

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

C.P. No.D-5205 of 2020

Date	Order with signature of Judge
-------------	--------------------------------------

Present

**Mr. Justice Muhammad Ali Mazhar
Mr. Justice Arshad Hussain Khan**

Prof. Dr. Muhammad Zahid.....Petitioner

Versus

The Chancellor, Federal Urdu University of
Arts, Science and Technology & others.....Respondents

Date of Hearing: 16.12.2020 & 17.12.2020

Mr. Muhammad Safdar and Ms. Asmaa Javaid, Advocates along
with Petitioner.

M/s. Anwar Mansoor Khan & Muhammad Ali Talpur, Advocates
for Respondents No.1 to 5, 7 & 8.

Barrister Hussain Bohra, Assistant Attorney General.

Muhammad Ali Mazhar, J: This Constitution Petition has been brought to challenge the appointment of respondents No.7 and 8 as members of Search Committee vide notification dated 07.07.2020. The petitioner has prayed for the directions against the respondents to reconstitute the search committee in view of the guidelines set by Higher Education Commission (HEC) and also entreated a further declaration that rejection of his application submitted for the appointment of Vice Chancellor is illegal. A restraining order has been sought against the respondents from

processing the applications received for the position of Vice Chancellor.

2. The learned counsel for the petitioner argued that the petitioner is Professor in BPS-21 in Federal Urdu University of Arts, Sciences and Technology (FUUAST) (respondent No.2). The University announced a vacancy for the post of Vice Chancellor vide advertisement dated 16.08.2020 in the vernacular newspapers to which the petitioner also applied. It was further contended that under Section 12 (2) of the Federal Urdu University of Arts, Sciences and Technology, Islamabad Ordinance, 2002, it is the requirement that in the Search Committee two distinguished teachers who were not members of the Senate and one academic of eminence not employed by the University should be there. It was avowed that respondents No.7 and 8 were included in the Search Committee who are neither distinguished nor worthy of being members of the search committee due to their unruly and highly undesirable behavior in past and they were also issued show cause notices. He further argued that Senate Investigation Committee also recommended that due to lack of discipline and undesirable behaviour of respondents No.7 and 8, they must not be assigned any additional responsibilities. It was further contended that the search committee shortlisted a number of candidates who were less qualified and less competent than the petitioner who is a senior member of the same University for last 25 years, despite that his application was rejected without considering his credentials or antecedents due to bias of respondents No.7 and 8. It was further averred that the search committee ignored the guidelines of HEC and while advertising the post the important guidelines and minimum standards framed by HEC were ignored. The search committee in order to accommodate their favourites has changed the criteria and requisite qualification for the post of Vice Chancellor and intentionally did not consider the three research grants of petitioner less than Rupees One Million and rejected

him. It was further contended that the search committee for the purposes of shortlisting and scoring outsourced their task to independent enumerators which fact is clearly mentioned in the counter affidavit filed by the respondents which creates serious doubt about the creditability, competence and partiality of the search committee for the appointment of Vice Chancellor on merit.

3. The learned counsel for the respondents No.1 to 5, 7 and 8 argued that there is no specific conditions laid down in Section 12 of the Ordinance for the appointment of Vice Chancellor, hence the search committee is authorized to decide the requirements in the best interest of the University. The search committee can also ask the candidates to furnish further information in order to recommend the panel of best candidates to the Senate for appointment. It was further contended that the respondents No.7 and 8 were nominated in the search committee vide 40th Syndicate meeting convened on 14.02.2020. The petitioner neither challenged the nomination of the said members after their notification nor challenged their nomination before the search committee. The petitioner challenged the process only when he was not shortlisted due to his own failure to meet the requisite criteria. As per University Code, the Syndicate is authorized to nominate the names of two teachers as members of the search committee through the Senate. The previous show cause or inquiry if any against such members is not relevant. Moreover, when the respondents No.7 and 8 were nominated in the 40th Syndicate meeting, the petitioner was present but the minutes of that meeting do not transpire any objection of the petitioner with regard to the nomination of respondents No.7 and 8 as members of the search committee. The present search committee consists of eminent professionals from the society and also has two former Vice Chancellors as its members which is functioning as per the rules and regulations and has also adopted the best practice to search and recommend a panel of worthy professionals for the post of Vice Chancellor. The search committee issued a feedback

form in which the candidates were asked to summarize their credentials and achievements which feedback form was also a part of progressive selection criteria. The search committee allocated 50 marks in different categories required to be mentioned in the feedback form and it was also decided by them that the candidates who will be able to secure 70% marks or above i.e. 35 out of 50 were to be shortlisted and called for interview. The petitioner failed to obtain 35 marks out of 50 on the basis of information that he himself provided, hence he was not fit to be called for interview.

