IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

Civil Appeals No.326-L & 327-L of 2020
Against Judgment dated 05.03.2020 passed by the Lahore High Court, Lahore in Intra Court Appeal No.11032 of 2020 and Intra Court Appeal No.8516 of 2020.

Dr. Iqrar Ahmad Khan — **Appellant** *(in both cases)*

VERSUS

Dr. Muhammad Ashraf etc. — **Respondents** *(in CA#326-L/20)*
Province of Punjab etc. — **Respondents** *(in CA#327-L/20)*

For the Appellant : Mr. Bilal Hassan Minto, ASC
Ch. Akhtar Ali AOR (in CA 327-L/20)

For the Respondent (s) : Mr. Hamid Khan, Sr. ASC *assisted by* Hafiz M. Tariq Naseem ASC and Mr. Muhammad Ahsan Bhoon, ASC.
(No. 1 in CA 326-L/20 and No. 8 in CA 327-L/20)

Mr. Akhter Javed, Addl.AG, Pb.
(No.2, 3, 6 and 7 in CA 326-L/20 and No. 1,2,5 and 6 in CA 327-L/20).

Mr. Muhammad Shahzad Shaukat ASC along with Mr. Shafqat Nadeem, Law Officer
(No.8 in CA 326-L/20 and No.7 in CA 327-L/20)

Date of Hearing : 07.12.2020

JUDGMENT

IJAZ UL AHSAN, J.- Through this single judgment, we intend to decide Civil Appeals No. 326-L and 327-L of 2020 as they involve common questions of law.

2. Through the instant Appeal, the Appellant has assailed a Judgment of the Lahore High Court, Lahore dated 05.03.2020 passed in Intra Court Appeal No. 11032 of 2020 and the Judgment of the Lahore High Court, Lahore dated 05.03.2020 passed in Intra Court Appeal No. 8516 of 2020 (hereinafter referred to as the "**ICAs**"). The ICAs were filed against a Judgment of the Lahore High Court, Lahore, dated 04.02.2020 passed in Writ Petition No. 34743 of 2019. The ICA Bench set aside the judgment passed by a learned Single Judge dated 04.02.2020 which had declared the appointment of Dr. Muhammad Ashraf, Respondent No. 1 in CA No. 326-L of 2020 and Respondent No. 8 in CA No. 327-L of 2020 to the post of Vice Chancellor of the Respondent-University being without lawful authority. The learned Division Bench restored the notification dated 16.04.2019 issued by the Government of Punjab appointing Respondent No. 08 as the Vice Chancellor of the Respondent-University.

3. The necessary facts giving rise to this *lis* are that applications were invited by the Government of Punjab for the post of Vice Chancellor of the University of Agriculture Faisalabad (hereinafter referred to as the "**Post**"), through an advertisement dated 23.08.2016 (hereinafter referred to as the "**Advertisement**"). The Appellant was the incumbent Vice Chancellor of the Respondent-University. His term ended in January 2017. The Appellant applied for the Post of Vice Chancellor pursuant to the Advertisement and Section 14(8) of the University of Agriculture Faisalabad Act 1973

(hereinafter referred to as the "**Act**"). Section 148 of the Act is reproduced below for ease of reference as:-

> *"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."*

Until the appointment of a regular Vice Chancellor, the Appellant was assigned the duties of the acting Vice Chancellor by the Chancellor i.e. Respondent No. 4 in CA. 326-L of 2020 and Respondent No. 3 in CA. 327-L of 2020 vide notification dated 27.01.2017. The said notification was challenged by way of Writ Petition No. 54628/2017 and the Appellant was restrained from acting as the Vice Chancellor vide order dated 09.08.2017. In order to run the everyday affairs of the Respondent-University, a Pro-Vice-Chancellor was appointed as per Section 15-A of the Act. For almost 2 years, because of pending litigation in the matter of appointment of the Vice Chancellor, a regular appointment could not be made. A Search Committee was finally constituted under Section 14(3) of the Act on 27.03.2018 which recommended three names to the Chancellor for possible appointment of one as Vice Chancellor in the order of merit. The Appellant stood at Number 1 on the merit list. However, the Appellant was not appointed as the Vice Chancellor by the Chief Minister Punjab for the reason that a number of audit paras were left unanswered by the Appellant during his past tenure, and that, the purportedly required four syndicate meetings in a year were not convened by the Appellant. An appointment was finally made through

Notification dated 16.04.2019 (hereinafter referred to as "**Impugned Notification**") through which Mr. Muhammad Ashraf, Respondent No. 1 in CA 326-L of 2020 and Respondent No. 8 in CA 327-L of 2020 was appointed as the Pro-Vice-Chancellor. The said appointment was challenged by the Appellant and the same was struck down vide judgment dated 04.02.2020 of the Single Bench of the High Court. The Respondents challenged this judgment by way of the ICAs which were allowed.

4. Leave to appeal was granted by this Court vide order dated 07.09.2020 in the following terms: -

> *"Learned Counsel for the Petitioner contends that as per the Judgment in the case of Appointments of Permanent Vice Chancellor of Punjab University (Human Rights Case No. 13865-P pf 2018), this Court has laid down the following law with regard to the appointment of Vice-Chancellors of the Universities in Punjab:-*
>
> > *'5.The Search Committee shall complete their work within a period of three weeks and submit/recommend names of three persons in the order of merit to the Government which shall proceed to notify the person of highest merit unless there are cogent reasons for not appointing him which shall be duly recorded in writing and shall be justiciable.'*
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> *Learned Counsel contends that although in the summary placed before the Chancellor, there were two objections, one with regards to the existence of 164 unsettled Audit Paras and the other, non-calling of the required meetings of the Syndicate, these reasons are not enough for excluding the Petitioner from being appointed as Vice Chancellor for the reason that the Search Committee has given highest marks to the Petitioner and, the Secretary Agriculture, was familiar with the position of 164 unsettled Audit Paras and non-calling of required syndicate meetings, he was a member of the Search Committee, and, he himself has given highest marks to the Petitioner i.e. 45. Further contends that the Search Committee has considered all aspects of the matter and thereafter, placed the same before the Chancellor and that the reasons put forward in the Summary were also within the knowledge of the Search Committee and despite that, it has given the highest marks to the Petitioner. He contends that the High Court has altogether misled*

itself in noting the Judgment of this Court in the Human Rights Case (supra) as totally misplaced and not applicable, is altogether illegal, in that, the said Judgment has full application to the case in hand and in terms of Article 189 of the Constitution was binding upon the High Court, and the High Court could not have taken a different view than the one taken by this Court in the cited case.

2. The submissions made by the learned Counsel for the Petitioner require consideration. Leave to appeal is granted to consider, inter alia, the same. The Appeal stage paper-books shall be prepared, expeditiously, but not later than one-month. The parties are allowed to file additional documents, if any, and for such, one month is allowed. The appeal shall be heard within a period of two months.

C.M.As No. 920-L and 2300/2020

3. The operation of the impugned judgments is suspended."

5. Learned Counsel for the Appellant submits that the Impugned Notification was issued in violation of the directions of this Court in HRC No. 13865-P of 2018 dated 22.04.2018. Further, that, the Appellant was awarded the highest marks by a duly constituted Search Committee consisting of individuals and academicians of high repute and immaculate credentials and integrity. The only reason on the basis of which the Appellant could be denied appointment was if cogent reasons were recorded for the same, which would be open to judicial review. He adds that there were no objections of any "mismanagement" or "poor financial controls" that were raised by the Search Committee when the Appellant was being recommended for appointment to the post of Vice Chancellor. Further, that the Secretary of Agriculture was part of the said Search Committee and, he being the Principal Accounting Officer / Representative of the Government of Punjab, had also awarded the Appellant the highest marks in management and financial controls. He

further argued that the audit paras which were made the basis of rejecting the Appellant's appointment against the post of Vice Chancellor were not related to the Appellant, and, the question whether or not these related to the Appellant reflecting on his management and financial control skills was never examined by the Chief Minister. He adds that there is a discrepancy when it comes to the actual number of audit paras against the Appellant in the records of the Government because at first, they were said to be 164 in number and then, they were claimed to be 140. He adds that Section 14 of the University of Agriculture Faisalabad Act 1973 (hereinafter referred to as the "**1973 Act**") has wrongly been interpreted by the learned Division Bench. He further adds that Sections 24 and 25 of the 1973 Act do not mandatorily require a specific number of syndicate meetings that are to take place. Even otherwise, Rule 3 of the University of Agriculture Faisalabad Conduct Of Business Rules 1976 uses the word 'ordinarily' which means that the said provision is discretionary in nature and not mandatory. He adds that there is no conflict in the case of ***Professor Dr. Razia Sultana and others v. Professor Dr. Ghazala Yasmeen Nizam and others (2016 SCMR 992)*** with the HRC Order of this Court. He concludes by submitting that the failure to appoint the Appellant as Vice Chancellor for the reasons provided by the Chief Minister is a *mala fide* act because many other appointments have been made involving individuals who had many more outstanding audit paras and

the said reason has never before been found used to refuse appointment. He has cited specific instances in this regard.

6. The learned counsel for Respondent No. 1 in CA 326-L of 2020 and Respondent No. 8 in CA 327-L of 2020 submits that the Chief Minister has exercised his discretion correctly and the reasons recorded by him in the exercise of his discretion are sound and cogent which are not open to interference. He states that the Impugned Notification was issued after a transparent process of selection and the exercise of discretion in the manner complained of does not amount to any illegality. He adds that a writ of *quo warranto* and *mandamus* is generally not maintainable in matters of appointment and that, the same falls squarely within the domain of policy which cannot be interfered with by courts unless it can be shown that non-interference may lead to grave injustice. He further submits that a presumption of validity is attached to executive actions and the same ought to be attached to the actions of the Chief Minister.

7. Learned Assistant Advocate General has mainly relied upon the arguments advanced by the counsel for Respondent No. 1 / Respondent No. 8. The only additional argument advanced by the Learned AAG is that the HRC Order of this Court does not apply to the present controversy.

8. Before we examine the case at hand, we consider it appropriate to list the issues before us for determination. These in our opinion are as follows:-

i. Whether the HRC Order of this Court is applicable to this case; and

ii. Whether the reasons provided by the Chief Minister were valid.

iii. Could the recommendation provided by the Search Committee in order of merit be overridden without assigning valid and cogent reasons which would withstand judicial scrutiny?

WHETHER THE HRC ORDER OF THIS COURT IS APPLICABLE TO THIS CASE?

9. Appointments to the post of Vice Chancellor are made according to the 1973 Act. Section 14(3) of the said Act is relevant for this controversy which is reproduced below for ease of convenience:-

> *"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."*

Further, Section 14(5) of the 1973 Act provides that the Search Committee shall recommend the names of three persons, who are in its opinion suitable for appointment to the post of Vice Chancellor, to the Government.

10. The matter of appointments of Vice Chancellor came up before this Court in Human Rights Case No. 13865-P of 2018 (hereinafter referred to as "**HRC Case**"). Objections were raised in the HRC Case against the appointments which were being made on recommendations of the Search Committee. It was pointed out that discretion was being exercised arbitrarily, in an unstructured, unregulated and biased manner and the principle of merit was not being followed. In this background, vide order dated 22.04.2018

(hereinafter referred to as "**HRC Order**"), the following order was passed:-

> *"4. We are mindful of the fact that public sector Universities cannot be left to operate without the appointment of a permanent Vice Chancellor. Therefore as an interim measure till such time that the permanent Vice Chancellors are appointed pursuant to recommendations submitted by the authorized Search Committees, acting Vice Chancellors will be appointed in the following manner:-*
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> *i) For King Edward Medical University as well as Nishtar Medical University, the existing Pro-Vice Chancellors will hold the posts of acting Vice Chancellors for running day to day affairs of the Universities till the appointment of permanent Vice Chancellors. This is in line with the respective statutes governing the two Medical Universities.*
>
> *ii) As far as the University of Health Sciences, Rawalpindi Medical University and Faisalabad Medical University are concerned, their acting Vice Chancellors shall be appointed as follows:-*
>
> *a. The names of ten senior most Professors according to the seniority list maintained by the Department shall be placed before the Search Committees which shall nominate/recommend one person to be notified as the acting Vice Chancellor. On receipt of such recommendations, the Government of Punjab shall notify the said person as the Acting Vice Chancellor immediately.*
>
> *5. The Search Committees shall complete their work within a period of three weeks and submit/recommend names of three persons in order of merit to the Government which shall proceed to notify the person of highest merit unless there are cogent reasons for not appointing him which shall be duly recorded in writing and shall be justiciable.*
>
> *6. The learned Advocate General, Punjab, shall submit a comprehensive report regarding the appointment of acting Vice Chancellors within one week and shall submit periodical reports regarding the progress being made towards the appointment of permanent Vice Chancellors. Let the matter be relisted for hearing after two weeks."*

