

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

Before:-

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

CP No. D- 888 of 2021

[Prof. Dr. Muhammad Ahmed Qadri and another v. Province of Sindh and others]

CP No. D- 1062 of 2021

[Prof. (Rtd) Dr. Syed Ehteshamul Haque v. Province of Sindh and 03 others]

CP No. D- 1780 of 2021

[Prof. Dr. Muhammad Ahmed Qadri and another v. Province of Sindh and others]

CP No. D- 2093 of 2021

[Syed Jamil Hassan Kazmi v. the Province of Sindh and 03 others]

Mr. Mehmood-ul-Hassan, advocate for the petitioner in C.P. No.D-2093 of 2021.

Mr. Haider Waheed, advocate for the petitioners in C.P. No.D-1780 of 2021.

Mr. Shahzeb Akhtar Khan, advocate for the petitioners in C.P. No.D-888 of 2021.

Syed Asam-ul-Haq, advocate for the petitioner in C.P. No.D-1062 of 2021.

Ms. Farkhanda Shaheen, advocate for respondent No.4 in C.P. No.D-1780 of 2021.

Mr. Shoaib Mohiuddin Ashraf and Ameeruddin, advocates for respondent No.3 in C.P. No.D-1780 of 2021 and in C.P. No.D-888 of 2021.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Ali Safdar Depar, AAG along with Abdul Qadeer, Regional Chairman, Search Committee, Muddasir Khan, Director Legal, Universities & Boards department and Mr. Naveed Arain, Deputy Secretary, Universities & Boards Department.

Date of hearing & Order: 26.01.2022

ORDER

The above-referred Constitutional Petitions are being disposed of by this common order as the issues raised therein are similar in nature.

2. Mr. Shahzeb Akhtar Khan, learned Counsel for the Petitioners in C.P. No. D-888 of 2021, has challenged the procedure of appointment of Vice-Chancellor University of Karachi, in pursuance of an advertisement of 29.06.2019. Both the petitioners applied in terms of advertisement, in the intervening period, a corrigendum dated 10.10.2019 was issued which became the subject matter of petition bearing C.P.No.D-631 of 2020. The said corrigendum was struck down vide judgment dated 24.12.2020 of this Court. It is the case of the petitioners that on account of the judgment in the aforesaid petition, the search committee got annoyed and as a result did not consider the petitioners as eligible candidates. Primarily the respondents are attempting to single out petitioner No.1 by issuing a letter dated 27.01.2021, which is under challenge, which is the main subject of these proceedings, whereby petitioner No.1 has been asked to get verified his 25 research publications through HEC. Learned counsel for the petitioners submits that individual petitioners will not be recognized by HEC and it is the job of the Search Committee to satisfy itself by issuing a letter to HEC to get such verification. When enquired that once they have surrendered to the authority/Search Committee, they cannot challenge their authority, learned counsel rests his case to the extent of the said letter of verification. He further submits that whatever be the reply of Federal HEC Islamabad, petitioners would be bound and they will not object to whatever reply of the Federal HEC would be. Learned counsel also challenged the constitution of the Search Committee in process of selecting the candidate of Vice-chancellor of the University of Karachi on the premise that the committee is biased in the sense that they are picking up the candidate who was much junior to the petitioners and even were not eligible to be appointed as Vice-Chancellor, Professor Khalid Iraqi was appointed as Acting Vice-Chancellor of the University of Karachi and the university is continuing without regular Vice-Chancellor.

3. Syed Asam-ul-Haq, learned counsel for the petitioner in C.P. No.D-1062 of 2021, has contended that the petitioner Professor (R) Dr. Syed Ehtashmul Haq is the most suitable candidate for the post of Vice-Chancellor, University of Karachi and he applied for the said position through advertisement dated 29.06.2019 as per his excellent career, research work, funding record, and international reputation. Petitioner also seeks dissolution of the present Search Committee and prays for an impartial, independent committee to be reconstituted to get evaluated the research publications of all the candidates through the Higher Education Commission of Pakistan for appointment of the Vice-Chancellor. Petitioner has also attacked the constitution of the Search Committee on the premise that the present Search Committee is partial, and does not have the competence to recommend a suitable candidate for the slot of Vice-Chancellor. He, therefore, prayed for allowing the instant petition.