4. Heard the arguments. Compliant with Section 11 of the **Federal Urdu University of Arts, Sciences and Technology, Islamabad Ordinance, 2002**, the Vice Chancellor of the University should be an eminent academic or a distinguished administrator and as a Chief Executive Officer of the University must be responsible for all administrative and academic functions of the University for ensuring that the provisions of this Ordinance, Statute, Regulations and Rules are faithfully observed in order to promote the general efficiency and good order of the University. Whereas, Section 12 of the same Ordinance germane to the appointment and removal of Vice Chancellor who is appointed by the Chancellor on the basis of recommendations made by the Senate. In keeping with Sub-section (2), a search committee is constituted by the Senate for the recommendations of persons suitable for appointment as Vice Chancellor. For the ease of reference, Section 12 of the aforesaid Ordinance is reproduced as under:

“12. Appointment and removal of the Vice-Chancellor.- (1) The Vice-Chancellor shall be appointed by the Chancellor on the basis of recommendations made by the Senate.

(2) A Search Committee for the recommendation of persons suitable for appointment as Vice-Chancellor shall be constituted by the Senate on the date and in the manner prescribed by the Statutes and shall consist of two eminent members of society nominated by the Chancellor, of whom one shall be appointed the Convenor, two members of the Senate, two distinguished University Teachers who are not members of the Senate and one academic of eminence not employed by the University. The two distinguished University teachers shall be selected by the Senate through a process, to be prescribed by Statute that provides for the recommendation of suitable names by the University Teachers in general. The Search Committee shall remain in

existence till such time that the appointment of the next Vice-Chancellor has been made by the Chancellor.

(3) The persons proposed by the Search Committee for appointment as Vice-Chancellor shall be considered by the Senate and of these a panel of three, in order of priority, shall be recommended by the Senate to the Chancellor:

Provided that the Chancellor may decline to appoint any of the three persons recommended and seek recommendation of a fresh panel. In the event of a fresh recommendation being sought by the Chancellor the Search Committee shall make a proposal to the Senate in the prescribed manner.

(4) The Vice-Chancellor shall be appointed for a renewable tenure of five years on terms and conditions prescribed by Statute. The tenure of an incumbent Vice-Chancellor shall be renewed by the Chancellor on receipt of a resolution of the Senate in support of such renewal:

Provided that the Chancellor may call upon the Senate to reconsider such resolution once.

(5) The Senate may, pursuant to a resolution in this behalf passed by three-fourths of its membership, recommend to the Chancellor the removal of the Vice-Chancellor:

Provided that where the Review Panel set up by the Chancellor in terms of section 8 of the Ordinance has reported gross misconduct by the Vice-Chancellor, including misuse of position for personal advantage of any kind, the Senate may, pursuant to a resolution in this behalf passed by two-thirds of its membership, recommend to the Chancellor the removal of the Vice-Chancellor:

Provided further that prior to a resolution for the removal of the Vice-Chancellor being voted upon the Vice-Chancellor shall be given an opportunity of being heard. The Senate may recommend the removal of the Vice-Chancellor on the ground of misuse of position for personal advantage, inefficiency, moral turpitude or physical or mental incapacity.

(6) A resolution recommending the removal of the Vice-Chancellor shall be submitted to the Chancellor forthwith. The Chancellor may accept the recommendation and order removal of the Vice-Chancellor or return the recommendation to the Senate.

(7) At any time when the office of the Vice-Chancellor is vacant, or the Vice-Chancellor is absent or is unable to perform the functions of his office due to illness or some other cause, the Senate shall make such arrangements for the performance of the duties of the Vice-Chancellor as it may deem fit."

