Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No.54-P/2015.

Professor Dr. Munir Khan Khattak…VS…The Chancellor,
University of Agriculture Khyber Pakhtunkhwa Peshawar.

JUDGMENT

Date of hearing………………08.12.2015………………

Petitioner(s) by Mr. Abdul Mabood Khattak, Advocate.

Respondent (2 & 3) by Umar Farooq Adam, AAG.

Respondent (4) by Mr. Eisa Khan, Advocate
Respondent (5) by Mr. Waseem Uddin Khattak, Advocate.

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ROOH UL AMIN KHAN, J:-

Through the instant constitutional petition under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner seeks issuance of a writ for declaring the impugned order to be illegal, without lawful authority, based on nepotism and discrimination and prayed that the respondents be directed to consider the petitioner for appointment against the post of Dean instead of respondent No.5.

2. As per averments of the writ petition, the petitioner joined the respondent’s University on 3.10.1983 as Lecturer and subsequently was promoted to the post of Professor on 01.9.2000. He has remained posted on
different posts in the university and presently posted as Director Teaching. That the Vice Chancellor (respondent No.4) moved a summary to Chancellor for appointment of Dean, Faculty of Rural Social Sciences, Agriculture University, Peshawar and recommended the panel of three names of senior professors including the petitioner and respondent No. 5, but the chief Executive (Chief Minister) recommended the respondent No.5, inspite of the fact that he was at serial No. 3 of the summary list, hence on recommendation of Chief Minister, respondent No.5 was appointed as Dean, Faculty of Rural Social Sciences, Agriculture University, Peshawar, vide impugned order dated 27.10.2014, and the petitioner being senior to respondent No.5 and equipped with rich experiences in the relevant field, was ignored without any rhyme and reason.

3. Initially comments of respondents were called for, which could not be filed, thus the learned counsel for petitioner was allowed to argue his case, who contended that, initially the terms and conditions of employees of University were being regulated by NWFP, Agriculture University Ordinance, 1981, but the same was repealed by Khyber Pakhtunkhwa University Act, 2012, wherein the criteria for appointment of Dean is not mentioned, however, section 28 (2) by saving the provisions of repealed statutes, regulations or rules on the subject have been made applicable for such like appointment and under the Act of 2012, the Chief Minister
has the discretion to recommend the name of suitable person for appointment, but he arbitrarily recommended the name of respondent No.5, who was at serial No. 3 of the summary list. The respondents have overlooked the rich experience of petitioner in the relevant field and his higher position in the summary list. The appointment of respondent No.5 is worst example of nepotism and favoritism which has seriously prejudiced the fundamental right of the petitioner protected under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Having heard the learned counsel for the parties, perusal of record would reveal that petitioner amongst others has competed for appointment against the post of Dean, Faculty of Rural Social Sciences, University of Agriculture, Khyber Pakhtunkhwa, wherein respondent No.5 got succeeded and was selected and appointed vide order dated 27.11.2014. Undisputedly the petitioner and respondent No.5 are employees of Agriculture University and their services were previously regulated under the NWFP Agriculture University Ordinance 1981. On promulgation of Khyber Pakhtunkhwa Universities “Act 2012”, the affairs of all the Universities in province listed in schedule and their employees were brought under the governance and management provided by Act 2012. However, the Act ibid is silent rather do not provide methodology for appointment of Dean of the faculty, therefore, the respondent department while processing the
appointment of Dean adopted criteria enumerated in the repealed Ordinance, which being saved under Section 48 of the Act 2012. For better understanding the text of section 48 of Act 2012 is reproduced which read as under.

“48. Repeal and Savings.—The Acts, Ordinances or other legislative instruments constituting the universities in the Schedule shall stand repealed from such dates as may be notified by the Government in the official Gazette:

Provided the Govt: may save, through appropriate provision in the repealing notification, such parts of the Acts, Ordinances or other legislative instruments constituting the universities listed in the schedule as are necessary for preservation of such specific features that are essential given the nature of the University and are not in conflict with the management and governance structure laid down by this Act or for continuation of the legal status of an institute, college or other constituent unit of the University as on the date of the notification in the official Gazette.

