

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, C.J.

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

Muhammad Younas Tahir, J.

Civil appeal No.35 of 2023
(PLA filed on 21.01.2023)

Prof. Dr. Rehmat Ali Khan, Vice Chancellor,
University of Kotli.

....APPELLANT

VERSUS

1. Dr. Syed Dilnawaz Ahmed Gardezi, Ex-Vice Chancellor University of management Sciences and Information Technology Kotli.
2. The Chancellor, University of management Sciences and Information Technology Kotli/The President of Azad Jammu and Kashmir, through Secretary to the President of Azad Jammu and Kashmir, President Secretariat, Muzaffarabad.
3. The University of Management Sciences and Information Technology Kotli.

4. The Azad Government of the State of Jammu and Kashmir through Secretary Services and General Administration Department, Azad Government of the State of Jammu and Kashmir, Civil Secretariat, Muzaffarabad.
5. The Prime Minister of Azad Jammu and Kashmir through Principal Secretary, Azad Government of the State of Jammu and Kashmir.
6. The Secretary Services and General Administration Department, Azad Government of the State of Jammu and Kashmir, Civil Secretariat, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment of the High Court dated 12.01.2023 in writ petition No.3452 of 2022)

FOR THE APPELLANT: Mr. Abdul Rasheed Abbasi, Advocate.

FOR THE RESPONDENTS: Kh. Maqbool War, Advocate-General, Raja Amjid Ali Khan and Mrs. Shehnaz Gillani Advocates.

Date of hearing: 14.02.2013

JUDGMENT:

Raja Saeed Akram Khan, C.J.- The captioned appeal by leave of the Court, has been directed against the judgment of the High Court dated 12.01.2023, whereby the writ petition filed by respondent No.1, herein, has been accepted.

2. The pleadings, in this case, unfurl that the dispute is related to the appointment of the Vice Chancellor of the University of Management Sciences and Information Technology, Kotli. Respondent No.1, herein, challenged the notification dated 12.09.2022, through which the appellant was appointed as the Vice Chancellor by filing writ petition before the High Court, claiming therein, that initially, the Search Committee recommended a panel, consisting of 5 suitable candidates, for consideration of Senate and thereafter, the Senate recommended 3 suitable candidates in order of priority to the Chancellor for

appointment of Vice Chancellor. He secured highest marks, hence, he was entitled to be appointed as Vice Chancellor, but the authority by violating the merit as well as the relevant provisions of the Constitution, made the appointment of the appellant, herein. It was also the claim of respondent No.1, herein, in the writ petition that the appellant, herein, was declined to be appointed as Professor by the University of Peshawar due to the reason that serious allegations were found levelled against him, when he remained posted as the Vice Chancellor in the University of Upper Dheer/KPK in Pakistan, therefore, he was even not eligible to be considered for appointment as Vice Chancellor. The learned High Court after hearing the parties, accepted the writ petition and while setting aside the appointment notification of the appellant, herein, issued a direction to the Appointing Authority to resend the matter of appointment of Vice Chancellor to

the Senate for reconsideration and by completing the process make the appointment afresh within a period of 01 month from the date of receipt of the impugned judgment.

3. Mr. Abdul Rasheed Abbasi, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case. He contended that the writ petition before the High Court was even not competent as the same was filed against the Chancellor of University of Management Sciences and Information Technology Kotli and the University of Management Sciences and Information Technology Kotli, whereas, the name of the University had been amended as the University of Kotli. In this way, non-impleadment of the University of Kotli as a party renders the entire proceedings before the High Court as void. He also stated that in the instant matter the Services and General Administration

Department has issued the notification for appointment of the appellant, but while challenging the notification the said department was not made party, hence, in this way too the writ was not maintainable. On merit of the case, he submitted that in view of the provisions of Section 11 of the University of Kotli Azad Jammu and Kashmir Act, 2014, the Chancellor is the sole authority to appoint the most suitable candidate from the penal sent by the Senate, therefore, the learned High Court was not justified to remand the matter to the Senate with the direction to resend the list of the candidates on order of priority. He further added that the learned High Court has grossly erred in law while holding that the Chancellor of the University has to act on the advice of the Prime Minister while appointing Vice Chancellor, whereas, no such provision is available in the relevant statute. In support of this version, he further stated that the Chancellor of the

University does not exercise the powers as President rather the office of the Chancellor is an independent one, therefore, the provisions of Article 7 of the Azad Jammu and Kashmir Interim Constitution, 1974, are not attracted. He lastly submitted that the appointing authority in the instant matter is the Chancellor, therefore, the direction to remand the case to the Senate amounts to the violation of the provisions of the relevant Act. He referred to the cases reported as *Sheikh Khalid Mahmood v. Mallick Muhammad Irfan* [PLD 1983 SC (AJ&K) 204], *Rana Aamer Raza Ashfaq and another v. Dr. Minhaj Ahmad Khan and another* [2012 SCMR 6], *Abdul Rasheed and 4 others v. Member Board of Revenue, AJK, Muzaffarabad and 33 others* [2013 SCR 222], *Mst. Rehana Faizullah and 4 others v. Ifatt Amanullah and 11 others* [2022 SCR 108] and *Shafqat Habib Lone and another v. Azad Government and others* [2022 SCR 179] and prayed for setting aside

the impugned judgment and dismissal of the writ petition filed by respondent No.1 before the High Court.