5. The petitioner in essence or predominantly has challenged the nomination of respondents No.7 and 8 as members of the search committee scarcely on the ground that show cause notices were issued to them due to their alleged unruly or rowdy behavior but he has not placed anything on record to show that on the basis of alleged show cause notices any departmental action was taken against them except a copy of recommendations of Senate

Investigation Committee dated 26.04.2018 that during pendency of the proceedings they may not be allowed any additional responsibility. Being a candidate for the post, the candidate cannot make choices for the appointment or nomination of members of search committee. Except the present petitioner, no other candidate came forward to challenge the inclusion of respondent No.7 and 8. According to the composition provided for search committee, it needs to be consist of two eminent members of the society nominated by the Chancellor of whom one shall be appointed as convenor, two members of the Senate, two distinguished University teachers who are not members of the Senate and one academic of eminence not employed by the University. The two distinguished University teachers are selected by the Senate through a process to be prescribed by the Statute for the recommendation of suitable names by the University teachers in general. The petitioner has alleged bias without any persuasive rationalization or reasoning against the respondents No.7 and 8 except that he opposed the nomination in the search committee which is not a justifiable ground nor seems to be logical that in a process in which the petitioner wants to participate and join for the selection of Vice Chancellor raising objections only for reasons that show cause notices were issued to respondents No.7 and 8. The respondents with their reply also produced a copy of notification dated 07.07.2020 issued by the Registrar conveying the names of the search committee, convenor and six other members appointed in terms of Section 12 of the aforesaid Ordinance. The appointment of search committee was made in pursuance of the minutes of 42nd meeting of the Senate of Federal Urdu University of Arts, Sciences and Technology for appointment of Vice Chancellor. The respondents have also submitted the profile of search committee members according to which the respondent No.7 is serving as Assistant Professor in the Department of Chemistry. He has more than 18 years of postgraduate teaching experience and contributed twenty research articles in national and international journals. He

attended and presented research work at multiple national conferences and workshops. He also served as a member of the Senate of the University and holds a PhD degree, whereas the profile of respondent No.8 depicts that he has also served as an Assistant Professor in the Department of International Relations having more than twelve years of postgraduate teaching experience and contributed various articles in national and international research journals and also holds a PhD degree. Neither the petitioner challenged this profile nor placed anything on record nor argued that these two persons are not fit in the criteria prescribed for the appointment of members in the search committee, on the contrary the petitioner admits that he filled some wrong information in the feedback form for which the respondents No.7 and 8 could not be held responsible. In our outlook and viewpoint, the allegations of bias or mala fide remained unsubstantiated and there is nothing to believe or hold that the nomination of respondents No.7 and 8 as members of search committee is illegal or ultra vires the procedure prescribed under Section 12 of the Federal Urdu University of Arts, Sciences and Technology, Islamabad Ordinance, 2002, hence on this count we do not find any substance in the petition.

6. Now we would like to mull over and take stock of other characteristics of the case. During course of arguments on 16.12.2020, the counsel for the petitioner pointed out Form-E (feedback form) attached with the counter affidavit of the respondents and argued that due to inadvertence in the column of research grants administered less than PKR 1 million, the petitioner wrongly mentioned "N/A" but he clarified this mistake through an email. He further argued due to some oversight correct information could not be submitted in the column but as a matter of fact, at least three research grants administered less than PKR 1 million are at the credit of petitioner. He requested us to grant some time to submit the copy of email and ultimately on 17.12.2020, petitioner's counsel submitted a statement alongwith

copy of email sent by the petitioner to show that on 03.10.2020, he communicated to the convenor of search committee and clarified that he received three research grants from local agency and also apologized for the inconvenience. We have also gone through the feedback form in which column 3a relates to the number of research grants administered less than PKR 1 million and clause 3b of the feedback form is pertinent to the number of research grants administered more than PKR 1 million but in both columns the petitioner has mentioned "N/A". The respondents have also submitted a form of eligibility and shortlisting/scoring according to which the petitioner had obtained 32 marks only and could not secure the marks for those columns which he himself failed to mention details except "N/A". When confronted to the copy of email, the learned counsel for the respondents submitted a statement that email of the petitioner was received on 03.10.2020 when the feedback forms of the candidates had already been scrutinized by the search committee and the scores allotted thereon. It was further stated that the petitioner failed to submit the requisite information or correction thereon within the extended date of submissions i.e. 24.09.2020, therefore, the request made by him in the aforesaid email could not be accepted.

