

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.52354 of 2024

Professor Dr. Sheikh Asrar Ahmad

Versus

Government of Punjab through Secretary High
Education, etc.

J U D G M E N T

Date of Hearing	07.10.2024
For the petitioner	Mr. Asim Khan Sherwani, Advocate
For Govt. of Punjab	Mr. Imran Khan, Assistant Advocate General with Ch. Rehman, Senior Law Officer and Mian Zahid, Law Officer Higher Education Department

Raheel Kamran J:- In this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (‘the Constitution’), the petitioner has made the following prayer: -

“It is, therefore, respectfully prayed that to stop the meritless and illegal search/appointments of the VCs by the search committee at eleven (11) universities of the Punjab and further directed to respondent No.5 to produce the record of all applications of VC ships.

It is further prayed that the award of the numbers of the PhD (Either 35 or 29) be stopped which causes discrimination.

It is further prayed that respondents No.1 to 4 may kindly be directed to cancel the search/selection appointment’s procedure of VCs Punjab in the interest of justice.”

2. The facts giving rise to this petition are that the petitioner being Professor of University of Education Lahore, Vehari Campus, in response to advertisement published in the newspaper for appointment of the Vice Chancellors (‘VCs’) of

Universities located in Punjab, submitted application after fulfilling all codal formalities, however, subsequently different print and electronic media broke the news that the search committees had finally recommended eleven vice chancellors and forwarded their cases to the Chief Minister, Punjab for approval.

3. Learned counsel for the petitioner contends that favourite candidates have been nominated without calling the petitioner for any interview or issuing him rejection letter. He maintains that out of eleven recommended candidates, few of them have been working for the second and third time as VCs and during their tenure the universities have suffered from severe financial and management crises. He further contends that local PhD degree holders are being treated with discrimination against the foreigner PhD degree holders, as without any reasonable classification the former are allocated 29 marks whereas the latter are assigned 35 marks, which constitutes violation of Article 25 of the Constitution for PhD by foreign universities is only available to those fortunate ones who possess financial resources to pursue education there. He adds that the Search Committees constituted for recommendation of the VCs have violated the merit policy and failed to follow the transparent procedure. He finally contends that appointments of the candidates who are going to be retired in a few days are just aimed to enhance their length of service.

4. Conversely, learned Law Officer contends that after scrutiny of record of all the candidates who applied for the posts of VCs by the Technical Review Committee constituted by the Search Committee, only eligible candidates were called for interview and all those who were not called were found ineligible. He maintains that Provincial Cabinet of the Punjab has approved the selection criteria for VCs of public sector universities which was duly notified on 25.05.2024 and the

petitioner while accepting the same applied for the said post, however, when he was not called for interview, he filed the instant petition challenging the eligibility criteria. He further contends that the universities are ranked using the Quacquarelli Symonds (QS) ranking system which categorizes institutions into various classifications and identifies the leading universities worldwide.

5. Learned Law Officer representing the Higher Education Department submits that the instant petition has become infructuous since appointments in question of the VCs have been finalized.

6. Heard.

7. It is by now well settled that discretion of the Chief Minister with regard to appointments of VCs in the public sector universities is not altogether unfettered and the reasons which would prevail upon him or her for such appointments are justiciable¹. The Courts can examine the same on the touchstone of validity, fairness and compliance with the law, rules and departmental practice². The matter of appointments of VCs in the public sector universities was earlier dealt with by the Supreme Court of Pakistan in Human Rights Case No.13865-P of 2018 vide order dated 22.04.2018 emphasizing such appointments on the basis of recommendations of Search Committees for precluding any arbitrary and capricious exercise of discretion.

8. In the instant case, no question over the constitution of Search Committees or on any of their members has been raised. In the prayer clause, this Court in the first place has been urged to stop the alleged meritless and illegal search/appointments of the VCs by the Search Committees in eleven universities of the

¹ *Dr. Iqrar Ahmad Khan v. Dr. Muhammad Ashraf and others* (2021 SCMR 1509)

² As above

Punjab after calling for record of all applications submitted in that regard.

9. There is no cavil that the scope of judicial power under clause (c) of Article 199(1) of the Constitution is wider than other provisions in the aforementioned Article inasmuch as under such exercise of jurisdiction this Court can issue any appropriate direction for enforcement of any of the fundamental rights guaranteed under Chapter I of Part II of the Constitution³, however, issuance of such direction should be necessary for the enforcement of the fundamental right, appropriate in the facts and circumstances of the case, which must not be a disproportionate measure. In contradistinction to that, directions in the nature of *mandamus* or *prohibition* under clause (a) of Article 199(1) are confined to act as required by law or refrain from acting in a manner not permitted by law.

10 There is no specific violation of law, policy or merit attributed to Search Committees in this case but only vague and general allegations have been levelled by the petitioner.

