

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

C.P. No.D-1499 of 2014

**Moula Bux @ Nouman .v.....Governor of Sindh
& others**

C.P. No.D-1500 of 2014

**Prof.Dr.Nazir A. Mughal....v..... Governor of Sindh
& others.**

**Present: Mr.Justice Muhammad Ali Mazhar.
Mr.Justice Shahnawaz Tariq**

Date of hearing 21.05.2014.

M/s.Zamir Ghumro and Malik Naeem Iqbal, Advocates for the petitioner in C.P.No.D-1499 of 2014.

Mr.Jhamat Jethanand, Advocate for the petitioner in C.P.No.D-1500 of 2014 and for respondent No.5 in C.P.No.1499/2014.

Mr.Abdul Jalil Zubedi, AAG

Muhammad Ali Mazhar J. This common judgment will dispose of the following constitution petitions:-

- (1) **C.P.No.D-1499/2014.** This petition of quo warranto has been filed against the appointment of respondent No.5 as Vice Chancellor of University of Sindh, Jamshoro, which is according to the petitioner illegal, unlawful and unconstitutional. MA.No.1348/2012 has been filed by the petitioner under Order 39 Rule 1 & 2 C.P.C (Old CP.No.D-310/2012-Hyderabad).



(2) **C.P.No.D-1500/2014.** The petitioner Prof.Dr.Nazir A. Mughal, Vice Chancellor of University of Sindh, Jamshoro who is respondent No.5 in C.P.No.D-1499/2014 has challenged the amendment made in the Sindh University Act, 1972 (Jamshoro) through Sindh University Laws (Amendment) Act, 2013. MA.No.147/2014 has been filed by the petitioner under Order 39 Rule 1 & 2 C.P.C (Old CP.No.D-25/2014-Hyderabad).

2. Mr.Zamir Ghumro, learned counsel for the petitioner in C.P.No.1499/2014 argued that the petitioner is a social activist, who has legitimate interest in the good governance and rule of law. Two years back one Mr.Mazhar-ul-Haq Siddiqui was performing his duties as Vice Chancellor of the respondent No.3 whose services were terminated suddenly and instead of filling vacancy through advertisement and the prescribed procedure, the respondent No.5 was appointed as Vice Chancellor on adhoc basis. The guidelines formulated by the respondents for the appointment of Vice Chancellor of the public sector university were completely ignored. It was further argued that the respondent No.5 was appointed in violation of Article 105(1) of the Constitution which provides that subject to the constitution, in the performance of his functions, the Governor shall act in accordance with advice of the Cabinet or the Chief Minister. It was further argued that the respondent No.5 is also holding other posts in different academic institutions including abroad hence, he does not regularly attend the University due to which administration of the institution is deteriorating day by day. Learned counsel further argued that the respondent No.5 should be removed immediately and in his place respondents be directed to appoint Vice Chancellor after fulfilling all codal formalities.



3. Mr. Zamir Ghumro, learned counsel for the petitioner also pointed out page-55 of his memo of petition, which is a resolution passed by the standing search committee in its meeting convened for the selection and appointment of Vice Chancellor. It further shows that 54 candidates applied for the post of Vice Chancellor and out of them nine candidates were short listed and the name of Prof. Dr. Nazir A. Mughal was mentioned at Sr.No.9, whereas in the remarks of the selection committee, it was clearly mentioned that the committee was unanimous in the opinion that none of the candidates found of the required standing to carry out the responsibilities of the Vice Chancellor of the University of Sindh Jamshoro. Learned counsel further pointed out Page-61, which are also minutes of meeting of the standing search committee regarding the appointment of Vice Chancellors of the University of Sindh Jamshoro. The minutes at page-61 shows that next meeting was convened on 31.12.2009 in which the search committee interviewed two candidates who were short listed earlier including Prof. Dr. Nazir A. Mughal and Mr. Syed Masood Alam Rizvi and all off a sudden, the committee was unanimous in the opinion that out of the two candidates Prof. Dr. Nazir A. Mughal is found suitable candidate. Learned counsel argued that in the meeting held in the month of June, 2009 none of the candidates were found suitable by the committee including Dr. Nazir A. Mughal but just after six months the same committee found Prof. Dr. Nazir A. Mughal a suitable candidate which was totally a conflicting decision taken under the pressure and influence of the Chancellor. In support of his arguments he relied upon the following case law:-

1. 2007 SCMR 318 (Muhammad Sidiq through L.Rs. v. Punjab Service Tribunal Lahore and others). Principles of locus poenitentiae. No perpetual rights could be gained



on basis of an illegal order. Principle of locus poenitentiae would not attract to such order.