4. Raja Amjid Ali Khan, Advocate, the learned counsel for respondent No.1, raised a preliminary objection that the contents of memo of appeal have been verified by the appellant, whereas, the same should have been verified by the counsel, hence, the instant appeal is not maintainable. He further stated that fraud has been practised on the Court while annexing the joining report of the appellant with the memo of appeal as it is clear from the appointment notification that effect has been given to the appointment from 20.09.2022, whereas, the joining report shows that the same was furnished on 13.09.2022, in this way, the appellant has not come in the Court with clean hands which disentitles him for any relief. While arguing the case on merits, he submitted

that the impugned judgment is in accordance with law. In the instant matter the discretion was exercised by the Chancellor in an arbitrary manner, therefore, the learned High Court rightly set at naught the appointment notification of the appellant. Respondent No.1 was at higher pedestal in the merit and was more suitable for appointment as compared to the appellant but he has been deprived of his right without assigning any reason by the Authority. Thus, the appointment of the appellant was violative of the merit and the result of unjustified exercise of discretion. He referred to the case law reported as *Dr. Iqrar Ahmad Khan v. Dr. Muhammad Ashraf and others* [2021 SCMR 1509] and prayed for dismissal of appeal.

5. The learned Advocate General and the Legal Advisor of the Services and General Administration Department adopted the

arguments advanced by the learned counsel for the appellant.

6. Arguments heard. Record perused. The learned counsel for the appellant raised two preliminary objections, i.e. while filing the writ petition the University of Kotli, Chancellor of the University of Kotli and the Services and General Administration Department, who had issued the appointment notification of the appellant, have not been made party, therefore, the writ petition was not maintainable. In view of the peculiar facts of the case, we do not agree with the version of the learned counsel for the appellant as the concerned Chancellor and the University had been made party, and mere on mentioning of such name of the University which was later on, changed by introducing amendment, it cannot be said that the writ petition was incompetent especially when the concerned University properly contested the

writ petition. The other objection raised by the learned counsel for the appellant that the Services and General Administration Department was not made party is also not of worth consideration as the Appointing Authority, Government through Secretary Services and General Administration Department and the Secretary Services and General Administration Department were duly made party in the writ petition, therefore, this objection has also no force. Same like, the preliminary objection raised by the learned counsel for respondent No.1, that the contents of the memo of appeal should have been verified by the counsel but in the instant case the same have been verified by the appellant himself, therefore, this appeal is not maintainable, is also in our view has no weight as the signature affixed on the verification is that of the counsel and inadvertently if the name of the appellant has been mentioned that

can be treated an irregularity which can be ignored. The version of the learned counsel for respondent No.1 that fraud has been practised while annexing the copy of joining report with the memo of appeal before this Court as it is clear from the appointment notification that the same shall take effect from 20.09.2020, whereas, in the joining report the date has been mentioned as 13.09.2020, is also not convincing in nature. The record speaks that appointment notification was issued on 12.09.2022 and on the very next day the appellant furnished the joining report, mentioning therein, that he shall join the office on 20.09.2022, so on such an insignificant ground the case of the appellant cannot be thrown out.

7. While attending to the merits of the case, we have examined the record and the relevant provisions of law as well as the case

law referred to by the learned counsel for the parties. For appointment of the Vice Chancellor, the mode has been provided in section 11 of the University of Kotli Azad Jammu and Kashmir Act, 2014, wherein, it has been provided that the Search Committee shall propose the names of the suitable candidates and the Senate after considering the names forwarded by the Search Committee, shall recommend a panel consisting of three candidates, in order of priority, to the Chancellor and the Chancellor shall appoint the Vice Chancellor on the basis of the recommendations made by the Senate. For better appreciation the relevant portion of the statutory provision is reproduced hereunder: -

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

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

as Vice-Chancellor shall be considered by the Senate and of these a panel of three, in order of priority, shall be recommended by the Senate to the Chancellor:

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

After going through the section (supra), it becomes clear that the Chancellor shall appoint the Vice Chancellor from the panel of suitable candidates recommended by the Senate, however, the question arises; whether the Chancellor may choose anyone from the panel or he shall follow the order of priority set by the Senate. In this regard, the relevant provision of law (supra) is silent, however, in the University of Kotli Azad Jammu and Kashmir Statutes,

2020 for appointment of Vice Chancellor, it has been provided in its clause 12 that the Chancellor after conducting interview may appoint the most suitable one in his opinion. The relevant clause is reproduced hereunder: -

"12. Approval by Chancellor

- 1) The Chancellor may call the top three (03) candidates forwarded by the Senate for interview and appoint the most suitable one in his opinion as a Vice Chancellor."

The words 'most suitable one in his opinion' used in the relevant Statutes are very significant and from the juxtapose perusal of the provisions (supra), it becomes crystal clear that the discretion lies with the Chancellor to appoint anyone of the candidates from the panel sent to him by the Senate. The Chancellor is not bound to follow the order of priority set by the Senate, if such interpretation is accepted then the process of forwarding the panel of

suitable candidates to the Chancellor by the Senate, conducting of interview by the Chancellor and option of forming the opinion by the Chancellor in respect of the suitability of the candidates, as provided in the relevant Statutes, will become redundant. The law is clear that the Chancellor is bound to appoint Vice Chancellor from the panel forwarded by the Search Committee to the Senate and by the Senate to the Chancellor and the Chancellor cannot make any appointment out of the panel forwarded by the Senate, however, he is not bound to pick the name falling at serial No.1, of the panel sent to him by the Senate, so in our view imposing any such restriction, which has not been provided in the relevant law, would amount to cease the right of opinion of the concerned authority conferred on him by the relevant Statutes and rewrite the Statutes. There is also no allegation of biasness against the concerned authority in the process of making appointment.