11. A bare perusal of the aforenoted order reveals that guidance was provided by this Court and the method of appointments to the posts of Vice Chancellors were structured to preclude the arbitrary and capricious exercise of discretion at the cost of appointments on merit. It was held by this Court that the appointments have to be made on the principle of merit unless cogent reasons for not appointing the person who is highest in merit are given, which would be

subject to judicial review. The said HRC Order was a speaking order giving clear instructions to the Government. We are unable to agree with the learned Division Bench insofar as it has held that the HRC Order was only applicable to universities that were before this Court in the HRC Case in question. The order passed by this Court laid down a rule of universal application which was meant to prevent the unstructured, arbitrary, biased and unregulated exercise of discretion solely dependent upon the sweet will of the Chief Minister, with the object of safeguarding and upholding the principle of merit. As such, being a pronouncement of this Court, it is binding on all executive and judicial functionaries. The record reveals that many subsequent appointments were made by the Chief Minister and the Government of Punjab while following and adhering to the rule settled by this Court in its order dated 22.04.2018. As a matter of fact, the recommendations of the Search Committee in this very case also followed the directions issued through the HRC Order and gave its recommendations in the order of merit. It shows that it was clearly understood by the Government of Punjab that the criteria given in the HRC Order was applicable to all future appointments made through the mode of Search Committees. Therefore, we find no valid basis, lawful reason or reasonable justification for the view taken by the learned ICA bench of the High Court that such Order was only applicable in the HRC Case.

12. It may be noted that directions were issued by this Court that Vice Chancellors be appointed expeditiously. The matter of such appointments got prolonged due to another Writ Petition No.12857 of 2019 filed in the High Court titled ***Prof. Dr. Ijaz Ahmad etc. v. Province of Punjab etc.*** This Petition was, however, dismissed vide order dated 13.03.2019 while observing that the post of Vice Chancellor of the University of Agriculture had been lying vacant since 23.01.2017 and the same ought to be filled without delay. It was further directed that according to the HRC Order, the person highest in merit shall be notified unless there were cogent reasons for not appointing him which shall be recorded in writing, within a period of fifteen days from the date of the order of the learned High Court.

13. Resultantly, the Search Committee constituted by the Government of Punjab for the selection of the Vice Chancellor, University of Agriculture, Faisalabad, made recommendations to the Chief Minister of Punjab who then advised the Governor / Chancellor of the University of Agriculture to appoint Respondent No. 8 / Respondent No. 1 as the Vice Chancellor for a period of four years in terms of Section 14(6) read with Section 11(8) of the 1973 Act. This appointment was made in place of the Appellant who was placed highest in merit, on the ground that certain unsettled audit paras had remained unaddressed during the Appellants' tenure as Vice Chancellor and that four syndicate meetings that were required to be called in a year were not

convened, which constituted sufficient reason to deny appointment to the Appellant even though he was on top of the merit list having scored the highest marks.

14. The learned Division Bench has relied upon the case of ***Professor Dr. Razia Sultana and others v. Professor Dr. Ghazala Yasmeen Nizam and others (2016 SCMR 992)*** to support its conclusions. The cited case on its facts is distinguishable for the reason that in the first place the Higher Education Department, KP, prepared the merit list of shortlisted candidates, who were interviewed by the Search Committee. The Search Committee interviewed the shortlisted candidates and finally, three candidates were recommended by it. The Search Committee did not allocate any merit to the three candidates and its recommendation was not based on any preference. Whereas, in the present case, there was no involvement of the Higher Education Department in making of the merit list and, the Search Committee had in the instant case prepared a merit list and such list was based upon order of merit with the candidate scoring in aggregate the highest marks on top of the list. The name of the Appellant was admittedly placed on top of the list.