2. 2011 PLC (C.S.) 956 (Safdar Ali Sahito v. Province of Sindh through Chief Secretary, Government of Sindh and 10 others) Article 199. Writ of quo warranto is in the nature of laying an information before a court against a person who claimed and usurped an office, franchise or liberty. Object of writ of quo warranto is to determine legality of holder of statutory or constitutional office and decide whether he was holding such office in accordance with law or was unauthorizedly occupying a public office. High Court is under obligation to inquire whether the incumbent is holding office under the orders of a competent authority.

3. PLD 2013 Supreme Court 829 (Regarding Pensionary benefits of the Judges of Superior Courts). Following are the basic principles for interpretation of statutes: (i) Duty of interpretation arose only where the words were not clear, or the provision in question was ambiguous, that it was fairly and equally open to diverse meanings. (ii) Intention had to be gathered from the language of the enactment, otherwise known as the 'plain meaning rule'. (iii) It was an elementary rule of construction that it was to be assumed that the words and phrases of technical legislation were used in their technical meaning, if they had acquired one, and otherwise in their ordinary meaning. Critical and subtle distinctions were to be avoided and the obvious and popular meaning of the language should, as a general rule, be followed. (iv) It was a cardinal rule of construction of statutes that no words were to be added or omitted or treated as surplus or redundant.

4. Mr. Jhammat Jethanand, learned counsel for the petitioner in C.P.No.D-1500/2014 and also representing respondent No.5 in C.P.No.D-1499/2014 argued that the petitioner was initially appointed as a Vice Chancellor of the University of Sindh Jamshoro in the year 1995 and till 1999 he continued his term. Thereafter, he was again appointed Vice Chancellor for the second term for four years which he continued from 2010 to 07.1.2014. However, on 8.1.2014 he was again appointed Vice Chancellor for further period of two years. He referred to the



pag-35 which is a notification issued by the Governor of Sindh on 13.8.2013 whereby the petitioner was appointed for two years and this notification of appointment was made effective from 8.1.2014. While the amendment made through Sindh University Laws (Amendment) Act, 2013 were made effective from 16.9.2013. So he argued that the amendment made subsequent to the appointment of the petitioner will have no retrospective effect and the petitioner shall be allowed to continue his third term as a Vice Chancellor. He further argued that the appointment for the third term which took place prior making the amendment has become a matter of past and closed transaction. According to learned counsel amendment made in the laws of the University of Sindh Jamshoro is on the face of it mala fide. Learned counsel referred to the reply of respondent No.3 in which though it is admitted that the petitioner was appointed for the second term but for his third term it was not advised by the Government of Sindh but on the contrary, the advised was given to the Chancellor to relieve the petitioner from the post of Vice Chancellor as this post was already advertised in the newspaper and the scrutiny committee shall have domain to select new Vice Chancellor on the basis of merit alone. Learned counsel argued that in the earlier law it was prerogative of the Chancellor to appoint the Vice Chancellor now the Vice Chancellor can only be appointed by the Chancellor on the recommendation of Government. It was further contended that through amendment, the powers of the Chancellor have been curtailed as now he has to appoint the Vice Chancellor only on the recommendation of Government.

5. It was further argued that in four universities/institutions where the third term of the Vice Chancellor was in vogue, a proviso was added in the laws of that particular university to the effect that the existing Vice Chancellor will cease to hold the



office but in the case of University of Sindh Jamshoro no such proviso was added, so the petitioner cannot be removed and he is entitled to complete his two years period as his third term but on the contrary the Government has published the advertisement in the newspaper on 31.10.2013. He also pleaded discrimination and according to him the Vice Chancellor of Agricultural University is enjoying third term. It was further contended that for I.B.A. Sukkur no such proviso is available for removing of the Director after two terms nor any such proviso is available for Shaheed Benazir Bhutto University Lyari, Karachi. He also invited our attention to page-43 of the memo of petition which is a chart showing the tenure of Vice Chancellors/Directors of Public Sector Universities/Institutes in Sindh. At Sr.No.4, the name of the petitioner is mentioned with the date of expiry of his term to the office of Vice Chancellor as 6.1.2016. In support of his arguments he relied upon the following case law:-

1. 1992 SCMR 563 (Inamur Rehman v. Federation of Pakistan and others). Article 25. Equal protection to all is the basic principle on which rests justice under the law. Equality before law as contemplated by Article 25 does not mean equality of operation of legislation upon all citizens of the State. Where certain rights which were violated were still capable of being in force and there was something still left to be done under the impugned legislation when the fundamental rights had been restored, then the Court would be bound to give effect to such fundamental rights and save a citizen from being denied the benefit of the same.

2. PLD 1992 Lahore 462 (National Industrial Cooperative Credit Corporation Ltd. v. Province of Punjab & another). Even though, a piece of legislation does not contain the provision for the compliance of natural justice, the same have to be read into it unless the statute itself by implication or otherwise dispenses with such compliance. Any invasion upon the rights of citizens by anybody, no matter whether by a private individual or



by a public official or body, must be justified with reference to some law of the country.

3. 1983 CLC 1585 (Ghulam Hyder Shah & others v. The Chief Land Commissioner Sindh & others). Competency of Legislature to enact laws retrospectively and to provide that they will also affect vested rights and transaction which are past and closed, held, cannot be doubted but in order to produce that effect, statute must be expressed in language capable of only one meaning and in case it is capable of being interpreted in two ways one preserving vested rights and obligations and other impairing them. Courts will adopt construction which preserves vested rights and lean against construction which impairs vested rights and affect transactions which are past and closed.

6. Mr. Abdul Jalil Zubedi, learned AAG argued that a bare look to the Amendment Act, 2013 make it quite visible that the amendments were made to maintain uniformity. He further argued that on the day when the amendment came into effect the petitioner immediately ceased to hold the office. He further argued that it is within the competence of provincial legislator to amend the laws. He further argued that any extension without advice by the Government of Sindh is in violation of Article 105 of the Constitution. The Amendment in Sindh University Act has been passed by the Sindh Assembly with the assent of the Governor Sindh. While passing the law there was no iota of malice against any individual. The position of VC Sindh University, Jamshoro was advertised in anticipation of the fact that it will fall vacant on 7th January, 2014, therefore there is no question of malice or mala fide. In support of his arguments, the learned AAG relied upon the following case law:

1. PLD 1983 S.C. 457 (Fauji Foundation v. Shamimur Rehman). When a Court which is a creature of the Constitution itself examines the vires of an Act, its powers are limited to examine the legislative competence or to such other limitations as are in the constitution, and while declaring a legislative instrument as void, "it is not because the judicial power is superior in degree or dignity



to the legislative power" but because it enforces the constitution as a paramount law either where a legislative instrument is in conflict with the constitutional provision so as to give effect to it or where the legislature fails to keep within its constitutional limits. Judicial review does not extend to prying into affairs of legislature.

2. PLD 1966 Supreme Court 854 (The Province of East Pakistan and others v. Sirajul Haq Patwari and another) The court has no power to question laws made by the duly constituted legislature under the constitution so long as the legislative authorities acted within the ambit of their powers under the Constitution. Thus the scope of judicial review is limited only to determining whether the impugned enactment is within law-making power conferred on the legislature and whether it violates any express conditions limiting that power.

3. 2012 SCMR 6 (Rana Aamer Raza Ashfaq & another v. Dr.Minhaj Ahmed Khan and another). Constitutional intent and mandate of Article 48 and 105 of the Constitution are one the foundational values of the constitutional scheme. Governor of a Province under the Constitution enjoys an exalted position, as he is a nominee of President and a symbol of Federation in the Province, whereas Chief Minister is the Chief Executive of the Province and is elected by Provincial Assembly. Except otherwise so provided under the Constitution, President and Governor are bound by the advice tendered by Prime Minister and Chief Minister respectively and in the manner as provided in the Constitution.


4. 1993 SCMR 1905 (Molassess Trading & Export (Pvt.) Ltd. v. Federation of Pakistan & others). It is well-settled principles of interpretation of statutes are that vested right cannot be taken away save by express words or necessary intendment. It also cannot be disputed that the legislature, which is competent to make a law, has full plenary powers within its sphere of operation to legislate retrospectively or retroactively. Therefore, vested rights can be taken away by such a legislation and it cannot be struck down on that ground.

7. Heard the arguments. The Sindh Universities Laws (Amendment) Act, 2013 was promulgated on 16.9.2013. What we have comprehended that by virtue of Sindh Universities




Laws (Amendment) Act, 2013, the legislature has made amendments in the laws of thirteen Universities/Colleges of Sindh to maintain uniformity in the organization, management in Control of Public Sector Universities and decree awarding institutes in the Province of Sindh. The amendment expresses vociferously that the Vice Chancellor shall be appointed by the Chancellor on the recommendation of the Government for a period of four years, which may be extended for one more term on such terms and conditions as the Chancellor may determine.

8. The intention of the legislature is clearly manifesting from the amendment that they have decided to curtail the tenure of Vice Chancellor to the extent of two terms only. Mr. Zamir Ghumra argued that no vested right or the plea of past and close transaction can be taken in the matter of appointment of VC. Since the VC was unlawfully appointed, he cannot claim any such right. He referred to the case of Muhammad Sidiq (*supra*) in which it was held that no perpetual right can be claimed on the basis of illegal order. The principle of *locus poenitentiae* would not attract to such orders. He then referred to the case of Safdar Ali Sehto which was authored by one of us (**Muhammad Ali Mazhar-J**), reported in 2001 PLC (C.S) 956. In this case it was held that object of writ of quo warranto is to determine legality of holder of statutory or constitutional office and decide whether he is holding such office in accordance with the law. He also referred to the PLD 2013 SC. 829. Duty of interpretation arose only where the words were not clear, or the provision in question was ambiguous, that is, it was fairly and equally open to diverse meanings. Intention has to be gathered from the language of the enactment. It is an elementary rule of construction that it was to be assumed that the words and phrases of technical legislation were used in their technical meaning, if they had acquired one, and otherwise in their



ordinary meaning. Critical and subtle distinctions were to be avoided and the obvious and popular meaning of the language should, as a general rule, be followed. It is cardinal rule of construction of statutes that no words are to be added or omitted or treated as surplus or redundant.

9. Mr. Jhammat argued that on issuance of notification for the third term, a vested right has been accrued in the favour of petitioner. We do not find it appropriate to hold that the philosophy or standpoint of past and closed transaction is applicable in the case of appointment of Vice Chancellor who has served eight years but for the third term also he is claiming the Vice Chancellorship as a vested right. The legislature has made amendment to ensure that nobody would be able to enjoy the third term as Vice Chancellor. If a person will be allowed to continue as Vice Chancellor for 10 to 12 years it will create frustration and exasperation amongst the persons who are also eligible to be appointed Vice Chancellor, but in the present case the Vice Chancellor does not want to leave the position for his successor in interest. Such elongated and lengthened tenure of a person to a particular post or office usually bring to a standstill and or immobilize the avenue and future prospects of other eligible and suitable persons. It is not the case of the petitioner that legislature was not competent to make the amendment but much emphasis was made that this amendment will not affect office of the petitioner because he was appointed for the third term prior to making the amendment in the law. He referred to the case of **Inamur Rehman** in which it was that equal protection to all is the basic principle. Where certain rights which were violated were still capable of being in force and there was something still left to be done under the impugned legislation when the fundamental rights had been restored, then the Court would be bound to give