In a case reported as *Professor Dr. Razia Sultana and others v. Professor Dr. Ghazala Yasmeen Nizam and others* [2016 SCMR 992], identical point was involved as Provincial Higher Education Department prepared a merit list in which 38 marks were awarded to the candidate appointed as Vice Chancellor later on, by the Chancellor and the candidate who obtained 52 marks challenged the appointment. In the said case the Search Committee recommended three candidates and when the matter came up before the apex Court of Pakistan the Hon'ble Court held that the relevant provisions of Khyber Pakhtunkhwa Universities Act, 2012, conferred discretion in the Chancellor to appoint anyone out of the candidates recommended by the Search Committee on the Advice of the Chief Minister. It was further held in the referred report while relying on different pronouncements, that it is not the function of the High Court exercising jurisdiction under

Article 199 of the Constitution of Pakistan to interfere in policy making domain of the Executive, moreover, the Court can neither assume the role of a policy maker nor that of a law maker. For better appreciation the relevant portion of the judgment (supra) is reproduced here which reads as under:-

“In the instant matter, absolute power of appointment was not given to authorities i.e. the Chancellor/Governor to appoint any person of their choice but the Search Committee consisting of eminent professionals was constituted who after detailed scrutiny of the credentials and lengthy interview of each candidate, recommended three names which, as per parawise comments, was not on the basis of any preference and the Chancellor/Governor, on the advice of the Chief Minister, appointed one candidate out of the three candidates in exercise of his powers, as mentioned above. Section 12(1) of

the Khyber Pakhtunkhwa Universities Act, 2012 gives discretion to Chancellor/Governor to appoint anyone out of the candidates recommended by the Search Committee on the advice of C.M. The only allegation against the appellant (Dr. Razia Sultana) is that she belongs to the constituency of the Chief Minister but without any supporting material, this cannot be termed as an act of mala fide.

11. Before we conclude, we may mention here that the principle laid down in the case of *Munir Hussain Bhatti v. Federation of Pakistan* (PLD 2011 SC 407), is not attracted to the facts of these appeals. As per the 19th Constitutional Amendment, Parliamentary Committee has to provide the reasons in case the nomination of the Judicial Commission is not accepted by them. Likewise, in the case of *Muhammad Yasin v. Federation of Pakistan* (PLD 2012 SC 132), appointment of the person was

declared unlawful as he was lacking the required qualification his name for appointment, in the first summary, was also declined by the Prime Minister.

12. In the case of Dossani Travels Pvt. Ltd. v. Travels Shop Pvt. Ltd. (PLD 2014 SC 1), while dealing with allocation of Hajj quota to Hajj Group Operators held that it is not the function of the High Court exercising jurisdiction under Article 199 of the Constitution to interfere in policy making domain of the Executive. In the case of Executive District Officer (Revenue) v. Ijaz Hussain (2011 SCMR 1864), the order of High Court was set aside whereby the High Court directed that the marks for interview should not exceed 25% of the total marks of selection, held that the Court can neither assume the role of a policy maker nor that of a law maker.

13. In the foregoing circumstances, the appeals are allowed. The impugned judgment dated

16.12.2014 passed by the Division Bench of the learned Peshawar High Court is set aside.”

In another case reported as *Dr. Iqrar Ahmad Khan v. Dr. Muhammad Ashraf and others* [2021 SCMR 1509], the appointment of the Vice Chancellor was under consideration. In the said case the concerned Chief Minister rejected the name of the appellant, therein, at the time of sending advice to the Governor, while assigning reasons and the Court held that the reasons assigned by the Chief Minister for not appointing the appellant, who was placed highest in the merit list, are justiciable and Courts can examine the same on the touchstone of validity, fairness and compliance with law, rules and departmental practice. In the said case the reasons assigned by the Chief Minister against the appellant, therein, were under consideration and the Court held that the reasons recorded by the appointing authority

are justiciable, whereas, in the instant case no such eventuality arose. Even otherwise there is also difference in the Statutes of the Universities which also cannot be overlooked as in the Statutes available in the instant matter clearly an option of forming the opinion has been given to the Chancellor regarding determination of the suitability of the eligible candidates recommended by the Senate. The Statutes are very much holding the field and no one has challenged the validity of the same, moreover, when the Search Committee and Senate after scrutinizing all the aspects recommended a panel consisting of the eligible persons, declaring all fit for appointment against the post of Vice Chancellor, then the question of exercise of powers arbitrarily also does not arise. In our view, the principle of law enunciated in *Dr. Razia Sultana's* case, in view of the peculiar facts of the instant case, is applicable while the proposition involved in the

other case law, discussed hereinabove, is different; therefore, the same is not applicable.

8. The learned High Court in the impugned judgment has also relied on the judgment of this Court rendered in the case titled *Prof. Dr. Abdul Hamid v. Prof. Dr. Muhammad Kaleem Abbasi*, decided on 04.10.2016, wherein this Court issued a direction to follow the Model Statutes framed by the Higher Education Commission till the time of framing of the Statutes for appointment of the Vice Chancellor. As now the Statutes have been framed and mode has been provided in the same for appointment of the Vice Chancellor, therefore, this judgment was not applicable. Similarly, in the other judgment of this Court reported as *The Chancellor and others v. Dr. Iqrar Ahmed Khan and others* [2019 SCR 985], relied upon by the High Court in the impugned judgment, the controversy was

quite different as in the said case no summary was forwarded by the proper form, whereas, in the instant matter the situation is quite otherwise. However, the important aspect is that in the said case the Division Bench of this Court, held that under Article 7 of the Azad Jammu and Kashmir Interim Constitution, 1974, the President cannot appoint the Vice Chancellor without advice of the Chief Executive/Prime Minister. We having with utmost respect for the learned members of the Division Bench are unable to concur with the view formed in the said judgment. We have examined Article 7 of the Azad Jammu and Kashmir Interim Constitution, 1974, The Azad Government of the State of Jammu & Kashmir Rules of Business (Revised), 1985 and also thoroughly scanned the University of Kotli Act as well as the University's Statutes, 2020, and reached the conclusion that law is very much clear that there is no requirement of advice of

the Chief Executive in the matter of appointment of Vice Chancellor, to the President, who by virtue of his office, also holds the office of Chancellor of the University as prescribed in the University Act, 2014 and while exercising powers under the University Act, 2014, the President performs function as Chancellor and not as President. Thus, we hereby declare that the Chief Executive has got no Constitutional or legal role in the matter of appointment of Vice Chancellor and the view formed by the Division Bench in the judgment (supra) stands overruled accordingly. As in the matter of appointment of the Vice Chancellor the President exercises the power being Chancellor of the University and not in the capacity of President, hence, the stance taken by the learned counsel for the appellant that the provisions of Article 7 of the Azad Jammu and Kashmir Interim Constitution 1974, wherein it has been provided that the President shall act

on the advice of the Prime Minister are not attracted, has force and we accept this plea.

9. So far as, the findings recorded by the learned High Court to the extent of allegations levelled against the appellant by respondent No.1, herein, are concerned, in our view, when the Search Committee after making thorough scrutiny forwarded the names of the candidates to the Senate and the Senate after considering all aspects proposed a panel of suitable candidates and recommended them for appointment to the authority and authority also looked into the matter while forming the opinion then preference should not be given to the allegations levelled by a rival candidate. So the findings recorded by the High Court to this extent are also uncalled for.

10. For the reasons recorded above, we find that the impugned judgment of the High Court is unsustainable and liable to be set aside.

Accordingly, we allow this appeal and while setting aside the impugned judgment of the High Court dismiss the writ petition filed by respondent No.1, herein. No order as to costs.

CHIEF JUSTICE

JUDGE

JUDGE

(J-I)

(J-III)

Muzaffarabad,
16.02.2023

RAZA ALI KHAN, J.

I have had the privilege to go through the proposed judgement authored by the learned Hon'ble Chief Justice and concurred by the other Hon'ble members of the bench. I have full regard for the opinion expressed therein, but despite having utmost respect and all regards, I have unable myself to subscribe to and concur with the opinion and conclusion, except to the extent of the correctly drawn opinion in para 8, about existence of any legal and Constitutional role of the Chief Executive in the

matter of appointment of vice chancellors of the universities (as had been created in the judgment of this Court, titled, “The Chancellor and others v. Dr. Iqar Ahmed Khan and others, 2019 SCR 985). Subject to above, I dissent from the conclusion and record my reasons, which are as follows:

1. The juxtaposed appreciation of Constitutional provisions emanates that the underlying spirit of the Constitution is equality, protection against all biases discriminations and arbitrarily exercised discretions from all offices, rule of law and Constitution, welfare and public good. The State and the Government require a gigantic workforce and personnel of diverse nature to run the affairs of the State, Government and their institutions. For provision of the standardized services

to the masses and achieve collective progression, public good and general welfare based upon legal and Constitutional objects, the appointment in public and government service holds very crucial importance. In that context the people have right to be served by the best chosen government and public sector employees, passed through credible and transparent processes and without it present modern and civilized world cannot be paced with by any otherwise lagging behind country. The right to be served by best chosen employees is based upon the principle of “equality of opportunity”, which states that all individuals should have an equal opportunity to compete for positions

without facing any discrimination or bias even in private sector jobs. This becomes more relevant and true in the matters of recruitment and appointment in public and government service. It is Constitutional and legal requisites that in public and Government service the vacancies shall be filled in strictly on merit while adhering to the prescribed mode and in transparent manner.

2. In a world where corruption, nepotism and other biases are still rampant, the right to be served by the best chosen officials becomes more imperative. The underlying principle of the prescribed processes ensures that candidates be selected for positions based on their merits, rather than their connections or

other external factors. This on one side helps to ensure provision of best services to the public and on other hand promote value of rule of law, Constitution, fairness and justice in the society. Further, it helps in creating an environment of trust and respect of people on the institutions, departments and the Government. This becomes more important and desirous in the present world democracy, where the masses are expected to have faith in and leave their rights to be safeguarded and protected by the Government and its institutions. These principles form bases also in teachings of the Holy Quran and Sunnah of the Holy Prophet(PBUH). Almighty Allah has

declared in verse No. 58 of the Surah
Al-Nisa, that:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ آلِ
نَاسٍ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۚ إِنَّ اللَّهَ كَانَ سَمِيعًا
بَصِيرًا﴾

“Indeed Allah Commands you to render trust to whom they are due and when you Judge between people to Judge with Justice. Excellent is that which Allah instruct you. Indeed Allah is ever hearing and Seeing.”

3. Keeping in view the ever-increasing importance and demands of society for merit-based and transparent selection of the employees in public sector institutions and Government departments, there are a few public sector institutions where more high standards of competency and professional excellence for recruitments must not be ignored at any cost. Among these, the health and education sector

require more high standards and more stringent processes for selection and appointment on the posts; as physical health and academic excellence of a nation directly and indirectly depends upon the professional excellence and performance of employees recruited in these institutions. In education sector the universities are the final institutions, which pass out the future work-force and professionals for all fields and departments of the country. In public sector universities the importance of high academic and professional excellence and competency, determined through merit-based and transparent selection processes, becomes manifold and that

too for the office of the exalted post of vice chancellor.

4. Moving towards the case in hand, section 11 of the University of Kotli Act, 2014 and clause 12 of the University Statutes, 2020, provide the manner for selection and appointment of the vice chancellor. Section 11 lays down that the vice chancellor shall be appointed by the Chancellor on basis of the recommendations of the Senate. It further postulates that the Senate of the University shall constitute a Search Committee for appointment of the vice chancellor. The Search Committee shall recommend a panel of suitable candidates to the Senate. The Senate shall select three suitable candidates out of the panel recommended by the

Search Committee and recommend in order of priority to the Chancellor for selection. The proviso attached to section 11 provides that the Chancellor may decline to appoint any of three candidates recommended by the Senate and seek fresh recommendations of a panel. Clause 12 provides that the Chancellor shall call the three candidates as recommended by the senate for interview and thereafter appoint more suitable among these three, as vice chancellor. Section 11 University of Kotli, Act, 2014, and clause 12 of the University Statute, 2020, are 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 recommendations made by the Senate.

“(2) A Search Committee for the recommendation of persons suitable for appointment as Vice-Chancellor shall be constituted by the Senate on the date and in the manner prescribed by the Statutes and shall consist of two eminent members of society nominated by the Chancellor, of whom one shall be appointed the Convenor, two members of the Senate, two distinguished University Teachers who are not members of the Senate and on academicians of eminence not employed by the University. The two distinguished University Teachers shall be selected by the Senate through a process, to be prescribed by 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 Search Committee for appointment as Vice Chancellor shall be considered by the Senate and of these a panel of three, in order of priority, shall be recommended by the Senate to the Chancellor:

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

“12. Approval by Chancellor

1)The chancellor may call the top three (03) candidates forwarded by the Senate for interview and appoint the most suitable one in his opinion as a Vice chancellor.”

5. Before interpreting the above stated provisions, it would be relevant to state that it is in my judicial knowledge that the method for selection of vice chancellor as opposed to appointments against posts of heads of other public sector institutions, has been made on more demanding standards and more transparent terms. Generally, a cursory examination of the Acts and Statutes

enacted for running the affairs of the universities provides that the legislature while appreciating and envisioning the very high importance of university education in a country's future progression and nation building, has intelligently, enacted and provided comprehensive and multi-layered mechanism for selections against the posts and running the affairs of the universities. While executing the actions under the universities Acts and Statutes and interpreting the same, keeping in view of importance of university education and office of Vice Chancellor, more informed and object-oriented interpretation is required to be made. Generally, the universities, except established for specific

disciplines i.e., engineering, medical etc, offer courses of diverse academic disciplines, hence, office of vice chancellor requisites that vice chancellor must have more diverse, dynamic, general professional experience and approach for running the affairs of the university.

6. A cursory perusal of section 11 and clause 12, reveals that a comprehensive manner has been provided for appointment of the vice chancellor keeping in view the importance of exalted and prestigious office of vice chancellor of the university and very keen and visionary expectations of the more exalted, esteemed and prestigious office of the Chancellor, who also happens to be the head of State-the

worthy President of the State of Azad Jammu and Kashmir. Under section 11(1) it is provided that the Chancellor shall be appointed on the basis of the recommendations made by the Senate. Section 11(2) postulates that a Search Committee for recommendations of persons suitable for appointment as vice chancellor shall be constituted by the Senate. It further lays down that Senate shall constitute the Search Committee in the manner prescribed by Statutes and it also prescribes eligibility, number of and manner of nomination of members of Search Committee. The requisites under section 11(2) for selection of members of Search Committee, i.e., numbers, qualification and manner of selection

members of Search Committee, itself reflect importance of Search Committee, its recommendations and the office for which Search Committee is constituted. Unlike, selection committees constituted under other service laws the Search Committee remains existing under sub-section (2) till the next vice chancellor is appointed by the Chancellor. Section 11(3) lays down that Search Committee shall propose a panel of candidates in order of priority to the Senate and the Senate shall consider the same panel and out of these panel recommend three names in order of priority to the Chancellor. The proviso attached to section 11 postulates that the Chancellor may decline to appoint any of three persons

recommended by the Senate and seek fresh panel. In case of demand of fresh recommendation, the Search Committee make proposal to the Senate in the prescribed manner. The prescribed methods for constitution of search committee, selection and appointment of the Vice Chancellor and refusal of the Chancellor and seeking afresh recommendations, and afresh recommendation required to be made again in prescribed manner, reflect importance of the office of Vice Chancellor in the affairs of university and the prestige and expectations attached to wisdom of the Chancellor.

