

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 830 of 2025

[Altaf Ahmed Memon *versus* Government of Sindh and others]

along with

C. P. No. D – 1245 of 2025

[Aftab Ahmed Pathan *versus* Government of Sindh and others]; and

C. P. No. D – 1304 of 2025

[Tariq Hussain Soomro and another *versus* Province of Sindh and others]; and

Present:

Mr. Muhammad Faisal Kamal Alam, J.

Mr. Jawad Akbar Sarwana, J.

- Date of hearing : 27.03.2025, 20.05.2025 & 23.05.2025.
- Petitioners : Altaf Ahmed Memon and Aftab Ahmed
[in C. P. Nos.D-830 & 1245/2025] Pathan, through Mr. S. Ali Ahmed Zaidi, Advocate.
- Respondents No.1 & 2 : Government of Sindh and another,
[in C. P. Nos.D-830 & 1245/2025] through Barrister Zeeshan Adhi, Additional Advocate General Sindh and Mr. Abdul Jalil Zubedi, Additional Advocate General Sindh along with M/s. Muhammad Sohail Imam, Legal Officer, Khadim Hussain, Law Officer, Syed Israr Hussain, Law Officer and Farhan Akhtar, Deputy Secretary [Admin], Universities & Boards Department [Respondent No.2].
- Respondent No.3 : The Search Committee, through M/s. Syed Saulat Hussain Rizvi and S. M. Mehdi Raza, Advocates, along with Dr. Syed Tariq Rafi, Chairman, Sindh HEC/Search Committee.
- Respondents No.4 : Dr. Asif Ali Memon, through Mr. Jaleel
[in C. P. Nos.D-830 & 1245/2025] Ahmed Memon, Advocate.
- Respondents No.5 : Ghulam Hussain Soho, through M/s.
[in C. P. No. D-830/2025] Nasrullah Korai and Gulsher Mari, Advocates.
- Petitioners : Tariq Hussain Soomro and Zafar Qureshi
[in C. P. No. D-1304/2025] through M/s. Malik Naeem Iqbal, and Malik Waseem Iqbal, Advocates.
- Ms. Shazia Hajrah, D.A.G. along with Mr. Muhammad Ishaque, Assistant Attorney General.

JUDGMENT

Muhammad Faisal Kamal Alam, J: Due to commonality, these listed Petitions are decided by this Judgment.

2. All the Petitioners are aspirants for the Post of Chairmen [in BPS-20] of Educational Boards, to be appointed through Recruitment Process vide ‘Vacancy Announcement’ / Advertisement in various Newspapers. Have challenged the Shortlisting of private Respondents, who are recommended by the Official Respondents for the Post of Chairmen for different Boards of the Province of Sindh established and functioning under the Sindh Boards of Intermediate and Secondary Education Ordinance, 1972 [the “**Governing Law**”].

3. Mr. S. Ali Ahmed Zaidi, Advocate, appearing for the Petitioners [in C. P. Nos. D – 830 and 1245 of 2025], contended that the Chairmen and other Posts in the Boards under the above Governing Law have to be filled in terms of the said Law and no other recruitment procedure can be adopted; that Search Committee, which has been involved in recruitment process was not empowered to do so because in terms of its parent Statute, viz. Constitution of the Search Committee Act, 2022 [the “**Said Act**”], the said Search Committee is constituted for the specific purpose as mentioned in Section 4 thereof, relating to, *inter alia*, prescribing the recruitment criteria for Vice Chancellor and other Officers for different Educational and Technical Boards in this Province; referred to credentials of the private Respondents as Chairmen and stated that Petitioners of these Petitions are much more qualified having far better experience of Government Service; alleged that selection of Respondent No.11 [Dr. Zahid Ali Channar] was made due to the fact that the said Respondent while working in Sindh Madrassatul Islam University purportedly facilitated Postgraduate Decree for the present Secretary of Respondent No.2 and in this regard News articles have been referred to, which are appended as Annexures P/16 and P/17 [*in C. P. No. D – 830 of 2025*]; that Summary dated 03.02.2025 for approval of Respondent No.1 in respect of filling eight vacant Posts of Chairmen for Education and Technical Boards is illegal, *inter alia*, because the entire recruitment process was not transparent; that purported Selection Committee did not give breakup of marks allocated by each Interviewer while interviewing the Petitioners and Respondents / Candidates for the

