

IN THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Salahuddin Panhwar
Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 162 of 2021

Syed Jamil Hassan Kazmi

Petitioner

through : Mr. Mehmood-ul-Hassan, advocate.

Respondent No.1

through : Mr. Ali Safdar Depar, AAG.

Respondents 2 & 3

through : M/S Shoaib Mohiyuddin Ashraf and
Ameeruddin, advocates.

Respondent No.6

through : Mr. Sabih Ahmed Zuberi, advocate.

Dates of hearing

& order : **16.09.2021**

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner has prayed for issuance of the writ against private respondents 5 and 6, inter-alia, on the ground that they are not fit, eligible, and qualified to hold the office of Dean Faculty of Science (**'DFS'**) in Karachi University, (KU).

2. In principle the petitioner has challenged the notification dated 4th June 2020, issued by the Secretary Universities & Boards Department, Government of Sindh, whereby the Competent Authority has appointed Prof. Dr. M. Abid Hasnain as Dean Faculty of Science up to his date of superannuation i.e. 03.11.2020, which period has already expired; and, Prof. Dr. Nasira Khatoon as Dean Faculty of Science, University of Karachi, against the future vacancy with effect from 04.11.2020 up to her date of superannuation i.e. 06.12.2022. For convenience sake, an excerpt of the notifications dated 4.6.2020 and 3.11.2020 are reproduced as under:-

“Government of Sindh
Universities & Boards Department
Karachi, dated 4th June 2020

NOTIFICATION

No.SO(U)&B/UoK/2-35/2018/273: In exercise of powers vested to him under section-2(2) of the First Statutes of University of Karachi Act 1972, as amended by Sindh Universities and Institutes Laws (Amendment) Act 2018, the Honorable Chief Minister Sindh has been pleased to appoint **Prof. Dr. M. Abid Hasnain** as Dean Faculty of Science, up to his date of superannuation i.e. 03-11-2020 and **Prof. Dr. Nasira Khatoon** as Dean Faculty of Science, University of Karachi, with effect from 04-11-2020 up to her date of superannuation i.e. 06.12.2022.

“No.B/Estt.(T)(I)/(Dean, Faculty of Science)/2020-902 November 3, 2020

OFFICE ORDER

In pursuance of Notification of the Honourable Chief Minister of Sindh, vide letter No.SO(U)U&B/UoK/2-35/2018/273 dated June 4, 2020, Prof. Dr. Nasira Khatoon, Department of Zoology is appointed as Dean, Faculty of Science, the University of Karachi under section-2(2) of the First Statutes of the University of Karachi Act 1972, with effect from 04-11-2020 till the date of her superannuation i.e. 06-12-2022.”

3. Mr. Mehmood-ul-Hassan, learned counsel for the petitioner has submitted that official respondents have erroneously protected the private respondents by forwarding their names for the Chief Minister, Sindh for appointment as Dean Faculty of Science KU for Three years, which has triggered the cause to approach this Court through the instant petition. He next argued that the direct appointment as head of the department by way of summary, bypassing the proper procedure of appointment through the competitive process was/is patently discriminatory and in gross violation of Articles, 4, 8, and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, thus the appointment of respondent No.6 is liable to be canceled; that the petitioner is the only “professor meritorious” in Grade-22 working as Professor in Science Faculty and is the only candidate and/or senior-most, being from Grade-22 Professor, to be considered as DFS in terms of the Code of the University, describing as to who could be the DFS.

Learned counsel further argued that the law provides that three senior-most professors in the said faculty could be considered by the Chancellor (now Chief Minister) and/or Vice-Chancellor read with a recent amendment in the subject law, hence, outrightly the petitioner is deprived of his rights and entitlement as head of the department.