15. It may be noted that the order in the HRC was passed subsequent to the case of ***Dr. Razia Sultana*** *(ibid)* and in essence, while recognizing the discretionary powers of the appointing authority as recognized in the said case, by way of the HRC Order went one step further to structure the same in a manner that the discretion was not exercised in an

unbridled, unstructured, biased or arbitrary manner to ensure the same was not abused or misused. The question decided in Dr. Razia Sultana's case and the order in the HRC dealt with two totally different issues namely, discretionary powers of the appointing authority (as recognized in Dr. Razia Sultana's case) and the structured exercise of such discretion by the appointing authority in order to prevent abuse of discretion (through the HRC Order). Moreover, it was after the case of Dr. Razia Sultana (*supra*) that the unbridled discretion to appoint anyone of the choosing of the appointing authority was structured by the Order of this Court in order to safeguard against abuse of discretion at cost of merit. Further, there existed no concept of preparing a list in the order of merit by assigning marks at the time when the judgment of ***Dr. Razia Sultana*** (*ibid*) was rendered. It was only after this Court passed the HRC Order that the Universities were directed to proceed with appointments of Vice Chancellors on merit as determined by a Search Committee. The HRC Order represents further development of the jurisprudence on the question of appointments on the recommendations of Search Committees. In ***Professor Dr. Razia Sultana*** the issue of discretionary powers of the Chief Minister and the mode and manner of exercise of the same was neither the issue nor was it examined or ruled upon by this Court.

16. The relevant paragraph of the judgment of ***Professor Dr. Razia Sultana*** is reproduced below:-

> *"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 para wise 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."*

A bare perusal of the aforenoted paragraph provides that, the names provided to the Search Committee were not in order of preference, but, were at random. In essence, what this means is that no list was prepared in the order of merit. Comparing the said case to the present controversy, it becomes apparent that after the HRC Order the names were required to be shortlisted by the Search Committee in order of merit, with the person highest on merit having a legitimate expectancy of being appointed unless the Chief Minister recorded valid reasons for not appointing him, and such reasons were open to judicial scrutiny and review. Consequently, the underlying principle and ratio of both orders of this Court were totally different and there is no conflict between the two.

17. Even otherwise, appointments to various other Universities such as the Fatima Jinnah Medical University, were made according to the HRC Order of this Court. Vice

Chancellors have been appointed in various universities across the province, following the principle laid down in our order dated 22.04.2018 which has, for all intents and purposes, been implemented by the provincial governments in respect of all appointments made on the basis of recommendations of the search committees. Therefore, the finding of the learned Division Bench that the order dated 22.04.2018 was applicable only to universities before this Court in the said matter is obviously erroneous, contrary to facts, ignores the ground realities and clearly represents a myopic approach. It may be noted that in the HRC order of this Court, a rule of general application relating to the appointment of Vice Chancellors in public sector universities on the basis of recommendations of search committees has been laid down. The applicability of the rule is not limited only to the universities before this Court but to all universities in the public sector under the control or authority of the government which was fully represented before this Court when the said order was passed. Further, the said order was not only implemented with reference to the institutions before us but to all other public sector universities for all intents and purposes. The order has also attained finality and continues to hold the field.

WHETHER THE REASONS FURNISHED BY THE CHIEF MINISTER WERE *VALID?*

18. From the very outset, it has been admitted that the reasons provided by the Chief Minister are justiciable and

courts can examine them on the touchstone of validity, fairness and compliance with the law, rules and departmental practice. Further, it has been admitted that the discretion of the Chief Minister is not unfettered, unbridled and unregulated. The counsel for the Respondent admits that the reasons cannot be capricious, *mala fide* or arbitrary but states that the reasons provided by the Chief Minister were adequate and sufficient. We have therefore examined the reasons furnished by the Chief Minister for not appointing the Appellant who had been placed highest on the merit list and instead, deciding to appoint the Respondent who was admittedly unanimously placed lower in the order of merit by the Search Committee which consisted of eminent citizens, respected representatives from academia, experts and high ranking government officials. The two reasons assigned by the Chief Minister in the Summary dated 13.04.2019 for not appointing the person placed highest in the order of merit were as follows:-

> *"a) Dr. Iqrar Ahmad who has obtained the highest marks has previously served as Vice Chancellor of the University of Agriculture. His period of appointment as Vice Chancellor was marked by poor financial controls and management as evidenced by 164 unsettled audit paras.*
>
> *b) Dr. Iqrar Ahmad was also unable to hold the required number of meetings of the Syndicate."*