above Posts, which is yet another illegality; this was crucial as no written tests were conducted and selection process was entirely based on interview, casting a heavier onus on the Search Committee to ensure proper record and indulge in meaningful deliberations [Paragraph-12 of the Written Synopsis of Petitioners]; the draft Rules under the Governing Law have been framed, receiving assent of the Controlling Authority, but could not be formally notified, but for all practical purposes and effect, the said draft Rules can be adopted and followed for filling vacancies in different Education and Technical Boards, but unfortunately it was not done and the recruitment was made under the above Said Act [of 2022].

Has further highlighted fact of C. P. No. D – 1245 of 2025, that the Respondent No.5, who lastly held the Post as Director in BPS-19 was preferred over the Petitioner [of the said Petition], that is, Aftaf Ahmed Pathan, who retired in BPS-22 Officer, but no reason was disclosed by the Search Committee for this ‘questionable selection of Respondent No.5’. To augment his arguments, he has cited the following Case Law_

- i. **2012 YLR 1801**
[*Miss Rabia Khan and 3 others versus Province of Sindh and 3 others*] – **Ms. Rabia Khan**; and
- ii. **2022 S C M R 694**
[*Uzma Mansoor and others versus Vice-Chancellor Khushal Khan Khattak University, Karakand others*].
- iii. **P L D 2012 Supreme Court 132**
[*Muhammad Yasin versus Federation of Pakistan through Secretary, Establishment Division, Islamabad and others*] – **OGRA Case**; and
- iv. **2025 S C M R 216**
[*Ayaz and others versus Mustafa Saeed and others*] – **Ayaz Case**.

4. The Legal Team of Petitioners has attempted to draw distinction between the recent Judgment handed down by the learned Division Bench at Circuit Court Hyderabad [in C.P. No.D-396 and C.P. No.D-494 of 2025], with regard to the same selection process, dismissing the Petition and the present *LIS*. It is argued that the said Judgment is *per incuriam* as it has not followed the principle laid down in other Judgments of this Court and the Hon’ble Supreme Court and hence is not binding on this Bench.

5. Malik Naeem Iqbal, Advocate, representing the Petitioners [in C. P. No. D – 1304 of 2025], *namely*, Tariq Hussain Soomro and Zafar Qureshi, argued that the recruitment process is not transparent for the reason that the eligibility criteria has been relaxed / reduced to accommodate the favorite candidates. Referred to earlier Advertisements [*at pages-11 and 13*], as evidence, and states that earlier, besides, academic qualifications, it is mentioned that seventeen years of Teaching and Administrative Experience was also required, which is done away in the present recruitment process. Contended that this is also violative of Statutory criteria as mentioned in Section 15, Sub-Section 2(3), requiring that Chairman of the Board, be appointed under the Governing Law, should be a Principal Executive and Academic Officer of the Board. Stated that this statutory eligibility is quite logical and corresponds to the Office of Chairman of the Board, *inter alia*, that an incumbent should be an academician.

6. The above Petitions are opposed through Parawise comments of Official Respondents. Barrister Zeeshan Adhi, Additional Advocate General Sindh along with Mr. Abdul Jalil Zubedi, Additional Advocate General Sindh, representing Respondents No.1 and 2, argued that the Petition is not maintainable and in addition to this Petition, several Suits have been filed by different persons, who were holding Charge of Chairman of the Board as stopgap arrangement, in order to prolong their tenure. Detail of the litigation is mentioned in Parawise Comments under Paragraph-2. Contended that the process of recruitment is in pursuance of the Court's Order, which is being done in a transparent manner and the Petitioners have no *locus standi* to challenge the same merely because they have not been selected. No violation of any statutory provision is made; the Governing Law does not prescribe any specific procedure for appointment of Chairmen and Sections 14 and 15 whereof empower the Government of Sindh / Official Respondents to appoint the Chairman, Secretary, Controller of the Examination, being the 'Controlling Authority', as envisaged in amended Section 12 of the above Law [*by virtue of Amendment incorporated through Sindh Act XXV of 2011*]. Argued that it is misconceived argument that Search Committee cannot be convened for selecting and appointing Chairmen of the Boards, because it is specific to the Universities, as this issue has already been decided by this Court and the Judgment is reported in the case of *Abdul Sami Soomro and others versus*

