

ORDER OF THE BENCH

By majority of four to one, the Chancellor while exercising revisional powers under Section 11-A of the Act is not required to seek advice of the Chief Minister, therefore, on this legal point, view rendered in the cases of University of Punjab vs. Sardar Ali (1992 SCMR 1093) and Federation of Pakistan vs. Muhammad Tariq Pirzada (1999 SCMR 2189) is approved whereas the contrary view rendered in the case of, Rana Aamer Raza Ashfaq vs. Dr. Minhaj Ahmad Khan (2012 SCMR 6), is not approved.

2. By majority of three to two, the Appeal is allowed, the impugned judgment is set aside and the matter is remanded to the Lahore High Court to decide the Writ Petition No.1691 of 2012 filed by the Respondent No.1 on merits. It is expected that the Lahore High Court shall decide the Writ Petition within 03 months from the date of communication of this judgment, as the Petition relates to the year 2012.

Chief Justice

Judge

Judge

Judge

Judge

Islamabad the, _____, 2016.

Approved for reporting.

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali, CJ
Mr. Justice Mian Saqib Nisar
Mr. Justice Amir Hani Muslim
Mr. Justice Iqbal Hameedur Rahman
Mr. Justice Khilji Arif Hussain

Civil Appeal No.359 of 2013.

(On appeal from judgment dated 15.01.2013 of the Lahore High Court, Lahore, passed in W.P.No.1691 of 2012).

Dr Zahid Javed.

...Petitioner.

VS

Dr Tahir Riaz Chaudhry and others.

...Respondents.

For the Petitioner:

Sardar Muhammad Aslam, ASC.
Raja Muhammad Afsar, AOR.

For Respondent No.1:

Mr. Abdul Rehman Siddiqui, ASC.

For Respondent No.2:

Mr. Tahir Munir Malik, ASC.

For Respondent No.3:

Nemo.

On Court's Notice:

Mr Nisar Durrani, A.G Sindh.
Mr Ayaz Swati, Addl.A.G Balochistan.
Mr Razzaq A Mirza, Addl.A.G, Punjab.
Mr Abdul Latif Yousafzai, A.G, KPK.
Mian Muhammad Rauf, A.G, Islamabad.
Mr Muhammad Waqar Rana,
Addl. Attorney General for Pakistan.

Amicus Curie:

Mr. Makhdoom Ali Khan, ASC.
Kh. Haris Ahmed, Sr.ASC.

Date of hearing:

03.03.2016.

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JUDGMENT

AMIR HANI MUSLIM, J. This Appeal, by leave of the Court, is directed against judgment dated 15.01.2013, passed by the Lahore High Court, Lahore, whereby the Writ Petition filed by the Respondent No.1 has been allowed.

2. The facts necessary for the present proceedings are that on 29.04.2005, the University of Punjab got published an advertisement in the press, inviting applications to various positions including the post of Associate Professor in Social Work Department. The Appellant, amongst others, applied for the said post which he was offered. Through Office Order dated 07.11.2007, the Vice Chancellor of the University, in anticipation of the approval of the Syndicate and upon the recommendations of the Selection Board, exercised the powers vested in him under Section 15(3) of the University of the Punjab Act 1973, and appointed the Appellant to the said post on one year's probation.

3. The Respondent No.1 challenged the appointment of the Appellant made through Office Order dated 07.11.2007, before the Lahore High Court by filing Writ Petition No.319 of 2008, which was disposed of with the direction to the Syndicate of the University to decide the issue of appointment of the Appellant. Accordingly, the Syndicate of the University in its 1689th meeting held on 29.10.2011 considered the appointment of the Appellant and decided to cancel the said appointment. The Appellant filed Petition under Section 11-A of the University of the Punjab Act 1973, before the Chancellor challenging the order dated 29.10.2011 of the Syndicate of the University. The Petition was allowed by order dated 06.06.2012, and the appointment of the Appellant was restored with all consequential benefits.

4. Feeling aggrieved, the Respondent No.1 filed Writ Petition before the Lahore High Court challenging the order dated 06.06.2012 of the Chancellor, which was allowed by the impugned judgment dated 15.1.2013, and consequently the order dated 06.06.2012, restoring the Appellant to his previous position, was set aside. The Appellant filed Civil Petition No.202 of 2013 for Leave to Appeal before this Court in which leave to Appeal was granted on 15.04.2013.

5. During the hearing of the aforesaid Appeal on 18.11.2013 by a two member Bench, it was noticed that the issue raised required hearing by a larger Bench and the Honourable Chief Justice of Pakistan was requested to constitute a five member Bench. The relevant portion of the order dated 18.11.2013 by the said Bench is reproduced hereunder:

*“On one of the last dates of hearing the question of interpretation and applicability of Section 11(8) of the Act came up for consideration obviously in the context of Article 105 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution), as also other relevant provisions of the Act, including Section 11-A and Section 43 therefore, thus a notice was issued to the learned Advocate General, Punjab, to appear in person and to answer the queries in relation thereto. During the course of hearing, the Acting Advocate General, Punjab has placed reliance upon the judgment reported as **Rana Aamer Raza Ashfaq and another Vs. Dr. Minhaj Ahmad Khan and another** (2012 SCMR 6) to argue, that according to the enunciation of law therein, the functions/powers of the Governor even if acting as Chancellor are regulated in terms of Article 105 of the Constitution, but when queried, he has stated that in the judgment supra the earlier law on the subject having close nexus to the issue in hand reported as **Federation of Pakistan through Secretary, Establishment Division, Government of Pakistan, Islamabad Vs. Muhammad Tariq Pirzada and others** (1999 SCMR 2189) seemingly it has eluded the attention of this Court; besides for the exercise of the functions of the Chancellor/the Governor specified in the Act, especially Section 11-A and Section 43, which are the relevant provisions, need deeper examination if such functions/powers are subject to the provisions of Article 105 of the Constitution. Moreover, the impact of the eighteenth amendment in the Constitution should also be taken into account which was not adverted to in the case of Rana Aamer Raza Ashfaq (supra). We think, that these propositions, which have emerged during the course of hearing, are of considerable importance and may in the given circumstances of the case need some elucidation of the Rana Aamer Raza Ashfaq’s case (supra) and/or reconsideration of the law enunciated therein, therefore we feel expedient that the matter be brought*

to the notice of the Hon'ble Chief Justice of Pakistan for considering the desirability of constitution of a larger bench.”

6. The larger Bench comprising of five members was constituted by the Honorable Chief Justice to resolve the issues raised in these proceedings. The Bench issued notices to the Attorney General for Pakistan and Advocate Generals of all four provinces under Order 27-A Rule 1, CPC, as well as appointed Messrs Makhdoom Ali Khan and Khawaja Haris ASCs as *Amicus Curiae* to assist this Court on the proposed issues which have far reaching effect.

7. Mr. Sardar Muhammad Aslam learned ASC for the Appellant commenced his arguments by contending that the Chancellor of a Province, while exercising his functions under the University of the Punjab, Lahore Act 1973 (the “University Act”), is not required to act on the advice of the Chief Minister. The learned ASC for the Appellant referred to Articles 45, 49, 51, 54, 56, 57, 59, 75, 89, 100, 145(2), 200, 208, and 234 of the Constitution and submitted that the said provisions enumerate the powers and functions vested in the President under the current constitutional set up. He contended that the functions that the President exercised under the foregoing provisions are those which require the President to act on the advice of the Prime Minister. While placing reliance on a judgment of this Court in the case of **Federation of Pakistan vs. Muhammad Tariq Pirzada and others**, (1999 SCMR 2189), the learned ASC submitted that it has been held by this Court that the President of Pakistan, when hearing appeals from the decision of the *Wafaqai Mohtasib*, exercises quasi judicial powers and is, therefore, not required to seek the advice of the Prime Minister. He

submitted that, similarly, the Governor of a Province / Chancellor of a University, in exercise of his functions under Section 11A of the University Act, also exercises quasi-judicial functions. He contended that if the Chancellor whilst exercising his revisional / appellate powers under the Act was required to seek the advice of the Chief Minister then it would lose all semblance of an independent application of judicial mind.

8. Learned counsel for the Appellant further contended that under the University Act, the Chancellor performs various functions which could be demarcated as administrative and quasi-judicial functions. The Chancellor revisional / appellate functions, the learned ASC contended, would fall within the latter category, in exercise whereof, it was not necessary for the Chancellor to seek the advice of the Chief Minister.