7. Other than section 11 of the University Act, 2014, the provisions of University Statutes, 2020, are also relevant for

procedure to be adopted by the Search Committee, shortlisting and interview of candidates and approval by Chancellor. It would be appropriate to reproduce Clauses 9, 10 and 11 of the University Statutes, 2020, which are as under:

“9. Procedure to be adopted by the Search Committee: -

The grading procedure for qualification, experience skill shall be as under:

- 1) The Search committee through Committee scrutinize the applications received in response to the position of Vice Chancellor advertised by the Chancellor's office in reputed national newspaper and posted on the website of the University. The Search Committee shall also have the mandate to search and head-hunt persons' eligible under the given criteria for the position of Vice Chancellor and ask them to submit their credentials for consideration before the closing date for receiving applications.
- 2) The Search Committee shall, after approval of quantification made by

the Scrutiny Committee, prepare merit list after awarding marks as per given grading criteria/ procedure under Rule 8.

10. Shortlist and Interview:

- 1) Candidates securing a minimum of 60% marks shall be eligible and shortlisted for interview.
- 2) The shortlisted applicants shall be called for Interview by the Search Committee. The member of Search Committee shall award interview marks out of 30 as per criteria given in the Schedule to these statutes.
- 3) The Search Committee before Interview, shall ensure that the attested copies of the documents provided by the candidate shortlisted for interview have been compared with original documents produced by candidates.

Provided that where a candidate fails to provide the original documents then he may be allowed by the Search Committee to participate to the Interview process and submit the documents within three days.

Provided further where a candidate fails to provide the original documents within three days he would be deemed to have been ineligible to be selected as Vice Chancellor.

11. Final merit list:

1) Consolidated final merit list shall be prepared by adding marks obtained based on overall evaluation of documents (70) and Interview (30)

2) The candidates securing, not more than five positions on merit, shall be submitted to the Senate for consideration and a panel of three candidates shall be forwarded to the Chancellor for consideration.

3) Out of the candidates presented by the Search Committee to the Senate, a panel of three, in order to priority, shall be recommended by the Senate to the Chancellor.

12. Approval by Chancellor:

1) The Chancellor may call the top three (03) candidates forwarded by the Senate for interview and appoint the most suitable one in his opinion as a Vice Chancellor.

2) The Chancellor may decline to appoint any of three candidates recommended and seek recommendation being sought by the Chancellor, the Search Committee shall make a proposal to the Senate in the prescribed manner.”

8. A juxtapose appreciation of sub-sections of section 11 of Act, 2014, and clause 9, 10, 11 and 12 of the University Statutes, 2020, made it

crystal clear that intent, object and provision of multi-layered selection process as laid down by the Act and Statutes, is nothing more than but to make appointment of a candidate on position of the vice chancellor, of a person with highest qualifications, professional experience, unblemished career and selected through a highly competitive, demanding and transparent process by a Search Committee, which itself consisting upon eminent members, Senate of university and the Chancellor. There is another limb of section 11 of the Act, 2014, which further reflects importance of and emphasizes on selection of the vice chancellor being on merit and only merit and nothing else. The proviso

attached to sub section (2) of section 11 provides that the Chancellor may decline to accept the panel sent by the Senate and seek fresh panel. For which Search Committee shall again initiate the process of searching and making its recommendation of the suitable candidates to the Senate. Meaning thereby that the Chancellor who also happens to be the worthy President and being as such, may have more high vision, standards and expectations for progression and provision of high quality education by the university, from the selected Vice Chancellor. Further, he has more means and resources to have access to information about the proposed candidates which the Search Committee and the Senate

surely do not possess for merit based selection and appointment of the Vice Chancellor as per the intention of the legislature. The importance of appointment of highly competent person against the office of the vice chancellor also reflects from Clause 9 of the Statutes, wherein procedure to be adopted by the Search Committee has been provided. It provides that other than inviting applications for the position of the Vice Chancellor through advertisement on reputed national newspapers and website of university, the Search Committee, as the nomenclature depicts, not as 'selection committee/board, rather "Search Committee" shall also have mandate to "search and head-hunt persons' and

ask them to submit their credentials for consideration, meaning thereby that selection of vice chancellor is not like appointments made against posts of other public sector institutions and departments. Rather, Search Committee itself shall search and hunt the eligible persons and request them to come forward and submit their credentials for consideration. Once it is established that legislature has provided keeping in view the importance of universities and quality education in the country, very comprehensive mechanism and high standards for selection of the vice chancellor than it would not be suffice to subscribe to the submission that the chancellor while ignoring the

recommendation, exercised his discretion without giving written reasons and valid justification. If that may be otherwise as suggested there remains no purpose of provision of multi-layered and stringent process for determination of merit and recommendations in order of priority.