Province of Sindh through Chief Secretary and others [2016 P L C (C.S.) 787]

–Soomro case. Has further placed reliance in the following Decisions_

- i. **2024 P L C (C.S.) 508**
[*Senior General Manager, Pakistan Railways and others versus Muhammad Pervaiz*];
- ii. **2018 P L C [C.S.] Note 129 [Sindh High Court]**
[*Muhammad Imran Khan Chishti versus Province of Sindh and others*] – **Chishti Case**; and
- iii. **Unreported Order dated 21.12.2017 passed by the Hon'ble Supreme Court in Civil Petition No.536-K of 2017**
[*Muhammad Imran Khan Chishti versus Province of Sindh and others*].

7. *Whereas*, the stance of Syed Saulat Hussain Rizvi, assisted by Mr. S. M. Mehdi Raza, Advocate, representing Respondent No.3, is somewhat similar to that of Respondent No.2, *inter alia*, justifying that the entire process was transparent because it has the approval of the Cabinet so also recent Judgments. Emphasized by referring to his Parawise Comments, that how numerous Court Cases have been filed, with the object to sabotage the ongoing Selection Process, particularly by those who were holding such Positions as a Stop Gap Arrangement.

8. Mr. Nasrullah Korai, Advocate, assisted by Mr. Gulsher Mari, Advocate, representing private Respondent No.5, who are recommended for appointment, also opposed these Petitions. Stated that appointment through competitive and merit-base selection process, through Search Committee, has already been endorsed by this Court in the case of Abdul Sami Soomro [*ibid*] and subsequent judicial pronouncements and the argument of Petitioners' side in this regard is untenable. Stated that equal opportunity was given to all the candidates including Petitioners and private Respondents and the selection of the latter is on merits and after proper evaluation of the Search Committee, therefore, no illegality is committed; hence, Petitions are liable to be dismissed.

9. Arguments heard and record perused. Written Synopsis were also submitted on behalf of the Petitioners and private Respondent No.5.

10. Summary of the case law cited by Legal Team of the Petitioners is, that no recruitment can be done on criteria not mentioned in the advertisement; qualification and competency in all fairness should be considered; in such nature of selection process, principle of legitimate

expectations can be applicable if prescribed criteria is violated and it then gives a challenger / petitioners a *locus standi* to question such process, which can result in its annulment.

Admission of MBBS Program was challenged in the reported case of Ms. Rabia Khan [*ibid*]; held that even the Executive Authority does not have unfettered and / or uncontrolled discretion, which is regulated under Article 137 of the Constitution, or other statutory scheme; through Executive Authority, the Secretary cannot impose the Government's Will on the Universities by means of Circular / Corrigendum as Universities are established and operate under their relevant statute and have an autonomous status.

In OGRA Case [*ibid*], the Hon'ble Supreme Court annulled appointment of Chairman OGRA as the selection process was found not transparent and based on nepotism to select a person of choice; reiterated the settled principle that where the government's discretion is involved in selecting the persons for key posts, that discretion is structured and is to be exercised within the statutory scheme; certain parameters are also mentioned in the Judgment, which is reproduced herein under_

“36. *to test the validity of the appointment process in this case, it would be useful to adopt a test based on the following considerations:*

- (a) *whether an objective selection procedure was prescribed;*
- (b) *if such a selection procedure was made, did it have a reasonable nexus with the object of the whole exercise, i.e. selection of the sort of candidate envisaged in section 3 of the Ordinance;*
- (c) *if such a reasonable selection procedure was indeed prescribed, was it adopted and followed with rigour, objectivity, transparency and due diligence to ensure obedience to the law.”*

The latest Decision of the Hon'ble Supreme Court reported as **2025 S C M R 216** [*Ayaz and others versus Mustafa Saeed and others*], as mentioned in the Written Synopsis of Petitioner is also considered. The matter relates to the advertisement published in newspapers for filling two vacant posts of Assistant Conservator Forests [BPS-17] for the urban areas and amongst contestants were Petitioners, who were already working in the Forest and Wildlife Department, Government of Sindh as Range Forest Officers [BPS-16]. Subsequently, the vacancies were raised from 2 to 7 and upper age limit was also relaxed. Certain procedural lapses in recruitment were highlighted by the Respondents, who were Petitioners before this