9. Mr. Makhdoom Ali Khan, Sr. ASC learned Amicus Curiae at the very outset contended that the Governor of a Province does not exercise quasi judicial powers. He referred to Tariq Pirzada Case (*ibid*) and submitted that he would beg to differ with the ratio of the aforesaid pronouncement of this Court insofar as it holds that the President, when hearing representations / appeals from a decision of the *Wafaqi Mohtasib*, exercises quasi-judicial functions. He submitted that the office of the ombudsman was created with the object that no government should countenance maladministration and the ombudsman is a statutory check upon the government and that is all. He contended that it cannot be termed as a judicial function because there is no power of enforcement of its decision. He submitted that a judicial function has to be exercised by authorities other than those that are executive. He contended that when

quasi-judicial authorities are created, the officers who preside over such authorities can only be appointed with the consultation of the Chief Justice of Pakistan or by the Chief Justice of a province.

10. Mr. Makhdoom Ali Khan Sr.ASC submitted that the office of the Governor is a constitutional office and when the Constitution talks of the functions of the Governor it is talking of its constitutional functions and not of functions outside the Constitution. However he contended that functions conferred upon the Governor outside the Constitution by a statute, would inherently be functions conferred upon him as a *persona designata* and he would not be acting in terms of Article 105 of the Constitution. He submitted that a law can be passed by a provincial assembly, the elected representatives of the people, in the exercise of their legislative powers whereby they specify that a certain person should be appointed to a statutory post and consequently the functions that person exercises would indeed be statutory functions. He contended that in the facts and circumstances of this case the appointment of the Chancellor is statutory but if the statute itself provides that the Chancellor, whilst exercising his statutory functions, is subject to Article 105 of the Constitution, then there can be no question about the law being *ultra vires*.

11. Mr. Makhdoom Ali Khan next submitted that pursuant to the position in terms of the statutory provisions of the Act prior to the amendment whereby Section 11(8) was inserted, the Chancellor would undoubtedly be exercising statutory functions without the advice of the Chief Minister. In support of his submission he placed reliance upon a judgment of this Court in the case of University of the Punjab, Lahore vs.

Chaudhry Sardar Ali (1992 SCMR 1093) and a judgment of the Indian jurisdiction in the case of **Dr. S.C. Barat and another v. Hari Vinayak Pataskar and others** (AIR 1962 Madhya Pradesh 73.)

12. Mr. Makhdoom Ali Khan continued his arguments by identifying the functions and powers of the Governor under the Constitution. He submitted that the Governor was appointed by the President under Article 101 of the Constitution, whereas Article 105 r/w Article 48(2) of the Constitution stipulates that the Governor in discretionary matters is not bound by the advice of the Chief Minister. The learned Amicus demarcated the functions of the Governor enumerated in the Constitution as those non discretionary functions performed on the advice of the Chief Minister, in terms of Article 105 of the Constitution, and those discretionary functions that can be performed without the advice of the Chief Minister. He submitted that the functions of the Governor under Article 110 (*Right of Governor to address Provincial Assembly*), Article 128 (*Power of Governor to promulgate Ordinances*), Article 129 (*The Provincial Government*), Article 131 (*Governor to be kept informed*), Article 132 (*Provincial Ministers*), Article 139 (*Conduct of business of Provincial Government*) and Article 140 (*Advocate General for a Province*) of the Constitution were all non discretionary in nature. Conversely he submitted that the provisions of the Constitution under which the Governor was vested with discretion, either by the specific use of the word “*discretion*” or by the very structural nature of the function being performed, were Article 112(2) (*Dissolution of Provincial Assembly*), Article 116(2)(b) (*Governors assents to Bills*), Article 130(7) (*vote of confidence*), and Article 133 (*Chief Minister continuing in*

office) of the Constitution. He submitted that in addition to the aforesaid discretionary powers of the Governor, Article 234 of the Constitution goes a step further and by its sub-clause (2) explicitly excludes the application of Article 105 of the Constitution.

13. Mr. Makhdoom Ali Khan further contended that Article 105 of the Constitution itself provides for exceptions to the said Article which are embedded in the constitutional structure. He contended that Article 105 r/w Article 48 of the Constitution creates certain exceptional discretionary powers which may arise by the specific words used in the Constitution i.e. where the word “discretion” is used or by the very structure of the constitution itself i.e. vote of confidence, vote of no confidence, Chief Minister continuing in office, dissolution of the assembly etc. He submitted that while the constitutional rule is that the Governor is bound by the advice of the Chief Minister, the constitutional exception is that in certain matters he is not bound by the advice of the Chief Minister. He submitted that insofar as Section 11(8) of the University Act is concerned, the legislature whilst referring to Article 105 of the Constitution, is referring to the constitutional role and not the constitutional exceptions.

14. Mr. Makhdoom Ali Khan submitted that Section 11(8) of the University Act states that in the performance of his functions under the Act, the Chancellor shall act and be bound in the same manner as the Governor of a province acts and is bound under Article 105 of the Constitution. He submitted that Section 11-A is also a function performed by the Chancellor under the Act, therefore, Section 11-A will be subject to Section 11(8) of the University Act. He further submitted that Section 11-A, whereby revisional

power is vested with the Chancellor, is not judicial or quasi judicial in nature but to the contrary is executive supervisory power. He submitted that the only way Section 11-A could override Section 11(8) is if it is held that Section 11-A is a special power vested in the Chancellor while Section 11(8) is general in nature, therefore, the former would override the latter.

15. Mr. Makhdoom Ali Khan the learned Amicus further developed his argument by contending that there are two interpretations which may be given to Section 11(8) and 11-A of the University Act. According to literal interpretation rule, the revisional powers of the Chancellor under Section 11-A of the Act are nothing more than one of the functions that the Chancellor exercises under the Act and are therefore, subject to Section 11(8) of the Act. He further contended that the purposive interpretation on the other hand would be that the office of Chancellor was created to keep it away from the political expediencies of the day and consequently in these matters there would be no interference warranted from the Provincial Government and the Chancellor has to apply his own mind in the capacity of an independent statutory functionary. He, however, submitted that a purposive interpretation, rendering Section 11-A independent of 11(8) of the Act, should only be resorted to if holding otherwise would lead to an absurdity. He further submitted that if the latter course of interpretation is taken, then this Court will be making the assumption that the Governor will never act out of political expediency and the Government will always act out of political expediency.

16. The learned Amicus Mr. Makhdoom Ali Khan reiterated that the statutory function of the Chancellor under the Act was not circumscribed

earlier but post insertion of Section 11(8), it has been circumscribed and the new statutory dispensation provides that the Chancellor should act on the advice of the Chief Minister. He submitted that if the Chancellor is given a statutory function independent of his constitutional functions, then Article 105 would clearly not apply, but the legislature by introducing Section 11(8) of the Act has essentially legislatively overruled the **Sardar Ali Case** (*ibid*), therefore, the current legislative scheme mandates that Article 105 of the Constitution will be attracted to the exercise of the Chancellor statutory functions as well.

17. Mr. Makhdoom Ali Khan concluded his arguments by bringing to our attention that the Governor under the Constitution is a federal appointee and for constitutional purposes, he is the representative of the Federation. He submitted that if the purposive interpretation is resorted to by us and Section 11A of the University Act is construed independently of Section 11(8) every time the province gives the Governor a function to perform, which under the purposive interpretation he could examine independently, this could tantamount to permitting federal interference in provincial matters, consequently creating a situation where a federal nominee would be interposed between the Provincial Government and the University. This he contended would inevitably lead to a conflict between the Federal and Provincial Governments. He submitted that this point had been attended to in the Judgment of this Court in the case of **Rana Aamer Raza Ashfaq vs. Dr. Minhaj Ahmad Khan** (2012 SCMR 6).

18. Mr. Khawaja Haris Ahmed Sr.ASC Amicus Curiae submitted that the law laid down by this Court in the **Rana Aamer Raza Case** (*ibid*)

was the correct enunciation of law and that he endorsed the arguments of Mr. Makhdoom Ali Khan. He submitted that upon a reading of Article 105 of the Constitution, although the Governor is bound by the advice of the Chief Minister, there are certain exceptions as stated in Article 48(2) of the Constitution, which are essentially in exercise of the Governor's discretionary powers. He submitted that what must be examined is whether there are discretionary functions exercised by the Chancellor under the University Act as well. He contended that under the Constitution, the Chancellor in exercise of some of his functions, by virtue of certain constitutional exceptions, is not bound by the advice of the Chief Minister with respect to those matters in which he has discretionary powers. He submitted that similarly the Chancellor, whilst exercising his powers / functions under the Act, would also not be bound by the advice of the Chief Minister in matters in which he has discretion.

19. Mr. Khawaja Haris Ahmed further submitted that Section 11-A of the Act vests revisional powers in the Chancellor, which powers he submitted were by their very nature discretionary, and that the discretionary powers of the Chancellor exercised under the University Act will not come within the mischief of Section 11(8) of the Act. He submitted that this Court ought to examine what provisions in the University Act qualify as discretionary powers of the Chancellor. These discretionary powers, he submitted, would not be hit by Section 11(8) as opposed to those functions of the Chancellor strictly performed under the Act. He submitted that exceptions to Article 105(1) are given in 105(5) read with Article 48(2) and if Section 11(8) of the Act is legislation by reference to Article 105 of the

Constitution, then the concept of a discretion based bifurcation of the powers of the Governor, being subject to the advice of the Chief Minister, would also have to be imported and read into Section 11(8) of the Act.

