

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Review Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Ghulam Mustafa Mughal, J.

1. Civil Review No. 05 of 2020

Filed on 30.11.2019

Dr. Iqrar Ahmed Khan, Suppressive Vice
Chancellor, Mirpur University of Science &
Technology (MUST), Mirpur, Azad Kashmir.

.... PETITIONER

VERSUS

1. The Chancellor, Mirpur University of Science & Technology/President Azad Govt. of the State of Jammu & Kashmir, through Secretary Presidential Affairs, President House, Muzaffarabad.
2. The Azad Govt. of the State of Jammu & Kashmir, through its Secretary Services and General Administration Department, AJK Govt. Muzaffarabad.
3. The Mirpur University of Science & Technology (MUST), Mirpur through its Registrar.
4. The Registrar, Mirpur University of Science & Technology (MUST), Mirpur.
5. The Secretary Higher Education Department, AJK Govt., Civil Secretariat, Muzaffarabad.
6. The Senate of Mirpur University of Science & Technology through Registrar.
7. The Search Committee of the Mirpur University of Science & Technology, through Registrar University.

8. Dr. Habib Ur Rehman, Ex-Vice Chancellor, University of Science and Technology, Mirpur.
9. The Search Committee through its Convener Dr. S.M. Junaid Zaidi, Executive Director, Comsats, Islamabad.
10. Accountant General of Azad Jammu & Kashmir.

..... RESPONDENTS

(In the matter of review of the judgment of this Court dated 08.11.2019, in Civil Appeals No.410 and 411 of 2019)

FOR THE PETITIONER: Mr. Aurangzeb
Chaudhary, Advocate.

FOR THE RESPONDENTS: Raja Amjid Ali
Khan, Advocate.

2. Civil Review No. 01 of 2020
Filed on 20.01.2020

Dr. Habib ur Rehman, newly appointed Vice Chancellor, Mirpur University of Science & Technology, Mirpur.

.....PETITIONER

VERSUS

1. Dr. Iqrar Ahmed Khan, Suppressive Vice Chancellor, Mirpur University of Science and Technology (MUST), Mirpur.

.....RESPONDENT

2. The Chancellor, Mirpur University of Science & Technology/President Azad Govt. of the

State of Jammu & Kashmir, through Secretary Presidential Affairs, President House, Muzaffarabad.

3. The Azad Govt. of the State of Jammu & Kashmir, through its Secretary Services and General Administration Department, AJK Govt. Muzaffarabad.
4. The Mirpur University of Science & Technology (MUST), Mirpur through its Registrar.
5. The Secretary Higher Education Department, AJK Govt., Civil Secretariat, Muzaffarabad.
6. The Senate of Mirpur University of Science & Technology through Registrar.
7. The Registrar, Mirpur University of Science & Technology (MUST), Mirpur.
8. The Search Committee of the Mirpur University of Science & Technology, through Registrar University.
9. Accountant General of Azad Jammu & Kashmir.

..... PROFORMA-RESPONDENTS

(In the matter of review of the judgment of this Court dated 08.11.2019, in Civil Appeals No.410 and 411 of 2019)

FOR THE PETITIONER: Mr. Farooq Hussain
Kashmiri, Advocate.

FOR THE RESPONDENTS: Mr. Aurangzeb
Chaudhary and Raja
Muhammad Hanif
Khan, Advocates.

Date of hearing: 27.01.2020.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned review petitions have been filed for reversal of the judgment dated 08.11.2019 passed by this Court in Civil Appeals No.410 and 411 of 2019. Although, different reliefs have been claimed by the petitioners but the petitions can be disposed of conveniently, hence, were heard together and are decided as such through the proposed judgment.

2. The facts forming the background of the captioned review petitions shortly stated are that the position of Vice Chancellor Mirpur University of Science and Technology (MUST) fell vacant. The Chancellor of the University i.e. the worthy President after receipt of the recommendations made by the Senate of the University, appointed Prof. Dr. Iqrar Ahmed Khan, as vice Chancellor MUST, vide

notification dated 15.02.2019, for a period of 3 years who could not join the position in time. Thereafter, in supersession of the notification dated 15.02.2019, Dr. Habib-ur-Rehman, petitioner, herein, was appointed vide notification dated 18.03.2019 as Vice Chancellor MUST. Dr. Iqrar Ahmed Khan challenged the notification dated 18.03.2019, before the Azad Jammu & Kashmir High Court through writ petition on 20.03.2019. The writ petition was contested by the other side by filing written statement, whereby, the claim of the petitioner, herein, was refuted. The learned High Court after necessary proceedings, through the judgment dated 26.08.2018 accepted the writ petition and set aside the notification of appointment of Prof. Dr. Habib-ur-Rehman/petitioner, herein, dated 18.03.2019. Consequently, the order of appointment of Dr. Iqrar Ahmed Khan dated

15.02.2019 was restored and he was directed to join within a week failing which the Chancellor MUST would be at liberty to make appointment to the position of Vice Chancellor afresh in accordance with law. The Chancellor and Prof. Dr. Habib ur Rehman challenged the legality and correctness of the judgment dated 26.08.2019, passed by the learned High Court, through separate appeals before this Court. This Court through the judgment under review dated 08.11.2019, accepted the appeal of the Chancellor (MUST), whereas, dismissed the appeal filed by Dr. Habib ur Rehman.