4. Mr. Haider Waheed, learned counsel for the petitioners in C.P. No.D-1780 of 2021, has submitted that despite eligibility of the senior-most Professors in the University of Karachi, the acting charge has been given to respondent No.4 Professor Dr. Khalid Mehmood Iraqi without any lawful authority, hence the notification of 15.5.2019 has been assailed and prayed for initiation of inquiry against respondent No.4's tenure as acting Vice-Chancellor of the respondent-University. Learned counsel further submitted that the respondents have acted in a manner which is in derogation of Articles 4, 18, and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, and has thereby caused harm to the fundamental rights of the petitioners as well as other aspirants to be appointed as the Vice-Chancellor of the University and serve the nation. He further added that the continued delay in appointing a regular Vice-Chancellor and letting respondent No.4 continue the office of Vice-Chancellor of the Karachi University is illegal and detrimental to the petitioners for the post of Vice-Chancellor. He also called in question the competency of the Search Committee in the appointment process of Vice-Chancellor and favoring the juniors in place of seniors. Learned counsel also called in question the appointment of respondent No.4 as Acting Vice-Chancellor of the respondent-University without lawful authority and submitted that respondent No.4 has made himself disqualified to contest for the post of Vice-Chancellor. He prayed for setting aside the notification dated 15.5.2019 whereby a junior professor has been appointed as Acting Vice-Chancellor of the University of Karachi.

5. Mr. Mehmood-ul-Hassan, learned counsel for the petitioner in C.P. No.D-2093 of 2021, has submitted that the petitioner is the most suitable candidate for

the post of Vice-Chancellor, University of Karachi, for which he applied through the public notice dated 29.6.2019 as per his excellent career, research work, funding record and international reputation. Petitioner also seeks dissolution of Search Committee and constitution of a fresh Committee to evaluate his candidature for the subject slot.

6. Mr. Ali Safdar Depar, learned AAG, assisted by Abdul Qadeer, Chairman, Search Committee, has submitted that the instant petition is not maintainable as the petitioners have approached this Court with unclean hands as they are themselves candidates to become the Vice-Chancellor of the respondent-University; that till date no action for and against has been taken by the respondent-University and Board, therefore, this petition is premature and is liable to be dismissed. Learned AAG supported the appointment of respondent No.4 in the capacity of Acting Vice-Chancellor, the University of Karachi, which is strictly under the law. Learned AAG pointed out that the post of Vice-Chancellor cannot be assigned to any person who is only senior / academically well versed but the post requires administrative qualities and is capable of holding managerial positions.

7. Ms. Farkhanda Shaheen, learned counsel for respondent No.4 in C.P. No.D-1780 of 2021 has referred to the para-wise comments filed on behalf of respondent No.4 and raised the question of maintainability of C.P. No. D-1780 of 2021 and submitted that the petitioners are not entitled to the discretionary relief under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973; that disputed questions of facts are involved in the above petition; that appointment of respondent No.4 has been made by the competent authority (Chief Minister Sindh) under the law. She, therefore, also prayed for dismissal of the instant petition.

8. We have heard learned counsel for the parties and perused the material available on record.

9. All the petitioners seek appointment for the post of Vice-Chancellor, the University of Karachi in terms of the Sindh Universities, Institutes, Laws (Amendment) Act, 2018, as invited through advertisement published in newspaper daily 'DAWN' dated 29.6.2019, *inter alia*, on the ground that they meet the eligibility/qualification criteria mentioned in the advertisement for the subject post, however, due to lethargic attitude and biases of the Search Committee, they have been deprived of such position. Therefore, at the first instance, the Search Committee needs to be dissolved and a new Search Committee may be ordered to be constituted to evaluate the eligibility/qualification and other criteria as outlined

in the advertisement and the shortlisted candidates may be recommended to the competent authority (Chief Minister Sindh) for appointment of Vice-Chancellor, University of Karachi.

10. In principle, the right to education is a fundamental right as it ultimately affects the quality of life which has nexus with other Fundamental Rights guaranteed by the Constitution under Articles 4 and 9 of the Constitution of the Islamic Republic of Pakistan, 1973. Awareness of rights and duties, growth of civic consciousness in society, enjoyment of Fundamental Rights guaranteed under the Constitution, and legal empowerment of people depend to a great extent on the quality of education. People cannot be free in the real sense unless they are properly educated; and in this regard establishment of quality, institutions are must with highly qualified teachers to provide quality education to the students without discrimination.

11. To achieve the above objectives, let us start from the University, how it functions; besides, the Chancellor and Vice-Chancellor through its various institutions i.e. the faculty, the Senate, the Syndicate, and Board of Studies.