20. Mr. Muhammad Waqar Rana, learned Additional Attorney General submitted that prior to the insertion of Section 11(8) of the University, whereby Article 105 has been incorporated by reference, there was a possibility that the Governor and the Provincial Government would be considered two separate bodies and there would be a likelihood of conflict and therefore a need arose to incorporate 11(8) in the Act. He submitted that as Article 105 of the Constitution has been specifically mentioned in Section 11(8) of the Act, the same has to be followed in letter and spirit. He submitted that if there was an exception to the applicability of Article 105 of the Constitution in terms of the powers exercised by the Chancellor under the Act, it ought to have been expressly mentioned. Otherwise, if an interpretation is placed that in exercise of his revisional powers the Chancellor is acting on his own then this may defeat the provisions of Section 11(8). He further submitted that had this been the intent of the legislature that the Chancellor would be acting on his own without seeking the advice of the Chief Minister, then nothing stopped the legislature from expressly providing for the same. He submitted that the law laid down by this Court in the **Rana Aamer Raza Case** (*ibid*) is the correct enunciation of law and in all matters the Chancellor / Governor is bound by the advice of the Chief Minister. He placed reliance in support of his contentions on a judgment of this Court in the case of **Pakistan Burmah Shell Ltd. vs.**

Nasreen Irshad (1989 SCMR 1892), and on two judgments of the Indian jurisdiction reported as **2006 2 SCC 1** and **2010 SCC 331**.

21. Mr. Razzak Ali Mirza learned Additional Advocate General Punjab submitted that it was the stance of the Provincial Government, as per his instructions, that the powers vested with the Chancellor under Section 11-A of the Act were discretionary in nature. He submitted that the advice of the Chief Minister would not be attracted when the Chancellor is called upon to judicially determine the rights of the employees of the University or when the Chancellor acts in a quasi judicial manner.

22. Mr. Nisar Durrani Advocate General Sindh endorsed the arguments of Mr. Makhdoom Ali Khan Amicus Curiae and submitted that the law laid down by this Court in the case of **Rana Aamer Raza** (*ibid*) is the correct enunciation of law.

23. Mr. Abdul Latif Yousafzai, learned Advocate General KPK submitted that when the Governor exercises powers under the Constitution he is bound by the advice of the Chief Minister, however, when the Chancellor whilst acting under the University Act exercises quasi-judicial and discretionary functions which are statutory in nature, he is not bound by the advice of the Chief Minister. In support of his submission he placed reliance upon a 5 member bench judgment of the Lahore High Court in the case of **Aurangzeb Shaafi Burki vs. Province of Punjab** (2011 PLC (C.S.) 735..

24. Mr. Ayaz Swati, the learned Additional Advocate General Balochistan submitted that the legislation governing universities in

Balochistan did not have a provision in *pari materia* to that of Section 11(8) of the University Act. Although the Governor of the Province acts as Chancellor for Universities in Balochistan as well, yet there was no legislation by reference to Article 105 of the Constitution, hence the legislative framework to the extent of the province of Baluchistan was distinguishable from that of the other Provinces.

25. Mian Muhammad Rauf, AG Islamabad endorsed the arguments of Mr. Makhdoom Ali Khan, the learned Amicus Curiae. He drew our attention to an opinion of this Court in the case reported as **Reference No.2 of 2005 by the President of Pakistan** (PLD 2005 SC 873) to stress the point that there are certain functions which the Governor performs which are discretionary in nature thereby not requiring the advice of the Chief Minister.

26. Although Sardar Muhammad Aslam learned ASC for the Appellant had addressed this Court extensively on the *lis* at hand, however the AOR for the Appellant requested that he be allowed to make his submissions with respect to some factual matters including the procedural history of the case before the High Court, a request that we acceded to. He submitted that the Appellant in lieu of the advertisement for the post of Associate Professor at the University was the only candidate who applied and the selection board headed by the Vice Chancellor, including 3 foreign consultants, had recommended his appointment. He further contended that the Respondent had earlier filed a similar writ petition before the High Court (Respondent No.1 in this appeal) which had been unconditionally withdrawn. He submitted that this Court must examine the effect of there

being two High Court orders, one of dismissal on account of unconditional withdrawal and one of acceptance, regarding the same matter.

27. Mr. Abdul Rehman Siddiqui learned ASC for the Respondent No.1 submitted that he adopts the contentions of Mr. Makhdoom Ali Khan, the learned Amicus Curiae. With respect to the submissions of the AOR for the Appellant, he contended that the earlier writ petition had been filed prematurely by the Respondent (petitioner before the High Court) whilst his revision was pending before the Governor. He submitted that subsequent to the passing of the order by the Governor on the revision petition, the Respondent herein instituted a fresh writ petition before the High Court. Replying to the contentions of the AOR with respect to the merits of the Appointment of the Appellant, the learned ASC for the Respondent submitted that the Appellant was appointed by the Vice Chancellor of the University in anticipation of approval by the Syndicate. The Syndicate did not provide the required approval on account of the Appellant lacking the requisite degree, experience and documentation. Insofar as the broader question of law is concerned, learned ASC for the Respondent submitted that Article 105 of the Constitution was imported into Section 11(8) of the Act, therefore, no exceptions to Section 11-A can be read into the statute.

28. We have heard the learned Counsel for the parties, the learned Advocate Generals, as well as the learned Additional Attorney General for Pakistan and have perused the record with their assistance. The question requires to be answered in these proceedings is whether the Chancellor while exercising revisional powers under Section 11-A of the Act is bound to act and or seek advice of the Government/ Chief Minister in view of the

language of Section 11 (8) of the Act. Sections 11-A and 11 of the Act are reproduced as under:

11. Chancellor.-(1) *The Governor of the Punjab shall be the Chancellor of the University.*

(2) *The Chancellor or his nominee shall preside at the Convocation of the University and the meetings of the Senate.*

(3) *If the Chancellor is satisfied that the proceedings of any Authority are not in accordance with the provisions of this Act, 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.*

(4) *Every proposal to confer an honorary degree shall be subject to confirmation by the Chancellor.*

(5) *The Chancellor shall have the power 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 re-consideration.*

(6) *The Chancellor may remove any person from the membership of any Authority if such person:-*

- (i) *has become of unsound mind; or*
- (ii) *has been incapacitated to function as member of such Authority; or*
- (iii) *has proceeded outside Punjab for a period exceeding six months; or*
- (iv) *has ceased to hold the position, office or qualification which was pre-requisite for his election/appointment as member of such Authority; or*
- (v) *has been convicted by a court of law for an offence involving moral turpitude;*
- (vi) *has failed to attend three consecutive meetings of the authority; or*
- (vii) *has accepted any assignment which involves his absence from the University for a continuous period of six months or more.*

(7) [Repealed]

(8) *In the performance of his functions under the Act the Chancellor shall act and be bound in the same manner as the Governor of a Province acts and is bound under Article 105 of the Constitution of the Islamic Republic of Pakistan.*

11-A. Revisional powers of the Chancellor.- *The Chancellor may, of his own motion or otherwise, call for and examine the record of any proceedings in which an order has been passed by any authority for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order and may pass such orders as he may deem fit.*

29. A bare reading of Section 11 of the Act prescribes functions of the Chancellor whereas Section 11-A confers revisional powers upon him. A three member Bench in the case of University of Punjab vs. Sardar Ali reported in (1992 SCMR 1093), while interpreting Section 11 (8) of the Act has held that Sub-Section 8 of Section 11 relates to the manner in which the Chancellor shall act in discharge of his duties and provides that he would be bound by the advice of the Chief Minister in the same manner as provided under Article 105 of the Constitution. However, it was concluded that powers conferred on the Chancellor under Section 11-A are independent of any restrictions contained in Section 11(8) of the Act which are relatable to his functions under the Act. Following the judgment in the case of Dr S.C Barat and another vs. Hari Vinayak Pataskar (AIR 1962 MP 73), this Court has further held that the powers and duties of the Chancellor conferred under the Act are not akin to the powers and duties of the office of the Governor. The judgment concluded that the appointments of the Respondents (employees) fall within the domain of the Chancellor notwithstanding the language of Sub-Section 8 of Section 11 of the Act.