4. On the other hand, learned counsel representing the private respondent, has raised the question of maintainability of the instant petition on the premise that the petitioner has approached this Court with unclean hands; that the petitioner maliciously waited for the tenure of the former Dean of the Faculty of Science i.e. respondent No.5 to get over on 3.11.2020 to approach this Court; that the relief sought by the petitioner is barred by laches, as the petitioner has accepted to the appointment of the respondents 5 and 6 as DFS respectively, by not challenging the notification of the respondent No.1 issued on 4.6.2020 when the respondent No.5 was appointed as DFS; that the aforesaid challenge has now been made without establishing that the private respondents did not possess the requisite qualification or seniority; that petitioner has also failed to establish any substantive illegality, procedural impropriety, decisional irrationality, malafide or unstructured discretion in the procedure of appointing the private respondents as DFS by the Competent Authority; that the petitioner has filed this petition seeking his appointment as DFS and challenged the appointment of private respondents in the nature of *quo warranto* which cannot be filed by an interested party who has approached this Court with malice and to settle personal score with the private respondents; that the petitioner has failed to identify as to how the actions of the respondents have influenced his rights bestowed upon him by the Constitution of the Islamic Republic of Pakistan, 1973. He lastly prayed for the dismissal of the instant petition.

5. M/S Shoaib Mohiyuddin Ashraf and Ameeruddin, learned counsel for the respondent-University, have supported the stance of private respondents and raised the similar question of the maintainability of the instant petition being barred by laches. Learned counsel further pointed out that respondent No.5 has already been retired on 3.11.2020 as DFS, thereafter respondent No.6 being the most senior professor has taken over the charge as DFS, and thus the petitioner is not entitled to invoke the constitutional jurisdiction of this Court as he failed to point out any infringement of his fundamental rights. Learned counsel further argued that the competency as claimed by the petitioner is irrelevant for the appointment as DFS, as he was not senior amongst three Professors of Faculty of Science, as he was at Sr. No.5 according to the seniority list of professors of Faculty of

Science, University of Karachi. Per learned counsel, the respondent-University recommended the three most senior professors namely Prof. Dr. M. Arshad Azmi, Prof. Dr. M. Abid Hasnain, and Prof. Dr. Nasira Khatoon for the appointment of Dean, Faculty of Science, under the 1st Statute Section 47(2) (2) University of Karachi Act, 1972, with the recommendation that the most senior professor, Professor Dr. M. Arshad Azmi may be appointed as DFS vide office letter dated 08.5.2020. Learned counsel referred to the summary forwarded by respondent No.4 to the competent authority dated 13.5.2020 and it was pointed out that Professor Dr. M. Arshad Azmi was due to retire on 9.6.2020, therefore, Prof. Dr. Muhammad Abid Hasnain was recommended for Dean, Faculty of Science, since his period as DFS was within six months, on account of his retirement on 03.11.2020, therefore, in the same summary, Prof. Dr. Nasira Khatoon/respondent No.6 was also recommended for the appointment of Dean, Faculty of Science, after superannuation of Prof. Dr. Muhammad Abid Hasnain, being most senior Professor, Faculty of Science with effect from 4.11.2020 till her superannuation i.e. 6.12.2022; that the competent Authority was pleased to appointment Prof. Dr. Abid Hasnain as DFS up to his date of superannuation i.e. 3.11.2020 and Prof. Dr. Nasira Khatton as DFS with effect from 4.11.2020 up to her date of superannuation and accordingly the notification dated 4.6.2020 was issued by the respondent No.4. He pointed out that it is not a fit case for issuance of a writ of quo warranto as there seems to be a personal dispute between the petitioner and the private respondents as to the appointment to the above post; that if this court issues such a writ, the employees to settle the disputes as to promotions/ appointment inter-se between them, may press into service the relief of quo warranto either directly or indirectly (through some other hired employees), which will not be in the interest of the smooth functioning of the service structure of respondent-university and will ultimately result in bypassing the remedies available under the statutes making them redundant and purposeless, which cannot be approved. In support of his contentions, he relied upon the cases of *Abrar Ahmed Khan v. The Sindh Labour Appellate Tribunal, etc (NLR 1997 Civil 567)*, and an unreported order dated 26.11.2014 passed by this Court in C.P. No.D-382 of 2013. He lastly prayed for the dismissal of the instant petition.

6. Learned Assistant 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 appointment 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, the aforesaid appointment process was conducted fairly and transparently. He lastly prayed for the dismissal of the captioned petition.

