

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ

MR. JUSTICE AMIR HANI MUSLIM

MR. JUSTICE KHILJI ARIF HUSSAIN

Civil Appeals No. 77-78 of 2015

(Against the judgment dated 16.12.2014 passed by the
Peshawar High Court in WP No.1255-P/2014)

Professor Dr. Razia Sultana
Govt. of K.P. thr. Chief Secretary, Peshawar etc

(C.A.No.77/15)

(C.A.No.78/15)

...Appellants

Versus

Professor Dr. Ghazala Yasmeen Nizam etc.

(C.A.No.77/15)

(C.A.No.78/15)

Respondents

For the Appellant
(in CA 77/15)

: Qazi Muhammad Anwar, Sr. ASC.
Syed Rifaqat Hussain Shah, AOR.

(in CA 78/15)

Mr. Waqar Ahmed Khan, Addl. A.G. KPK

For the Respondent-1

: Qazi Jawad Ehsanullah, ASC
(In both cases)

Applicants in
CMA 1009/15

Both in person.

On Court Notice:

Ms. Farah Hamid, Secretary, HED, KPK
Mr. Hamid Ali, SO

Date of hearing:

03.03.2016

ORDER

Khilji Arif Hussain, J. These two appeals are arising out of judgment dated 16.12.2014 passed by the Peshawar High Court, Peshawar whereby the learned High Court set-aside the order dated 1.4.2014 passed by the Government of KPK and notification dated 7.4.2014 while declaring as without lawful authority. The matter was

remanded to the Chief Minister for considering afresh on merits in the light of recommendations by the Search Committee, in accordance with law, by exercising the discretion judicially after affording opportunity to the respondent of being heard.

2. The brief facts, necessary for adjudicating the matter, are that appellant (in civil appeal No.78 of 2015 i.e. Government of KPK through Higher Education Department) advertised the position of Vice Chancellor for Shaheed Benazir Bhutto Women University, Peshawar in the leading national newspapers. In response to said advertisement, various persons filed their applications including the appellant Dr. Razia Sultana and the respondent namely, Professor Dr. Ghazala Yasmeen. As averred in the petition, the Higher Education Department, KPK prepared a merit list of short listed candidates who were going to be interviewed by the Search Committee. As per contentions, according to merit list the respondent was awarded 52 marks whereas the appellant Dr. Razia Sultana was awarded 38 marks. The Search Committee interviewed the short listed candidates and finally three candidates including the appellant Dr. Razia Sultana and respondent Dr. Ghazala Yasmeen were unanimously recommended by the said Search Committee. The Higher Education Department, KPK forwarded these three names to the Chief Minister wherein the respondent's name appeared at serial No.1 whereas the name of appellant Dr. Razia Sultana appeared at serial No.3. The Chief Minister through order dated 1st April, 2014 recommended the name of appellant Dr. Razia Sultana to be appointed as Vice Chancellor and accordingly, after approval of the Governor/Chancellor, a notification was issued on 7th April, 2014.

The respondent Dr. Ghazala Yasmeen impugned the said notification dated 7th April, 2014 through Writ Petition No.1255-P/2014 before the learned Peshawar High Court which was allowed in the above terms. Hence, these appeals.

3. We have heard Qazi Muhammad Anwar, Sr. ASC for appellant Dr. Razia Zultana, Mr. Waqar Ahmed Khan, Addl. A.G. for Government of KPK, Qazi Jawad Ehsanullah, ASC and Mr. Waseemuddin Khattak, ASC for respondents.

4. The learned counsel for appellants contended that the process of appointment of Vice Chancellor was undertaken by the authorities concerned in a transparent manner and in this regard through public notice, applications were invited from eligible candidates to submit their CVs. In the said advertisement, eligibility criteria, terms & conditions and evaluation proforma were clearly mentioned for the position of Vice Chancellor. In response to said advertisement, the University received 20 applications which were short listed as per evaluation proforma and after short listing, the eligible candidates were called for interview by the Search Committee. It is contended by the learned counsel for the appellants that the marks allocated to the candidates for the purpose of short listing the eligible candidates has nothing to do with the interview conducted by the Search Committee consisting of highly capable and responsible persons. The said Committee after interviewing the candidates as also taking into consideration their academic background, professional quality and leadership qualities etc., unanimously recommended the three names. The Chief Minister, in exercise of his discretion recommended the appellant Dr. Razia Sultana which was thereafter

approved by the Government/Chancellor under section 12(1) of the Khyber Pakhtunkhwa Universities Act, 2012. It is contended that the discretion exercised by the Chief Minister and the Government/Chancellor for selecting the name of appellant Dr. Razia Sultana was in accordance with law and after taking into consideration all the aspects relevant for the position. It is further contended that the respondent has failed to place on record any malice on the part of the Chief Minister and the Governor/Chancellor while selecting the name of appellant Dr. Razia Sultana out of the three names as recommended by the Search Committee.