30. The second judgment rendered by another three Member Bench of this Court in the case of Federation of Pakistan vs. Muhammad Tariq Pirzada (1999 SCMR 2189), in a way endorses the same view, interpreting the powers conferred on the President under Article 32 of the Establishment of Office of Wafaqi Mohtasib (Ombudsman) Order. It concluded that powers exercised by the President as Appellate Authority are quasi judicial in nature and that Article 48 of the Constitution does not debar the President from exercising appellate powers conferred on him under the aforesaid order independently. However, the view taken in the aforesaid two judgments was not endorsed by a four Member Bench of this Court in the case of Rana Aamer Raza Ashfaq vs. Dr. Minhaj Ahmad Khan (2012 SCMR 6), where this Court has held that the Chancellor under the Act was bound by the advice of the Government/Chief Minister while exercising revisional and or appellate powers. In fact the Bench in this judgment only interpreted Section 11 (8) of the Act which relates to the functions of the Chancellor and held that in discharge of his functions under the Act, he is bound by the advice of the Chief Minister/Government. In this judgment this Court has considered the case of Federation of Pakistan vs. Muhammad Tariq Pirzada (1999 SCMR 2189), but the learned Bench did not take note of the earlier judgment in the case of University of Punjab vs. Sardar Ali reported in (1992 SCMR 1093) and rendered conflicting judgment by holding that while exercising revisional powers, the Chancellor was bound to seek/act on the advice of the Government/Chief Minister.

31. In order to appreciate the contentions of the parties on the conflicting views recorded in the aforesaid judgments, it would be necessary

for us to examine the scheme of the Act. Generally speaking the statutes confer powers, functions and duties on different statutory authorities. These are distinct concepts of administrative law, which have been developed by the Courts over a long period and have different jurisprudential overtone and consequences. Even in the case of Federation of Pakistan vs Durrani Ceramics and others (2014 SCMR 1630), a distinction of the nature has been drawn. A bare perusal of Sections 11 (8), 11-A, 15, 24, 26, 28 and 29 of the Act would instantly indicate that the legislature has consciously used three distinct concepts in different provisions of the Act. While the restriction envisaged in Section 11 (8) is relatable to functions, Section 11-A refers to powers of the Chancellor. Thus the restrictions envisaged in Section 11 (8) would be applicable to cases where functions are discharged by the Chancellor, but would not extend in cases of exercise of powers conferred on him such as is the case under Section 11-A. Section 11 spells out the functions of the Chancellor. The term “Function” in its ordinary parlance means an act in which the Authority does not have the discretion whereas the term “Power” implies exercise of discretion by the Authority.

32. The term ‘Function’ as defined in Words and Phrases (Permanent Edition - 17A) is that the word “function” is derived from the Latin “functus” which is the past participle of the verb ‘fungor’, which means to perform, execute, administer. The most usual signification of the term “function” is the fulfillment or discharge of a set duty or requirement; exercise of a faculty; that power of acting in a specific way which appertains to a thing by virtue of its special constitution. “Function” is that mode of action or operation which is proper to any organ, faculty, office, structure,

etc; and is the kind of action or activity, proper to a person or thing. “Function” is not patentable, but function shows the explanation of the form, the result, the means of obtaining the result, and the operation and co-operation of the elements to produce the result. “Function” performed by an authority is inherent and goes by the office.

33. The term ‘Power’ as defined in Words and Phrases (Permanent Edition - 33) simply connotes the discretionary authority to perform. Unless otherwise defined by statute, a “Power” is “General” when it is exercisable in favor of any person that a donee may select and is “special”, “limited”, or “particular” when it is exercisable only in favor of persons or a class of persons designated or described in the instrument creating the power. “Power” is a lawful ability to accomplish a given purpose. “Power” conferred on an authority is derived or drawn from the law.

34. Now the next question would be whether the powers conferred under Section 11-A of the Act are administrative powers and/or quasi judicial powers to be exercised by the Chancellor. The word “Quasi” is defined ‘as if’, as though, as it were, in a manner, in a certain sense or degree, seeming, seemingly, analogous to and it may mean resemblance. The quasi judicial power is a duty conferred by words or by implication on an officer to look into facts and to act on them in the exercise of discretion, and it lies in the judgment and discretion of an officer other than a judicial officer. A “quasi judicial power” is one imposed on an officer or an authority involving the exercise of discretion, judicial in its nature, in connection with, and as incidental to, the administration of matters assigned or intrusted to such officer or authority. A “quasi judicial act” is usually not

one of a judicial tribunal, but of a public authority or officer, which is presumably the product or result of investigation, consideration, and human judgment, based on evidentiary facts of some sort in a matter within the discretionary power of such authority or officer. A quasi judicial power is not necessarily judicial, but one in the discharge of which there is an element of judgment and discretion; more specifically, a power conferred or imposed on an officer or an authority involving the exercise of discretion, and as incidental to the administration of matters assigned or entrusted to such officer or authority.

35. After examining the terms “Function”, “Power” and “Quasi Judicial Power” we revert back to Article 105 of the Constitution, which provides that the Governor under the Constitution, who is *persona designata* Chancellor of the University, has to act on the advice of the Chief Minister. Article 105 (1) provides that the Governor is bound to act on the advice of the Chief Minister. This Article starts with the prefix ‘subject to the Constitution’. In fact, under the scheme of the Constitution, there are provisions where the Governor is bound by the advice of the Chief Minister, but then there are exceptions where the Governor being the nominee of the President is not required to follow the advice of the Chief Minister or where the power has been conferred on the Governor to act independently or under the Constitution.

36. The argument of learned Sr.ASC, Mr. Makhdoom Ali Khan, that since Section 11(8) has been introduced by an amendment, restricted the powers of the Chancellor provided under Section 11-A to act on the advice of the Chief Minister in the manner provided under Article 105 of the

Constitution, therefore, Section 11(8) of the Act is applicable to Section 11-A and the powers exercised by the Chancellor can only be exercised by him on the advice of the Chief Minister. He further submits that the Revisional powers of the Chancellor in terms of Section 11-A of the Act are not quasi judicial in nature but are administrative in nature, therefore, the Chancellor has no discretion to decide a revision or appeal independently. We are not persuaded by these arguments for more than one reason. Section 11(8) was amended on 12.03.1975, by Act XVI of 1975. To start with the Revisional powers conferred under Section 11-A of the Act on the Governor (Chancellor) of the Province are not qua his position as the Governor of the Province but a statutory functionary namely, the Chancellor, who for the time being happens to be the Governor of the Province as well. Had this not been so, the Rules of Business of the Punjab Government would have also specifically adverted to this category of cases which are required to be decided by the Governor qua his position as Governor. It is similar to the cases where the Judges of the High Courts are appointed as Members of the Tribunals such as the Tribunal which hears appeals against the orders passed by Returning Officers prior to the general elections under the Representation of Peoples Act, 1976.

37. The next contention of the learned Amicus Curiae that powers conferred on the Chancellor under Section 11-A are not quasi judicial is also not persuasive. In the foregoing paras, we have discussed that the term “Quasi Judicial Power” refers to powers which cannot be delegated and are to be exercised by the Persona Designata mentioned in the statute. Such powers, functions or duties can neither be delegated to any other person or

authority nor can be exercised on the recommendation of any other authority or person. The powers, functions and duties provided under the scheme of the Act are to be performed or discharged by the person or authority designated by the statute and none other. Any other interpretation would lead to absurd results; for instance while the entire proceedings including the personal hearing shall be conducted by the person or authority specified in the statute (Chancellor), yet the decision, which may be contrary to his own findings, shall be taken by the Government (Chief Minister). This would be a completely sham exercise. We are neither prepared to do gross injustice to the plain language of the statute nor attribute such outcome to the legislative intent. The more logical interpretation which comports with the legislative intent is to look at the particular provision of the statute and determine the nature of powers, functions and duties conferred by the statute. If it is in the nature of quasi judicial power, then the Persona Designata is required to act personally and not on the basis of any advice by any other person or authority.

38. Where the Tribunal or an Authority is conferred with quasi judicial powers by the Statute, the duty to act fairly, justly by a proper application of mind to the facts of the case after providing opportunity of hearing to the person affected is far greater than compared to cases the powers conferred by the Statute is of purely administrative nature involving the multiple options to the authority and consideration of policy issues.

39. Mr. Makhdoom Ali Khan, learned Sr.ASC, was of the view that the Governor (Chancellor) while exercising revisional powers under Section 11-A or under any other provision of the Act has to seek the advice of the

Chief Minister. This view does not appeal to reason. If such interpretation is attached to the provisions of Section 11(8) and the powers conferring discretion under Section 11-A on the Chancellor are restricted in the manner that the Chancellor shall seek advice of the Government, after hearing the party and before deciding the Revision, this by itself would be violative of Article 10-A of the Constitution and against all the natural norms established in the legal parlance. We have noticed that the scheme of the Act has not been adverted to by the Honourable Bench while deciding the case of Rana Aamer Raza Ashfaq vs. Dr. Minhaj Ahmad Khan (2012 SCMR 6), instead it has concluded that functions in terms of Section 11(8) or otherwise provided by the Act were synonymous to the powers of the Chancellor conferred by the Act.