3. Mr. Aurangzeb Chaudhary, the learned Advocate appearing for Dr. Iqrar Ahmed Khan, argued with vehemence that this Court at page 23 of the judgment sought to be reviewed, has observed that the appointment of Dr. Iqrar Ahmed Khan, as Vice Chancellor MUST was

validly made but at the same time approved the order of the Chancellor whereby, extension in joining time has been disallowed. The learned Advocate further argued that in the appeal filed on behalf of the Chancellor, against the judgment of the High Court, it was categorically stated that Dr. Iqrar Ahmed Khan, made hectic efforts to join the position but his joining was not accepted by the competent authority. The learned Advocate submitted that this aspect of the matter escaped the notice of the Court while handing down the judgment under review.

4. Mr. Farooq Hussain Kashmiri, the learned Advocate appearing for Dr. Habib ur Rehman, petitioner, herein, submitted that the appointment of Dr. Habib ur Rehman was made competently and validly by the President/Chancellor after failure of Dr. Iqrar Ahmed Khan to join the position. He added that

through the same order, Dr. Habib ur Rehman was appointed and the notification was issued by the department after approval of the Chief Executive, therefore, the same cannot be set aside.

5. Raja Amjid Ali Khan, Advocate, who also appeared on behalf of Dr. Habib ur Rehman, has placed on record a copy of the judgment of the Lahore High Court, wherein, it is clearly stated that Dr. Iqrar Ahmed Khan has not placed on record any document regarding joining the position as Vice Chancellor in Azad Kashmir.

6. Raja Muhammad Hanif Khan, the learned Advocate appearing for The Chancellor and others submitted that the points agitated by the petitioners have comprehensively been dealt with by this Court in the judgment sought to be reviewed. He further submitted that the petitioners failed to point out any error apparent

on the face of the record and the judgment under review is well-reasoned, hence, the review petitions may be dismissed.

7. We have heard the learned counsel for the parties and have gone through the judgment under review. It may be stated that review against a judgment/order cannot be filed in routine and very strong and exceptional reasons are required to review an order/judgment of the Court on the grounds enumerated in the Constitution as well as the Supreme Court Rules. While hearing a review petition case cannot be heard as an appeal because it is not within the preview of the review jurisdiction as per settled law and practice of this Court. The review is only competent when there is an error apparent on the face of record. In the present case, the Court has attended and resolved all the points raised by the learned counsel for the parties. The appointment of Dr. Habib ur Rehman

has also been declared illegal because the Chief Executive has not tendered any advice for his appointment as Vice Chancellor. A clear cut direction has been given in para 8 and 9 of the judgment under review which is as under:-

“8. The contention of learned counsel for the respondent that once the Vice Chancellor has been appointed, he could only be removed while following the procedure envisaged under Section 11(5) of the Mirpur University of Science and Technology (MUST) Act, 2014, is also devoid of any force because in the present case, the Chancellor has not removed the Vice Chancellor on any ground listed in the aforesaid provision of law. It has already been observed that the process for appointment was not completed as the position was not accepted by the respondent, herein, by not joining his duty, therefore, the Chancellor has rightly exercised the inherent powers to revoke his appointment. The view taken by the learned High Court, in this regard, in our estimation, is not correct. The learned High Court has referred to and relied upon subsections 2 and 3 of section 42 of the Mirpur University of Science and Technology (MUST) Act, 2014, and observed that after seeking the views of the Senate, the Chancellor was not supposed to cancel the appointment of the respondent, herein. This observation of the learned High Court is also not correct. The contention of Raja Amjid Ali Khan, the learned Advocate appearing for Prof. Dr. Habib ur Rehman, that only a State Subject can be

appointed in MUST as Vice Chancellor is left open in view of the aforesaid conclusion and shall be decided in any other proper case.

(underlining is ours)

9. Thus, it is concluded that the President was not under obligation to accede to the request of the respondent, herein, in view of his conduct. The respondent, herein, was not entitled to the discretionary relief under the extra ordinary jurisdiction of the High Court and his writ petition was liable to be dismissed. We order accordingly. Prof. Dr. Habib ur Rehman, appellant, herein, is also not entitled to any relief because his appointment order has been issued without following the due process of law as envisaged in the Rules of Business 1985, and Article 7 of The Azad Jammu & Kashmir Interim Constitution, 1974. The Chancellor/competent authority shall initiate fresh process of appointment of the Vice Chancellor MUST in accordance with law.

In the judgment sought to be reviewed, it was categorically stated that the authority/Chancellor may initiate fresh process for selection of Vice Chancellor MUST University Mirpur. As the Search Committee constituted by selection of Vice Chancellor still exists and will continue till selection of the next VC, therefore, the fresh process can be initiated by adopting the fresh process in accordance

with law. There is no ambiguity in the judgment under review.

The upshot of the above discussion is that finding no force in these review petitions, the same are hereby dismissed with no order as to cost.

JUDGE

CHIEF JUSTICE

Muzaffarabad
15.02.2020