(2) Notwithstanding the repeal envisaged by sub-section (1),—
(a) everything done, action taken, obligation or liabilities incurred, rights and assets acquired, persons appointed or authorized, jurisdiction or powers conferred, endowments, bequests, funds or trusts created, donations or grants made, scholarships, studentship, or exhibitions instituted, affiliations or privileges granted and orders issued under any of the provisions of the repealed Acts, Ordinances, other legislative instruments or the Statutes, the Regulations and the Rules made or deemed to have been made there under, shall, if not inconsistent with the provisions of the Act or the Statutes, the Regulations or the Rules made under this Act, be continued and, so far as may be, be deemed to have been respectively done, taken, incurred, acquired, appointed, authorized, conferred, created, made, instituted, granted and issued under this Act, and any documents referring to any of the provisions of the repealed Acts, Ordinances, other legislative instruments or the Statutes, the Regulations and the Rules first referred shall, so far as may be, be considered to refer to the corresponding provisions of the Ordinance or the Statutes,
the Regulations and the Rules made under this Act.

(b) all institutes, colleges, or other constituent units of the University functioning in terms of the provisions of the repealed Acts, Ordinances or other legislative instruments shall continue to function in terms of the relevant repealed provisions till such time that the Senate through Statutes have prescribed otherwise; and

(c) any Statutes, Regulations, or Rules made or deemed to have been made under the repealed Acts, Ordinances or other legislative instruments shall, if not inconsistent with the provisions of this Act, be deemed to be Statutes. Regulations or Rules made under the Act having regard to the various matters which by this Act have to be regulated or prescribed by Statutes, Regulations and Rules respectively and shall continue to be in force until they are repealed, rescinded or modified in accordance with provisions of this Act.”

5. Under the cover of the above provision the university authorities recommended names of three senior most professors from the Faculty. Section 1 (1-A) and (2)
of the schedule of First Statute of the Khyber Pakhtunkhwa Agriculture University Act 1981 provides that there shall be a Dean of each faculty who shall be appointed by the Chancellor from amongst three most senior professors of the faculty and the Dean shall be the chairman and convener of the Board of Faculty and shall hold office for a fixed period of three years. From the above quoted statute it is manifest that the authority of appointing of Dean of Faculty is vested in the Chancellor, who shall select any one amongst the three senior professors of the Faculty. The available record would reveal that summary for appointment of Dean, Faculty of Rural Social Sciences comprising name of three senior most members of Faculty, including petitioner, respondent No.5 and another one namely Dr. Hamayun Khan was moved by the University authority and sent to the Chancellor who selected respondent No.5 for appointment as Dean. Bare reading of statute would depict that the seniority and length of service or existing the name of an incumbent at the senior part of the summary is not the sole criteria for appointment of Dean of Faculty. The contention of learned counsel for petitioner that the name of petitioner existed at serial No.1 of the summary is misconceived. Had it been essential for the Chancellor to definitely select the candidate at serial No.1 of the summary list, then there would have no need to send three names to him. Moreso, it would amount to put a
clog on the discretion and authority of Chancellor, which is surely not the mandate of the First Statute of University.

6. As far as the contention of learned counsel for petitioner that he was not considered for appointment by the appointing authority due to malafide, is concerned, suffice it to say that according to the relevant statute the respondent department shall prepare a summary for recommendation which shall consist three senior most faculty members, whereas the Chancellor is vested with the authority to select one of the most suitable amongst them and thus, as observed in the preceding paras, this exercise has properly been done strictly in accordance with statute by the Vice Chancellor. Resultantly we must halt the discussion here, because it is established principle of law that the Constitutional Court cannot substitute opinion of the appointing authority on mere allegation of malafide which is admittedly question of fact and cannot be determined in extraordinary constitutional jurisdiction. We have no equipment to measure that the petitioner was on better footing than respondent No.5, as it is collective responsibility of Selection Board and Chancellor, respectively and this Court shall not substitute the opinion and decision of the competent authority, because it will amount to an interference in the statutory functions of the appointing authority. In case titled “Arshad Ali Tabassum VS the Registrar, Lahore High Court, Lahore” (2015 SCMR 112), the apex Court was pleased to rule that there
is no measure apparatus with the Court to determine that the petitioner was differed by the interview committee for a specific reason i.e. misconduct. Undoubtedly the petitioner has been considered for appointment by the competent authority but in the panel of candidates the respondent No.5 was found fit and suitable for appointment, thus the respondents have not violated any statutory rules. In this regard, wisdom may be derived from the judgments rendered by the august Supreme Court of Pakistan in the following cases:-

i. “Asif Mahmood Ghughtai advocate and 17 others Vs Government of Punjab through Chief Secretary and others” (2000 CMR 966).

ii. “Dr. Mir Alam Jan Vs Dr. Muhammad Shahzad and others” (2008 SCMR 960) and,


7. In the case in hand, petitioner failed to prove any illegality or irregularity in process of appointment of the Deans Faculty of Rural Social Sciences or to show any malafide on the part of respondents. Resultantly, this petition being bereft of merits is dismissed in limine.

JUDGE

JUDGE

Announced on;
8th of December, 2015.