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

8. The question involved in the present petition concerning the appointment of Dean Faculty of Science, University of Karachi. According to Section 2(2) of the First Statute of University of Karachi Act, 1972 as amended by the Sindh Universities and Institute Laws Amendment Act, 2018, the Dean of each Faculty shall be appointed by the worthy Chief Minister on the recommendation for the Vice-Chancellor from amongst the three senior-most Professor in the faculty for three years.

9. In the above scenario, we have to see whether the petitioner was senior Professor or respondent No.6 was senior to the petitioner as per the seniority list produced by respondent No.6 in her counter-affidavit (*page 175*) as well as by the respondent-University in their counter-affidavit (*page 7A*).

10. It appears from the record that the seniority of three senior-most Professors of the Faculty of Science is as follows:

S.No	Name	Date of Appointment as Professor	Date of Birth	Date of Retirement
1	Prof. Syed Jamil Hassan Kazmi	11-11-2005	10-06-1960	09-12-2021
2	Prof. Dr. M. Abid Hasnain	11-11-2005	04-11-1960	03-11-2020
3	Prof. Dr. Nasira Khatoon	11-11-2005	07-12-	06-12-2022

			1962	
--	--	--	------	--

11. On perusal of the record and the documents furnished by the respective parties, we have found that respondent-university vide letter dated 8.5.2020 addressed to Secretary Universities & Boards Government of Sindh, expressly pointed out that Prof. Dr. M. Arshad Azmi is the senior most Professor of the Faculty of Science and is a suitable candidate to be considered for appointment as the Dean, Faculty of Science for the period with effect from 3rd May, 2020 till his retirement i.e. 09-06-2020, but unfortunately Secretary Universities & Boards Government of Sindh, twisted the same and floated Summary for Chief Minister and proposed on his own accord that Prof. D. M. Arshad Azmi is the senior-most professor of the Faculty and is going to retire on 9.6.2020, therefore, the competent authority may appoint Prof. Dr. M. Abid Hasnain as DFS up to 3.11.2020, however, he did not stop here and further proposed to fill the aforesaid vacancy after the retirement of Prof. Dr. M. Abid Hasnain by proposing the name of Prof. Dr. Nasira Khatoon as DFS, University of Karachi, with effect from 4.11.2020 up to her date of superannuation i.e. 6.11.2022, which factual position was not endorsed and forwarded by the respondent-university, however he succeeded in obtaining order from the Competent Authority erroneously vide endorsement dated 21.5.2020.

12. The episode did not end here, in this regard we scanned the profile of the petitioner and private respondent No. 6 which explicitly show that the petitioner was appointed in the respondent-University as Lecturer on 16.9.1991 and was promoted as Assistant Professor on 03.04.1997 and Associate Professor on 01.01.2001 and Professor on 11.11.2005, whereas respondent No.6 was appointed as Lecturer on 09.3.1994, Assistant Professor on 28.3.1994, Associate Professor on 01.01.2001 and Professor on 11.11.2005. Prima facie, petitioner and respondent No.6 were appointed as Professors on the same date month and year. It is pertinent to mention that law for recommendation for the post of Dean has been that the senior most among the professors shall be recommended. Thus, when the length of the service of the persons is also the same by virtue of the date of appointment being the same, the age of the persons will have to be considered meaning thereby the oldest person will be considered the senior-most amongst the other

officers holding the same post. The abovementioned principles are important to note for the cases wherein promotion is to be made for the senior positions like the Head of the Department, Dean, etc., and also for all those cases wherein for administrative purposes the *inter se* Seniority amongst the officers is to be determined as provided under the University Act. Therefore, summing up, the *inter se* Seniority amongst persons holding the same post/rank will be determined on the basis of above touchstone. In this case, as per record, the petitioner was born on 01.01.1962 whereas respondent No.6 was born on 7.12.1962. Both were promoted as professor on same date, though question of senior most between them was to be determined with reference to their ages only for the position of DFS. This shows that the petitioner was senior to respondent No.6 who ought to have been recommended for the position of DFS, however, respondent-University preferred the name of respondent No.6 in place of petitioner by ignoring the said settled principles, the reasons are obvious; and, the Secretary Boards and Universities played a tricky role; and, on his accord suggested the Competent Authority for appointment of respondent No.6 against the future vacancy which was likely to occur after the retirement of Prof. Dr. M. Abid Hasnain as DFS up to his date of superannuation on 3.11.2020. The Secretary, Universities and Boards, Government of Sindh, was never enjoying any authority to take an exception to such position.

