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JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W. P. No. 27179 of 2023

Professor Dr. Shazia Arshad **Versus** Governor Punjab and 04 others

W. P. No. 11917 of 2023

Professor Dr. Muhammad Shahbaz **Versus** The Chancellor UET, Lahore
and 05 others

W. P. No. 2455 of 2022

Professor Dr. Kamran Abid **Versus** Province of Punjab and 04 others

JUDGMENT

Date of Hearing:	18.09.2024
Petitioner(s) by:	Syed Ali Abbas Sherazi, Advocate in W. P. No. 27179 / 2023 M/s Muhammad Fahad, Mishayl Zia and Akhlaq Hussain Shah, Advocates in W. P. No. 11917 / 2023 Mr. Khalid Zafar, Advocate in W. P. No. 2455 / 2022
Respondent(s) by	Mr. Sikandar Nisar Saroya, Assistant Advocate General Barrister Muhammad Saram Israr, Advocate for Respondent No. 3 in W. P. No. 11917 / 2023. Mr. Shan Saeed Ghumman, Advocate for Respondent No. 5 in W. P. No. 27179 / 2023 & 2455 / 2022 and for Respondents No. 1, 2 & 4 in W. P. No. 11917 / 2023 M/s Malik Muhammad Awais Khalid and Muhammad Ali Bhatti, Advocates / Legal Advisors for Respondents No. 3 & 4 / University of the Punjab in W. P. No. 2455 / 2022

ABID HUSSAIN CHATTHA, J: This consolidated Judgment shall decide the titled Petitions which are intrinsically connected to each other and revolve around circular dated 29.12.2008 (the “**Circular**”) issued by Governor Punjab in his capacity as Chancellor which purportedly prescribes a multi-factor criteria with respect to the appointment of

Professors as Deans of Public Sector Universities (the “PSU”) in the Province of the Punjab.

2. W. P. No. 27179 / 2023 prays that the Circular be declared as illegal and unlawful having no statutory backing, whereas, W. P. Nos. 11917 / 2023 and 2455 / 2022 question the appointment of Respondent No. 3 as Dean of Faculty of Electrical Engineering, University of Engineering & Technology, Lahore (the “UET”) and the appointment of Respondent No. 5 as the Dean of Faculty of Electrical Energy & Environmental Engineering, University of the Punjab, Lahore (the “PU”), respectively, and seek to declare the same as unlawful being in violation of merit in terms of the Circular and in view of law laid down in cases titled, “Dr. Iqrar Ahmad Khan v. Dr. Muhammad Ashraf and others” (2021 SCMR 1509); and “Dr. Akbar Anjum v. Bahauddin Zakariya University, etc.” (2022 LHC 1824).

3. The respective arguments of learned counsels for the parties have been heard and record perused.

4. The common question for determination is the legal status of the impugned Circular in the light of relevant Statutes of UET and PU and referred case law so as to ascertain if the impugned notifications qua Deans of the UET and PU have been issued in consonance with law.

5. The impugned Circular issued by Governor Punjab states that existing Ordinances / Acts and Statutes of the PSU in the Punjab do not provide any specific criteria for the appointment of Deans of Faculties by the Governor / Chancellor which at times causes difficulty in selecting the most suitable candidates for appointment as Dean, therefore, in order to make the process for appointment for selection of Dean transparent and merit based, the Governor’s Secretariat has evolved a multi-factor criteria, a copy of which is enclosed for guidance and a direction is issued to the effect that all cases for appointment of Professors as Deans of the Faculties may be submitted by the Vice Chancellors of the PSU in accordance with the enclosed criteria. The said enclosure lists various parameters such as length of service, research publications, academic performance, annual confidential reports and educational administration experience. It also

prescribes maximum marks for each category, lists sub parameters and prescribes maximum marks and mechanism for distribution of marks.

6. It is conceded by all sides that both UET and PU are PSU which are governed by their respective legislative instruments. UET is constituted under the University of Engineering & Technology Act, 1974 (the “**Act, 1974**”). Section 2(2) of the Schedule of First Statutes of the Act, 1974 stipulates the method of appointment of Dean of Faculty of UET which reads as under:-

“The Dean of each Faculty shall be appointed by the Chancellor from amongst the three senior most Professors in the Faculty for a period of three years and shall be eligible for re-appointment:

Provided that if no Professor is available in a Faculty, a Professor from some other Faculty may act as a Dean till a Professor of the Faculty is itself appointed.”

(emphasis supplied)

7. Perusal of the Act, 1974 reveals that comprehensive legal mechanism has been put in place for the constitution, operations and functionality of UET. Section 2(1)(t) defines “Statutes” “Regulations” and “Rules”, respectively, to mean the Statutes, the Regulations and the Rules made or deemed to have been made pursuant to the Act, 1974. Section 9 thereof lists various offices of UET in which the Chancellor is listed as apex office of UET. Section 10 thereof specifically deals with the office of ‘Chancellor’. Section 10(3) thereof stipulates that if the Chancellor is satisfied that the proceedings of any Authority are not in accordance with the provisions of the Act, 1974, the Statutes, the Regulations, or the Rules, he may, after calling upon such Authority to show cause why such proceedings should not be annulled, by order in writing, annul the proceedings. Similarly, Section 10(5) thereof empowers the Chancellor to assent to such ‘Statutes’ as are required to be submitted to him by the Senate or withhold assent or refer them back to the Senate for reconsideration. Importantly, Section 10(8) thereof states that the Chancellor in performance of his functions under the Act, 1974 shall act and be bound in the same manner as the Governor of the Province acts and is bound under Article 105 of the Constitution of the Islamic Republic of Pakistan, 1973. The Chancellor is also vested with revisional powers