19. We note that the counsel for the Appellant has placed before us several similar cases of appointment of Vice Chancellors of other universities. In the said cases, the appointees had pending audit paras and despite that, they were appointed to the post of Vice Chancellor. This fact has

not been controverted by the learned counsel for the Respondents. We further note that the Chief Minister has made no effort to examine the said audit paras to ascertain whether they were actually related to the financial control and management of the Appellant. The record reflects that he recorded a general finding without ascertaining the facts with any degree of accuracy or due application of mind. Nothing has been shown to us that may connect the outstanding audit paras with poor financial controls of the Appellant. It is also important to note that, this too has not been contested by the learned counsel for the Respondents. The only document examining the audit paras is a letter dated 01.03.2019 and the said letter does not examine the details of the pending audit paras or the question whether they related to the mismanagement or lack of financial or administrative control during the Appellant's tenure as the Vice Chancellor of the Respondent-University. All other letters issued in the matter appear to have been prepared after the Impugned Notification was issued.

20. The record further reveals that the Secretary, Agriculture Department, Government of Punjab, was part of the Search Committee. The said Secretary is the Principal Accounting Officer of the Government of Punjab. He was a member of the Search Committee that placed the Appellant at Serial No. 1 of the merit list. It is worth mentioning that the same Secretary has given the Appellant 10 out of 10 marks in the category of "Administrative and Financial Management".

Further, the Appellant was given 45 marks in the Interview. As against this, the Respondent was given only 31 marks in the Interview. The same Secretary was part of the interview as well. Therefore, when the representative of the Government who had first-hand knowledge of all material and relevant facts also gave highest marks to the Appellant and low marks to the Respondent, we do not see why the Appellant was not appointed and that too without cogent and convincing reasons.

21. Keeping in view the fact that other persons have been appointed as Vice Chancellors, and while considering their appointments, the pendency of audit paras has not been considered as a material and determining factor reflecting on their administrative ability or financial controls, we do not see why the same standard was not applied in the case of the Appellant and that too without due application of mind and examination of the documents or material attributable to alleged lax financial controls of the Appellant. Further, he was never confronted with the same and was virtually condemned unheard and behind his back. The reasons provided by the Chief Minster show an exercise of pick and choose with a pre-determined mind and a conscious and deliberate effort appears to have been made to contrive reasons to appoint a person lower on merit and deprive a person better qualified, higher on merit and obviously more suitable for the post in question. This act of the Chief Minister amounts to an illegal, arbitrary, capricious and unbridled exercise of discretion by

the Chief Minister and cannot be countenanced especially so when the Search Committee, comprising of credible academicians, independent members and representatives of the Government itself with impeccable credentials, placed the Appellant on top of the merit list. Not only was he at No.1 of the merit list in the written exam, but, he was also given the highest marks in the interview. The same interview in which the Respondent did not perform as well.

22. From the facts and circumstances discernable from the record, it is evident that the Appellant was denied an appointment unlawfully and arbitrarily and, reasons were contrived to furnish a basis for a predetermined decision which fail to stand the test for judicial scrutiny. It was precisely for this reason that in our order dated 28.04.2018, while retaining the discretion of the government to appoint a person lower on merit we had circumscribed and structured the exercise of discretion by making it obligatory on the authority to record cogent reasons with a rider that such reasons will be justiciable. As discussed in the preceding paragraphs, the impugned order not only lacks bonafide and transparency but also assign reasons which are neither cogent nor show any consistency in executive decision making.

23. The second reason provided by the Chief Minister is that the Appellant was unable to hold the required number of syndicate meetings. The stance of the Appellant is that there is no requirement in the Act to hold a certain number of

meetings of the syndicate. Statutes of other Universities expressly and specifically provide for the same in their law. The said requirement stems from an amendment made by the syndicate on 28.06.2014 to Rule 3 of the University of Agriculture Faisalabad Conduct of Business Rules of the Syndicate, 1976 (hereinafter referred to as the "**Rules**") which reads as follows:-

> *"Meetings. 3. (1) **Ordinarily**, the Syndicate will meet at the University Campus and Faisalabad at least four times in a Calendar year"*

24. It is evident from a perusal of the said provision in its true perspective that it is discretionary and not mandatory in nature as no consequence is provided in the law or the rules for failure to comply with the same. Even otherwise, despite our query, the learned ASC for the Respondent has been unable to show any prejudice having been caused to anybody on account of the alleged failure to call the requisite minimum number of syndicate meetings in a year. Further, where the relevant law requires a specific number of meetings, it provides for the same in the Act for example Section 22 of the Act which requires the "Senate" to hold two meetings in a year. The word used in the provision relating to syndicate meetings is "ordinarily" which is indeed discretionary as opposed to Section 22(3) which uses the word "shall" which in the facts and circumstances of the case points towards a mandatory command. The said Section is reproduced as:-