40. As we have also noticed that the earlier judgment in the case of University of Punjab vs. Sardar Ali (1992 SCMR 1093) has not been considered in the judgment of Rana Aamer Raza Ashfaq (*supra*), which was directly on point. In the judgment of University of Punjab (*supra*), it has been held that Section 11 (8) relates to the manner in which the Chancellor shall act in discharge of his duties. All that Sub-Section 8 of Section 11 provides is that the Chancellor (Governor) shall be bound by the advice of the Chief Minister in the manner as he is bound in the discharge of his functions under Article 105 of the Constitution. Mere reference to Article 105 of the Constitution in Section 11 (8) does not take away the revisional powers of the Chancellor conferred on him under Section 11-A of the Act. Section 11 (8) provides that “*the Chancellor shall act and be bound in the same manner as the Governor of a Province acts and is bound under Article*

105 of the Constitution". This clearly manifests that the restriction is relatable to the function of the Chancellor whereas Section 11-A empowers the Chancellor to exercise his discretion, when he hears revision and or appeal. In other words, the Chancellor, who is *Persona Designata* under the Act, is conferred power but in a different capacity which cannot be termed identical to that of the office of the Governor. Looking from another angle, the Punjab Government has introduced the Punjab University Employees (Efficiency & Discipline) Statutes, 1975 (hereinafter referred to as Statutes of 1975. The Statute of 1975 is made applicable to the Universities Employees except holders of such posts as specified by the Chancellor and regulates the terms and conditions of the Employees of the Universities of Punjab. This Statute confers powers of appointments, promotions and actions against Employees of the Universities. Sections 12,15,17 and other provisions confer powers on the Chancellor for hearing Revisions and Appeals preferred by the Employees against the orders of the competent authorities. If Section 11 (8) is interpreted in the manner as advanced by the learned ASC, it would mean that if an employee prefers a Revision or Appeal by invoking the provisions of the Act or Statutes of 1975, the Chancellor cannot pass an order unless he reverts back to the Chief Minister and or the Government for its advice. The case of University of Punjab vs. Sardar Ali referred to hereinabove has focused this issue while interpreting Section 11(8) of the Act and held that the Chancellor will apply his mind and decide the appeals or revisions independently and Section 11(8) will not come in his way.

41. Mr. Khawaja Haris learned Amicus Curiae in fact has argued that the powers of Chancellor cannot be restricted by Section 11(8) while he exercises the Revisional powers under Section 11-A of the Act. He has relied upon the language of Section 11(8) and said that even in the scheme of Constitution, the Governor has been given discretion to exercise some of the powers independently and has not been made responsible to act on the advice of the Chief Minister of the Province on all the issues. He contended that in the like manner the Chancellor is not bound by the advice of the Chief Minister in the matters where the Chancellor has been conferred powers as discussed.

42. From the aforesaid discussion, we are clear in our minds that the principles enunciated in the judgments rendered by this Court in the cases of University of Punjab vs. Sardar Ali (1992 SCMR 1093) and Federation of Pakistan vs. Muhammad Tariq Pirzada (1999 SCMR 2189), are in consonance with the spirit of the provisions of the Act and the conflicting view in the case of Rana Aamer Raza Ashfaq vs. Dr. Minhaj Ahmad Khan (2012 SCMR 6) is not the good law. Section 11-A or the other provisions of the Statute of 1975 under which Chancellor exercises revisional or appellate powers, are independent and do not make it obligatory on him to seek and or act on the advice of the Chief Minister in terms of Section 11(8) of the Act.

43. We have also perused the additional note of one of the Honourable Judge of this Court in the case of Rana Aamer Raza Ashfaq, who while concurring with the findings of the bench has concluded that by the 18th Amendment, the concurrent list was abolished and the 'subject of

Education’ went within the exclusive legislative domain of the Province. The Honourable Judge, while interpreting different provisions of the Constitution has held that after the 18th Amendment, if the power of the Governor (Chancellor) is not curtailed in terms of Section 11(8), it may lead to conflict of interest between the Federation and the Province. The Hon’ble Judge was persuaded to reach such a conclusion on the ground that under the scheme of the Constitution, the Governor is the nominee of the President and is also bound by the advice of the Chief Minister. According to the Hon’ble Judge that after abolition of the concurrent list, the President may ask the Governor (Chancellor) to act contrary to the advice of the Chief Minister on the subject of Education. We, with profound respects, differ with the view of the Honourable Judge. Under the scheme of the Constitution, the Governor has to perform certain functions provided therein. The Article 105 of the Constitution opens with the prefix “subject to Constitution” and specifies the functions of the Governor performed by him on the advice of the Chief Minister but the scheme of the Constitution also includes the President who may make such provision as he thinks fit for discharge of functions of the Governor “in any contingency not provided for in this part”. Therefore, the functions of Governor in terms of Article 105(1) would be distinct from the functions of the Governor, which he has to discharge in terms of Article 101(5) of the Constitution. Both these provisions of the Constitution are independent of each other and mutually exclusive. There are other provisions of the Constitution which confer powers on the Governor to exercise his discretion without seeking advice of the Chief Minister/ or act on the directives of the President. Since 1975 till date, the Provincial Governments have been legislating laws on Education and the Federation

has never intervened. This approach of the Hon'ble Judge perhaps is not in conformity with the scheme of the Constitution. We, for the aforesaid reasons, do not endorse the view of the Hon'ble Judge.

44. Before parting with the judgment, we acknowledge the able assistance extended by both the learned Amicus Curiae, Additional Attorney General for Pakistan and Advocate Generals of the Provinces and the Counsels representing the parties.

45. For the aforesaid reasons, this appeal is allowed and the judgment of the Lahore High Court allowing the Writ Petition of the Respondent is set aside. The matter is remanded to the High Court for hearing the Writ Petition on merits to be decided within three months from the date of communication of the orders.

Chief Justice

Judge

Judge

Judge

Judge

Announced in open Court on _____.

(Approved for Reporting)

Sohail/**

Judge

MIAN SAQIB NISAR, J:- I have had the benefit of going through the judgment rendered by my learned brother, Justice Amir Hani Muslim, however I beg to differ with the opinion expressed therein, and therefore take the liberty to present my dissenting view.

2. The key question involved in the matter is whether the Chancellor of the University of Punjab (*University*), is bound by the advice of the Chief Minister of Punjab in terms of Section 11(8) of the University of Punjab Act, 1973 (*the Act*), while exercising his (*Chancellor's*) powers under Section 11-A of the Act.

3. The facts of the case and the arguments put forth by the learned counsel for the appellant, the learned *amici curiae*, learned law officers for the Federation and the respective Provinces, and the learned counsel for the respondents have been succinctly expressed in my brother's opinion, and thus for the sake of brevity the same are not reproduced here.

4. Heard. In order to resolve the proposition at hand, the relevant provisions of law are reproduced below:-

University of Punjab Act, 1973

“11. Chancellor.— (1) The Governor of the Punjab shall be the Chancellor of the University.

(2) The Chancellor or his nominee shall preside at the convocation of the University and the meetings of the Senate.

(3) If the Chancellor is satisfied that the proceedings of any Authority are not in accordance with the provisions of this Act, 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.

(4) Every proposal to confer an honorary degree shall be subject to confirmation by the Chancellor.

(5) The Chancellor shall have the power 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 re-consideration.

(6) The Chancellor may remove any person from the membership of any Authority if such person:-

- (i) has become of unsound mind; or*
- (ii) has been incapacitated to function as member of such Authority; or*
- (iii) has proceeded outside Punjab for a period exceeding six months; or*
- (iv) has ceased to hold the position, office or qualification which was pre-requisite for his election/appointment as member of such Authority; or*
- (v) has been convicted by a court of law for an offence involving moral turpitude;*
- (vi) has failed to attend three consecutive meetings of the authority; or*
- (vii) has accepted any assignment which involves his absence from the University for a continuous period of six months or more.*

Provided that no order under this subsection shall be passed unless the person to be affected thereby is afforded an opportunity of being heard;

(7) [Repealed]

(8) *In the performance of his functions under the Act the Chancellor shall act and be bound in the same manner as the Governor of a Province acts and is bound under Article 105 of the Constitution of the Islamic Republic of Pakistan.*

11-A. Revisional powers of the Chancellor.— *The Chancellor may, of his own motion or otherwise, call for and examine the record of any proceedings in which an order has been passed by any authority for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order and may pass such orders as he may deem fit.*

Provided that no order under this section shall be passed unless the person to be affected thereby is afforded an opportunity of being heard.”

* * * * *

Constitution of the Islamic Republic of Pakistan, 1973

“105. Governor to act on advice, etc.