5. On the other hand, the learned counsel for the respondent vehemently argued that the respondent secured highest marks as per evaluation proforma and accordingly, if for any reason, her name was not recommended by the Chief Minister and the Governor/Chancellor, they ought to have give reasons for the same.

6. We have gone through the entire record minutely and carefully considered the submissions of learned counsel for the parties. From perusal of record, it appears that respondent Dr. Ghazala Yasmeen averred in her memo of petition before the High Court that she secured higher marks than appellant Dr. Razia Sultana and as such if, for any reasons, the Chancellor/Governor had decided not to appoint her, he ought to have interviewed her and give reasons for her supersession. In order to appreciate the contention raised by the respondent, we have carefully gone through the record and found that the contentions of the respondent have no basis. The marks were allocated to the candidates on the basis of evaluation proforma for the purpose of short listing the candidates

who applied for the position of Vice Chancellor. On the basis of these marks, the Search Committee, constituted under section 12(2) of the Khyber Pakhtunkhwa Universities Act, 2012, interviewed all the fifteen (15) out of twenty (20) candidates. The Search Committee, consisting of eminent professionals, has not allocated any marks to any candidate as is evident from the minutes of the said Committee. The Search Committee, after a lengthy interview consisting of questions relating to University administration, professional and academic abilities etc. unanimously recommended three names out of which the Chancellor/Governor, in exercise of his powers under section 12(1) of the Khyber Pakhtunkhwa Universities Act, 2012, appointed the appellant as Vice Chancellor.

7. An administrative order is a final disposition of a matter before an administrative agency; product of an administrative adjudication, such order may be declaratory or it may contain an affirmative or negative command, whereas administrative forum while deciding rights has to take decisions by giving justiceable reasons of the same.

8. The role assigned to the judiciary in a tripartite allocation of power is to assure that the Courts will not intrude into an area committed to the other branches of government.

9. In a democratic society, to have the final say whether the action of each branch is within the constituent grant is of judiciary. However, the judicial review of the propriety of administrative decision best serves "*the public interest*" are said to be question-begging. The purpose of judicial review are first, to check abuse or detournement of such power; second, to ensure to citizens an

impartial determination of their disputes with officials; and third, to protect them from unauthorized encroachment on their rights and interest.

10. 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 length interview of each candidate, recommended three names which, as per parawise 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. The only allegation against the appellant (Dr. Razia Sultana) is that she belongs to the constituency of the Chief Minister but without any supporting material, this cannot be termed as an act of *mala fide*.

11. Before we conclude, we may mention here that the principle laid down in the case of Munir Hussain Bhatti vs. Federation of Pakistan (PLD 2011 SC 407), is not attracted to the facts of these appeals as per the 19th Constitutional Amendment, Parliamentary Committee has to provide the reasons in case the nomination of the Judicial Commission is not accepted by them. Likewise, in the case of Muhammad Yasin vs. Federation of Pakistan (PLD 2012 SC 132), appointment of the person was declared unlawful as he was lacking

the required qualification and his name for appointment, in the first summary, was also declined by the Prime Minister.

12. In the case of Dossani Travels Pvt. Ltd. Vs. Travels Shop Pvt. Ltd. (PLD 2014 SC 1), while dealing with allocation of Hajj quota to Hajj Group Operators held that it is not the function of the High Court exercising jurisdiction under Article 199 of the Constitution to interfere in policy making domain of the Executive. In the case of Executive District Officer (Revenue) vs. Ijaz Hussain (2011 SCMR 1864), the order of High Court was set-aside whereby the High Court directed that the marks for interview should not exceed 25% of the total marks of selection, held that the Court can neither assume the role of a policy maker nor that of a law maker.

13. In the foregoing circumstances, the appeals are allowed. The impugned judgment dated 16.12.2014 passed by the Division Bench of the learned Peshawar High Court is set-aside.

14. These are the reasons of our short order of even date i.e. 3.3.2016.

Chief Justice

Judge

Judge

Islamabad
03.03.2016
A.Rehman

Approved for reporting