Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR | JUDICIAL DEPARTMENT

WP.No. 1255-P/2014

Professor Dr. Ghazala Yasmeen

...VS...

Chancellor SBBW University & others.

Date of hearing.... 16.12.2014.

JU D G M E N T

Petitioner (s) by M/s Qazi Jawad Ehsanullah & Mian Naveed Gul Kakakhel Advocates.
Respondent (s) by Qazi Muhammad Anwar Advocate

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ABDUL LATIF KHAN J:- Through instant petition, the petitioner has challenged the notification No. SO(U-1)HE/13-3/2014 dated 07.04.2014 being illegal, without lawful authority and liable to be struck off/ set aside.

2. A perusal of the record reveals that the Search Committee for Vice Chancellors, Khyber Pakhtunkhwa invited applications for the positions of Vice Chancellors for various universities including Shaheed Benazir Bhutto Women University Peshawar and in this regard announcement of Vice Chancellor’s position was advertised by the Government of KPK through Higher Education Department in leading
National Dailies, from accomplished and strongly motivated academic leaders and administrators with a demonstrated track record of academic administration, strong leadership and financial management skills.

3. The petitioner and seventeen others including respondent No.5 applied for the position within stipulated period. The evaluation of the candidates made in view of evaluation proforma provided for the position of Vice Chancellor subject to personal attributes and eligibility criteria. Shortlisted candidates appeared before the Search Committee for appointment of Vice Chancellor for Shaheed Benazir Bhutto Women University Peshawar on 16th March, 2014 and after thorough assessment, panel of three candidates consist upon petitioner(Professor Dr. Ghazala Yasmeen Nizam College of Home Economics, University of Peshawar) on top recurred 52 marks at serial No.1, Dr. Shazia Yasmeen Department of Physics, Islamia College, Peshawar at serial No.2 and respondent No.5 (Professor Dr. Razia Sultana Quaid-e-Azam University, Islamabad, in bottom obtained 38 marks at serial No. 3, were unanimously recommended and approved by the convenier of Search Committee
(Special Assistant to the Chief Minister for Higher Education Department and consequent upon recommendation of Search Committee, summary for ‘Chief Minister’ was submitted by the Higher Education Department Khyber Pakhtunkhwa, routed through Special assistant to Chief Minister for Higher Education and Chief Secretary Khyber Pakhtunkhwa, who recommended respondent No.5 with the aid of following words; on 01.04.2014 “Professor Dr. Razia Sultana is recommended” which was approved by the Governor Khyber Pakhtunkhwa resulting into issuance of impugned notification No. SO (U-I)HE/13-3/2014 dated 7th April 2014, by the Higher Education Department Government of KPK, whereby respondent No.5 was appointed as Vice Chancellor by the Governor Khyber Pakhtunkhwa/Chancellor (respondent No.1) for a period of four years with immediate effect on enhanced salary package and terms and conditions for Vice Chancellors of all provincially charted Public sector Universities.

4. Para-wise comments filed by respondents No.2 & 3 jointly and have admitted the recommendation of petitioner at serial No.1, on top of panel of three candidates proposed by the Search Committee. The
eligibility of the petitioner was not disputed, however averred that Chief Minister has the discretion to recommend any candidate out of the panel to the Governor/Chancellor for appointment as Vice Chancellor in view of Section 12 Khyber Pakhtunkhwa University Act, 2012.

5. Respondents No. 1 & 5 have also filed comments claiming the appointment of respondent No. 5 made in accordance with provisions of Section 12 of Khyber Pakhtunkhwa Universities Act (XIX) of 2012. The marks obtained by petitioner as 52 and 38 by respondent No. 5 were admitted however termed these only for screening purposes. It is added that sending panel of three candidates by Search Committee of the Government was the requirement of Section 12 of the Act ibid and power to select one from the panel of 3 for appointment was the prerogative of the Govt. (Chief Minister). It is also averred that appointment of Vice Chancellor is on the pattern of appointment of CEC in view of Article 213 of the Constitution of Islamic Republic of Pakistan 1973, where Leader of House and Opposition Leader have to forward a panel of three agreed candidates to the Parliamentary Committee, which shall select one
from amongst the panel as CEC. It is also averred that serial number of the candidates does not create a right in favour of a candidate. Section 12, KP Universities Act (Act XIX) 2012 is produced for conveyance as follow:-

“12. Appointment and Removal of the Vice-Chancellor.—-(1) The Vice-Chancellor shall be appointed by the Chancellor, on advice of Government, from a panel of three candidates proposed by the Search Committee.

(2) A Search Committee for the recommendation of persons suitable for appointment as Vice-Chancellor shall be constituted by Chancellor and shall consist of—

(a) The Minister of Higher Education of Khyber Pakhtunkhwa, who shall be the Convener of the Search Committee.