(1) *Subject to the Constitution, in the performance of his functions, the Governor shall act on and in accordance with the advice of the Cabinet, or the Chief Minister*

Provided that within fifteen days the Governor may require the Cabinet or, as the case may be, the Chief Minister to reconsider such advice, whether generally or otherwise, and the Governor shall, within ten days, act in accordance with the advice tendered after such reconsideration.

(5) *The provisions of clause (2) of Article 48 shall have effect in relation to a Governor as if reference therein to “President” were reference to “Governor”.*

48. President to act on advice, etc.

(1)

(2) *Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever.”*

An analysis of the proposition at hand requires an examination of the role and functions of the Chancellor of the University. The Chancellor, as envisaged by Section 10 of the Act, is the highest ranking officer of the University, and exercises numerous functions and/or powers as prescribed by the Act (*see, inter alia, Section 11(3) to 11(6) specially*). His functions and powers include, *inter alia*, the power to nominate members of the Senate, Syndicate, etc., to remove any person from the membership of the Senate, Syndicate, Academic Council, etc., and to review orders of the Syndicate. Section 11(8) of the Act, in which reference has been made to Article 105 of the Constitution of the Islamic Republic of Pakistan, 1973 (*Constitution*), binds the Chancellor, in the performance of his functions under the Act, by the advice of the Chief Minister, as the Governor of a Province is bound under Article 105 *ibid*.

5. This allows us to segue into a discussion about the interplay between the offices of Governor and Chancellor. The office of the Governor is a constitutional one and therefore his functions are constitutional. The office of the Chancellor is a statutory one created by the Act and therefore his functions are statutory. Hence, functions conferred upon the Governor, or more accurately the **person** who acts as the Governor, by any law other than the Constitution, would be in the nature of functions

conferred upon a *persona designata*. The *persona designata* doctrine, is that non-judicial functions can be conferred on judges in their personal capacity. The Latin phrase means that a person is considered as an individual rather than as a member of a class. Originally the idea was that a judge, in his personal capacity, could be appointed to an office involving the performance of administrative or executive functions including functions which were quasi-judicial in their nature. In this case the Governor, a member of the executive, as *persona designata*, would be exercising administrative powers of a Chancellor, when deciding matters under the provisions of Section 11-A of the Act. The duties and powers of the Chancellor are not conferred upon the Governor, but upon the person who happens to occupy the office of Governor. The Chancellor does not perform his functions or act in exercise of powers available to him as Governor under the Constitution and is not bound by the advice of the Chief Minister as per Article 105 of the Constitution, rather since the appointment of the Chancellor is statutory, the functions and powers would be controlled by the statute, and the Chancellor would be bound by the advice of the Chief Minister as per Section 11(8) of the Act. This is manifest from a plain reading of Section 11(8) which draws a parallel with Article 105 by using the words “*in the same manner as...*” This fine distinction which may appear illusory is in fact very real and important and thus needs to be appreciated. This reasoning is bolstered by the fact that the statutory position of Chancellor under the Act could just as easily have been conferred upon anyone else, such as a Provincial Minister, a Provincial Secretary, or a retired Judge of the Supreme Court or a High Court, and the statute could have placed a limitation that he (*Chancellor*) would be bound by the advice of the Chief Minister. To this extent, the judgment reported as **University of the Punjab, Lahore and 2 others Vs.**

Ch. Sardar Ali (1992 SCMR 1093) in which a judgment from across the border reported as Dr. S. C. Barat and another Vs. Hari Vinayak Pataskar and others (AIR 1962 Madhya Pradesh 73) was relied upon and cited with approval, is the correct enunciation of law.

6. Going further, under Article 105(1) of the Constitution, the Governor is to act on and in accordance with the advice of the Cabinet or the Chief Minister. According to Article 105(5) read with Article 48(2) of the Constitution, the Governor, in respect of matters in which he is empowered by the Constitution to exercise his discretion, is not bound by the advice of the Cabinet or the Chief Minister. At this juncture it may be pertinent to mention that the Constitution itself draws a distinction between those functions of the Governor in which he has no discretion and is bound by the advice of the Chief Minister, in other words the Governor's constitutional duties and powers, and those functions in which the Governor is empowered to exercise his discretion and is therefore not bound by the advice of the Chief Minister. The articles of the Constitution which spell out discretionary powers of the Governor where he is not bound by the advice of the Chief Minister can be identified thus: either the article itself contains the word "discretion" or the exercise of discretion is spelt out from the wording/language of the article, or the structure of the function conferred upon the Governor in the article is such that it demands that the Governor exercise his discretion without the advice of the Chief Minister, or the particular article explicitly excludes the application of Article 105. The interpretation of the said article unfolds the **constitutional rule** that the Governor is bound by the advice of the Chief Minister and the **constitutional exception** is that the former is not bound by the advice of the latter in certain matters which have been placed solely within the former's domain. When Article 105 of the

Constitution is referred to in Section 11(8) *ibid* it embodies both, the constitutional rule and the constitutional exception. But for this purpose it is not the constitutional provisions which require exposition rather the Act *simpliciter*.

7. A bare reading of Section 11(8) of the Act clearly provides that the Chancellor would be bound by the advice of the Chief Minister in the performance of the former's functions "*under the Act*". This unequivocally stipulates the constitutional rule (*embodied in the Act*) and means that any functions undertaken or carried out by the Chancellor under the Act would be subject to the advice of the Chief Minister. What is now required to be ascertained is whether there are any exceptions to the said rule. All the learned counsel who argued the matter before us have not relied upon any other provision of the Act to indicate the same except Section 11-A. The submission of the counsel for the appellant is that this section confers a revisional power upon the Chancellor which is a quasi-judicial function therefore it should be interpreted to mean an independent power of the Chancellor. Mr. Makdoom Ali Khan, learned *amicus*, has argued that it is one of the functions of the Chancellor under the Act and that it is not his discretionary power so as to fall within the exception. Mr. Khawaja Haris Ahmed, the other learned *amicus*, has submitted that the very nature of the revisional power makes it a discretionary power of the Chancellor. In view of the above, the entire controversy revolves around the interpretation of Section 11-A.

8. Section 11-A does not provide that the revisional power so exercised by the Chancellor shall be in his "discretion"; it also does not provide a specific exclusion that whilst exercising the revisional power the Governor shall not be bound by the advice of the Chief Minister. Should the exercise of discretion be spelt out from the words of the section or

discretion should be read into it? Does the structure, purpose and object of the function exercised by the Chancellor require that he not be bound by the advice of the Chief Minister? In this context, it is salutary to recall that the power of revision is a supervisory power, jurisdiction, or function of an authority, be it executive or judicial/quasi-judicial. In the exercise of executive supervisory power a superior executive officer/authority may, either *suo moto* or when approached by someone affected by any action/order of a subordinate authority, in appropriate proceedings **available under the law** (*note: if revisional powers are provided under the law*) correct the action or order. Correspondingly a superior judicial forum may exercise its supervisory power/function in aid of a person aggrieved by the order of a subordinate judicial forum. But these two revisional jurisdictions, one on the executive side and the other on the judicial side, occupy different spheres and the two do not overlap. The exercise of the revisional power on the executive side remains purely administrative in its own hierarchy, whilst the exercise of the judicial power retains its judicial character. Only for the reason that the power of the Chancellor as per Section 11-A has been described to be a revisional power does not make him a judicial/quasi-judicial authority. It may be pertinent to mention here that according to Section 11(3) *ibid* the Chancellor, if satisfied that the proceedings of any authority are not in accordance with the provisions of the Act etc. may, after calling upon such authority to show cause why such proceedings should not be annulled, annul such proceedings by order in writing. It is nobody's case that this is a discretionary power of the Chancellor and that while exercising this power/function he is not bound by the advice of the Chief Minister. When we compare the revisional power envisaged by Section 11-A and the one referred to above [Section 11(3)], these are akin and both are administrative in nature. I beg to

differ with the distinction drawn by my brother in his opinion between Section 11 which provides for “functions” and Section 11-A which provides a “power” and on the basis whereof my learned brother restricts the applicability of Section 11(8) to the former and does not extend it to the latter. With profound respect, I am not persuaded that the applicability or otherwise of Section 11(8) rests upon the distinction between “function” and “power”. The argument that while exercising his **functions** under Section 11 the Chancellor is bound by the advice of the Chief Minister but while exercising **power** under Section 11-A the Chancellor is not bound by such advice on account of an element of discretion involved in the exercise thereof, overlooks the fact that the word “power” has been used in Section 11(5) itself. How can the word “Chief Minister” be read instead of the word “Chancellor” for purposes of all provisions in Section 11, but not Section 11-A, especially when Section 11(5) also stipulates a **power** of the Governor? To my mind the bifurcation between “functions” and “powers” of the Chancellor is ephemeral and cannot be used to determine the applicability of Section 11(8).