13. We have further been informed that the petitioner is the senior-most Professor serving in BPS-22 and was/is eligible for the position of DFS, whereas the private respondents were/are in BPS-21, then the question arises who prompted the respondents to nominate a junior officer for the subject post, which needs to be looked into by the competent authority on the disciplinary side, after providing an opportunity of meaningful hearing to them, within a reasonable time.

14. Keeping in view the above facts as well as the legal position of the case, the petitioner seems to be the senior-most Professor of the Faculty of Science, whose suitability is not disputed hence he shall be considered for appointment as the Dean, Faculty of Science, therefore we hold that the aforesaid proposal of the respondent-Secretary to the competent authority for the appointment of respondent No.6 against the

future vacancy, was based on malafide intention just to accommodate junior Prof. Dr. M. Abid Hasnain as well as Prof. Dr. Nasira Khatoon as DFS University of Karachi, as such the notifications dated 4.6.2020 and 3.11.2020 issued by the Secretary Universities & Boards Government of Sindh are set-aside.

15. Reverting to the question raised by the learned counsel for the respondents that normally the petitioner was required to approach this Court within around six months for redressal in constitutional jurisdiction of this Court, thus barred by laches. Primarily, the impugned notification was issued on 04.06.2020, whereas the petitioner has approached this Court on 07.01.2021, which does not debar him to call in question the appointment of the private respondent in constitutional jurisdiction under the writ of *quo warranto* as the basic appointment of the private respondents has been called in question in the present proceedings, which is now going to be set at naught by the competent authority as discussed in the preceding paragraphs while no hard and fast rules as to laches can be laid down so far as the writ of *quo warranto* is concerned.

16. Coming to the next point that interest of the petitioner is also being agitated in the petition, suffice it to say when we have found that every action of the respondents dubious to propose the competent authority, the names of the shortlisted candidates, in a cursory manner, thus prima facie the competent authority was not properly appraised on the subject issue, therefore, the matter needs to be looked into by the competent authority afresh, keeping in view the seniority-cum merit principle as law laid down by the Honorable Supreme Court on the subject and take a fresh decision to appoint Dean of Faculty of Science of respondent-university.

17. We in the aforesaid circumstances hold that the recommendation of the respondent-university as well suggestion of Secretary Universities and Board to the competent authority for the appointment of Dean Faculty of Science in Karachi University as discussed supra was without lawful authority; and, we do not appreciate the conduct of the respondents in the manner they have dealt with the matter of appointment of the Dean Faculty of Science in Karachi University, in bypassing the senior professor working in grade

22 and got recommended the private respondents for the said position in violation of the principle of natural justice and seniority, which is a universal principle. It is well-settled law that if a civil/public servant is appointed in violation of any provision of law, the competent authority can look into the matter.

18. Before parting with this order, we may observe that the appointments are to be made by the Government in statutory bodies, autonomous bodies, semiautonomous bodies, regulatory authorities, etc. through the transparent manner and competitive process, and not otherwise. However, we may further observe that the competent authority i.e. Chief Minister Sindh has endorsed the purported proposal of Secretary Universities and Board vide summary as discussed supra which needs to be revisited, before retirement of the petitioner, keeping in view the seniority principle for appointment of the Dean Faculty of Science in Karachi University as well as 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).

19. In view of the above, this petition is allowed and, we direct the competent authority to hold a fresh interview of the petitioner and respondent No.6 for the appointment of the Dean Faculty of Science in Karachi University on merit under the law within two weeks from the date of this order strictly in the light of the law enunciated by Hon'ble Apex Court in the aforesaid cases.

20. These are the reasons for our short order dated 16.9.2021, whereby we have allowed the instant petition in the above terms.

J U D G E

J U D G E

Nadir*