12. Primarily, the Vice-Chancellor is its institutional head and enjoys a pivotal position. Being the executive and academic head of the University, it is for him to ensure that the University's statutes, Regulations, and Rules are faithfully observed; that he presides over the meetings of various bodies of the University and affiliated colleges. In matters of urgent nature, it is he who takes remedial steps; it is he who creates temporary posts when the urgency requires; he sanctions expenditures provided for in the approved budget, re-appropriates amounts not exceeding a certain amount; he convenes meetings of the Senate and the Syndicate. He is the bridge between the executive and academic wings of the University. It is the multi-dimensional role of the Vice-Chancellor which requires that the person who occupies this office should be imbued with values and character traits of integrity, academic excellence, and administrative ability. It is because of this that the search for Vice-Chancellor the world over has been an exercise-driven by higher principles. In our own country, the University Grants Commission/Higher Education Commission of Pakistan has laid down a procedure for appointment of Vice-Chancellor of University which, inter-alia requires the constitution of a Search Committee. The said Search Committee comprises eminent individuals having distinction in various disciplines. The Search

Committee is to recommend a panel of three candidates out of which the competent authority has to appoint one as Vice-Chancellor of the university.

13. In the present case, under Section 13(1) of the University of Karachi, Act 1972, as amended by Sindh Universities and Institutes Laws (Amendment) Act, 2018, which provides that there shall be a Vice-Chancellor of the University who shall be eminent academic and is qualified to be a full Professor in BPS-22 and shall be appointed by the Chief Minister for four years, which term may be extended for one or more time on such terms and conditions as the Chief Minister, Sindh, may determine, however that is subject to evaluation of his candidature, during the tenure, he remained on the subject post; and, after fresh advertisement, that is primarily, essential for the smooth working of the Public Sector University.

14. The post of Vice-Chancellor is mainly an administrative post, therefore, administrative experience is an essential requirement. Per learned AAG, the Search Committee interviewed the petitioners and other candidates; and, after scrutinizing their candidature as per advertised criteria, wherein the petitioners did not succeed.

15. The Honorable Supreme Court in the case of Dr. Iqrar Ahmed Khan Vs. Dr. Muhammad Ashraf and others **2021 SCMR 1509**, has provided the basic guidelines concerning the appointment of Vice-Chancellors of the public Sector Universities on the analogy that the Search Committee is required to recommend names of three persons in the order of merit to the Government which shall proceed to notify the person of highest merit unless there are cogent reasons for not appointing him, which shall be duly recorded in writing and shall be justiciable.

16. The similar matter of appointment of the Vice-Chancellor came up before the Honorable Supreme Court in the Human Rights Case No.13865 -P of 2018. Objections were raised in the HRC Case against the appointments which were being made on recommendations of the Search Committee. It was pointed out that discretion was being exercised arbitrarily, in an unstructured, unregulated, and biased manner and the principle of merit was not being followed. In this background, vide order dated 22.04.2018, the Honorable Supreme Court passed the following order so far as the appointment of acting Vice-Chancellor is concerned:-

"4. We are mindful of the fact that public sector Universities cannot be left to operate without the appointment of a permanent Vice-Chancellor. Therefore as an interim measure till such time that the permanent Vice-Chancellors are appointed pursuant to recommendations submitted by the authorized Search

Committees, acting Vice Chancellors will be appointed in the following manner:-

i}.....

ii}.....

a} The names of ten senior most Professors according to the seniority list maintained by the Department shall be placed before the Search Committees which shall nominate/ recommend one person to be notified as the acting Vice Chancellor. On receipt of such recommendations, the Government of Punjab shall notify the said person as the Acting Vice Chancellor immediately."

17. The Honorable Supreme Court further held as under:

"21. Keeping in view the fact that other persons have been appointed as Vice-Chancellors, and while considering their appointments, the pendency of audit paras has not been considered as a material and determining factor reflecting on their administrative ability or financial controls, we do not see why the same standard was not applied in the case of the Appellant and that too without due application of mind and examination of the documents or material attributable to alleged lax financial controls of the Appellant. Further, he was never confronted with the same and was virtually condemned unheard and behind his back. The reasons provided by Chief Minister show an exercise of pick and choose with a pre-determined mind and a conscious and deliberate effort appears to have been made to contrive reasons to appoint a person lower on merit and deprive a person better qualified, higher on merit, and obviously more suitable for the post in question. This act of the Chief Minister amounts to an illegal, arbitrary, capricious, and unbridled exercise of discretion by the Chief Minister and cannot be countenanced especially so when the Search Committee, comprising of credible academicians, independent members, and representatives of the Government itself with impeccable credentials, placed the Appellant on top of the merit list. Not only was he at No.1 of the merit list in the written exam, but, he was also given the highest marks in the interview. The same interview in which the Respondent did not perform as well.