One of the reasons prevailing with the petitioner for claiming favouritism against the Search Committees is that he has not received any rejection letter. It is noted that the advertisement for the appointments in question, copy whereof is annexed with this petition, reflects that only short-listed/eligible candidates were to be interviewed by the respective Search Committees.

The other ground urged by the petitioner is that it is second or third term of some of the recommended candidates and during their earlier tenures the universities had undergone severe financial and management crisis but none of them has been named specifically in this petition or in the course of arguments.

³ *Human Rights Commission of Pakistan and 2 others v. Government of Pakistan and others* (PLD 2009 SC 507), and *Abdul Wahab v. HBL and others* (2013 SCMR 1383).

As regards the contention that some of the recommended candidates are going to retire in a few days, besides having not specified any particular person, the advertisement in question itself shows the maximum age of 65 years for the applicants.

Be that as it may, since appointments in question of the VCs have already been made, as apprised by the law officer, the petitioner is at liberty to exercise his right to information before the concerned forum in accordance with law and assail any such appointment on specific grounds depicting violation of any provision of law or the applicable policy while impleading the Vice Chancellor concerned. No room for a roving inquiry or fishing expedition can be made available to the petitioner in the instant case⁴.

11. The allocation of points of PhD degrees in the shortlisting criteria, annexed with the parawise comments filed by respondents No.1 & 2, are as under: -

- *PhD from the top 100 QS ranked universities of the world: 35 Points*
- *PhD from the top 101-300 QS ranked universities of the world: 33 points*
- *PhD from the top 301-500 QS ranked universities of the world: 31 points*
- *PhD from an HEC recognized or UNESCO listed institution: 29 points*

Note: The most current, publicly available QS Ranking will be referred to while allocating points.

12. The second prayer in this petition is regarding alleged discriminatory selection criteria *vis-à-vis* award of different numbers to local PhD degree holders and foreign degree holders. It is noted that advertisement for appointments in question was published on 01.06.2024 and last date for submission of the applications was 24.06.2024 and he applied for the said post but when he was not called for the interview, he filed this constitutional petition on 04.09.2024 challenging the selection

⁴ *Commissioner Inland Revenue v. MCB Bank Limited (2021 PTD 1325)*

criteria. The petitioner ought to have challenged the selection criteria notified by the Government before applying for the post in question and not after having been rejected. In the absence of such timely challenge, it can be presumed that he accepted the criteria to be valid and expressed no reservation against it. It is equally well settled that the selection criteria generally reflects a policy decision of the provincial government. In the absence of any violation of constitutional guarantee or patent illegality, such policy decision cannot be annulled by this Court in the exercise of writ jurisdiction⁵. However, validity of the criteria has been assailed here for alleged violation of Article 25 of the Constitution and the rules of acquiescence, waiver and estoppel do not stand in the way of constitutional guarantees⁶, thus it would be appropriate to adjudicate upon the challenge.

13. The appropriate approach to Article 25 of the Constitution is well settled and reference needs only be made to one of the leading cases, I. A. Sharwani and others v. Government of Pakistan through Secretary Finance Division Islamabad and others⁷ wherein following principles of law governing operation of Article 25 have been set out:

(i) *that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;*

(ii) *that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;*

(iii) *that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;*

(iv) *that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of*

⁵ *Senior General Manager, Pakistan Railways and others v. Muhammad Pervaiz* (2024 SCMR 581)

⁶ *Asad Ali v. Federation of Pakistan* (PLD 1998 SC 161), and *Lahore Bachao Tehrik v. Dr. Iqbal Muhammad Chauhan and others* (2015 SCMR 1520)

⁷ (1991 SCMR 1041), Para 26

circumstances, may be unreasonable in other set of circumstances;

(v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based--

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification.”

14. It is thus abundantly clear that Article 25 of the Constitution allows for reasonable classification based on intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and such differentia must have a rational nexus to the object sought to be achieved. To resolve the controversy in hand, one must ask whether the criteria of allocating 29 marks to PhD degree holders from HEC recognized or UNESCO listed institutions against assignment of up to 35 marks to foreign PhD degree holders from top 500 QS ranked universities of the world is based on intelligible differentia and, if so, does it have rational nexus with object sought to be achieved?