9. It has been put by the counsel for the appellant and same has been subscribed to in the proposed judgment that the Chancellor has exercised his discretion while choosing the candidates falling at serial number three in order of priority, as recommended and forwarded by the Senate to the Chancellor. There is no cavil with the general principle of law that the authority conferred with any

discretion may exercise the same. But, once the high stature and importance of the office of vice chancellor of a university and the responsibilities of more esteemed and exalted office of the chancellor, along with intent of legislature while making enactment and the university statutes are appreciated in juxtaposition, there remains no other opinion except that the discretion must be exercised judiciously. The concept of 'absolute and unfettered discretion' of authority does not hold field any more in legal and Constitutional arena of any modern State. Absolute and unfettered discretion has been regarded as ruthless master and it has been put that unless it is structured, it was likely

to be abused. Now, the 'discretion' is either structured by statutes or by principles laid down under the case law. It is also settled by now that even if the discretion is not structured by statute or rules, the same must not be exercised unreasonably or arbitrarily and without application of judiciousness and same may be exercised for achieving the true objective of the intended action by following the rules of justness, fairness and openness keeping in view of broader Constitutional and statutory objectives and commands. Our this view is fortified by the case reported as *Farrukh Bashir vs. Federal Public Service Commission, Islamabad through Secretary and 2 others* [2003

PLC (CS) 1116], wherein, it has been held as under: -

“18. The submissions of learned Deputy-Attorney General have duly been considered. As far as the first contention based on Regulation No.1 is concerned even "the absolute discretion" of the Federal Government is regulated by the report of the Medical Board and although the discretion was not limited by the said regulations yet the decision to finally accept or reject a candidate is to be taken in a just, fair and proper manner. There cannot be anything as "absolute discretion" in law as it is wholly incompatible with the guarantee provided by Article 4 of the Constitution which will be rendered as a pious homilies if the argument of the learned Deputy Attorney-General was to be accepted. Absolute discretion is a ruthless master and unless it was structured, it was likely to be abused. Thus, such a provision would be ex facie discriminatory.”

The same proposition has been dealt with in the case reported as *Karachi*

Electric Supply Company Ltd, through Authorized Officer/ Attorney vs. Lottee powergen (pvt.) Limited through Company Secretary and 3 others, [PLD 2014 Sindh 574], wherein, it has been observed as under: -

“No such thing exist as “unfettered statutory discretion”... All discretion is structured, whether that structuring is by rules and principles enunciated in the case-law or provided in the statute itself, or both.”

In the other case reported as *Mujeeb Ahemd and others vs. Province of Sindh through Chief Secretary to Government of Sindh and others* [2011 PLC (C.S) 1193], it has been observed as under: -

“It is a settled principle of law that object of good governance cannot be achieved by exercising discretionary powers

unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness and openness in consonance with the command of the Constitution enshrined in different Articles including Article 3 and 25 of the Constitution.”

10. The powers vested in the Chancellor stand clearly mentioned in the Act and the same cannot be enhanced or widened through Statutes. The Statutes or any subordinate legislation is meant only to achieve the objectives of the parent law. In the instant case a full-fledged and comprehensive mechanism for determination of merit has been provided in the parent law and such determined merit cannot be left at the mercy or sweat will of authority which under the parent law is not vested with any power to determine its own merit substituting the one determined through a prescribed manner by a Committee consisting

of the specialists and specifically constituted for the said purpose alone.

11. Clause 12(1) of the Statute provides that Chancellor may call the top 03 candidates for interview and then form his opinion regarding the most suitable but in the instant case no such exercise was carried out. Although, this clause has no backing of the parent Act but even otherwise without any interview there remains no basis to form opinion by the Chancellor.
12. Another aspect of the issue is that the meeting of the Senate held on 01.09.2022, in which the recommendations in order of priority were made was presided over by the Chancellor himself meaning thereby that the recommendations in order of priority made by himself were later ignored and disturbed by the Chancellor without having interview of the

recommended candidates and recording any reason or justification.

13. The Chancellor in the instant case happens to be the Worthy President of the State which being the highest office of the State is the most dignified, the most respectable and the most credible office in a State. Therefore, it is necessary that detailed reasons for declining to accept any recommendations of the Senate be recorded especially when no recommendations for fresh panel has been sought. To my estimation each and every authority exercised by any institution, office or public office holder in a State has to record reasons and grounds for the same with no exception regardless of how high the said institution, office or public office holder is in the hierarchy of a State. The concept of modern constitutional State emerged on

negation and denial of old concept of “the King can do no wrong”. It is utmost important for us being Muslims and Islam being the State religion as per AJ&K Interim Constitution 1974, that Islam much before the emergence of modern constitutional State negated any unstructured, unregulated and unaccountable authority to vest in any institution, office or person. Therefore, it goes without saying that due process is a requirement that matters be resolved in accordance with established procedure, rules and principles in a fair and transparent manner. So it is held that even there being no statutory provision requiring the Chancellor to record reasons for ignoring respondent No. 1 and another being first and second in order of priority and choosing the appellant being the third (far behind as per

marks granted by the Search Committee) the principle of natural justice required to record valid and justiciable reasons for doing so to bring the same in conformity with reasonableness, justness, fairness, openness, good conscience, equity, equality and injunctions of Islam being the Supreme Law of the land. This Court has already held so in its judgment reported as *Azad Govt. & others vs. Kh. Muhammad Saleem Bismal & 17 others*, [2022 SCR 430]. The relevant portion of the said judgment is reproduced here which reads as under: -