9. I find myself unable to agree that Section 11-A is a quasi-judicial function and therefore it would be absurd that though the Chancellor has discretion, he would still be bound by the advice of the Chief Minister. In my considered view, the power of revision under Section 11-A is not of a quasi-judicial nature but an executive supervisory power, conferred upon the highest ranking officer in the University hierarchy, i.e. the Chancellor, in order to serve as a check and balance mechanism to ensure that the Senate, Syndicate, Academic Council, etc. pass orders in accordance with law and propriety. In this respect, the illustration quoted by Mr. Makhdoom Ali Khan has much force, in that Article 45 of the Constitution, whereby the President is empowered to grant pardon, is not

a judicial/quasi-judicial function, rather it is the exercise of a prerogative conferred upon the Head of State by the Constitution, on the advice of the Government, to pardon a person or commute a sentence etc., and so ultimately it is an executive function. Likewise, on the statutory plane, the office of the Ombudsman is essentially an executive function, which (*Ombudsman*) serves as a statutory check on the Government to so as to curb instances of maladministration. In this regard the enunciation of law in the judgment reported as **Federation of Pakistan through Secretary, Establishment Division, Government of Pakistan, Islamabad Vs. Muhammad Tariq Pirzada and others (1999 SCMR 2189)** to the extent that the President exercised quasi-judicial powers while deciding representations under the Ombudsman law, does not seem to be the correct exposition of law for the reason that the very functions of the Ombudsman are not of a judicial nature, since the Ombudsman simply holds a probe into maladministration by a Government agency and makes recommendations which is very different from the orders a judicial officer passes, and from those recommendation(s), a representation lies to the President. Further there is no power of enforcement of the Ombudsman's recommendations, and neither is there any mechanism for enforcement of the President's decision. I do not find that it would negate the spirit and purpose of the power of revision or lead to any manifest absurdity to make the Chancellor bound by the advice of the Chief Minister in respect of the exercise of power under Section 11-A. The argument that it would render the Governor's power redundant is in fact quite contrary to our constitutional scheme and democratic structure, wherein the executive functions are primarily exercised by the Prime Minister or the Chief Minister as the case may be. The Governor is a representative of the Federation. On the touchstone of separation/trichotomy of powers it is

incomprehensible as to how the Governor can be given the discretion to interfere in the executive functions of the Province.

10. Coming back to the reasons as to why I am of the view that Section 11(8) controls Section 11-A of the Act, Section 11(8) specifically provides for the exercise of certain functions by the Governor and refers to Article 105 of the Constitution which is to be followed in letter and spirit. The provisions of Act do not provide for any exception that allows the Governor to act otherwise than in accordance with the advice of the Chief Minister. If there was meant to be an **exception** to this general rule of being bound by the advice of the Chief Minister, then such an exception would/should have been expressly mentioned in the statute or else fall into one of the categories outlined above. The interpretation that whilst exercising his powers of revision under Section 11-A the Governor is to act on his own without the advice of the Chief Minister would defeat the mandate of the clear provisions of Section 11(8). Furthermore, Section 11-A was inserted by the University of the Punjab (Amendment) Ordinance, 1982, approximately nine years after the promulgation of the Act; had the Legislature so wanted, it could have framed the section *ibid* as a non-obstante clause, but this was not done, making it patently clear that the intention of the Legislature was to render Section 11-A subject to the already existing Section 11(8).

11. The argument that the office of the Chancellor was created to keep such matters away from political expediencies and considerations in order to forestall the Government of the day from interfering in the affairs of the University and further that the Chancellor has to apply his independent mind; suffice it to say that the very fact that the Governor is to act as the Chancellor as *persona designata* negates this argument, which (*argument*) assumes that the Chancellor, who is the Governor, will not

be influenced by political considerations and conversely that the Government (*Chief Minister*) will act whilst keeping political concerns at the forefront. We cannot assume that making the Chancellor bound by the advice of the Chief Minister would necessarily lead to the powers under Section 11-A being exercised in favour of the University. The University is a statutory body and the Chancellor a statutory functionary. Section 11-A does not provide for a quasi-judicial function but an administrative or executive supervisory function, therefore even the principle of separation of powers is not violated.

12. Moreover, by interpreting Sections 11(8) and 11-A of the Act in such a way so as to empower the Chancellor with the sole discretion whilst exercising revisional powers would essentially result in the Federation interfering with Provincial autonomy as mentioned above. The Governor is for all constitutional intents and purposes, a Federal appointee and a representative of the Federation in the respective Province. Since the Eighteenth Amendment, education has become a Provincial subject, thus no interpretation can be placed upon the Act which does violence to the Constitutional scheme and the Federation cannot be allowed to interfere and impinge upon the autonomy of the Province, as has been highlighted by my learned brother, Justice Asif Saeed Khan Khosa, in his note in the judgment reported as **Rana Aamer Raza Ashfaq Vs. Dr. Minhaj Ahmad Khan** (2012 SCMR 6), which I believe is the correct exposition of law.

13. In light of the above, the crux of this opinion is that the Chancellor is bound by the advice of the Chief Minister in view of Section 11(8) of the Act, and that the said section governs the powers exercised by the Chancellor under Section 11-A of the Act. Therefore, while deciding the revision petition of the appellant under Section 11-A *ibid*, the

Chancellor ought to have sought the advice of the Chief Minister on the matter and would have been bound by the same. The Chancellor whilst deciding the revision himself has not acted in accordance with law, thus the view taken by the learned High Court in this regard in the impugned judgment is correct and does not warrant interference by this Court, in the light whereof, this appeal is dismissed.

JUDGE

Khilji Arif Hussain, J. With honour, I have had the benefit of going through the judgments rendered by my learned brothers Mian Saqib Nisar, J. and Amir Hani Muslim, J. With profound respect to both the learned Judges, I would like to record my own reasons.

2. This appeal, with leave of the Court, is directed against the judgment passed by the Lahore High Court whereby the learned Judge-in-Chambers accepted the petition filed by the respondent by holding that the Chancellor is bound by the advice of the Chief Minister while exercising powers under section 11-A of the University of the Punjab Act, 1973 ('the Act').

3. The facts in brief necessary to decide the listed petitions are that the appellant was appointed as an Associate Professor on 21.11.2007 w.e.f. 30.10.2005 by the Vice Chancellor of the University. His appointment was challenged through writ petition No.319 of 2008. Through the said writ petition, the matter was referred by the learned High Court to the Syndicate of the University to consider the issue in the matter. On 27.12.2011, the Syndicate decided that the appointment of respondent No.5 was not in accordance with law, hence the appointment order of the appellant was withdrawn with immediate effect. The appellant filed departmental appeal. While the departmental appeal was pending, the appellant filed revisional petition under section 11-A of the Act. The Chancellor/Governor of the Punjab accepted the revision petition, filed by the appellant, vide his order dated 06.06.2012 which order was impugned through the Writ Petition No.16961 of 2012 before the Lahore High Court which was accepted by the learned Judge-in-Chambers as mentioned above.

4. In order to appreciate the issue in the matter, I would like to reproduce section 11 of the Act which reads as under:-

"11. Chancellor

- (1) *The Governor of the Punjab shall be the Chancellor of the University.*
- (2) *The Chancellor or his nominee shall preside at the Convocation of the University and the meetings of the Senate.*
- (3) *If the Chancellor is satisfied that the proceedings of any Authority are not in accordance with the provisions of the Act, 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.*
- (4) *Every proposal to confer an honorary degree shall be subject to confirmation by the Chancellor.*
- (5) *The Chancellor shall have the power 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 re-consideration.*



- (6) *The chancellor may remove any person from the membership of any Authority if such person;*
 - (i) *has become of unsound mind; or*
 - (ii) *has been incapacitated to function as member of such Authority; or*
 - (iii) *has proceeded outside Punjab for a period exceeding six months; or*
 - (iv) *has ceased to hold the position, office or qualification which was requisite for his election/appointment as member of such Authority; or*
 - (v) *has been convicted by a court of law for an offence involving moral turpitude;*
 - (vi) *has failed to attend three consecutive meetings of the Authority; or*
 - (vii) *has accepted any assignment which involves his absence from the University for a continuous period of six months or more.*
- (7) *[Repealed]*
- (8) *In the performance of his functions under the Act of Chancellor shall act and be bound in the same manner as the Governor of a province acts and is bound under article 105 of the Constitution of the Islamic Republic of Pakistan.*

11-A. Revisional powers of the Chancellor

The Chancellor may, of his own motion or otherwise, call for and examine the record of any proceedings in which an order has been passed by any authority for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order and may pass such orders as he may deem fit".