15. Vice Chancellor is the principal executive and academic officer of the University who is required to promote teaching, research and publications besides ensuring excellent administration of the University. The requirement of having earned PhD degree from an HEC recognized or UNESCO listed institution has been made mandatory for position of the Vice Chancellor. It is one of the indicators revealing academic excellence of such applicants. UNESCO is the only United

Nations agency with a mandate in higher education and works with countries to ensure high quality higher education opportunities are available to everyone and for that purpose, it claims to place a special focus on inclusion, the recognition of qualifications and quality assurance, particularly in developing countries. Higher Education Commission of Pakistan, on the other hand, is a statutory organization established by the Federal Government, *inter alia*, to fund, oversee regulate and accredit the higher education endeavours in Pakistan. Applicants for the positions of VCs have earned their PhDs from a wide range of universities all of which do not possess identical quality and standards of excellence. While the requirement of PhD degree from an HEC recognized or UNESCO listed institution is meant to satisfy an eligibility requirement for appointment of VCs, it provides no basis to differentiate excellence amongst such institutions. QS World University Rankings is one of the most widely recognized and used systems of rankings to compare excellence of universities on the basis of certain well-defined indicators such as academic reputation, employer reputation, faculty/student ratio, citations per faculty, international students' ratio, international faculty ratio. These indicators provide reasonable basis for classification of excellence amongst the institutions for the purpose of appointing VCs. It can be legitimately expected that the VCs who have earned their PhD degrees from the top ranked institutions of the world shall, while benefitting from their rich international exposure, endeavour to promote such excellence in the institutions headed by them. Therefore, the impugned selection criteria is not arbitrary and discriminatory but based on rational nexus with the object of classification.

16. Undoubtedly, in the capitalist world we are part of, economic disparity and unequal distribution of wealth is a reality. In the state of Pakistan, adherence to the capitalism is

evident from the citizens' fundamental rights to acquire, hold, dispose of property and protection against acquisition of property by the state⁸ as well as the freedom of trade, business or profession⁹, as guaranteed by the Constitution. However, various labour laws were enacted in Pakistan in 1960s and 1970s acknowledging some rights of workers arguably in response to the threat posed by the communist movement at international level. Pakistan remains a state closer to the right-of-centre. Societies in such states, by and large, remain divided by poverty and wealth. Pakistan is not a communist state and Judges in this country neither have the constitutional mandate nor the capacity to change it that way. It is perhaps for this reason that the Supreme Court of Pakistan, in the case of *I. A. Sherwani* enunciated the principle that discrimination on the basis of reasonable classification was permissible under Article 25 of the Constitution and that different laws could validly be enacted for persons having different financial standings, etc¹⁰. At best, what Judges of the constitutional Courts can do, while dispensing justice, is to mitigate harshness and miseries of the people to the extent permitted by the Constitution¹¹.

17. It is disturbing to note that for many in the homeland, access to even primary education is a far-fetched dream. It is no brainer that there can be no progress in any society without its human resource development and access to education is the key for that. Notwithstanding constitutional guarantee qua free and compulsory education for all children between the ages of 5 to 16 years, more than 22.8 million children are out of schools in this country, representing 44% of population in that age group¹². The state has fallen apart in fulfillment of her commitment to impart free and compulsory education to all such children. At

⁸ Articles 23 & 24 of the Constitution

⁹ Article 18 of the Constitution

¹⁰ (1991 SCMR 1041), Para 26

¹¹ Human Rights Commission of Pakistan and 2 others v. Government of Pakistan and others (PLD 2009 SC 507)

¹² UNICEF Report on education in Pakistan (<https://www.unicef.org/pakistan/education>)

systems level, inadequate financing, limited enforcement of policy commitments and challenges in equitable implementation impede reaching the most disadvantaged¹³. In such conditions, pursuit of higher education in Pakistan is nothing short of a luxury for a common citizen. Even after a degree in higher education is earned, the same does not guarantee employment. Amongst others, this is largely on account of mediocre standards of education. Be that as it may, amidst meager resources allocated by the state for imparting higher education, availability of the VCs possessing extra-ordinary qualifications, experience and publications from well-reputed universities and centres of excellence in the world is nothing short of a blessing and the same is vital for the advancement of quality and standards of education in the public sector universities. Such measures can seriously contribute to overcome mediocrity so that ultimately the students and faculties may fully benefit therefrom.

18. Any allegation of discrimination on the basis of inability of a student to fund higher education is indeed a direct attack on the top universities of the world to perpetuate inequality in the field of education, research and excellence. Be that as it may, it is a common knowledge that PhD programs offered by top ranked universities in the world are mostly funded by such institutions or other organizations who offer scholarships and or financial aid to deserving applicants. No doubt such scholarships or financial aid is granted on competitive basis, however, top universities in the world are fairly mindful of their reputation in that regard. Thus, plea of the petitioner that PhD degrees from top QS ranked universities are only available to those fortunate ones who possess financial resources to pursue education abroad cannot be readily accepted. In any event, for being based on reasonable classification having nexus with the object, as fully

¹³ UNICEF Report on education in Pakistan

explained above, the impugned condition does not violate Article 25 of the Constitution.

19. For the foregoing reasons, this petition sans merit and is accordingly dismissed.

(RAHEEL KAMRAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar