

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.

1. Civil Appeal No.215 of 2016
(PLA filed on 23.08.2016)

Prof. Dr. Abdul Hamid, Deen Faculty of Basic and Applied Sciences, University of Poonch, Rawalakot, Azad Kashmir.

.....APPELLANT

VERSUS

1. Prof. Dr. Muhammad Kaleem Abbasi, Faculty of Basic and Applied Sciences, University of Poonch, Rawalakot.

....RESPONDENT

2. The Chancellor, University of Poonch through Secretary, Presidential Affairs, Azad Government of Jammu & Kashmir, Muzaffarabad.
3. Azad Jammu & Kashmir Government through its Chief Secretary, Muzaffarabad.
4. The Secretary Presidential Affairs, Azad Government of Jammu & Kashmir, Muzaffarabad.

5. Search Committee for the appointment of Vice Chancellor, the University of Poonch through its Secretary Committee, Rawalakot.
6. The Senate of University of Poonch through its Chairman, Rawalakot.
7. Prof. Dr. Muhammad Rasul Jan, Vice Chancellor University of Pishawar.
8. Prof. Dr. Syed Dilnawaz Ahmed Gerdezi, Vice Chancellor, University of Azad Jammu & Kashmir, Muzaffarabad.
9. Prof. Dr. Abdul Nabi, Department of Chemistry, University of Balochistan, Quetta.
10. Prof. Dr. Muhammad Arif, University of Agriculture, Peshawar.
11. Prof. Dr. Mansoor Akber Kundi, University of Balochistan, Quetta.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated 08.08.2016 in Writ Petition No.1670/2015]

FOR THE APPELLANT: Barrister Humayun
Nawaz Khan, Advocate.

FOR RESPONDENT No.1: Mr. Abdul Rashid Abbasi
Advocate.

FOR THE AZAD GOVT.: Mr. Raza Ali Khan,
Advocate-General.

2. Civil Appeal No.224 of 2016
(PLA filed on 08.09.2016)

1. University of Poonch through its Registrar, Rawalakot, Azad Kashmir.
2. The Senate of University of Poonch through its Secretary/Registrar University of Poonch, Rawalakot.
3. Search Committee for the appointment of Vice Chancellor, the University of Poonch through Secretary Committee/Secretary Presidential Affairs Rawalakot, Azad Kashmir.
4. The Chancellor, University of Poonch through Secretary, Presidential Affairs, Azad Government of Jammu & Kashmir Muzaffarabad, Azad Kashmir.
5. The Secretary Presidential Affairs, Azad Government of Jammu & Kashmir Muzaffarabad, Azad Kashmir.

.....APPELLANTS

VERSUS

1. Prof. Dr. Muhammad Kaleem Abbasi, Faculty of Basic and Applied Sciences, University of Poonch, Rawalakot.

....RESPONDENT

2. Azad Government of Jammu & Kashmir, through its Chief Secretary, Muzaffarabad.
3. Prof. Dr. Abdul Hamid, Dean Faculty of Basic and applied Sciences, University of Poonch, Rawalakot.
4. Prof. Dr. Muhammad Rasul Jan, Vice Chancellor University of Pishawar.

5. Prof. Dr. Syed Dilnawaz Ahmed Gerdezi, vice Chancellor, University of Azad Jammu & Kashmir, Muzaffarabad.
6. Prof. Dr. Abdul Nabi, Department of Chemistry, University of Balochistan, Quetta.
7. Prof. Dr. Muhammad Arif, University of Agriculture, Peshawar.
8. Prof. Dr. Mansoor Akber Kundi, University of Balochistan, Quetta.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated 08.08.2016 in Writ Petition No.1670/2015]

FOR THE APPELLANTS: Barrister Humayun Nawaz Khan, Advocate.

FOR RESPONDENT No.1: Mr. Abdul Rashid Abbasi Advocate.

FOR THE AZAD GOVT.: Mr. Raza Ali Khan, Advocate-General.

Date of hearing: 20.09.2016.

JUDGMENT:

Mohammad Azam Khan, C.J.- The titled appeals by leave of the Court arise out of the judgment of the High Court dated 8th August,

2016, whereby writ petition No.1670 of 2015, filed by respondent No.1, herein, has been accepted. Since both the appeals arise out of the same judgment, therefore, these are proposed to be disposed of, through a consolidated judgment.

2. The University of Poonch, Rawalakot has been established through "The University of Poonch, Rawalakot Act, 2014" (*hereinafter to be referred as Act, 2014*). The post of Vice Chancellor fell vacant on 25th March, 2015, in the University. The Search Committee for appointment of the Vice Chancellor was constituted by the Senate of the University of Poonch, Rawalakot. The post was advertised in the newspapers and the same also appeared on the website of the University. Apart from others, Dr. Muhammad Kaleem Abbasi also applied for appointment against the post of Vice Chancellor. The Search Committee conducted the interviews of the short listed candidates, who were

19 in number including Dr. Muhammad Kaleem Abbasi, on 22nd and 23rd July, 2015, and recommended the names of 6 candidates and sent the same while determining the order of merit to the Senate for consideration and recommendations to the Chancellor for appointment of the Vice Chancellor. Dr. Muhammad Kaleem Abbasi, filed a writ petition in the Azad Jammu & Kashmir High Court on 19th August, 2015, through which he challenged the recommendations of the Search Committee dated 23rd July, 2015, for appointment of the Vice Chancellor and sought a direction that while setting aside the recommendations of the Search Committee, the respondents be directed to conduct the proceedings of the Search Committee according to the guidelines laid down by Higher Education Commission (H.E.C.) as provided in the Model Ordinance, 2002 i.e. the Federal Universities Ordinance, 2002. Later on, he moved an application for amendment of the writ petition,

which was allowed and amended writ petition was filed on 7th May, 2016, whereby apart from setting aside the recommendations of the Search Committee, he prayed that the criteria laid down in the advertisement may be declared against law, the rules and the advertisement be set aside, with a further prayer that the respondents be directed to conduct the proceedings of the Search Committee according to the guidelines laid down by the H.E.C, provided in the Model Ordinance 2002. After necessary proceedings, a learned single Judge in the High Court through the impugned judgment dated 8th August, 2016, set aside the advertisement, all the proceedings conducted in furtherance thereof, and directed the respondents to conduct a fresh selection process and fill the vacant post in accordance with law, hence these appeals by leave of the Court.

3. Barrister Humayun Nawaz Khan, Advocate, counsel for the appellants, in both the appeals submitted that the judgment of the High Court is against law and the record. The University of Poonch, Rawalakot is creation of Act, 2014. The Vice Chancellor is appointed under section 11 of Act, 2014 and not under the provisions of Federal Universities Ordinance, 2002. The process of selection has to be completed under section 11 of Act, 2014. The learned counsel submitted that the writ petition was not maintainable. The petitioner, respondent No.1, herein, applied for the post of the Vice Chancellor and participated in all the proceedings including the interview but could not attain the merit position. Thereafter, he initially, challenged the recommendations of the Search Committee and later on, after a period of around one year, challenged the advertisement. After applying for the post and participating in the interview, he has

acquiesced and is estopped from filing the writ petition. The learned counsel forcefully argued that apart from the principles of acquiescence and estoppel, the writ petition is hit by the doctrine of laches. The advertisement was issued on 18th March, 2015 but the same was challenged through amended writ petition on 7th May, 2016, after a period of around 15 months, without any explanation, thus the writ petition was hit by the laches. He further argued that after the recommendations of the Search Committee, the Senate recommended the names of three persons in its meeting held on 17th August, 2015 and forwarded the same to the Chancellor for appointment of the Vice Chancellor. The recommendations of the Senate have not been challenged, therefore, the writ petition was not maintainable. The learned counsel lastly argued that the petitioner in the High Court failed to point out violation of any law or the rule. A writ can be

filed only on violation of law. The learned Judge in the High Court has not applied the correct law. He requested for acceptance of both the appeals.

4. While controverting the arguments, Mr. Abdul Rashid Abbasi, Advocate, counsel for respondent No.1 in both the appeals, submitted that the principle of acquiescence and estoppel is not applicable in the case in hand because soon after the advertisement, the petitioner, respondent No.1, herein, addressed a letter to the Chairman H.E.C., Convener Search Committee to the effect that the criteria laid down in the advertisement for appointment against the post of Vice Chancellor is different from the guidelines/Statutes for appointment of the Vice Chancellor issued by the H.E.C. He referred to annexure "PK" forming part of the file of the High Court. The learned counsel submitted that the H.E.C. is controlling body of all the Universities in Pakistan and the Azad Jammu

& Kashmir and the Vice Chancellor is appointed in the light of the guidelines issued by the H.E.C. The learned counsel made a comparison of the advertisement issued by the Search Committee and the guidelines issued by the H.E.C. and drew a distinction that the conditions laid down in the impugned advertisement are violative of the criteria/guidelines laid down by H.E.C. He requested for dismissal of the appeals.

5. Mr. Raza Ali Khan, the learned Advocate-General submitted that the judgment of the High Court is against law and the record. The learned single Judge in the High Court while delivering the impugned judgment has incorrectly observed that despite the direction, the record was not produced by the University authorities. He referred to an affidavit sworn in by Sardar Abdul Hafeez Khan, Additional Advocate-General of the time and submitted that it is stated in the affidavit

that he produced the record in the Court on 9th June, 2016, therefore, the acceptance of writ petition on this ground was not warranted under law. The learned Advocate-General argued that all the proceedings have been conducted in accordance with law. He further submitted that according to section 11 of Act, 2014, the Search Committee shall be constituted by the Senate in the manner prescribed by the Statutes but the Statutes for the Search Committee have not been framed by the University authorities. The learned Advocate-General submitted that not only the University of Poonch, Rawalakot all other Universities of the Azad Jammu & Kashmir and Pakistan, even have not framed the Statutes for the Search Committee. He submitted that if the Statutes on the subject have not been framed under law then the Statutes framed by the H.E.C. have to be followed. The learned Advocate-General submitted that the office of the Vice Chancellor University of Poonch,

Rawalakot is vacant since March, 2015 and due to the judgment of the High Court if the new process is initiated then a lot of further time will be consumed and the University will remain without the Vice Chancellor.

6. We have heard the learned counsel for the parties as well as the learned Advocate-General and perused the record. At the conclusion of the arguments, we directed the learned Advocate-General and the counsel for the University of Poonch, Rawalakot to produce the record pertaining to the proceedings of the Search Committee. The record was produced on the next day and we directed the Registrar, University of Poonch, Rawalakot to supply the certified copies of the same, which have been supplied accordingly.

7. First of all, we will deal with the question of acquiescence and estoppel. The Search Committee through an advertisement published in

the newspapers, invited the applications for appointment of the Vice Chancellor of the University of Poonch, Rawalakot. Apart from others, Dr. Muhammad Kaleem Abbasi, respondent No.1, herein, also applied for the post. His name was included in the list of short listed candidates. He appeared before the Search Committee for interview. He could not attain the merit position, thereafter, he challenged the recommendations of the Search Committee. It was vehemently argued by the counsel for the appellants and the learned Advocate-General that after applying for the post and participating in the process of interview, the petitioner in the High Court is estopped from challenging the recommendations and process of the advertisement. After failing to attain the merit position, he cannot turn round and challenge the recommendations.