against the order passed by any Authority and has the right of visitation in terms of inspection and inquiry with respect to any matter connected with UET under Section 11 of the Act, 1974. Section 22 thereof lists powers and duties of the Senate of UET and provides that subject to provisions of the Act, 1974, the Senate shall have powers listed therein which include the power to consider the drafts of Statutes proposed by the Syndicate and deal with them in the manner indicated in Section 29(2) of the Act, 1974. This Section also empowers the Senate to perform such other functions as may be prescribed by Statutes of the UET. Similarly, Section 24 thereof prescribes the powers and duties of the Syndicate which, amongst others, include the power to propose drafts for Statutes for submission to the Senate. Section 29 thereof provides that subject to provisions of the Act, 1974, Statutes may be made to regulate or prescribe any of the matters listed therein which, *inter alia*, include the scales of pay and other terms and conditions of service of officers, teachers and other employees of UET; the establishment of Faculties, Institutes, Colleges and other Academic Divisions; the powers and duties of officers and teachers; conditions for appointment of Professor Emeritus and award of honorary degrees; and other matters which by the Act, 1974 are to be or may be prescribed or regulated by Statutes. Section 29(2) of the Act, 1974 provides that draft of Statutes shall be proposed by the Syndicate to the Senate which may approve it or pass it with such modifications as the Senate may think fit, or may refer it back to the Syndicate for reconsideration, or may reject it subject to conditions prescribed therein. Section 30 thereof provides that Regulations may be made subject to provisions of the Act, 1974 and the Statutes regarding the matters listed therein. The rule making power is also conferred under Section 32 of the Act, 1974.

8. It follows from the above that there is no power vested under the Act, 1974 to the Governor Punjab in his capacity as Chancellor of UET to arbitrarily or unilaterally prescribe a criteria for the appointment of Dean of UET unless the criteria as proposed is incorporated in the Statutes or Regulations or Rules of UET in accordance with the provisions of the Act,

1974. Admittedly, the proposed criteria encapsulated in the impugned Circular has not so far been adopted or incorporated in the relevant Statutes or Regulations or Rules of UET and as such, has no legal footing. Therefore, till today, the only relevant provision of law in the field is Section 2(2) of the First Statutes of Schedule to the Act, 1974 which empowers the Governor Punjab as Chancellor of UET to appoint the Dean of each Faculty of UET from amongst the three senior most Professors in the Faculty for a period of three years. The discretion is structured in the manner that it is confined to three senior most Professors in the Faculty. The impugned appointment of Dean of UET was made, accordingly, and as such, there is no substance in the challenge brought to the appointment of Respondent No. 3 in W. P. No. 11917 / 2023.

9. Similarly, PU is constituted under University of the Punjab Act, 1973. The provisions thereof are almost identical to the Act, 1974, as such, there is no need to discuss them separately. Suffice is to state that applicable criteria for appointment of Dean in PU is the same as in the case of UET, therefore, for the reasons stated above, challenge to the appointment of Respondent No. 5 in W. P. No. 2455 / 2022 is also without substance.

10. Dr. Iqrar Ahmad Khan case (supra) deals with the post of Vice Chancellor of the University of Agriculture, Faisalabad which is a completely different position and the appointment to the said post was scrutinized therein with reference to applicable law. As such, the said case has no bearing or nexus to the facts and circumstances of the titled cases. In contrast, Dr. Akbar Anjum case (supra) relates to the appointment of Dean of Faculty of Bahauddin Zakariya University, Multan yet with due deference, legality of the impugned Circular issued by the Governor Punjab was not decided in the said case. Hence, the said case cannot be relied upon since the titled cases are being decided on the basis of a legal question which was not addressed therein. It may be noted that case titled, "Dr. Munir Khan Khattak v. Chancellor, The University of Agriculture, Khyber Pakhtunkhwa and 4 others" (2017 PLC (C.S.) Note 10) is infact squarely applicable, wherein, the appointment of Dean based on similar

statutory criteria was upheld by learned Division Bench of Peshawar High Court.

11. There is no cavil to the proposition that any discretion vested in any Authority by law can be further regulated and structured through delegated legislation within the ambit of applicable enactment as was proposed by the Governor Punjab through the Circular. However, no vested legal right can be asserted on its basis unless the said criteria is adopted in the relevant Statutes, Regulations or Rules of the PSU. No lawful mandate can be extended to any functionary to prescribe a criteria in his own wisdom in a manner not ordained by law. It is apparent that this fact was later realized by Governor Punjab himself which is reflected vide letter dated 15.07.2024, wherein, instructions have now been issued to all the PSU to consider the inclusion of the proposed criteria in their relevant Statutes, Regulations or Rules by amending the same in accordance with law. This is precisely the reason that while appointing the Deans, the Governor Punjab followed the applicable statutory criteria and disregarded the proposed mechanism in the impugned Circular since it did not have the force of law.

12. In view of the above, W. P. No. 11917 of 2023 and 2455 of 2022 are **dismissed**. W. P. No. 27179 / 2023 is **allowed** and it is declared that the impugned Circular having no legal backing is not applicable to the appointment of Deans in any PSU unless any such criteria is adopted by each PSU in accordance with law.

(ABID HUSSAIN CHATTHA)
Judge

Approved for reporting.

Judge

Announced in open Court on 23.09.2024.

Judge