22. From the facts and circumstances discernable from the record, it is evident that the Appellant was denied an appointment unlawfully and arbitrarily and reasons were contrived to furnish a basis for a predetermined decision which fail to stand the test for judicial scrutiny. It was precisely for this reason that in our order dated 28.04.2018 while retaining the discretion of the government to appoint a person lower on merit we had circumscribed and structured the exercise of discretion by making it obligatory on the authority to record cogent reasons with a rider that such reasons will be justiciable. As discussed in the preceding paragraphs, the impugned order not only lacks bona fide transparency but also assigns reasons which are neither cogent nor show any consistency in executive decision making.

23. The second reason provided by the Chief Minister is that the Appellant was unable to hold -the required number of syndicate meetings. The stance of the Appellant is that there is no requirement in the Act to hold a certain number of meetings of the syndicate. Statutes of other Universities expressly and specifically provide for the same in their law. The said requirement stems from an amendment made by the syndicate on 28.06.2014 to Rule 3 of the University of Agriculture Faisalabad Conduct of Business Rules of the Syndicate, 1976 (hereinafter referred to as the "Rules") which reads as follows:-

"Meetings. 3. (1) ordinarily, the Syndicate will meet at the University Campus and Faisalabad at least four times in a Calendar year."

24. It is evident from a perusal of the said provision in its true perspective that it is discretionary and not mandatory in nature as no consequence is provided in the law or the rules for failure to comply with the same. Even otherwise, despite our query, the learned ASC for the Respondent has been unable to show any prejudice having been caused to anybody on account of the alleged failure to call the requisite minimum number of syndicate meetings in a year. Further, where the relevant law requires a specific number of

meetings, it provides for the same in the Act for example section 22 of the Act which requires the "Senate" to hold two meetings in a year. The word used in the provision relating to syndicate meetings is "ordinarily" which is indeed discretionary as opposed to Section 22(3) which uses the word "shall" which in the facts and circumstances of the case points towards a mandatory command. The said Section is reproduced as:-

"(3) The Senate shall meet at least twice in every year on dates to be fixed by the Vice-Chancellor with the consent of the Chancellor."

25. We are therefore of the view that, the Appellant was not "required" to hold a certain number of syndicate meetings and the Appellant could not have been denied appointment for his failure to do what he was not required by law to do.

26. The learned Division Bench has erroneously and for reasons best known to it held that the Court cannot adjudicate upon the reasons given by the Chief Minister. This finding in our humble view constitutes abdication of jurisdiction and power of judicial review of administrative actions by the High Court which is the foundation and hallmark of the jurisdiction of the High Court under Article 199 of the Constitution. Further, we had clearly and categorically held in our order dated 22.04.2018 that the reasons recorded by the appointing authority will be justiciable. In the presence of such clear and categorical findings recorded by this Court, we are unable to comprehend how a finding of this nature could be recorded by the learned High Court. We have been unable to find the basis, logic, reason, or rationale behind the view taken by the learned Division Bench that the reasons recorded by the appointing authority do not have to undergo judicial scrutiny. The order of this Court was clearly on a question of law, enunciated a principle of law, and was binding on the learned Division Bench in terms of Article 189 of the Constitution. This fact has unfortunately escaped the notice of the learned Division Bench of the High Court. Further, it is settled law that, even the obiter dicta of this Court is binding on the High Court. Reliance in this regard is placed on Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 Supreme Court 483) the relevant part of which is reproduced as under:-

"Even obiter dictum of the Supreme Court, clue to the high place which the Court holds in the hierarchy of courts in the country, enjoy a highly respected position as if it contains a definite expression of the Court's view on a legal principle or the meaning of a law. (M. Ismail and Sons v. Trans-Oceanic Steamship Co., Ltd PLD 1966 Dacca 296, Nagappa v. Ramchandra AIR 1946 Bombay 365, K.C. Venkata Chalamayya v. Mad. State AIR 1958 Andhra-Par. 173, K.P. Doctor v. State of Bombay AIR 1955 Bom. 220, Bimla Devi v. Chaturvedi AIR 1953 All. 613)." (Emphasis supplied)

27. The aforementioned principle of law was further highlighted in the case of Muhammad Ali Abbasi and 2 others v. Pakistan Bar Council (PLD 2009 Karachi 392) the relevant paragraph of which is reproduces as under:-