8. A relief by way of writ petition is a discretionary relief. The acquiescence and estoppel are two recognized principles on the basis of which equitable relief can be refused to a person. Once a person participates in the process and fails to attain the merit position, thereafter, he cannot turn round and challenge the process. The doctrine of acquiescence and estoppel is fully applicable against such person. The proposition came under consideration of this Court in a number of cases and it was observed that writ petitions have to be dismissed wherein the Court finds that the acquiescence and estoppels attracted. In the case reported as *Engineer Muhammad Khalid vs. The University of AJ&K & 8 others* [2004 SCR 467], this Court observed as under

“10. The objection raised on behalf of the respondents is also weighty that the petitioner participated in the test and interview conducted by the Selection Board. He failed to raise any objection about the presence of Sardar Muhammad Altaf Khan as an expert,

therefore at this belated stage on the principle of acquiescence he cannot be allowed to challenge his presence as member of the Selection Board. The reliance was rightly placed upon the cases reported as Umar Hayat vs. Azad Govt. and others [1999 SCR 243], Suleman Ahmed vs. Tanveer Ahmed Mir [2001 SCR 282], and Abdul Qadir vs. Abdul Karim [2000 SCR 97], wherein it is laid down that if at the relevant time, objection about the jurisdictional competence of any forum is not raised, on failure to achieve the goal, a person cannot be allowed to turn volte-face and challenge the constitution of such forum. The writ jurisdiction is a discretionary jurisdiction. Only a person coming with clean hands can seek equitable relief by invoking this jurisdiction of the High Court."

In the case reported as *Sardar Zaheer Ahmed Khan and another vs. Azad Government and 4 others* [2005 SCR 89], it was observed as under;-

"9. A perusal of the judgment of the High Court as well as the report of the Commission reveals that the petitioners have participated and duly assisted the Commission of Inquiry and they have all along been with the Commission during inquiry. They have challenged the notification of appointment of Commission of Inquiry after the report was submitted by the Commission and when they found it against them. A

person who duly participated in an inquiry and acquiesced to the jurisdiction, is estopped from calling in question the proceedings and the results thereof. I am fortified in holding this view by Ghulam Mustfa v. Azad Govt. and 2 others [1996 SCR 7]."

In another case reported as *Azad Government and 3 others vs. Mrs. Jamshed Naqvi & 3 others [2014 SCR 13]*, this Court observed as under;-

"12. All the aforesaid documents sufficiently proved that the respondent herself was instrumental in moving the summaries for her contract appointment. Acquiescence and estoppel are two recognized modes on the basis of which equitable relief by way of writ cannot be granted. In a case reported as Abdul Qadir vs. Abdul Karim and 4 others [2000 SCR 97], it was observed as under:-

"..... We may add that acquiescence and estoppel are two recognized grounds in presence of which jurisdiction based or equity cannot be exercised in favour of a litigant. A common example may be found in the writ jurisdiction of the High Court which is equitable in nature and no relief is granted to a litigant if he himself is instrumental in the making of an order or if he acquiesces in it. He is not

allowed to turn round and challenge it. Equitable jurisdiction cannot also be exercised in favour of a litigant with objectionable conduct. If any authority is needed on this point we may refer to the judgment of this Court reported as Muhammad Sharif vs. Muhammad Manzoor and others [1993 SCR 92] and the case titled Ghulam Mustafa vs. Azad Govt. and 2 others [1996 SCR 7]."

Similarly, in the case reported as *Fatima Bibi vs. Najma Parveen & 15 others* [2016 SCR 15], this Court observed as under:-

".....The High Court has dismissed the writ petition on the ground that the appellant applied for the post, participated in the test and interview but could not qualify the same. After failing, he has challenged the process of selection. He has acquiesced and estopped by conduct from challenging the process of selection. There is no illegality in the judgment of the High Court. The writ petition was liable to be dismissed on the sole ground."

9. We have also considered the letter addressed by Dr. Muhammad Kaleem Abbasi to

the Chairman H.E.C., which forms part of the file of the High Court as annexure “PK”, wherein he has raised certain objections on the advertisement. Section 10 of Act, 2014 provides that the Vice Chancellor shall be eminent, academician/scholar of international repute and shall be appointed on such terms and conditions as may be prescribed.

Section 10 is reproduced as under:-

“10. Vice-Chancellor:- (1) There shall be a Vice-Chancellor of the University who shall be an eminent academician/scholar of international repute and shall be appointed on such terms and conditions as may be prescribed.
(2)
(3)
(4)
(5)
(6)
(7)
(8)”

A reading of sub-section (1) of section 10 of Act, 2014, makes it abundantly clear that the Vice Chancellor shall be a person who shall be an eminent, academician/scholar of international

repute. The advertisement shall be judged in the light of the statutory provisions and the H.E.C. Statutes on the subject. The Search Committee constituted by the Senate issued the advertisement in the newspaper which also appeared on the website of the University. For proper appreciation the same is reproduced as under:-

“The advertisement

Vacancy Announcement Vice Chancellor
University of Poonch, Rawalakot

The Search Committee for the next Vice-Chancellor (VC) appointed by the Senate of the University invites applications from accomplished and strongly motivated academic leaders administrators can develop further and improve the management of the following improvement resource of intellectual growth and higher learning

The University of Poonch, Rawalakot:

Upgraded to a University in February, 2012, University of Poonch, Rawalakot envisages human resource development of the region and comprises of seven important faculties including Agriculture, Medical and Health Sciences, Engineering and Technology, etc. The university envisions an affordable higher education to local and regional students, providing solutions through research relevant to the national needs and contributing towards economic development driven by production of high quality human recourses.

Qualification and Experiences;

Applicants holding PHD will be assessed according to their academic and leadership abilities and attainments as well as significant evidence of scholarship, administration, meaningful research, strategic planning, financial

management and resource development. A holistic understanding of issues pertaining to the higher education sector, including enhancement of pedagogy and quality assurance, research and development, impact on economy, development of human and financial resources, and constructive social interaction with communities, will be considered as a major asset.

Age Limit:
Maximum 65 years.

Terms of appointment:
The Vice Chancellor shall be appointed by the Chancellor for period of 05 years

Application:
Appropriately experienced candidates capable of taken up the chancellor of the position may apply by sending a letter of intent, curriculum vitae on the prescribed format available at the link www.hec.gov.pk/-----Poonch 2015 and names and contact details of three referees. The letter should --- less than 1,000 words, their vision of the strengths and possibilities of development and sustenance of Institution's Programmes.

Members of civil society, ---- scholars, etc are also encouraged to nominate accomplished academicians or researchers suitable for consideration of possible appointment as Vice-Chancellor, subject to submission of a formal application.

Those already in Government/Semi Government Service are required to apply through proper channel. Only short listed candidates, at the time of interview, are required to submit HEC attested/equivalence copies of the terminal degree attained.

The last date of submission of application complete in all respect in Tuesday the April, 07, 2015.

Secretary Search Committee/Presidential Affairs
Kashmir House President Block
Sector F-5/2, Islamabad
Contact: 051-9203800 (Off), 051-9210540 (Fax)"

The Statutes for appointment of the Vice Chancellor, issued by the H.E.C. are also relevant

for the purpose. The same are reproduced as under:-

“Statutes for the appointment of Vice Chancellor

(1) Application:

Application for the appointment of Vice Chancellor shall be invited through advertisement in the national press. Nominations by the prominent scholars/high level academicians will also be considered. The advertisement shall include all elements eligibility, terms/conditions and attributes required for the position of the Vice Chancellor.

(2) Eligibility Criteria:

- (a) Should have Ph.D or equivalent in any subject from a reputed University recognized by the Higher Education Commission/Government.
- (b) Should have not below the rank of full University Professor (BPS-21)/Professor Tenure Track/Tenure.
- (c) Should have rich experience in academic and financial management with proven track record of skills in initiating and managing change, strategic planning, overseeing, implementation and the capability of mobilizing resources for the University and its research programs and collaboration with national and international institutions.
- (d) Both male and female candidates are eligible to apply.
- (e) Should have a vast experience in postgraduate teaching, administrative and financial management.

- (f) Should have a to his/her credit quality research publication in journals international repute.
- (g) Age Limit: Not more than 64 years.”

A combined study of section 10 of Act, 2014, para (v) of the Statutes framed by the H.E.C. for appointment of the Vice Chancellor and the advertisement shows that the qualification fixed in section 10 of Act, 2014, i.e. “who shall be an eminent academician/scholar of international repute” is missing in the advertisement. Clause (f) of para (2) of the Statutes for appointment of the Vice Chancellor also provides that the candidate should have to his/her credit quality research publication in journals international repute. The criteria fixed in the statutory provisions i.e. section 10(1) of Act, 2014, that the Vice Chancellor shall be eminent, academician and scholar of international repute, is missing in the advertisement published in the newspaper. Due to non-mentioning of this eligibility criteria in the advertisement any person

who is not an eminent academician/scholar of international repute and not eligible for appointment under the Statutes, can apply for the post of Vice Chancellor and participate in the process, as such the advertisement issued for the vacancy of Vice Chancellor by the Search Committee is violative of section 10(1) of Act, 2014 and also the Statutes issued by the H.E.C. for appointment of the Vice Chancellor, therefore, the advertisement being violative of Act, 2014 is liable to be struck down.

10. It was vehemently argued by the counsel for the appellants that the writ petition to the extent of the advertisement is hit by the doctrine of laches, because the writ petition was filed in August, 2015 and the amendment to challenge the advertisement was made on 7th May, 2016, after a period of 15 months from the date of advertisement without any explanation of delay,

thus the same was not maintainable. The petitioner in the High Court alleged that he addressed a letter to the Convener, Search Committee which is annexure "PK" of the High Court file, whereby he pointed out that the advertisement is violative of the criteria laid down by the H.E.C. The Convener of Search Committee failed to response. The process for selection of the Vice Chancellor was done under the advertisement which was violative of section 10(1) of Act, 2014, which is a continues wrong, therefore, the doctrine of laches is not applicable in the case. Any act done in violation of statutory provisions holding the field, comes in the definition of continue wrong. The doctrine of laches is not applicable in such situation. It was held by this Court in the case reported as *Azad Government and two others vs. Muhammad Arif Khan and 2 others* [2003 SCR 456] as under:-

".... Admittedly this road is under control and management of P.W.D. The private vehicle owners are plying public

transport over the same and Government is getting road tax from such vehicles. If the respondents have been deprived of the use of their property under an arbitrary and capricious manner it is a continuous wrong, the question of laches, therefore, is not attracted in this case"

The argument has no force and is repelled.

11. Although, we have drawn the conclusion that the advertisement for the post of Vice Chancellor was violative of section 10(1) of Act, 2014 and the Statutes framed by the H.E.C. for the post of Vice Chancellor, as such is not maintainable but from the perusal of record, it has come in our notice that the process adopted by the Search Committee regarding the evaluation criteria and the procedure of the Search Committee for recommendations is violative of the Statutes for appointment of the Vice Chancellor framed by the H.E.C., therefore, we deem it necessary to examine the whole process conducted by the Search Committee. Here it may be observed that the higher education in the Azad Jammu & Kashmir is

regulated by H.E.C. but H.E.C, Ordinance, 2002, the Federal Universities Ordinance, 2002, the Rules, the Regulations and the Statutes made there under are not adopted in the Azad Jammu & Kashmir but it is a long standing practice which attains the status of law, however, the concerned are directed to immediately provide the legal cover for the extension of the functions of the H.E.C. and relevant laws in the Azad Jammu & Kashmir.

12. The University of Poonch, Rawalakot was established through Act, 2014. The Vice Chancellor of the University is appointed under section 11 of Act, 2014. For proper appreciation section 11 of Act, 2014, is reproduced as under:-

“11. Appointment and Removal of the Vice-Chancellor:- (1) The Vice-Chancellor shall be appointed by the Chancellor on the basis of the 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 s s and shall consist of two eminent members of society nominated by the Chancellor of whom

one shall be appointed the Convenor, two member of the Senate, two distinguished University Teachers who are not members of the Senate and one academician of eminence not employed by the University. The two distinguished University Teachers shall be selected by the Senate through process, to be prescribed by the Statutes 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 Senate 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 of the Senate in the prescribed manner.

(4).

(5).

....."

The reading of the above referred section reveals that the Vice Chancellor is appointed by the President on the recommendations of the Senate. Sub-section (2) of section 11 of Act, 2014, postulates that a Search Committee for the recommendation of a person suitable for

appointment as Vice Chancellor shall be constituted by the Senate in the manner prescribed by the Statutes and the word “prescribed” is defined in section 2(n) of Act, 2014, as “prescribed means prescribed by the Statutes, Regulations or Rules made under Act, 2014”. On query, both the counsel for the parties and the learned Advocate-General stated that no Statutes for the constitution of the Search Committee have been framed by the University of Poonch, Rawalakot and even not only in all the Universities of the Azad Jammu & Kashmir but also in Pakistan the Statutes for the constitution of Search Committee have not been framed. The higher education is governed in Pakistan and in the Azad Jammu & Kashmir by the H.E.C. For the Federal Universities the Federal Universities Ordinance, 2002 was promulgated on 13th November, 2002. Section 11 of the said Ordinance deals with the appointment and removal of the Vice Chancellor. Sub-section (2) of

the said Ordinance also provides that the Search Committee for recommendation of the suitable persons for appointment of the Vice Chancellor be constituted by the Senate in the manner prescribed by the Statutes. The language of section 11(2) of the Act, 2014, and section 11(2) of the Federal Universities Ordinance 2002, is the same which also provides that the Search Committee shall be constituted by the Senate in the manner prescribed by the Statutes. Had the University Authorities framed the Statutes for constitution of the Search Committee then the proceedings would have been conducted under the said Statutes. It has come on the record that the Statutes for constitution of the Search Committee have not been framed by the University, therefore, the University should have resorted to the Model Statutes framed by the H.E.C. for the appointment of the Vice Chancellor.

13. The next question which emerges from the record produced by the University Authorities, is that whether the method adopted by the Search Committee is based on the Model Statutes framed by the H.E.C., or not. The Model Statutes for appointment of the Vice Chancellor provide the evaluation criteria/procedure adopted by the Search Committee. The relevant para is reproduced as under:-

“(5) Evaluation Criteria/ Procedure:

(a) The applications/ nominations will be scrutinized by taking into consideration the eligibility criteria. The eligible applicants will be shortlisted, if required. The shortlisted candidates will be invited by the search committee for interview. The search committee will evaluate the candidates on the basis of the criteria, credentials/ attributes and recommend a panel of three candidates for appointment on merit as Vice Chancellor for the prescribed period to the Senate. The committee shall prepare a dossier of each of the candidates. Minimum 60% score would be required for eligibility of the candidates for recommendations/ appointment.

(b) The candidates for the position of Vice Chancellor shall be evaluated on the basis of following criteria/ standards:-

(i) **Length of Service (Max. 10 Marks):**

05 marks per service year rendered as Meritorious Professor in BPS-22; 02 marks per service year rendered as Professor in BPS-21 or Professor on Tenure Track/ Tenure.

(ii) Educational Administration (Max. 20 Marks):

Vice Chancellor :04 marks per year up to a maximum of 16 marks ; Pro-Vice Chancellor; 03 marks per year up to a maximum of 12 marks; Deans/ Principal of constituent College/ Principal Officers/ Directors or equivalent ; 02 marks per year up to a maximum of 08 marks; Heads of Institutes Departments or equivalent; 01 marks per year up to a maximum of 06 marks.

(iii) Academic Performance (Max. 20 Marks):

Number of M.Phil. / Ph.D. produced (Max. 10 marks); No of P.Phil. produced 01 marks per M.Phil/Ms (Max 05 marks); No. of Ph.D. produced 05 marks per Ph.D. produced(Max 10 marks);

Research Grant Award (Max.05 marks); 02 marks for less than 1 million and 05 marks for more than 01 million as principal investigator other than the research grants given by the parent university; Awards/ Hounour (Max.05 marks); National Awards (Civil/ Presidential and International awards/ honour recognized by HEC 02 marks per award (Max. 04 marks); HEC Awards/ Other National Awards;)1 Marks per award (Max. 02 marks).

(iv) Post Ph.D. Qualification (Max. 10 Marks):

03 marks for a post doctorate of more than 6 months to one year (max. 06 marks) at local University / Institution ;

04 marks for a post doctorate of more than 6 months to one year at foreign university/ institution (Max. 08 marks); 05 marks for one year or more post doctorate at foreign University/ Institution (Max. 10 Marks).

(v) Research Publications (Max. 30 Marks):

02 marks per paper in the HEC recognized research journals with IF or Journal cited in social sciences citation index; 01 marks per paper published in local HEC recognized journals (in case of medicine sciences. PMDC recognized journal): 02 marks per patent crop variety (approved) subject to maximum of 06 marks; 02 marks per book authored or edited internationally subject to a maximum of 04 marks; 01 mark per book authored or edited locally subject to a maximum of 03 marks.

(vi) Reputation/ Capability and Reliability (Max. 10 Marks):

Each of the members of the search committee will award out of maximum 10 marks to this category and average marks will be counted towards final score.

(c) The search committee will evaluate the applicants in accordance with the eligibility criteria and Statutes (Numerical Evaluation) as per proforma (approved as part of the Statutes) and recommend panel of three candidates on merit to the Senate/ Chancellor for approval.

(d) In case score of two or more candidates is turn out to be same , the candidates having more total score in (i) to (v) would be preferred.”

The evaluation criteria consists of two parts. First part deals with the record and is further divided into five parts. Out of total 100 marks, 90 marks are reserved for the five parts and second part consists of interview. 10 marks have been reserved for the interview. It is laid down in para 5(vi) of Model Statutes that each member of the Search Committee shall award the marks out of total 10 marks and the average marks will be counted towards the final score. A detailed bifurcation of marks under every heading is provided in the evaluation criteria.

14. It appears that the Search Committee sought some guidance from the Model Statutes for appointment of the Vice Chancellor and prepared the evaluation criteria but major part of evaluation criteria has been ignored. The criteria has been fixed for assessment in four parts. Out of total 100 marks, 20 marks have been fixed for the academic

record which is further divided into the three parts. 25 marks have been reserved for the working experience, while 25 marks have been reserved for achievements and recognition which is further divided into five parts and 30 marks have been reserved for the interview. The following criteria for assessment and bifurcation was fixed by the Search Committee.

Assessment Sheet for VC

CV. No.	Name of the applicant			
Sr. No.	Criteria		Max score	Marks obtained
1.	ACADEMIC RECORD		20	
1.1	Basic Qualification	Post Doc/D.SC=2,	10	
1.2	Quality of Institution Attended	Years or more stay (for education/research/teaching) in any Russell group (UK), Ivy league (USA), MIT & Standford (USA) University=7 3 years or more stay (for education/research/teaching) in any of the top 500 universities of the world as per QS Ranking =5 3 years or more stay (for education/research/teaching) in any foreign university (accredited by HEC) or any top 50 Pakistani Universities (HEC's current ranking)=3	7	
1.3	Trainings Attended	Above 100 days =3	3	
2	WORK EXPERIENCE		25	
2.1	Having worked as full Professor or equivalent in HEC recognized university/organization	10 years and above =6 5 years = 4 Below =0	6	
2.2	Having 5 years or more teaching/research/work experience in foreign organization		3	
2.3	Leadership	1 point for every year in leadership role	10	

2.4	Administrative and Financial Management	Administrative =3 (One point for every two years- Maximum 3 points)	6	
3	ACHIEVEMENTS AND RECOGNITION		25	
3.1	National Level Award (by President of Pakistan, Prime Minister of Pakistan, Sitar-i-Imtiaz, Pride of Performance etc.) =4 Provincial Level Award (by Governor/Chief Minister, Dastar-e-Fazeelat etc/) =2 Regional/Organizational Level Award (District Governments, HEC etc.) =1 (Maximum points - 7)		7	
3.2	Established history of distinguished service	Grade 22 or equivalent and above Academic =6 Grade 22 or equivalent and above Non-academic =5 Grade 20-21 or equivalent Academic =4 Grade 20-21 or equivalent Non-academic =3	6	
3.3	Acknowledgement as having reached a pinnacle of the profession	International bodies =4 National bodies =3 Regional bodies =2	4	
3.4	New Organizations established	International level =4 National level =2	4	
3.5	Projects Undertaken	Rs.1 billion and above =4 Rs.500 million -1 billion =3 Rs.500 million or below =2	4	
4	INTERVIEW To assess the personality and capability of the applicant to perform the role. Overall traits of the personality, presentation, leadership, attitude, behavior, communication skills, ethics and moral standards, respect for Islamic ideology and vision to be analyzed in the interview		30	
		Total	100	

The basic difference between the Model Statutes and the criteria fixed by the Search Committee is that the H.E.C. has reserved 30

marks for the research publication whereas in the criteria fixed by the Search Committee, no marks have been reserved for the research and publication. The H.E.C. has reserved 30 marks for length of service and educational administration whereas only 10 marks have been reserved for interview but the Search Committee has reserved 30 marks for the interview. The reservation of 30 marks for the interview vests larger discretionary power in the Search Committee. The criteria fixed by the Search Committee, is violative of the H.E.C. Model Statutes.

15. The record reveals that in response to the advertisement total 54 applications were received. 19 candidates were shortlisted, including the name of Dr. Muhammad Kaleem Abbasi. Out of 19 candidates, 18 candidates appeared in the interview. The Search Committee prepared the score sheet, forming part of the working paper as annexure (vii) produced by the Registrar

University of Poonch, Rawalakot. For proper appreciation the score sheet is reproduced as under:-