Court and the Apex Court agreed with the impugned Judgment of this Court, for setting aside the recruitment process and re-advertising the Post in question afresh. Ratio for the said Decision was that through an addendum of subsequent date, even after last date of submission of applications, amendment was made in the advertisement that altered the complexion of the recruitment process; secondly, the two Posts were divided into urban and rural depriving the candidates from rural area for the said Post as cutoff date had passed; thirdly, number of vacant posts were raised from two to seven, without any re-advertisement. It is held that Sindh Public Service Commission should select most deserving and competent candidates rather than blue eyed based on nepotism and favoritism. Lack of transparency and preferential treatment would damage the good governance. Since transparency was not there in the recruitment process, therefore, it was set aside with the above directions.

11. Résumé of the case law cited by the Legal team of Respondents is, that the ambit and purview of judicial review of government policies is well-settled, that the Court can neither act as an appellate authority with the aim of scrutinizing the propriety, suitability and / or adequacy of a policy, nor may act as an advisor to the Executive on matters of policy; however, interfere only when the policy in question violates the fundamental rights of the citizens, any constitutional or statutory provisions.

In Abdul Sami Case [*supra*], is relevant in which provisions of the present Governing Law were discussed. It is ruled by learned Division Bench of this Court that appointment of Officers including Chairmen, Controller of Examination and Secretary through Search Committee is not illegal, rather it permits competitive process across the Board and best persons can be selected for such important Offices.

In Chishti Case [*ibid*], the stance of petitioner, who was claiming to be lawfully appointed Controller of Examination Board of Intermediate was repelled by this Court and it is held that the said post can be filled through initial appointment ‘*by effecting competition through a Public Notice published in newspaper. It is a settled principle in Service Jurisprudence that the eligibility of a candidate has to be determined in accordance with advertisement for the post, Service Rules governing the appointment and any amendment or instruction back by law*’. This Judgment was upheld by the Hon’ble Supreme Court in Civil Petition No.536-K of 2017, relied upon by the Respondents’ side.

12. In compliance with the directives of this Court, A.G. Office submitted a Report on behalf of Respondent No.2 [Universities and Board Department], *inter alia*, with Minutes of the Meeting of the Search Committee [this record is available from pages-689 to 761 in C. P. No. D – 840 of 2025]. Perusal of these Minutes confirm that more than hundred Candidates [Names also mentioned] were interviewed in nine batches and those secured more than fifty marks were recommended by Respondent No.3 – Search Committee for the Position of Chairmen in Educational / Technical Boards in Sindh. This Tabulation shows that the private Respondents have scored more marks than the Petitioners and thus the private Respondents were recommended for the said Posts.

13. During proceeding, Petitioners' Counsel [Mr. Ali Ahmed Zaidi] submitted Statement dated 23.05.2025 along with certain documents including the Summary for Chief Minister Sindh, that five successful candidates have been appointed as Chairmen of Educational / Technical Boards, *whereas*, Posts of Chairman for the Board of Intermediate Education Karachi and Board of Secondary Education Hyderabad are vacant, because the selected candidates, namely, Dr. Chandio and Mr. Tunio, who were top scorers, had declined to join their respective Departments. A proposal was made that whether candidates from the Waiting List be selected in order to expedite the entire process or fresh advertisement is given, and it has **been decided that these two vacant Posts** will be filled through re-advertisement in order to select best suitable candidates. This latest Decision of Respondents also nullifies the objection of the Petitioners' side, that in such a competitive process no waiting list is required to be prepared.

14. The Recruitment Rules till date have not been notified under the Governing Law and during course of the arguments, it is not disputed by either of the Advocates for the Parties, that at present it is the discretion of the Competent Authority to appoint Chairmen of the Boards under the Governing Law, *inter alia*, Section 14 (2) thereof. As correctly pointed out by the learned Additional Advocate General Sindh that the Cabinet of the Provincial Government took the Decision that selection should be made through Search Committee established under the above Statute, in order to ensure transparency and merits. **Decision dated 12.12.2024 of the Cabinet is at Page 431, Annexure A/3 (of the Parawise Comments of Respondent**

No.2). The above cited Case Law on behalf of the Respondents, in particular Soomro Case, endorsed the Decision of the Official Respondents, that appointments be made through competitive process, and for that purpose, the Search Committee was constituted.

