

# IN THE HIGH COURT OF SINDH, ATKARACHI

C.P No. D-6254 of 2017

**Present:**

Mr. Justice Syed Hassan Azhar Rizvi  
Mr. Justice Adnan-ul-Karim Memon

Petitioner. Prof. Abdul Razzaque Shaikh, through  
Mr. Haider Waheed along with Mr.  
Sufiyan Zaman Advocates.

Respondents No.2: Through Abdul Salam Memon Advocate.

Respondent No.1 & 3: Through Abdul Jalil Zubedi, AAG.

Respondent No.4: Through Mr. Haq Nawaz Talpur  
Advocate.

Date of hearing: **10.10.2017**

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J: -** By invoking extraordinary Constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, the Petitioner seeks the following reliefs:-

- i) Declare that the appointment of Respondent No.4 in the absence of exercise of discretion in a structured manner by the Respondent No.1 shall be unlawful;***
- ii) Direct the Respondent No.1 to provide a copy of the Summary of the process of appointment of Vice Chancellor for the Liaquat University of Medical and Health Sciences upon which advice is to be made to the Respondent No.2.***

2. Brief facts of the case are that the post of Vice Chancellor Liaquat University of Health Sciences, Jamshoro (hereinafter referred to as LUMHS) fell vacant on 02.07.2017 and the

Government of Sindh advertised the same in Daily renowned Newspapers on 25.03.2017 for appointment. The prescribed qualification and experience contained in the advertisement is as under:-

**“not less than post graduate fellowship in a medical field or a PhD in relevant area from HEC/PMDC recognized university.**

**At least 25 quality research publications in national and international HEC recognized research journals.**

**A medical professional with 20 years’ experience in teaching/academic position with a substantial experience of working in senior/administrative positions.**

**Must possess outstanding and inspiring leadership with strong interpersonal and influencing skills and proven academic excellence.**

**Candidates must not be above 65 years of age at the time of submission of application.**

3. The Chief Minister’s Secretariat, Sindh, Karachi, vide Notification No. SO(U)/CMS/15-14/2013, dated 17.10.2016, reconstituted the Search Committee for selection of competent and qualified person(s) for the post of Vice Chancellors / IBA Directors in the Public Sector Universities in Sindh, which comprised the following:-

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|--|-------------------|
| 1. “Justice (Retd) Syed Deedar Hussain Shah<br><i>Former Judge Supreme Court of Pakistan</i>                       | Chairman          |
| 2. Dr. Mazhar-ul-Haq Siddiqui<br><i>Former Federal Secretary &amp; Former Vice Chancellor, University of Sindh</i> | Permanent Member  |
| 3. Syed Anwar Haider<br><i>Former Federal Secretary &amp; Former Home Secretary Sindh</i>                          | Permanent Member  |
| 4. Secretary, Sindh High Education Commission  | Ex-Officio Member |

**Co-Opted Members for General Universities**

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| 1. Prof: Dr. Qasim Pirzada<br><i>Former Vice Chancellor, University of Karachi</i>   |  |
| 2. Prof: Dr. S.M. Qureshi<br><i>Former Federal Secretary &amp; Former Vice Chancellor, Mehran University of Engineering and Technology, Jamshoro</i> |  |

**Co-Opted Members for Engineering Universities**

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| 1. Prof: Dr. S.F.A Rafeeqi<br><i>Former Professor and Former Pro-Vice Chancellor, NED University of Engg.&amp; Tech, Karachi</i> |  |
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2. *Prof: Dr. Abdul Qadeer Rajput*  
Former Vice Chancellor, Mehran University of Engineering and Technology, Jamshoro

**Co-Opted Members for General Universities**

1. *Prof: Dr. Iqbal Memon*  
Former Professor of Surgery Dow University of Health Sciences, Karachi and Former Principal Benazir Bhutto Shaheed Medical College Lyari Karachi.
2. *Prof: Dr. Manzoor A. Mirza*  
Former Professor / Head of Department of Ophthalmology, Dow University of Health Sciences, Karachi

4. The terms of references of the committee are as under:-

- i) To scrutinize and shortlist the applications in the light of eligibility criteria given in the advertisement.**
- ii) To hold interview of the shortlisted candidates having a proven track record of leadership in the fields of academia, administration and management. The Committee shall consider the applicant integrity, professional experience and contribution of public service.**
- iii) To recommend a panel of three most suitable candidates (in alphabetical order) to the Chief Minister, Sindh. The Chief Minister, Sindh may, select the most suitable candidate after interviewing the three candidates, considering their integrity, academic excellence, administrative experience and the abilities necessary to perform the job.**

5. As per averments contained in the comments filed by the Respondent No. 01, in response to the advertisement, 20 applications were received. The Search Committee, consisting of the following members, in a meeting held on 15.08.2017, scrutinized the credentials of 20 candidates and short listed seven candidates for interviews. Dr. A. Q. Rajput, Chairman, Chartered Inspection and Evaluation Committee was called as special invitee to assist the Committee in evaluation of research publications as per Higher Education Commission Criteria.

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|---|-----------------------------------|
| 1. Justice (Retd.) Syed Deedar Hussain Shah | Chairman                          |
| 2. Dr. Mazhar-ul-Haq Siddiqui               | Permanent Member                  |
| 3. Syed Anwar Haider                        | -do-                              |
| 4. Secretary (Universities and Boards)      | Ex. officio member                |
| 5. Prof. Dr. YounusSoomro                   | co-opted for Medical Universities |

6. The Search Committee discussed the benchmark evaluation criteria so also for awarding marks to the candidates during interview and unanimously agreed to the following criteria:

**“05 marks for Ph.D/Fellowship, 15 marks for research publications (in national and international HEC recognized research journals), and 80 marks for interview considering the academic and leadership abilities, attainments, as well as, significant evidence of scholarship, administration, strategic planning, financial management and resource development.”**

7. The Search Committee interviewed the seven shortlisted candidates on 18.08.2017 and after considering their integrity, academic excellence and administrative experience as per above criteria, unanimously recommended three names (in alphabetical order) to the Chief Minister Sindh for recommending one name to the Chancellor / Governor Sindh for appointment as Vice Chancellor LUMHS, Jamshoro.

Prof. Abdul Razaque Shaikh  
Prof. Dr. Bikha Ram Devrajani  
Prof. Dr. Muhammad Akbar Nizamani

8. Per learned Assistant Advocate General Sindh, the Chief Minister after interviewing the above three candidates, recommended the name of Prof. Dr. Bikha Ram Devrajani to the Chancellor/Governor Sindh for appointment as Vice Chancellor, LUMHS, Jamshoro. Petitioner, being aggrieved and dissatisfied with the impugned recommendations of the Chief Minister, Sindh, has preferred this Petition, which was presented before this Court on 19.09.2017.

9. On issuance of notice, the Respondent No. 1 filed para-wise comments.

10. Mr. Haider Waheed, learned counsel for the Petitioner, has argued that the recommendation in favour of the Respondent No.4 for the position of Vice Chancellor, LUMHS, Jamshoro is based on malafide intention, without considering merits of the candidates; that no plausible explanation or reasoning has been assigned for the exercising such discretion by the Chief Minister Sindh; that the Respondent No.1 acted beyond its mandate and power as provided under the law, by ignoring findings of the Search Committee and arbitrarily recommended a candidate, who stands at Sr. No. 02 in the merit list, which action is illegal, unlawful and without jurisdiction; that in the present matter, the merit has been bypassed and nepotism has also prevailed, which is in violation of principle of structured discretion. Learned counsel has emphasized that entire impugned process being float for want of a well thought out structured objective criteria, and lacking due process, gave way to arbitrariness, ambiguity and whimsical approach; that the position of Vice Chancellor is a public office and thereby appointing a person on such high post, who is not eligible to be considered for such position thereby caused grave loss to the public at large. Learned counsel for the Petitioner in support of his contention has relied upon in the case of ***Pakistan Medical Association (Center) Vs. Chancellor Dow University of Health Sciences and others (2016 PLC CS 1232)*** and argued that the discretion is to be exercised according to rational reasons. He further added that the action, which does not meet the threshold requirements is considered to be arbitrary and misuse of power. He further added that the Search Committee recommended three candidates for the position of Vice Chancellor and the Petitioner

has obtained marks more than the Respondent No.4, therefore, Petitioner is entitled to be considered for the position of Vice Chancellor and not the Respondent No.4. He further argued that the wrong advice has been given to the Governor / Chancellor for appointment of Respondent No.4 without any reasons; that it was bounden duty of the Chief Minister to recommend the candidate for the position of Vice Chancellor as per recommendation of Search Committee on merit.

11. Mr. Abdul Jalil Zubedi, learned Assistant Advocate General, Sindh, representing the Respondents No.1 and 3, has argued that the Search Committee headed by Justice (R) Deedar Hussain Shah adopted the benchmarks for awarding marks as discussed supra. He further contended that the Search Committee after interviewing the candidates recommended following three suitable candidates in alphabetical order for the post of Vice Chancellor LMUHS, Jamshoro.