> *"(3) The Senate **shall** meet at least twice in every year on dates to be fixed by the Vice Chancellor with the consent of the Chancellor"*

25. We are therefore of the view that, the Appellant was not "required" to hold a certain number of syndicate meetings and the Appellant could not have been denied appointment for his failure to do what he was not required by law to do.

26. The learned Division Bench has erroneously and for reasons best known to it held that the Court cannot adjudicate upon the reasons given by the Chief Minister. This finding in our humble view constitutes abdication of jurisdiction and power of judicial review of administrative actions by the High Court which is the foundation and hallmark of the jurisdiction of the High Court under Article 199 of the Constitution. Further, we had clearly and categorically held in our order dated 22.04.2018 that the reasons recorded by the appointing authority will be justiciable. In the presence of such clear and categorical findings recorded by this Court, we are unable to comprehend how a finding of this nature could be recorded by the learned High Court. We have been unable to find the basis, logic, reason or rationale behind the view taken by the learned Division Bench that the reasons recorded by the appointing authority do not have to undergo judicial scrutiny. The order of this Court was clearly on a question of law, enunciated a principle of law and was binding on the learned Division Bench in terms of Article 189 of the Constitution. This fact has unfortunately escaped the notice of the learned Division Bench of the High Court. Further, it is settled law that, even

the *obiter dicta* of this Court is binding on the High Court. Reliance in this regard is placed on ***Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 Supreme Court 483)*** the relevant part of which is reproduced as under:-

> *"Even obiter dictam of the Supreme Court, due to the high place which the Court holds in the hierarchy of courts in the country, enjoy a highly respected position as if it contains a definite expression of the Court's view on a legal principle, or the meaning of a law. (M. Ismail & Sons v. Trans-Oceanic Steamship Co., Ltd PLD 1966 Dacca 296, Nagappa v. Ramchandra AIR 1946 Bombay 365, K.C. Venkata Chalamayya v. Mad. State AIR 1958 Andh-Par. 173, K.P. Doctor v. State of Bombay AIR 1955 Bom. 220, Bimla Devi v. Chaturvedi AIR 1953 All. 613)." (Emphasis supplied)*

27. The aforenoted principle of law was further highlighted in the case of ***Muhammad Ali Abbasi and 2 others v. Pakistan Bar Council (PLD 2009 Karachi 392)*** the relevant paragraph of which is reproduces as under:-

> *"Indeed, it is too well-settled of a principle of law, requiring no reconsideration, that even obiter dicta of the Supreme Court are binding on the High Courts, irrespective of the latter's strength (see M. Ismail and Sons v. Trans-Oceanic Steamship Co. Ltd. PLD 1966. Dacca 296, Ghaus Muhammad v. The State PLD 1978 Lah. 1235, Afaquz Zubair V. Muhammad Idrees PLD 1978 Kar. 984, Faiz Bakhsh v. Muhammad Munir 1986 CLC 507, Ghulam Mustafa Mughal v. Azad Government of the State of Jammu and Kashmir 1992 MLD 2083, Abdul Razzak v. The Collector of Customs 1995 CLC 1453, Mian Manzoor Ahmed Wattoo v. The State 2002 YLR 3433, Hafeez-ud-Din v. Badar-ud-Din PLD 2003 Kar. 444, Azad J & K Government v. Ch. Muhammad Saeed, Stenographer 2003 PLC (CS) SC (AJ&K) 789 and Watan Party v. FOP 2005 YLR 388). (Emphasis supplied)*

28. For reasons recorded above we find that the impugned judgment of the learned Division Bench of the Lahore High Court dated 05.03.2020 is unsustainable and liable to be set-aside.

29. Accordingly, we allow these appeals and set aside the impugned judgment of the Lahore High Court dated 05.03.2020.

Chief Justice

Judge

Judge

ANNOUNCED IN OPEN COURT ON 13.7.21 AT ISLAMABAD.

Judge

NOT APPROVED FOR REPORTING
Haris, LC/*