“8. It may be stated here that Act, 1986 provides a complete and comprehensive mode for removing the Chairman or any Member of the P.S.C. on the ground of any misconduct. In such situation, to look into the matter, a Judge of the High Court is appointed by the President and after completion of inquiry, proceedings for removal of any Member or Chairman, can be

initiated. In presence of clear and conspicuous procedure, removal of the respondents from their respective offices on the same day when the Ordinance No. X1 of 2016 was promulgated, is beyond comprehension. Even otherwise, if it is assumed that there were no statutory provisions even then the principle of natural justice demands that order should be based on reasons and fairness, which is lacking in the matter in hand. The doctrine of natural justice has been evolved and followed by the judiciary to protect the fundamental rights of people and to feature the concept of fairness by administrative authorities. At every stage of the proceedings, the essentials and principles of natural justice are always kept in mind so as to prevent the miscarriage of justice and arbitrariness and to uphold fairness, reasonableness, good conscience, equity and equality. The doctrine of natural justice is so flexible in nature that it changes itself to an extent where the rights of an individual are infringed. If any authority violates the principle of “natural justice in causa sua” then the order passed would be voidable i.e. it can be challenged before any Court. But if any authority violates the principle of “audi-alteram partem” then the order would be regarded as “void ab-initio”. Thus, the adjudicating authority must have

sufficient knowledge about principles of natural justice i.e. *audi alteram partem* and *nemo iudex in causa sua* before articulating any judgment, hence, it should be concluded that; “the universal and absolute law is that natural justice which cannot be written down, but which appears to hearts of all”

This Court in the case reported as *Muhammad Yousaf vs. Arshad Mehmood and another* (2014 SCR 1521), has been held as under:-

The survey of the judgments on the subject reveals that the Courts especially in criminal cases of conviction have liberally exercised powers of condonation of delay and the wisdom behind exercise of such powers in such manner is clear that at least the convicted person should have no doubt in his mind that his right of hearing has been denied. 12. As it is divine right even the Allah Almighty who is omnipotent, is so kind that he also provided this right to His creatures. In this case, the unusual mode of conducting the proceedings by the trial Court creates some doubts in the minds that the proper course of safe administration of justice has not been adopted.”

14. In a modern constitutional State all administrative acts are subject to judicial

review and in absence of any statement of reasons for an act such as appointment notification dated 12.09.2022, in violation of the order of priority (merit) cannot be judged in accordance with the Constitution and Law. The process of writing reasons materially assists decision-makers during the process facilitating the detailed consideration of all necessary issues and enhances the public confidence in the authority. Therefore, to ensure the rule of law the statement of reasons specially while bypassing or ignoring the merit determined by the competent forum, is essential. The Supreme Court of Pakistan while dealing with the identical propositions regarding appointment of Vice Chancellor in its judgment of Human Right's case No. 13865-P of 2018 and *Dr. Iqrar Ahmed Khan vs. Dr. Muhammad*

Ashraf, [2021 SCMR 1509], has held that order of priority set out by the Search Committee and recommended by the Senate cannot be disturbed and the appointments of Vice Chancellor have to be made on principle of merit unless cogent reasons for not appointing the person who is highest in merit, are given which would be subject to judicial review. Through the judgment (*supra*), the Apex Court of Pakistan after examining the reasons recorded by the Chancellor for not appointing the one who was highest in merit held the said reasons non-cogent and declared that the person with highest merit was denied an appointment unlawfully and arbitrarily.

15. It is worth mentioning that the Supreme Court of Pakistan's judgment reported as Professor *Dr. Razia Sultana and others vs. Professor Dr.*

Ghazala Yasmeen Nizam and others [2016 SCMR 992], is distinguishable as in that case three persons recommended by the Search Committee, were not on the basis of any preference so Chancellor/ Governor on the advice of the Chief Minister appointed one out of three candidates.

16. Nutshell of the above discussions is that the findings recorded by the High Court that advice of the Chief Executive was required for making appointment of the Vice Chancellor, in view of the relevant law on the subject, discussed in the majority judgment, cannot be maintained and in this regard, I fully agree with the findings recorded in the majority judgment. However, I am of the view that as while making the appointment of the appellant the order of priority set by the Senate has been disturbed by

the Chancellor; therefore, under law the Chancellor should have recorded the reasons in this regard which are missing in the case. In my opinion, the learned High Court while accepting the writ petition, instead of remanding the matter to the Senate should have remanded the same to the Chancellor, so the impugned judgment is modified accordingly. As the order of the appointment of the appellant has been issued contrary to the order of priority set by the Senate without recording reasons, therefore, the same cannot be protected and prayed relief cannot be granted to the appellant.

In the light of the above discussion, although, I concur with the findings recorded in the majority judgment that Chief Executive has no role in the appointment of the Vice

Chancellor, but at the same time in my firm view the relief prayed by the appellant in the appeal, for restoring his appointment notification, cannot be given to him. Thus, in such a situation, I partially accept this appeal in the terms indicated hereinabove with no order as to costs.

JUDGE

COURT ORDER

By majority of three to one, this appeal is accepted and the impugned judgment of the High Court dated 12.01.2023 is set aside, consequently, the writ petition filed by respondent No.1 before the High Court is dismissed.

CHIEF JUSTICE JUDGE JUDGE

JUDGE

Mirpur

24.02.2023