“Score Sheet for the Post of VC, The University of Poonch Rawalakot

S. No.	CV No.	Name of candidates	Academic record (20 marks)	Work Experience (25 marks)	Achievements and recognition (25 marks)	Total -70	Interview (30 marks)	Total marks 100
1	20	Dr. Muhammad Rasul Jan	16	22	12	50		
2	17	Prof. Dr. Muhammad Tasneem Shah	16	18	12	46		
3	10	Prof. Dr. Shahid Mehboob Rana	15	18	11	44		
4	23	Prof. Dr. Ch. Jamil Anwar	15	19	9	43		
5	32	Prof. Dr. Muhammad Rafique Khan	18	19	6	43		
6	39	Prof. Dr. Zahid Saleem	13	22	8	43		
7	53	Prof. Dr. Muhammad Ashfaq	13	19	13	43		
8	21	Prof. Dr. Nowshad Khan	18	17	7	42		
9	41	Prof. Dr. Abdul Hamid	18	15	8	41		
10	22	Dr. Muhammad Tufail	18	7.5	14	39.5		
11	25	Prof. Dr. Muhammad Arif	17	15	6	38		
12	29	Prof. Dr. Syed Dilnawaz Ahmed Gardezi	10	17	11	38		
13	31	Dr. Muhammad Sarwar	16	12	9	37		
14	37	Dr. Muhammad Kaleem Abbasi	13	17	7	37		
15	49	Prof. Dr. Ghulam Yasin Chohan	15	13	8	36		
16	16	Engr. Prof. Dr. Akhtar Mahboob	13	12	10	35		
17	19	Prof. Dr. Mansoor Akbar Kundi	8	21	6	35		
18	33	Prof. Dr. Tariq Masud	13	17	5	35		
19	7	Prof. Dr. Abdul Nabi	13	14.5	7	34.5		
20	36	Dr. Mirza Shahid Baig	15	12	7	34		
21	24	Dr. Mir Ajab Khan	16	10	7	33		
22	42	Prof. Dr. Khawaja Farooq Ahmed	18	7	8	33		
23	54	Prof. Dr. Syed Nisar Hussain Hamdani	13	13	7	33		
24	28	Prof. Dr. Muhammad Jamil Ahmed	10	16	6	32		
25	51	Dr. Mohammad Tahir Shah	13	8	11	32		
26	59	Prof. Dr. Khaliq Ahmed	8	20	4	32		

27	50	Dr. Abdul Hameed, SI, AF	13	7.5	11	31.5		
28	6	Prof. Dr. Muhammad Faheem Malik	11	10	10	31		
29	14	Prof. Dr. Muhammad Nasim Khan	10	11.5	7	28.5		
30	52	Prof. Dr. Ishtiaq Ahmed Chaudhary	8	16.5	4	28.5		
31	57	Prof. Dr. Azhar Maqbool	8	13	7	28		
32	40	Prof. Dr. Muhammad Rustam Khan	11	10.5	6	27.5		
33	34	Prof. Dr. Nasiruddin Khan	8	15	4	27		
34	48	Prof. Dr. A. Z. Hilali	9	14	4	27		
35	18	Prof. Dr. Khalid Mahmood	10	11	4	25		
36	38	Mr. Shahzad Iqbal Sham	8	13	4	25		
37	15	Brig (R) Dr. Riasat Ali, SI (M)	8	4	12	24		
38	46	Dr. Muhammad Tariq	11	6	6	23		
39	30	Prof. Dr. Muhammad Qayyum Khan	10	6.5	6	22.5		
40	11	Dr. Qamar Ul Wahab	15	3	4	22		
41	12	Prof. Dr. Zahoor Ahmed Baloch	11	6	5	22		
42	44	Prof. Dr. Muhammad Arif Khan	11	5	6	22		
43	55	Pof. Dr. Jan Muhammad Memon	8	3	4	15		

The perusal of the score sheet reveals that out of total 100 marks, the Search Committee awarded the marks out of 70 marks to the candidates and first 19 candidates were shortlisted and called for interview, which was conducted on 22nd and 23rd July, 2015. On the basis of interview, the Search Committee recommended 6 candidates to the Senate for appointment of Vice Chancellor and also fixed the order of merit of 6 candidates. A perusal of the assessment sheet which provides bifurcation

of marks, shows that the Search Committee out of total 100 marks reserved 70 marks for academic record, working experience and 30 marks were reserved for interview. Out of 70 marks the candidates who were in first 19 positions were called for interview and 18 candidates appeared in the interview. The Search Committee prepared the following score sheet after granting the marks:-

“Consolidated Evaluation Sheet

S. N.	CV No .	Name /Designation	Prof. Dr. Mukhtar Ahmeds)	Prof. Dr. Niaz Ahmed Akhtar	Gen. (R) Muhammad Aziz Khan	Mr. Mehmood Khan	Prof. Dr. Tasawar	Prof. Dr. Khalil Ahmed	Prof. Dr. Iqrar Ahmed	Marks out of 60	R a n k
			Marks =10	Marks =10	Marks =10	Marks =10	Marks =10	Marks =10	Marks =10		
1	20	Dr. Muhammad Rasul Jan	8	9	8.5	8		8.5	8	50	2
2	17	Prof. Dr. Tasneem Muhammad Shah	6	4	6.5	5		7	4	32.5	1 2
3	10	Prof. Dr. Shahid Mehboob Rana	5	6	6	5		7.5	4	33.0 5	1 1
4	23	Prof. Dr Ch. Jamil Anwar	6.5	6	7	6		7.5	3	36	9
5.	32	Prof. Dr. Muhammad Rafique Khan	4	4	6	4		6.5	3	27.5	1 6
6.	39	Prof. Dr. Zahid Saleem	6.5	6	7	6		7.5	4	37	8
7.	53	Prof. Dr. Muhammad Ashfaq	5	8	6	6.5		7	3	35.5	1 0
8.	21	Prof. Dr. Nowshad Khan	6	5	6	6		7.5	5	35.5	1 0
9	41	Prof. Dr. Abdul Hamid	8.5	9	8.5	8.5		8.5	9	52	1
10	22	Dr. Muhammad Tufail	6	3	6	6		6.5	3	30.5	1 4
11	25	Prof. Dr. Muhammad Arif	7.5	5	8	7		7.5	8	43	5