5. It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the Court must give effect to each words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is also a settled proposition of law that the provisions of the statute have to be read as a whole and in its context. When language of the provision is plain and unambiguous the question of supplying *casus omissus* does not arise. The Court can interpret a law but cannot legislate. It is a familiar rule of interpretation that the word used by legislature must be construed according to its plain natural meaning and that legislature never use redundant or surplus words/phrases.


6. Keeping in view these settled principles of law of interpretation, when I read section 11 of the Act alongwith other provisions of the Act, it appears that by section 11 of the Act, certain powers were conferred upon the Chancellor *inter alia*, that if the Chancellor is satisfied that the proceedings of any Authority are not in accordance with the provisions of the Act, the Statutes, the Regulations, or the Rules, he may, after calling upon such Authority to show cause why such proceedings should not be annulled or that every proposal to confer an

honorary degree shall be subject to his confirmation or 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 re-confirmation or to remove any person from the membership of any Authority on the grounds mentioned in sub-clause 6 of section 11 of the Act.

7. Natural and ordinary meaning of words should not be departed from unless it can be shown that the legal context in which the words are used requires a different meaning. The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are constructed according to their grammatical meaning, unless leads to some absurdity or unless there is some thing in the context or in the object of the statute. The legislature is deemed not to waste its words or to say anything in vain. The legislature enacts a particular phrase in a statute the presumption is that it is saying some thing which has not been said immediately before.

8. When one compare the power conferred upon the Chancellor under section 11 with revision power conferred under section 11-A, he can note that there is an apparent distinction viz. while exercising these powers. The power under section 11 in view of sub-section 8 has to be exercised by the Chancellor on the advice of the Chief Minister as required under Article 105 of the Constitution whereas the revisional powers are conferred on the Chancellor under section 11-A of the Act by the Legislature, the intention of the legislature is that such powers will be exercised by the Chancellor without the advice of the Chief Minister is manifest from the words used by the legislature "*of his own motion or otherwise*". The word "*own*" when used, it means belonging to oneself, exclusive, individual, particular, private and proper. These *quasi judicial* authorities conferred upon the Chancellor have to be exercised by the Chancellor without any advice from the Chief Minister. The word "*of his own motion or otherwise*" are the significant words which were used by the legislature intentionally to exercise *quasi judicial* powers by the Chancellor without influence by any quarters whereas the other powers conferred upon the Chancellor under section 11 alongwith other provisions of the Act, the Chancellor is required to act on the advice of the Chief Minister in terms of Article 105 of the Constitution.

9. In the instant case, the issue before the Court was whether the appellant was rightly appointed for the post of Associate Professor (BS-19) or not. His initial appointment



for the said post was not approved by the syndicate and in these circumstances, he filed application before the Chancellor to redress his grievance whereas in the case of Aamer Raza Ashfaq vs. Minhaj Ahmed Khan (2012 SCMR 6), the point for consideration before the Court was the appointment of the Vice Chancellor of the University. Section 14 of the Act was amended in the year 2012 by the Punjab Amendment Act No. LX of 2012 which reads as under:-

"14. Vice Chancellor.- (1) *A person who is eligible and who is not more than sixty five years of age on the last date fixed for submission of applications for the post of the Vice Chancellor may apply for the post.*

(2) *The Government shall determine, by notification in the official Gazette, the qualifications, experience and other relevant requirements for the post of the Vice Chancellor.*

(3) *The government shall constitute, for a term of two years, a Search Committee consisting of not less than three and not more than five members for making recommendations for appointment of the Vice Chancellor.*

(4) *The Search Committee shall follow such procedure and criteria for selection of the panel for the post of the Vice Chancellor, as the Government may by notification, determine.*

(5) *The Search Committee shall recommend to the Government, in alphabetical order without any preference, a panel of three persons who, in its opinion, are suitable for appointment as the Vice Chancellor.*

(6) *The Chancellor shall appoint the Vice Chancellor for each term of four years but he shall serve during the pleasure of the Chancellor.*

(7) *The Government shall determine the terms and conditions of service of the Vice Chancellor.*

(8) *The incumbent Vice Chancellor shall not be allowed any extension in his tenure but subject to eligibility he may again compete for the post of the Vice Chancellor in accordance with the procedure prescribed by or under this section.*

(9) *If the office of the vice Chancellor is vacant or the Vice Chancellor is absent or is unable to perform the functions of the Vice Chancellor owing to any cause, the Pro-Vice Chancellor shall perform the functions of Vice Chancellor but, it at any time the office of the Pro-Vice Chancellor is also vacant or the Pro-Vice Chancellor is absent or is unable to perform the functions of the Vice Chancellor owing to any cause, the Chancellor shall make such temporary arrangements for the performance of the duties of the Vice Chancellor as he may deem fit".*

10. From the perusal of the said section, it appears that the power of appointment of Vice Chancellor, initially to be exercised by the Chancellor, now the government has to appoint the Vice Chancellor after notifying Research Committee consistent of not less than three and not more than five members for making recommendations for appointment of Vice

Chancellor. Since the government has to determine qualifications, experience and other relevant requirement under sub-section 2 of section 14 of the Act and to notify Research Committee under sub-section 3 of section 14 and the said Research Committee has to follow the said procedure and criteria for selection of the panel for the post of Vice Chancellor as the government may notify, determine and recommend to the government in alphabetical order without any preference, a panel of three persons who, in its opinion, are suitable for appointment as the Vice Chancellor. The appointment order to be issued by the Chancellor become minister work and as such in the case of Aamer Raza Ashfaq supra, the Court has rightly held that the Chancellor has to act in the matter on the advice of Chief Minister as required under section 11(8) of the Act whereas for the appointment of Professors, Associate Professors, Assistant Professors etc., the power under section 26 vested with the syndicate and any person aggrieved by an order can file appeal to the Vice Chancellor in case the order is not passed by the Vice Chancellor and if order is passed by the Vice Chancellor then appeal lies to the Chancellor.

11. Section 11-A of the Act was introduced by the Punjab Ordinance No. XIII of 1982 whereas sub-section 8 of section 11 was added by the Punjab Act No. XVI of 1975. The legislature having noticed that the Chancellor has to act and bound in the same manner as the Governor of Province under Article 105 of the Constitution, confer revisional power on the Chancellor to be exercised "*of his own motion or otherwise*" which reflect the intention of the law makers that the Chancellor in case of any order passed by a syndicate, on his own motion or on application by the affectees exercising *quasi judicial* power, can pass appropriate orders after hearing the parties.

12. The discretionary power under section 11-A of the Act is in line with the discretionary powers given to the Governor in various Articles of the Constitution, like Article 112(2), Article 116(2(b)), Article 130(7), Article 133 and Article 234 where the Governor has to act in his own discretion without any advice from the Chief Minister like under section 11-A of the Act.

13. Now I will deal with the question whether the appellant was qualified to be appointed as Associate Professor. The record reveals that for the Department of Social Work, the minimum qualifications as Associate Professor are that to have Ph.D in the relevant field,

10 (ten) years teaching/research experience in a recognized University or Professional experience in the relevant field in a national or international institute and 5 research papers published in the Journal of international repute as per criteria of Higher Education Commission.

14. The appellant, admittedly, is not holding Ph.D in the field of Social Work; with teaching experience of 3 (three) years and 6 (six) months as Assistant Professor in the University and none of his research papers published in any Journal of international repute. It appears that instead of order of appointment passed by the Vice Chancellor in exercise of emergency power, the matter had to be placed before the Syndicate for approval or otherwise but record reveals that it was not placed before the first meeting of the Syndicate, however, on 25.3.2006, the matter was placed before the Syndicate when it was deferred as a writ petition was pending before the Lahore High Court involving the controversy. After the orders dated 27.9.2011, passed by the Lahore High Court in Writ Petition No.319/2008, the Syndicate, after taking into consideration the qualification, experience etc. of the appellant, unanimously resolved to cancel the appointment order of the appellant being the competent authority. The appellant filed revision petition under section 11-A of the Act before the Chancellor/Governor who vide order dated 6.6.2012, without taking into consideration the minimum qualifications, experience etc., held that since appellant "*worked with full devotion, for over four years, a vested right had accrued in his favour*" relying on the doctrine of '*locus poenitentiae*'. From the record, it appears that the matter was placed before the Syndicate for approval or otherwise of the appointment on 29.10.2011 but due to pendency of writ petition before the Lahore High Court, the same was deferred and again taken up after the disposal of the said writ petition. In this view of the matter, the findings of the Chancellor regarding alleged vested right relying on the doctrine of *locus poenitentiae* are not tenable in the eyes of law particularly when the appellant lack the required qualifications for appointment as Associate Professor, Department of Social Work.

15. For the foregoing reasons, the order of the Vice Chancellor dated 21.11.2007 is set aside and the decision of Syndicate dated 27.12.2011 is restored.


(Khilji Arif Hussain)
Judge