

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Salahuddin Panhwar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 4485 of 2018

Prof. Dr. Jawed Badvi

Petitioner No.1

Through : Mr. Muhammad Ali Waris Lari, advocate
along with petitioner No.1.

Prof. Dr. Jan Muhammad Memon

Petitioner No.2

Through : Mr. Sarmad Hani, advocate.

Respondents No.1 to 3

Through : Mr. Salman Talibuddin Advocate General
Sindh along with Ms. Leela Kalpana Devi,
Addl. A.G and Mr. Ali Safdar Depar, AAG.

Respondent No.4

Through : Mr. Sohail Hayat Khan Rana along with
Ms. Sumaiya Jokhio and Ms. Kiran
Aslam advocates

Respondent No.5

Through : Mr. Muhammad Nishat Warsi, DAG

Respondent No.6

Through : Malik Naeem Iqbal, advocate

Dates of hearing : **28.9.2021 and 30.09.2021**

Date of Order : **30.09.2021**

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, Petitioner No.2 has impugned the recruitment process initiated by the Universities and Boards Department, Government of Sindh, for the position of Vice-Chancellor, Shaheed Mohtarma Benazir Bhutto Medical University, Larkana, (SMBBMU).

2. Brief facts of the case are that the post of Vice-Chancellor Shaheed Mohtarma Benazir Bhutto Medical University Larkana (SMBBMU) fell vacant in February 2018. Thereafter Secretary Universities and Boards Department, Government of Sindh advertised the subject post for appointment in renowned Daily Newspapers on 27.2.2018 for the appointment. The Chief Minister's Secretariat, Sindh, Karachi, constituted the Search Committee comprising of credible

academicians, independent members, with impeccable credentials for the selection of a competent and qualified person for the post of Vice-Chancellor in the Public Sector Universities in Sindh. The Search Committee received 18 applications which were scrutinized in its meeting held on 30.05.2018, and the decision was made to call the two shortlisted candidates namely, Prof. Dr. Aneela Atta-ur Rehman/respondent No.6 and Prof. Abdul Razaque Shaikh for interview on 08.06.2018, and unanimously recommended them in alphabetical order to Chief Minister Sindh for recommending one name for appointment as Vice-Chancellor, SMBBMU, Larkana. The competent authority after interviewing the two candidates recommended the name of respondent No.6, / Professor Dr. Aneela Atta-ur Rehman for the post of Vice-Chancellor, SMBBMU, Larkana for four years on usual terms and conditions vide notification dated 24.09.2018. For convenience sake, an excerpt of the notification dated 24.09.2018 is reproduced as under:-

“NOTIFICATION

***SO(U)/(U&B)/SMBBMU-L/10-3/2018/46:** In exercise of the powers vested in him under Section 10(1) of Shaheed Mohtarma Benazir Bhutto Medical University, Larkana Act, 2008 as amended by Sindh Universities and Institutes Laws (Amendment) Act 2018, the Honorable Chief Minister Sindh has been pleased to appoint Prof. Dr. Aneela Atta ur Rehman as Vice-Chancellor, Shaheed Mohtarma Benazir Bhutto Medical University, Larkana for a period of four years, on usual terms and conditions, with immediate effect. However, her appointment is subject to the final outcome of CP No.D-4485/2018 presently pending adjudication before the Honorable High Court of Sindh Karachi.*

*BY ORDER OF THE CHIEF MINISTER, SINDH
Alia Shahid
Secretary*

3. Petitioners being aggrieved by and dissatisfied with the non-consideration of their candidatures by the Search Committee for interview preferred this Petition, which was presented before this Court on 07.06.2018. This Court vide order dated 07.06.2018 directed the respondent-university to consider them for the interview, subject to their qualification. They being aggrieved by and dissatisfied with the non-compliance of the direction of this court moved contempt application, which was dismissed vide order dated 17.08.2018 with reasoning. Petitioners having seen the changing scenario approached this Court by filing application under Order 1 Rule 10 CPC (CMA

No.26421/2019) by arraying Dr. Aneela Atta ur Rehman as respondent No.6, which was allowed vide order dated 11.10.2019.

4. Today, when the matter was called, petitioner No.1 appeared in person and submitted application for withdrawal of this petition, which was allowed accordingly. However, petitioner No.2 prayed for the decision on merit.

