- ii) To hold interviews 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's 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.

21. The learned AAG vide statement dated 24.02.2020 has placed on record the final and consolidated results of candidates for the post of Vice-Chancellor, PUMHSW, Shaheed Benazirabad. The minutes of the meeting of the Search Committee held on 23.07.2019 are as under:-

“In all, the following ten (10) candidates appeared in the interview in Phase-I and Phase-II.

**Phase-I**

1. Prof. Dr. Abdul Razzaque Shaikh.
2. Prof. Dr. Jan Muhammad Memon.
3. Prof. Dr. Ghulam Mustafa Shah.
4. Prof. Dr. Shams Raza Brohi.
5. Prof. Dr. Gulshan Ali Memon.

**Phase-II**

1. Prof. Dr. Akhter Ali Baloch.
2. Prof. Dr. Shams Uddin Shaikh.
3. Prof. Dr. Abdul Hakeem Jokhio.
4. Prof. Tufail Ahmed Baloch.
5. Prof. Dr. Meharunnisa Khaskheli.

Prof. Dr. Jan Muhammad Memon, Prof. Dr. Syed Ghulam Mustafa Shah, and Prof. Dr. Shams Raza Brohi secured less than 50% marks and so they were not considered to be recommended for the interview by the Honorable Chief Minister Sindh. Prof. Dr. Anela Atta ur Rehman did not appear whereas the Committee observed that Prof. Dr. Gulshan Ali Memon, Prof. Abdul Hakeem Jokhio, Prof. Tufail Ahmed Baloch, and Prof. Dr. Meharunnisa Khaskheli did not fulfill the criteria of the post.

The committee then evaluated them according to the formula worked out earlier regarding which the valuation is to be done on the basis of (a) number of publication-both local and international, (b) power of expression of the candidate, (c) personally, (d) administrative experience, (e) ideas about improvement of PUMHS and (f) overall knowledge of university affairs.

In the end, after calculation of all points scored, the following candidate qualifies and their names are given merit wise.

- i. Prof. Dr. Shamsuddin Shaikh.
- ii. Prof. Dr. Akhter Ali Baloch.
- iii. Prof. Dr. Abdul Razzaque Shaikh.

**Prof. Dr. Abdul Qadeer Rajput**  
Chairman, Search Committee

**Prof. Dr. A.Q. Mughal**  
Member Search Committee

**Prof. Dr. Nelofer Shaikh**  
Member Search Committee

**Prof. Dr. Muhammad Qaiser**  
Member Search Committee

**Mr. Imtiaz Kazi**  
Member Search Committee

**Mr. Muhammad Riazuddin**  
Ex-Officio Member



22. We have noticed that the Search Committee in disregard of the order dated 21.12.2017 passed by the Hon'ble Supreme Court of Pakistan awarded marks to the shortlisted candidates in the following manner: -

**Consolidated Details of the Candidates (Phase-I & Phase-II)**  
Name of Position & Institution: Vice-Chancellor – PUMHS

S.N	Name of Candidate	MARKS AWARDED BY THE MEMBERS OF THE SEARCH COMMITTEE								Total Mark	Total Avrg Marks	Remarks
		Prof Dr. AQK Rajput	Prof Dr. A.Q Mughal	Prof. Dr. Nilofer Shaikh	Prof. Dr. M. Qaiser	Mr. Imtiaz Kazi	Mr. M. Riazzuddin	Prof. Dr. Iqbal Memon	Prof. Dr. Yunus Soomro			
<b>PHASE-I</b>												
1.	Prof. Dr. Aneela Attaur Rehman	-	-	-	-	-	-	-	-	-	-	
2.	Prof. Dr. Abdul Razzaque Shaikh	55	50	50	51	-	40	45	-	291		
3.	Prof. Dr. Jan Muhammad Memon	30	20	20	24	-	20	35	-	149		
4.	Prof. Dr. Gulshan Ali Memon	-	-	-	-	-	-	-	-	-		
5.	Prof. Dr. Syed Ghulam Mustafa Shah	30	20	20	33	-	20	-	-	123		
6.	Prof Dr. Shams Raza Brohi	37	30	40	24	-	35	36	-	202		
<b>PHASE-II</b>												
1.	Prof. Dr. Abdul Hakeem Jokhio	-	-	-	-	-	-	-	-	-		
2.	Prof. Tufail Ahmed Baloch	-	-	-	-	-	-	-	-	-		
3.	Prof. Dr. Akhter Ali Baloch	50	70	60	-	30	50	60	-	320		
4.	Prof. Dr. Shams Uddin Shaikh	55	80	65	-	50	60	70	-	380		
6.	Prof. Dr. Meharunnissa Khaskheli	-	-	-	-	-	-	-	-	-		
7.												