(b) the Chairman of relevant Standing Committee of the Provincial Assembly of Khyber Pakhtunkhwa;

(c) the Chief Secretary, Government of Khyber Pakhtunkhwa;

(d) three eminent members of the society, with experience in education, administration or social work;

(e) two eminent educationists;

(f) the Secretary of the relevant Administrative Department of the Government; and
(g) the Secretary to the Government, Higher Education, Archives and Libraries Department.

(3) The members mentioned in clauses (d) and (e) of sub-section (2) shall be nominated by the Chancellor while the members mentioned in clauses (a), (b), (c), (f) and (g) shall be members of the Search Committee by virtue of their offices.

(4) The Search Committee shall remain in existence till such time as a new Vice-Chancellor is appointed by the Chancellor.

(5) The Vice-Chancellor shall be appointed for a renewable tenure of four years on terms and conditions prescribed by Statutes. The tenure of an incumbent Vice-Chancellor may be renewed by the Chancellor on the basis of his performance and on receipt of a resolution of the Senate in support of such renewal:

Provided that the Chancellor may call upon the Senate to reconsider such resolution once.

(6) Where the Chancellor is of the view that the Vice-Chancellor should be removed, he may make a reference to the Senate stating the instances of inefficiency, moral turpitude or physical or mental incapacity or gross misconduct on the part of the Vice-Chancellor that have come to his notice. After consideration of the reference the Senate shall, pursuant to a resolution in this behalf passed by two-third of its membership, recommend to the Chancellor the removal of the Vice-Chancellor.”

6. A look of the referred provision of law provides the constitution of Search Committee consist
upon eminent educationalist and members of the society apart from Government senior officers, which recommend a panel of 3 candidates and out of it on the advice of Govt. (Chief Minister) Vice Chancellor shall be appointed by the Chancellor. Though Government has the discretion to appoint one candidate out of the panel recommended by Search Committee however, it has to exercise the discretion with conscious and independent application of mind. The Government has only recommended respondent No. 5 without assigning any reasons, which amounts to disposal of the matter in hasty and summary manner without taking into consideration the eligibility, merit and recommendation of high profile Search Committee constituted under the statute for the assessment of eligibility and merit of the candidates. The Government failed to realize its parental status vis-à-vis the subject and it never behoved it to deny to the subject what is determined by competent Committee constituted for search purpose, to be their right. The Government should not taken shelter under technicalities of law. The order passed by Govt. comprising of single word “recommended” is not in line with law nor can be termed as a reasoned order. It
is by now established principle of law that apart from court of law, authority entrusted with quasi judicial powers must dispose the matter pending before it with a reasoned judgment. It must appear not merely that the authority has reached a conclusion rather appear to have reached the conclusion which is just and is result of fair play and good conscious.

7. In Mahabir Parsad’s case reported AIR 1970 SC 1302, SC of India has observed that authority entrusted with quasi judicial authority must afford opportunity to the party interested in the dispute of being heard and adjudicate the matter by reasoned judgment. It is also expressed that recording of reasons in support of decision on a disputed claim by a quasi judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy reached on the grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which authority has rejected the right claimed. Excessive use of lawful power by government became unlawful and is amenable to jurisdiction of this court as the executive and administrative actions and decisions tainted with arbitrariness and lacking fair play and
transparency could be subjected to judicial review in appropriate cases. The criteria for consideration of No.3 in merit ignoring petitioner placed at S. No. 1 in the panel has not been shown. The government has neither afforded opportunity to the petitioner of being heard, nor considered the recommendations made by the Search Committee and instead passed the impugned order without recording any reasons, which is not in line with law and is in disregard of fair play, established norms of equity and good conscious. Needless to mention that Government is expected to be a gentlemen, nay, the noblest person in a state. It never behoved that a Government to ignore merit, ascertained and forwarded to it by a high profile Search Committee, in the garb of technicalities and to observe merit only in dispensation of rights of citizens.

8. The basic object of establishment of courts in a society was not only to administer law but was in fact to dispense justice. The ultimate goal of courts has to do complete justice and ensure the rights of parties without any hurdles. The plea that Govt. has the prerogative to appoint anyone out of panel of three in exercise of discretion, is misplaced, as it is always
subject to transparency good conscious fair play and established norms of equity and shall not be the result of whim or caprice.

9. Quite apart from this, it is most coveted goal of process of administration of justice that justice should not only be done but to be manifestly seen to be done, a speaking rather than cursory order passed in arbitrary fashion is imperative, nay indispensible.

10. Section 24 A (2) of the General Clauses Act is referred for reference:-

“(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to
the person affected prejudicially.”

The referred provision of law envisages that executive authority besides exercising judicial powers, while passing any order under any provision of law has to record reasons therefor.

11. Having thus considered against this backdrop, we allow this petition set aside the impugned order dated 01.04.2014 passed by the government and notification dated 07.04.2014 is declared as without lawful authority and annulled. The case is remitted to the Govt. (Chief Minister) for considering the matter afresh on merit in the light of recommendations by the Search Committee strongly in accordance with law by exercising discretion judicially after affording opportunity to the petitioner of being heard. Order accordingly.

JUDGE


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