5. Mr. Sarmad Hani learned Counsel for the petitioner No.2 has mainly contended that the recruitment process initiated by the Secretary Universities and Boards Department, Government of Sindh was compromised to accommodate the beneficiary / private respondent No.6, who had exerted the political influence upon the official respondents, just to accommodate her for the post of Vice-Chancellor, SMBBMU, Larkana; and, her selection was/is based on extraneous consideration, thus liable to be recalled. He further averred that petitioner No.2 was denied the opportunity to participate in the recruitment process by the Search Committee, unlawfully and arbitrarily; and, the reasons given for appointing respondent No.6 are clear on the subject post reflecting a predetermined decision. Per learned counsel for petitioner No.2 the impugned action on the part of the Search Committee not only lacks bonafide and transparency but also failed to assign cogent reasons. That while evaluating the candidature of the candidates, the Search Committee was not mandated to assign marks. Thus violated the law laid down by the Honorable Supreme Court in the case of Professor Dr. Razia Sultana and others a Professor Dr. Ghazala Yasmeen Nizam and others (2016 SCMR 992). He emphasized that neither the terms of reference required nor mandated awarding of any marks to candidates nor was so provided by the law. As such it could not be ruled out that the result compiled by the Search Committee was politically motivated; neither there was transparency in the interview conducted by the Search Committee. He added by saying that the reasons provided by the Search Committee are not justifiable and this court can examine them on the touchstone of validity, fairness, and compliance with the law, rules, and departmental practice; that it is settled law that, even the obiter dicta of the Honorable Supreme Court is binding on this Court. In support of his contentions, learned counsel for petitioner No.2 has relied upon the

statement dated 28.09.2021 and Orders passed by the Hon'ble Supreme Court. He next submitted that non-suiting petitioner No.2 by the Search Committee was an erroneous act on their part, therefore, the entire exercise undertaken by respondent-University for the position of Vice-Chancellor, SMBBMU is illegal and not sustainable under the law. He stressed that petitioner No.2 being eligible and qualified in all respect was/is entitled to participate in the recruitment process and denial by the respondent-University is against his fundamental rights as enshrined under the Constitution. Learned counsel lastly prayed for the annulment of the entire process, including the appointment of Respondents No.6.

6. Malik Naeem Iqbal learned counsel representing respondent No.6 has referred to the counter affidavit filed by respondent No.6 and argued that the advertisement was issued on 27.2.2018 for selection on the post of Vice-Chancellor, SMBBMU, Larkana. The Search Committee made recommendations strictly in accordance with the terms of qualifications prescribed under Shaheed Mohtarma Benazir Bhutto Medical University, Larkana Act, 2008 as amended by Sindh Universities and Institutes Laws (Amendment) Act 2018, and the Search Committee also acted under the provisions of the Act of 2008 in making the recommendation. Even note a single non-appointee out of the 18 candidates or any other person claiming to be eligible in terms of Shaheed Mohtarma Benazir Bhutto Medical University, Larkana Act 2008, has questioned the appointment of respondent No.6 made by respondent-university. Therefore, petitioner No.2 being a non-appointee/not eligible for the post, cannot question and raise such grounds in a Constitution Petition, hence, grounds taken by him are beyond the scope of the writ of quo-warranto as envisaged under Article 199(1)(b)(ii) of the Constitution, 1973. He asserted that it cannot be said that the awarding of marks at the interview by the Search Committee was done to select certain persons, however, it was done just to recommend the two shortlisted candidates to the competent authority for selection; and it was the prerogative of the competent authority to choose one candidate; that the selection of the private respondent was made according to the criteria outlined in the Public Notice issued by the respondent-department, which cannot be interfered with.

7. Mr. Salman Talibuddin, learned Advocate General Sindh has supported the stance of the learned counsel representing the private respondent and raised the question of the maintainability of the instant Petition. However, he added that respondent-university is a Statutory Body and the appointment of the private Respondent is made by the competent authority under the law. He further added that respondent No 6 is well experienced and validly appointed by the Competent Authority for the post of Vice-Chancellor SMBBMU, Larkana, thus does not suffer from any inherent defect or disqualification under the law, therefore the instant Petition is misconceived. He concluded by saying that the instant Petition is not maintainable under Article 199 of the Constitution.

8. We have heard learned counsel for the parties and perused the material available on record and the case-law cited at the bar.

9. Primarily, the writ of quo warranto under Article 199(1)(b)(ii) of the Constitution, 1973, is not a substitute for writ of mandamus. The power of this Court to issue a writ of quo warranto is limited to an appointment made contrary to statutory provisions, and, the suitability of a candidate for an appointment does not fall within the scope of a quo warranto action. On the aforesaid proposition, we are fortified with the decisions of the Hon'ble Supreme Court in the cases of Muhammad Liaquat Munir Rao v. Shams-Ud-Din and others (2004 PLC (C.S.) 1328, Dr. Khalil ur Rehman v. Government of Punjab through Chief Secretary, Punjab and 5 others (2015 PLC (C.S.) 793).