effect to such fundamental rights and save a citizen from being denied the benefit of the same. Once the law has been amended in such a way that no person shall be allowed to continue third term as VC then how it is discriminatory. It is a case of a reasonable classification which is applicable across the board. He then referred to the case of **National Industrial Cooperative Credit Corporation Ltd.** in which it was held that even though, a piece of legislation does not contain the provision for the compliance of natural justice, the same have to be read into it unless the statute itself by implication or otherwise dispenses with such compliance. In our view the law was not amended only to affect the petitioner but many other persons have been discontinued from enjoying their third terms as VC. The ratio of **Ghulam Hyder Shah**, judgment is that the vested right cannot be taken away unless it is expressed in the statute in language capable of only one meaning and in case it is capable of being interpreted in two ways one preserving vested rights and obligations and other impairing them. Courts will adopt construction which preserves vested rights. In the impugned amendment the curtailment of Vice Chancellor third tenure is expressly mentioned without any doubt or ambiguity in a language which is capable of being interpreted only in one way. The ongoing or incomplete tenure for the third term cannot be treated as past and closed transaction. The legislature is competent to make the laws to maintain and create harmony among all institutions so we repelled the contention of Mr. Jhammat. In the case of **I.A. Sharwani (1991 SCMR 1041)** the hon'ble Supreme Court held that all citizens are equal before the law and entitled to equal protection of law. However, the State is not prohibited to treat its citizens on the basis of a reasonable classification. In this parlance, we would like to hold that ousting of third tenure of Vice Chancellor in the entire Province of Sindh cannot be treated discriminatory to the



petitioner rather it is a reasonable classification in the entire province, so nobody would be able to hold the third term as Vice Chancellor in the university/institution. At this juncture, we would also like to quote the case of **Ch.Nazir Ahmad (PLD 2013 Lahore 621)** and **Dr.Mobashir Hassan (PLD 2010 S.C. 265)**, in which the hon'ble Supreme Court held that law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation unless the legislative enactments is violative of a constitutional provision. There is no cavil to the well settled guidelines expounded by the hon'ble Supreme Court in the above judgments, but in this case we do not find the amendment *ex facie* or violative of any constitutional provisions.

10. Learned AAG referred to the cases of **PLD 1966 SC 854, 2012 SCMR 6 & 1993 SCMR 1905**. The ratio of the aforesaid judgments is that the court has no power to question laws made by the duly constituted legislature under the constitution so long as the legislative authorities acted within the ambit of their powers under the Constitution. The scope of judicial review is limited only to determining whether the impugned enactment is within law-making power conferred on the legislature and whether it violates any express conditions limiting that power. Vested right cannot be taken away save by express words or necessary intendment. It also cannot be disputed that the legislature, which is competent to make a law, has full plenary powers within its sphere of operation to legislate retrospectively or retroactively. Therefore, vested rights can be taken away by such legislation and it cannot be struck down on that ground. Constitutional intent and mandate of Article 48 and 105 of the Constitution are one the foundational values of the constitutional scheme. The President and Governor are bound by the advice tendered by Prime Minister



and Chief Minister respectively and in the manner as provided in the Constitution.

11. One more important aspect cannot be ignored that the petitioner Dr.Nazir A.Mughal was appointed for the third term vide notification dated 13.8.2014 but his third tenure of two years was made effective from 8.1.2014. The amendment in the law was passed by the Sindh Assembly on 19th August 2013 which was assented by the Governor Sindh on 28th August and the amended Act was gazetted on 16th September 2013. It clear beyond any shadow of doubt the petitioner was to assume the charge of third tenure on 8.1.2014 when the law was already amended so after change in law no such benefit could be claimed for the third tenure which is prohibited under the law.

12. In view of the above discussion, we find no merits in Constitutional Petition No.D-1500/2013 which is dismissed, consequently, Prof.Dr.Nazir A. Mughal is ceased to hold the office of Vice Chancellor of his third term with immediate effect. The Constitutional Petitions C.P.NO.D-1499/2013 is also disposed of in the above terms along with all pending applications in the aforesaid petitions. It is further directed that the Government of Sindh shall implement the Sindh University Laws (Amendment) Act, 2013 across the board without any discrimination. No person shall be allowed to continue or complete third tenure of his office of the Vice Chancellor in any university/institution in the province of Sindh against the law.


Judge


Judge

Karachi:
Dated. 12.6.2014.