"Indeed, it is too well-settled of a principle of law, requiring no reconsideration, that even obiter dicta of the Supreme Court are binding on the High Courts, irrespective of the latter's strength (see M. Ismail and Sons v. Trans-Oceanic Steamship Co. Ltd. PLD 1966. Dacca 296, Ghaus Muhammad v. The State PLD 1978 Lah. 1235, Afaquz Zubair v. Muhammad Idrees PLD 1978 Kar. 984, Faiz Bakhsh v. Muhammad Munir 1986 CLC 507, Ghulam Mustafa Mughal v. Azad Government of the State of Jammu and Kashmir 1992 MLD 2083, Abdul Razzak v. The Collector of Customs 1995 CLC 1453, Mian Manzoor Ahmed Wattoo v. The State 2002 YLR 3433, Hafeez-ud-Din v. Badar-ud-Din PLD 2003 Kar. 444, Azad J & K Government v. Ch. Muhammad Saeed, Stenographer 2003 PLC (C.S.) SC (AJ&K) 789 and Watan Party v. FOP 2005 YLR 388)." (Emphasis supplied)

28. For reasons recorded above we find that the impugned judgment of the learned Division Bench of the Lahore High Court dated 05.03.2020 is unsustainable and liable to be set aside.

29. Accordingly, we allow these appeals and set aside the impugned judgment of the Lahore High Court dated 05.03.2020.”

18. In the light of dicta laid down by the Hon'ble Supreme Court in the case of Dr. Iqar Ahmed Khan (supra), the Government of Sindh is required to constitute Search Committee for the term of two years, a Search Committee consisting of not less than three and not more than five members and/or any member as per law for making recommendations for appointment of the Vice-Chancellor in terms of rules and regulations set forth by the Government of Sindh having better qualification than the aspiring candidates for the post of Vice-Chancellor of the Universities in Sindh. The basic object of the Search Committee is to examine the eligibility criteria as set forth under the law of the candidates and submit/recommend names of three persons in order of the merit to the government which shall proceed to notify the person of highest merit unless there are cogent reasons for not appointing him which shall be duly recorded in writing and shall be justiciable as observed by the Hon'ble Supreme Court in the case of Dr. Iqar Ahmed Khan (supra). Besides that, the competent authority/Chief Minister shall record valid reasons if he disagrees with the findings of the Search Committee, besides that, if he non-suits any candidate for the position of Vice-Chancellor, he must record valid reasons in writing, however, subject to all just exceptions as provided under the law. We also feel appropriate to direct the Government of Sindh to interview the candidates for the post of Vice-Chancellor in-camera through its newly constituted search committee and its recording be made available if needed by any Court of law and the said recording shall also be uploaded on the website of the Government of Sindh. The recording should not be destroyed and the same be saved for one year in case the appointment is challenged and then in such event unless the issue is disposed of by the competent Court of law.

19. The Government of Sindh is directed to expedite the process by ensuring reconstituting of Search Committee within two months from the receipt of this order and shall also complete the process of interview of all the candidates afresh for the appointment for the post of Vice-Chancellor, University of Karachi, at the earliest. Meanwhile, the Search Committee (after reconstitution) shall send the copies of the original academic certificates/degrees/publications of the petitioners and the private respondents to the Higher Education Commission of Pakistan for verification. The Higher Education Commission of Pakistan is directed to look into the academic qualification certificates/publications of the petitioners and the private respondents and after ascertaining genuineness or otherwise submit the report to the Search

Committee constituted by the Government of Sindh in a sealed envelope within one month for further proceedings.

20. Before parting with this order, we have noticed that serious allegations have been leveled against the present Acting Vice-Chancellor of the respondent-university as discussed in the preceding paragraphs, therefore, we deem it appropriate to direct the respondent-university to forward the names of ten senior most Professors according to the seniority list maintained by the respondent-university to be placed before the Worthy Chief Minister, Sindh to nominate one senior-most professor in BPS 22, who shall be notified the acting Vice-Chancellor in the intervening period. The said exercise shall be undertaken just after receipt of the order of this Court.

21. These petitions are allowed in the above terms with no order as to costs.

22. Let notices be issued to the Worthy Chief Minister, Sindh/competent authority of the Universities and Boards, Secretary Universities and Boards, Government of Sindh and the Chairman Higher Education Commission of Pakistan for information and compliance.

JUDGE

JUDGE

Nadir*

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