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Prof. Dr. Yunus Soomro

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Prof. Dr. Iqbal Memon

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Mr. Imtiaz Kazi

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Mr. Muhammad Riazzuddin

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Prof. Dr. Muhammad Qaiser

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Prof. Dr. Nilofer Shaikh

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Prof. Dr. A.Q Mughal

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Prof. Dr. A.QK Rajput (S.I)

23. Prima-facie, the competent Authority constituted a Search Committee with the sole object to ensure the selection of a candidate of their choice. On perusal of the record and the documents furnished by the respective parties, we have found that awarding marks to the candidates was not the mandate of the Search Committee. It is

unfortunate that the Sindh Government instead of following the principle of selection on merits, allowed the Search Committee to indulge in the above unauthorized and illegal activity. Such conduct on the part of the Government of Sindh and the Search Committee ex-facie appear to be tainted with bias. In this context, the law enunciated by Hon'ble Apex Court in the cases of Prof. Dr. Razia Sultana and others v. Prof. Dr. Ghazala Yasmeen Nizam and others (2016 SCMR 992), Dr. Zahid Jawed Vs. Dr. Tahir Riaz Chaudhary and others (PLD 2016 SC 637), and unreported order dated 21.12.2017 passed by Hon'ble Supreme Court of Pakistan in Civil Petition No.655-K of 2017 (Re-Prof. Abdul Razak Shaikh v. Province of Sindh and others) cover the issue in hand.

24. Prima-facie the entire exercise was undertaken by the official respondents for the post of Vice-chancellor, PUMHSW, Shaheed Benazirabad as provided under section 13(i)(I-A) of Peoples University of Medical & Health Sciences for Women, Shaheed Benazirabad Act, is not sustainable under the law for the reasons that the date for submission of applications had already expired and fresh applications could not be entertained; and also a right had already been accrued to the candidates who met the academic qualification and other criteria set forth in the advertisement before corrigendum. Therefore, apparently, in absence of the requisite qualification and experience, including the age limit as prescribed under the law, the candidate cannot be held to be eligible to hold the post of Vice-chancellor, PUMHSW, Shaheed Benazirabad; that in view of the settled principle of law, the retrospective effect could not be given to the subsequent corrigendum. It is a settled law that rules or procedures operate retrospectively but if the rules create or take away one's a vested right, then the operation of rules are prospective and not retrospective.

25. The above facts lead us to the conclusion that the respondent-Board had changed the entire scenario of the subject post with new eligibility requirements, by issuing the corrigendum without completing the exercise already undertaken in pursuance of the first/original advertisement.

26. We in the aforesaid circumstances hold that the recommendation of the Search Committee to the competent authority for the appointment of Vice-Chancellor PUMHSW, Shaheed Benazirabad in pursuance of corrigendum as discussed supra was without lawful authority and awarding marks to the candidates by the Search Committee is also held to be against the clear command of the Honorable Supreme Court in the cases discussed in the preceding paragraph. Accordingly, we direct the Search Committee /competent authority to hold a fresh interview of the shortlisted candidates made before the issuance of corrigendum and make recommendation to the competent authority for the appointment of Vice-Chancellor, PUMHSW, Shaheed Benazirabad on preference basis/merit wise under the law within three weeks from the

date of this order strictly in the light of the direction of Honorable Supreme Court given in the case of Prof. Abdul Razaque Shaikh supra.

27. The captioned petitions are disposed of in the above terms with no order as to costs.

28. Let a copy of this order be transmitted to competent authority/ Respondent No.1 forthwith for information and compliance.

JUDGE

JUDGE