10. We are of the view the ground of awarding marks to the shortlisted candidates by the Search Committee was not their mandate under reference set forth by the competent authority. On the subject, unreported order dated 21.12.2017 passed by Hon'ble Supreme Court of Pakistan in the case titled Civil Petition No.655-K of 2017 (Re-Prof. Abdul Razak Shaikh v. Province of Sindh and others) and Professor Dr. Razia Sultana supra is clear in its terms. However, we intend to go ahead and decide the matter on merit; and, to see whether petitioner No.2 was non-suited by the Search Committee with justifiable reasons or otherwise. And whether there was/is any inherent disqualification of respondent N.6 to hold the post of Vice-Chancellor, SMBBMU, Larkana.

11. The Honorable Supreme Court vide **order dated 22.04.2018** in Human Rights Case No. 13865- P of 2018 has provided the guidelines for appointment of Vice-Chancellors in public sector universities, based on recommendations of the Search Committees. The aforesaid proposition has recently been reiterated by the Honorable Supreme Court vide unreported **Judgment dated 13.7.2012** passed in Civil Appeals No.3264, & 327 of 2020. The order of the Honorable Supreme Court quoted supra enunciates a principle of law and is binding on this Court under Article 189 of the Constitution.

12. We have gone through the criteria for appointment of Vice-Chancellor as envisaged under the Shaheed Mohtarma Benazir Bhutto Medical University Act, 2008 as amended under the Sindh Universities & Institutes Laws (Amendment) Act, 2018. For convenience, the relevant provision of the law is reproduced as under:

“6. In section 10 –

(i) For sub-section (1), the following shall be substituted:-

(i) There shall be a Vice-Chancellor of the University who shall be eminent academic or a distinguished Medical Professional and is qualified to be a full Professor and shall be appointed by the Chief Minister for a period of four years, which may be extended for one more term on such terms as the Chief Minister may determine.”;

(ii) After sub-section (1-A) the following shall be inserted:-

“(1-A) The professional and academic qualifications, experience and age for the post of Vice-Chancellor shall be as such as may be prescribed.”

13. As per the advertisement dated 27.02.2018, the candidate for the position of Vice-Chancellor should have the following educational qualification and experience:-

- *Not less than post-graduate fellowship in a medical field or a Ph.D. in relevant areas from HEC/PMDC recognized university.*
- *At least 25 quality research publications in national and international HEC recognized research journals.*
- *20 years experience in teaching / academic position with substantial experience of working in senior / administrative positions relevant to the medical profession.*

- *Must possess outstanding and inspiring leadership with strong interpersonal and influencing skills and proven academic excellence.*
- *Candidates must not be above 62 years of age on the closing date of application.*

14. To deal with the aforesaid propositions, we have scrutinized the reply of the Secretary to the Government of Sindh Universities & Board Department, which explicitly shows the following factual position about the educational qualification and experience of petitioner No.2 and respondent No.6: -

Prof. Dr. Aneela Atta ur Rehman	
Total Number of Articles* Submitted for Verification	30
Total Publications/Articles Verified	27
W Category	20
X Category	1
Y Category	6
Z Category	0
Not Recognized by HEC/Not Verifiable	3

Prof. Dr. Jan Muhammad Memon	
Total Number of Articles* Submitted for Verification	30
Total Publications/Articles Verified	7
W Category	1
X Category	2
Y Category	3
Z Category	1
Not Recognized by HEC/Not Verifiable	23

15. It also appears from the above reply that petitioner No.2 was lacking the qualification for the post of Vice-Chancellor in terms of Public notice dated 27.02.2018, and this is the reason he was not found eligible for the said post. Because in petitioners' credit only seven articles/publications could be verified, while in the credit of respondent No.6, there were/are 27 articles/publications, which were duly verified (recognized), which was/is a mandatory requirement for the subject post. At this stage learned counsel for the petitioner, referred to the Curriculum Vitae of petitioner No.2 available with the statement dated

28.9.2021 filed by the petitioner; and, stressed that he was/is a qualified person in all respect for the subject post. Be that as it may since the Expert Committee has already given findings against petitioner No.2 in terms of Public Notice. In such circumstances, we are not in a position to substitute our findings and change disqualification into qualification as opined by the Expert Committee. On the aforesaid proposition, we are fortified with the decision of the Honorable Supreme Court in the case of Muhammad Ashraf Sangri v. Federation of Pakistan and others (2014 SCMR 157). Besides, we shall add that eligibility of the candidate demands that he must possess inspiring leadership with strong interpersonal and influencing skills and proven academic excellence of the candidate.

16. We have noticed that the role of the Search Committee was\is not to appoint the Vice-Chancellor but only to shortlist and recommend three names for the appointment. We make this point only to be sure, that the issue of bias as portrayed by petitioner No.2 is not central to the decision on whether the process of appointment of Vice-Chancellor stood vitiated by reason that the Search Committee did not shortlist the petitioner No.2 and awarded Marks to the candidates for their ease or only recommended two candidates to the competent authority for the appointment. In the instant matter, the Search Committee consisting of eminent professionals was constituted who after detailed scrutiny of the credentials and lengthy interview of each candidate, recommended two names. And, the competent authority i.e. Chief Minister, appointed one candidate out of two candidates in the exercise of his powers under the Shaheed Mohtarma Benazir Bhutto Medical University Act, 2008 as amended under the Sindh Universities & Institutes Laws (Amendment) Act, 2018 to appoint one candidate out of those recommended by the Search Committee.

17. It is also relevant to note that through the present petition, petitioner No.2 has not challenged the appointment of respondent No.6 as Vice-Chancellor on the premise that she lacked the qualification for the subject post; but only her name was recommended by the competent authority for appointment as Vice-Chancellor based on political influence. The allegation of political influence, we shall insist, cannot be proved without recording evidence, or least through an

inquiry. Reference can be made to the case of Said Zaman Khan and others v. Federation of Pakistan through Secretary Ministry of Defence and others (2017 SCMR 1249). Being conducive, relevant paragraphs No.82 and 83 are reproduced as under:-

“82. All Judicial and quasi-judicial forums for that matter even the Executive Authorities exercise on the powers conferred upon them by law so as to fulfill the mandate of such law and to achieve its declared and self-evident purpose. However, where any action is taken or order passed not with the intention of fulfilling its mandate or to achieve its purpose but is inspired by a collateral purpose or instigated by a personal motive to wrongfully hurt somebody or benefit oneself or another, it is said to suffer from malice of facts. In such cases, the seat of the malice or bad faith is the evil mind of the person taking the action be it spite or personal bias or ulterior motive. Mere allegations, in this behalf, do not suffice. Malice of fact must be pleaded and established at least prima facie on record through supporting material.

83. All persons purporting to act under a law are presumed to be aware of it. Hence, where an action taken is so unreasonable, improbable or blatantly illegal that it ceases to be an action countenanced or contemplated by the law under which it is purportedly taken malice will be implied and act would be deemed to suffer from malice in law or constructive malice. Strict proof of bad faith or collateral proposes in such case may not be required.”

Therefore, it is germane to mention that such a proposition, whereby disputing respondent No.6’s appointment cannot be considered without lawful authority.

18. Prima-facie, as per record respondent No 6s’ educational qualification and experience do show that there was nothing amiss in her appointment as Vice-Chancellor. We are also of the view that there was full compliance with the procedural requirements as contained in the law. We also find no flaw in the recommendation of two names by the Search Committee to the competent authority; and the consequent appointment of respondent No.6 as Vice-Chancellor of Shaheed Mohtarma Benazir Bhutto Medical University, Larkana, (SMBBMU).

19. Adverting to the contention of learned counsel for petitioner No.2 that only two candidates were shortlisted for the interview rather than three candidates as required under the law. We are of the considered view that this contention is not appealable because the Search Committee was required to make recommendations of eligible

candidates, but when the Search Committee does not find require the number of eligible candidates the procedure does not require them to cancel such process. It is also a matter of record that minutes of the meeting of Search Committee, prima-facie, shows that it received 18 applications but found only two candidates to be eligible for the interview which proves that eligibility of all candidates was appreciated by the Search Committee, however, ending in finding only two candidates as eligible. Even otherwise, this Court cannot sit in judgment over the wisdom of competent authority of the Government in the choice of the person to be appointed as long as the person chosen possesses prescribed qualification and is otherwise, eligible for appointment.

20. So far as the contention that in the previous round of litigation, petitioner No.2 was found eligible and interviewed by the Search Committee for the same position, and in the present case, the Search Committee has non-suited him due to lack of qualification. To our understanding, this proposition is not of any help for petitioner No.2 because it is a matter of record that petitioner No.2 was considered by the Search Committee but was not found eligible. Needless to add that an observation of the Court for considering one for the same post shall never deprive the authority of examining the eligibility of the candidate which, otherwise, shall always be the domain of the authorized committee, thus the petitioner No.2 cannot take resort to the decision of this Court in his earlier petition to claim reassessment of the candidate for the subject post in the instant petition.

21. Before parting with this order, we have noticed that there are specific directions of Hon'ble Supreme Court in respect of re-employment of retired employees on a contract basis and the said practice has been deprecated by the Hon'ble Apex Court in its judgments reported as Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs Province of Sindh (2015 SCMR 456). We also expect the Search Committee, in all fairness, in terms of order dated 28.9.2021 passed by this Court, to maintain the record of the proceedings in camera with voice recording, concerning the appointment of the Vice-Chancellor of Public Sector Universities.

22. We accordingly dismiss the present petition with no order as to costs. Pending applications, if any, also stand disposed of.

23. These are the reasons for our short order dated 30.9.2021.

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Shahzad Soomro