12	29	Prof. Dr. Syed Dilnawaz Ahmed Gardezi	7.5	9	7.5	8.5		8.5	8	49	3	
13	31	Dr. Muhammad Sarwar	6	6	7	6.5		7	5	37.5	7	
14	37	Dr. Muhammad Kaleem Abbasi	6.5	9	7	7		7	6	42.5	6	
15	49	Prof. Dr. Ghulam Yasin Chohan	4.5	4	6	5		6.5	4	30	1	
16	16	Engr. Prof. Dr. Akhtar Mahboob	did not appeared									
17	19	Prof. Dr. Mansoor Akbar Kundi	7	9	6	6		8	7	43	5	
18	33	Prof. Dr. Tariq Masud	5	4	6	6		7	4	32	1	
											3	
19	7	Prof. Dr. Abdul Nabi	7.5	9	8	6.5		8.5	8	47.5	4	

It is worth mentioning that in the assessment sheet 30 marks were reserved for interview while the interview was conducted on the basis of 60 marks. While sending the recommendations, the Search Committee recommended 6 candidates who secured first 6 positions in the interview. The marks of academic record, working experience and achievements/recognition were not considered. When total marks reserved are 100, out of which 70 marks are reserved for academic record, working experience and achievements/recognition and 30 marks are reserved for interview

then the result should have been compiled out of total 100 marks but the Search Committee violated the criteria fixed by itself and instead of 30 marks reserved 60 marks for interview and recommended 6 candidates only on the basis of interview. The marks reserved for other three categories were not considered. It is a sorry state of affairs that the process conducted by the Search Committee for appointment of the Vice Chancellor of University which is a highest seat of teaching was violative of not only the Model Statutes of the H.E.C. for appointment of the Vice Chancellor but the Search Committee also violated the criteria fixed by itself. The Search Committee while sending the recommendations of 6 persons to the Senate also determined the order of merit. The University is governed under Act, 2014, the

Search Committee has to perform its function under the statutory provisions and not in an arbitrary manner. Sub-section (3) of section 11 of Act, 2014 lays down that 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. The Search Committee shall recommend the names to the Senate and after consideration the Senate shall send the panel of three persons in order of merit to the Chancellor. The Search Committee has no power to determine the order of merit. The Search Committee made the recommendations in clear violation of the Statutes framed by the H.E.C., the criteria laid down by itself and Act, 2014. It is a celebrated principle of law that if a thing is provided to be done in a particular manner it has to be done in the same manner or not at all. Our

this view is fortified by a number of judgments of this Court. In the case reported as *Azad Govt. of the State of Jammu and Kashmir through Chief Secretary and 3 others vs. Sardar Abdul Aziz Khan* [2012 SCR 187], it was observed as under:-

“9. It is celebrated principle of law that if an act is required to be performed according to the prescribed manner by law or rule it should be performed according to the prescribed manner alone or not at all”

In the case reported as *Muhammad Younas Tahir vs. Shaukat Aziz, Advocate, Muzaffarabad and others* [2012 SCR 213], this Court observed as under:-

“26. It is celebrated principle of law that when a particular method for performance of an act is prescribed under an Act or Rules, then such act must be performed according to that particular method or not at all as has been laid down in a case titled “Habibullah v. D.I.G. Police and 3 others [2004 SCR 378]. The relevant observation is reproduced as under:-

“.... It is now settled proposition of law that when a particular method of performance of an act is prescribed under an Act or Rule then such act must be

performed according to the prescribed method alone or not at all."

Likewise, in the case reported as *AJ&K Government and 4 others vs. Mohi-ud-Din Islamic University & 2 others* [2014 SCR 382], it was observed as under:-

"11. The law is settled on the point that things provided to be done in a prescribed manner must be done in that way and no deviation can be made from it...."

Similarly, in a recent judgment reported as *Shaukat Hussain Awan vs. AJ&K Bar Council & 4 others* [2015 SCR 284], it was observed as under:-

"13.it is almost settled that for performing any act when the law has prescribed a specific manner then it has to be performed in that manner or not at all."

Thus, the recommendations made by the Search Committee only on the basis of interview are not sustainable. The Search Committee has no power to determine the order of merit of the candidates.

16. It is worth mentioning that para (5) of the Statutes of the H.E.C. provides that the Search Committee shall recommend the panel of three candidates for appointment on merit and minimum 60% scores would be required for eligibility of the candidates. The Search Committee recommended 6 candidates on the basis of interview and not on the overall performance. Thus, the recommendations made by the Search Committee are violative of the Model Statutes framed by the H.E.C. which are not maintainable.

17. The Vice Chancellor has to be appointed under section 11 of Act, 2014, on the recommendations of the Search Committee constituted in the prescribed manner in the Statutes. The Statutes for appointment of the Vice Chancellor have not been framed. The matter cannot be left open on the discretion of the authority that it shall constitute the Search

Committee according in its discretion. It is high time that the authorities shall act promptly and fulfill the requirement of section 11 of the Act, 2014 and frame the Statutes for appointment of the Vice Chancellor. The official respondents are directed to do the needful not only for University of Poonch, Rawalakot but for all the Universities in Azad Jammu & Kashmir. Till that time the appointment of the Vice Chancellor shall be made according to the Model Statutes framed by the H.E.C.

18. The appeals merit dismissal. The post of Vice Chancellor shall be advertised in accordance with section 10(1) of Act, 2014 and paras 1 and 2 of the Statutes framed by the H.E.C. for appointment of the Vice Chancellor. The Search Committee shall adopt the evaluation criteria laid down in para (5) of the Statutes framed by the H.E.C. for appointment of the Vice Chancellor.

19. Since, the post of Vice Chancellor University of Poonch, Rawalakot is lying vacant for the last 1½ years, therefore, it is directed that that the post of Vice Chancellor University of Poonch, Rawalakot shall be advertised within a period of two weeks and whole the process for appointment under section 11 of Act, 2014, shall be completed within a period of two months, from the date of announcement of the judgment.

With the above observations the appeals are dismissed with no order as to costs.

CHIEF JUSTICE
Muzaffarabad.
.....10.2016.

JUDGE