7. What we have deciphered and figure out from the provisions of the Ordinance vis-à-vis the appointment of Vice Chancellor, the rationale or underlying principle of appointing search committee is to make sure the recommendations for the appointment of Vice Chancellor on merits in a transparent and translucent manner so that a profile of most competent and suitable person is vetted, screened or sort through for the recommendations but in the reply to main petition filed by respondents No.1 to 5, 7 and 8, paragraph 10 is quite relevant which for the ease of reference is reproduced as under:

"10. That the contents of Paragraph No. 13 of the main Petition are denied as false and misleading. As stated above, the Petitioner has

failed to secure 35 marks which were the minimum required criteria to get short listed for the interview. The Search Committee performed within its rules and regulations without any prejudice, fear and favour. Therefore, the petitioner's claim of hand-picking or pre-selecting the candidates is false, fictitious, fabricated and baseless. It is most respectfully submitted that the names of the candidates were never placed or disclosed to the Members of the Search Committee for short listing and scoring was done by the independent enumerators. Only the Scoring Sheets with the file numbers were discussed by the Search Committee without having names of any of the candidates. In addition to this the Members of Search Committee being highly qualified and professionals are person of integrity thus such baseless allegations are not warranted in the instant case and the same are being made for the Petitioner only for their ill-motivated and malafide intentions of slowing and stopping the process of appointment of the Permanent Vice Chancellor of the University. Therefore, the instant Petition is liable to be dismissed with heavy cost on the Petitioner."

8. The Vice Chancellor for Academic Affairs provides the executive leadership in assisting the Chancellor in the overall planning, organizing, and controlling of the academic program areas. He performs the duties of executive administrative work in planning, developing, organizing, directing and evaluating academic programs, policies, procedures and guidelines with overall leadership, direction and control in all academic areas. The role and purpose of search committee is quite meaningful and carrying great weight and importance. It is somewhat incomprehensible to glance through the declaration made in aforesaid paragraph that the names of the candidates were never placed or disclosed to the Members of the Search Committee for short-listing and scoring was done by an independent enumerators and only the scoring sheets with the file numbers were discussed by the search committee without having names of any of the candidates. By doing so we feel no hesitation in our mind to hold that search committee was found fail in its duties. The search committee was appointed for recommending the most suitable candidate for appointment as Vice Chancellor which could not outsource their responsibilities and onerous duty to some independent enumerators while a sacred duty was conferred to analyze and scrutinize the credentials and antecedents of all candidates who applied to the post of Vice Chancellor. We do not think that search committee was empowered to adopt a unique idea of outsourcing their task to

some independent enumerators which idea is downrightly extraneous and alien to Section 12 of the Ordinance wherein the entire responsibility rests upon the search committee to complete the entire exercise and recommend the names of best suitable candidates for the final selection by the Chancellor. It was their obligation and errand appearing in the law to scrutinize and assess the curriculum vitae/résumé of all candidates for shortlisting and marking/scoring with due diligence and correct application of mind then issue interview letters to the shortlisted candidates.

9. In the case of **Pakistan Medical Association (Centre) vs. Chancellor Dow University of Health Sciences (2016 PLC (C.S.) 1232)** (the judgment authored by one of us Muhammad Ali Mazhar; J), the question of appointment of Vice Chancellor of the University as well as the domain and responsibilities of the search committee were dilated upon in detail on the basis of dictum laid down by our own courts and foreign courts and the gist and crux what has been deduced and congregated are that in the case of **Rana Aamer Raza Ashfaq versus Doctor Minhaj Ahmed Khan (2012 SCMR 6)**, the apex court expatiated and expounded the role of University and Vice-Chancellor and reckoned that Universities are seats of learning and centres of excellence. To achieve, its objects, University functions besides the Chancellor and Vice-Chancellor through its various institutions. Vice-Chancellor is a University's institutional head and enjoys a pivotal position. Vice-Chancellor is a bridge between executive and academic wings of University. Such multi-dimensional role of Vice-Chancellor requires that person who occupies this office should be imbued with values and character traits of integrity, of academic excellence and administrative ability. In the case of **Kalyani Mathivanan v. K.V. Jeyaraj and others (AIR 2015 SC 1875)**, the Supreme Court of India referred to Regulation 1 for the office of VC (Statutes and Ordinances of Cambridge University, June 2002:655) and held that VC is of a stature and his/her presence commensurate to lead a distinguished academic