15. In absence of the specific statutory Rules of appointment and selection, a recruitment process can be borrowed from another special Statute, viz. The Constitution of the Search Committee Act, 2022, promulgated with the sole object to make appointments in public sector Universities in a transparent manner. Since underlying object of the Boards in terms of the Governing Law is, *inter alia*, to regulate, develop and control Intermediate and Secondary Education; recognize and de-recognize educational institutions, grant certificates, diplomas to persons who have passed examinations; therefore, it is necessary to headhunt and select the best suitable candidates as Chairmen of the Board, who can ensure the accomplishment of the above statutory functions of the Respondent No.2-the Universities and Board Department. Hence, no illegality is committed by the Committee formed under the above Act of 2022, the composition whereof is mentioned under Sub-Section (2) of Section 3, that includes, the Chairman, Sindh Higher Education Commission [SHEC].

16. Similarly, objection of both the learned Advocates for the Petitioners, especially Mr. Naeem Iqbal Advocate, that amendment in the eligibility criteria as mentioned in the present Subject Advertisement is done with the object to favour private Respondents, because it is a departure from the earlier Advertisements [as stated in the foregoing paragraphs], is also untenable, because, the eligibility criteria has not been substantially altered as such, that can defeat the statutory command, *inter alia*, as still, Minimum Master's Degree along with 17 years-experience in BPS-17 and above with minimum 8 years' experience in BPS-18 and above in Government, autonomous or semi-autonomous body, is required; *alternatively*, 8 years' experience of senior management in private sector coupled with financial management and knowledge of examination system. Besides, through the present competitive mechanism, **the 'discretion'** earlier enjoyed by the 'Competent Authority', is replaced by a collective assessment and wisdom of the Search Committee.

17. The Judgment handed down by learned Division of this Court at Circuit Court Hyderabad in C. P. Nos. D – 396 and 494 of 2025, has been perused. It relates to the present/ Subject Advertisement and Selection Process.

18. In the above Judgment, rival contentions of the Advocates for the Parties have been duly considered. The marks obtained by the Petitioner of the above mentioned Petitions as compared to their Opponents (private Respondents) are taken into account. It is ruled that appointment of Chairman, Secretary and the Controller of Examination falls within the exclusive domain of the Controlling Authority and no illegality was found in the present selection process of the Respondents. Learned Bench has discussed the case law cited by the learned counsel while giving the Decision.

19. The above Judgment of *Ayaz Case* and other Case Law cited by the Petitioner's Counsel, is distinguishable from the facts of the present case as none of the factors mentioned therein, exists in the present selection process, which already being scrutinized in detail by the learned Division Bench of this Court [Hyderabad Circuit, *supra*].

Since the eligibility criteria mentioned in the Advertisement has direct nexus/ rationale with the object of the Subject Matter, that is, the selection of candidates in terms of the statutory scheme of the Governing Law, therefore, neither any illegality has been committed, nor, there is lack of transparency {2007 Y L R 161 [Karachi]- *M/s Shams and Brothers Versus Government of Pakistan*}.

20. The question framed on 27.03.2025 is, therefore, answered as follows_

- i. Since no Statutory Rules and Regulations at present exist for filling the requisite position of Chairmen, under the Governing Law, therefore, in view of the above, Search Committee also established under the Special Statute, can be tasked with the selection process.
- ii- *Secondly*, no illegality is found in the entire selection process. The Petitioners were given equal opportunity to compete in the process but were unable to secure requisite marks.

21. In view of the above, these Petitions are dismissed along with all pending application(s), if any.

22. The record submitted by Respondent No.3, as observed in the Order of 23.05.2025, presently in the custody of learned Nazir, is directed to be returned as per Rules and Procedure to the representative of the Official Respondent No.3.

Judge

Judge

Karachi.

Dated: 15.09.2025.

Riaz / P.S.