- Prof. Abdul Razaque Shaikh
- Prof. Dr. Bikha Ram Devrajani
- Prof. Dr. Muhammad Akbar Nizamani.

He next argued that summary was floated to the Chief Minister Sindh to recommend one candidate to the Chancellor / Governor Sindh for appointment as Vice Chancellor, LUMHS, Jamshoro. Learned AAG, during the course of arguments, submitted a statement dated 10.09.2017, accompanied with the copies of minutes of meeting of Search Committee for selection of Vice Chancellor of LUMHS, Jamshoro; evaluation and marks obtained by three candidates in the said interview though it was not requirement under the terms of reference to award marks to

any candidate; however, it was clarified in the said terms of reference that the Search Committee has to recommend a panel of three suitable candidates (in alphabetical order) to the Chief Minister, who shall after interviewing the candidates, recommend the most suitable candidate amongst them. He further added that the Government of Sindh/Chief Minister recommended one of the suitable candidate namely Prof. Dr. Bikha Ram Devrajani for the position of Vice Chancellor, LUMHS, Jamshoro, to the Worthy Chancellor for issuance of Notification of appointment. He added that there is no malafide intention on the part of Government as everything has been done in accordance with law and on merit. He lastly prayed for dismissal of the instant Petition. In support of his contention, he relied upon the case of ***Rana Amir Raza Ashfaq and others Vs. Dr. Minhaj Ahmed Khan and others (2012 SCMR 6)***, ***Prof. Dr. Razia Sultana and others Vs. Prof. Dr. Ghazala Yasmeen Nizam and others (2016 SCMR 992)*** and argued that the discretionary power of recommending anyone out of the candidates recommended by the Search Committee lies with the Competent Authority viz. Chief Minister, Sindh, under the law; and to advise the worthy Governor / Chancellor for appointment of Vice Chancellor of LUMHS, Jamshoro. He lastly contended that the judgment reported in ***(2016 PLC CS 1232)*** relied upon by the learned counsel for the Petitioner is distinguishable on the facts and circumstances of the present case, therefore, the instant Petition is liable to be dismissed.

12. Mr. Haq Nawaz Talpur, learned counsel for the Respondent No.4, adopted the arguments of learned AAG. However, he has drawn our attention that the absolute/discretionary power lies

with the Chief Minister, Sindh, as per amendment made in Sindh Universities and Institutes Laws (Amendment) Act 2014; he further argued that the case in hand is fully covered by the case law referred to hereinabove by the learned AAG; that the judgment reported in the case of ***Pakistan Medical Association (Center) through General Secretary and others vs. Chancellor Dow University of Health Sciences and others (2016 PLC CS 1232)*** relied upon by the learned counsel for the Petitioner is distinguishable on the facts and circumstances of the present case.

13. Mr. Abdul Salam Memon, learned counsel for the Respondent No.2, stated at the bar, that the matter may be decided on merits and any order passed by this Court in the present case shall be complied with in letter and spirit.

14. During the course of arguments Mr. Suleman Dahri, learned counsel put his appearance and filed vakalat nama on behalf of Applicant Professor Muhammad Akbar, which is taken on record. Learned counsel intended to move an application under Order 1 Rule 10 CPC and attempted to argue the matter that the applicant/Intervenor is one of the candidate recommended by the Search Committee, therefore he may be heard. Since we have already heard this petition at Katcha Peshi stage by consent of learned counsel for the parties, therefore we declined to accept the application under Order 1 Rule 10 CPC, intended to be filed by Mr. Suleman Dahri learned counsel for Applicant/Intervenor. This matter was heard on 10.10.2017 and reserved for judgment.



15. We have heard learned counsel for the parties and have also perused the material available on record and case law cited at the bar as well.

16. As per Section 14(1) of the Liaquat University of Medical & Health Sciences Ordinance, 2000, the powers for appointment of Vice Chancellor were vested with the Chancellor/Governor; but, after amendment in law, the Government of Sindh/Chief Minister in light of recommendations of Search Committee, recommends a name to the Chancellor/ Governor for issuance of Notification relating to the appointment of Vice Chancellor.

17. We have noted that Section 14 of the Liaquat University of Medical and Health Sciences Ordinance No. VIII of 2001 has been amended vide Sindh Universities and Institutes Laws (Amendment) Act, 2014 Sindh Act No. V of 2015 and sub-Section (1) substituted in the following manner:-

***“A person having medical background shall be appointed as Vice Chancellor by the Chancellor on the advice of Government for a period of four years, which may be extended for one more term, on such term and conditions as Government may determine.”***

18. We have minutely perused the Notification dated 17.10.2016, whereby terms of reference of the Search Committee for selection of competent and qualified person(s) for the post of Vice Chancellor were notified as discussed in para No. 4 (supra).