institution. The stated mission of the University is to contribute to society through the pursuit of education, learning, and research at the highest international levels of excellence. The VC must be of exceptional caliber with academic credibility, clear strategic vision, and outstanding leadership qualities. He/she should have strong management skills and senior level experience gained in a complex institution and the ability to bring them to bear in a democratic, self-governing University. The Vice-Chancellor being the principal executive and academic officer of the University, should exercise general supervision and control over the affairs of the University and give effect to the decision of all its authorities. He shall be the ex-officio Chairman of the Court, Executive Council, Academic Council, Finance Committee and Selection Committees and shall, in the absence of the Chancellor preside at any convocation of the University for conferring degrees. It shall be the duty of the Vice-Chancellor to see that the provisions of the Act, Statutes and Ordinances and Regulations are fully observed and he should have the power necessary for the discharge of this duty. In an interesting Article, titled **“Why Socrates should be in the Boardroom in Research Universities”**, published in 2010 by Amanda H. Goodall, Leverhulme Fellow, Warwick Business School, the author points out two contrasting events that happened in 2003 and 2004. It is common knowledge that Cambridge University came into existence in 1209 and almost about 800 years later, a distinguished Anthropologist, by name Alison Richard, was appointed as the 344th President or Vice-Chancellor of Cambridge. She was an acclaimed academician. In contrast to what happened at Cambridge in 2003, Oxford University appointed in 2004, a person by name John Hood, who was not an academic but was only a businessman. He became the first head of Oxford University, ever since the year 1230, to be elected to the Vice-Chancellorship from outside the University's current academic body. The paper authored by Amanda Goodall considered the question as to why Cambridge and Oxford chose

such different individuals to lead their ancient and reputed institutions. The central theme of the paper was as to whether there was a relationship between University performance and leadership by an accomplished researcher. Eventually, after analyzing the statistics from about 100 Universities throughout the world, the author came to the conclusion, supported by evidence that Research Universities should be led by top scholars. The conclusions reached by the author could be summarized in the way that the best Universities in the world are led by more established scholars; that scholar-leaders are considered to be more credible leaders in Universities, commanding greater respect from their academic peers; that setting an organisation's academic standards is a significant part of the function of the Vice-Chancellor and hence one should expect the standard bearer to first year that standard; that a leader, who is an established scholar, signals the institution's priorities, internally to its faculties and externally to potential new academic recruits, students, alumni, donors and the media; that since scholarship cannot be viewed as a proxy for either management experience or leadership skills, an expert leader must also have expertise in areas other than scholarship.

10. In the wake of above discussion, this constitution petition is disposed of along with pending application in the following terms:-

1. Outsourcing the task of shortlisting and marking/scoring by Search Committee to the independent enumerators was in violation of basic structure of Section 12 of the Federal Urdu University of Arts, Sciences and Technology, Islamabad Ordinance, 2002 therefore the exercise of shortlisting and marking/scoring conducted by said independent enumerators on directions of search committee is set aside.
2. The Search Committee is directed to conduct selection process de novo by itself and scrutinize and appraise in a fair and transparent manner all curriculum vitae/résumé submitted by the candidates for the appointment to the post of Vice Chancellor

pursuant to advertisements published in the newspapers on 16.08.2020 for inviting applications.

3. After due diligence, assessment and proper appraisal of curriculum vitae/résumé, supporting documents and feedback forms including the information if any submitted by the candidates for rectifying any bona fide mistake in the feedback form, the search committee shall award marks consistent with the yardsticks/benchmarks and shortlist the candidates for interview. After finalization of selection process within 30 days, Search Committee shall forward the recommendations compliant with Section 12 of the Federal Urdu University of Arts, Sciences and Technology, Islamabad Ordinance, 2002 for appointment of Vice Chancellor of Federal Urdu University.

Judge

**Karachi:-
Dated.28.4.2021**

Judge