19. Pursuant to the order of this Court dated 06.10.2017, a copy of minutes of meeting of Search Committee held on 15.08.2017 for scrutiny of credentials of candidates applied for the post of Vice Chancellor, LUMHS, Jamshoro was placed on record by the

learned AAG. Prima-facie, the minutes of meeting show that Search Committee conducted interviews of shortlisted candidates for the post of Vice Chancellor, Liaquat University of Health Sciences Jamshoro. The minutes of Search Committee meeting explicitly reflects that the Committee scrutinized credentials of short listed candidates for the post of Vice Chancellor and after interviewing them and considering their academic / administrative experience and suitability for the job, unanimously recommended three names (in alphabetical order), which included name of the present Petitioner also, to the Chief Minister, Sindh, for recommending one name to the Chancellor / Governor Sindh for appointment as Vice Chancellor LUMHS.

20. Record further reveals that the Search Committee ranked three recommended candidates on the basis of marks scored by them as follows:-

Sr. No.	Name of candidates	Marks obtained
1	Prof Abdul Razaque Shaikh	84.5
2	Prof. Dr. Bikha Ram Devrajani	83.3
3	Prof. Dr. Muhammad Akbar Nizamani	81.5

21. We have noted that the Search Committee recommended the above position of the candidates to the Chief Minister Sindh for the appointment as Vice Chancellor. Record further reflects that the Chief Minister Sindh after interviewing the above three candidates recommended to the Chancellor the name of Prof. Dr. Bikha Ram Devrajani for appointment as Vice Chancellor LUMHS, whose name was listed at Serial No. 2, by the Search Committee. The discretionary power under Section 14 (1) of Sindh Universities and

Institutes Laws (Amendment) Act, 2014, is in line with discretionary powers under Article 105 of the Constitution of Islamic Republic of Pakistan 1973, given to the Government of Sindh/ Chief Minister to advise the Chancellor to appoint Vice Chancellor for a period of four years, which may be extended for one more term, on such terms and conditions, as Government may determine.

22. We in the above background will deal with the question, whether the Petitioner can claim a right to be appointed as Vice Chancellor of LUHMS. The record reveals that the Petitioner has been awarded 84.5% by the Search Committee.

23. We are of the view that under the terms of reference (mentioned supra), the Search Committee was not required to assign marks. There is no yardstick on the basis of which search committee could have assigned marks; secondly the recommendations of Search Committee are not binding and the Chief Minister has been assigned discretion to nominate one candidate for the position of Vice Chancellor, after interviewing amongst the candidates recommended by the Search Committee (in alphabetical order).

24. In the instant case, since marks were awarded by the Search Committee and the Petitioner, on the basis of same, claims his appointment for the position of Vice Chancellor, LUMHS, Jamshoro, therefore, his claim cannot be acceded to. In this context, the law enunciated by the Hon'ble Apex Court in the case of ***Prof. Dr. Razia Sultana and others Vs. Prof. Dr. Ghazala***

***Yasmeen Nizam and others (2016 SCMR 992)***, covers the issue in hand. The relevant portion of the judgment is reported herein below:-

***“ 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 para-wise 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 the Chancellor/Governor to appoint anyone out of the candidates recommended by the Search Committee on the advice of C.M.”***

25. Reliance can also be placed in the case of **Dr. Zahid Jawed Vs. Dr. Tahir Riaz Chaudhary and others (PLD 2016 SC 637)**.

26. The case law cited by the learned counsel for the Petitioner is distinguishable on the facts and circumstances of the case in hand.

27. Reverting to the plea raised by the learned Counsel for the Petitioner that Chief Minister Sindh has wrongly exercised his discretionary powers without assigning any plausible reason to nominate Respondent No.4 for the position of Vice Chancellor of LUMHS, after interviewing him. Suffice it to say that marks given by the Search Committee are with reference to the criteria. The Chief Minister during process of appointment of Vice Chancellor may exercise his discretion, by picking any of the recommended candidates by the Search Committee, which cannot be gone into in exercise of judicial review as these are administrative decisions and unless it is shown that any fundamental right of the Petitioner

has been infringed, this Court will not interfere. There is no material placed before us, by which, we can conclude that discretion has been wrongly exercised by the Chief Minister, Sindh. Reliance can be placed in the case of ***Arshad Ali Tabassum Vs. The Registrar Lahore High Court (2015 SCMR 112)***.

28. In result of foregoing discussion, we do not find any merit in the instant Petition, which is hereby dismissed along with listed application(s)

**JUDGE**

**JUDGE**