

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.3800-P/2024

Dr. Aurangzeb Khan and others

Vs.

**Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and others**

Date of hearing 22.08.2024

For Petitioner(s): M/s. Amir Javed, Muhammad Tariq Afridi and Mubashir Manzoor, Advocates.

For Respondent(s): M/s. Shah Faisal Utmankhel, Advocate General Khyber Pakhtunkhwa, Adnan Ali, AAG and Sana Ullah, Additional Attorney General for Pakistan.

JUDGMENT

IJAZ ANWAR, J. This writ petition has been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:-

“The petitioners respectfully pray that this Hon’ble Court may be pleased to:

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- A. Declare the impugned decision of the 10th Provincial Cabinet meeting minutes to scrap the appointment of Vice Chancellors as illegal, unconstitutional, and of no legal effect, hence, liable to be quashed and set-aside.
 - B. Declare the impugned advertisement dated 27.07.2024 for appointment of Vice Chancellors to the extent of 19 Public Sector Universities is illegal, unlawful, hence, liable to be set-aside.
 - C. Direct respondent No.2 to forward the approved appointments of Vice Chancellors by the Cabinet to respondent No.3 for issuance of official

**Notifications as per Section 12 of the
Khyber Pakhtunkhwa Universities
Act, 2012;**

**D. Grant any other relief deemed
appropriate by this Hon'ble Court in
the interest of justice”.**

2. Learned counsel representing the petitioners argued that the decision to initiate process for appointment of the Universities' Vice Chancellors was duly acted by the elected Government when vide Notification dated 02.02.2022, Academic Search Committee was constituted, whereafter, these positions were duly published in different newspapers. He further argued that in view of the repeated cancellation of the interview's dates, after shortlisting of the candidates, some of the Members of the Academic Search Committee have resigned and the Interim Setup have only substituted Members for filling these positions vide Notification dated 22.12.2023. He next argued that the Academic Search Committee has interviewed the eligible candidates and accordingly, recommended a panel of three Members for each position for the Universities of this Province, according to him, the decision of the present Government to re-advertise these positions vide the impugned advertisement is in violation of the vested rights of the petitioners. He placed reliance on the cases titled “Munawar Hassan Vs. Chief Secretary, Government of Balochistan and others (2017 PLC (C.S) 81), Abdul Aziz and another Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others (2015 PLC (C.S) 958), Miss Farzana Qadir Vs. Province of Sindh

through Secretary, Ministry of Health, Government of Sindh Secretariat, Karachi and another (2000 PLC (C.S.) 225), Mehboob Ali Rind and others Vs. Secretary Education Balochistan and others 2023 PLC (C.S) 1526, Syed Irfan Ahmed and another Vs. Government of Pakistan through Secretary, Finance, Ministry of Finance, Islamabad and others (2009 PLC (C.S.) 4), Amjad Ali Khan Vs. Ministry of Energy (Power Division), Islamabad through Secretary and others (2019 PLC (C.S.) 300), Managing Director, Public Procurement Regulatory Authority (PPRA) and another (2019 PLC (C.S.) 1348), A.R. Khan Vs. P.N. Boga through Legal Heir (PLD 1987 SC 107)”. He further contended that even the learned Additional Advocate General, Khyber Pakhtunkhwa has made a statement before the Hon'ble Supreme Court of Pakistan in Constitution Petition No.07/2024 to the effect that the Academic Search Committee had already recommended the eligible candidates for appointment of Vice Chancellors and that shortly, the appointments would be made. He further argued that the requirement of Section 230 of the Elections Act, 2017 (hereinafter to be referred as “the Act of 2017”) was complied with when permission was sought from the Election Commission of Pakistan for completion of the process of appointment of Vice Chancellors.

3. On the other hand, the worthy Advocate General Khyber Pakhtunkhwa, representing the official

respondents, mainly objected that the Interim Government is not mandated to pass any such policy decision in the matter. He placed reliance on the cases titled “Khawaja Muhammad Asif Vs. Federation of Pakistan and others (2013 SCMR 1205), Nadir Khan Vs. Qadir Hussain and others (2024 SCMR 770), Muhammad Awais and others Vs. Government of Pakistan through Federal Secretary Health, Islamabad and others (2024 MLD 422) and Government of Balochistan through Secretary Services and General Administration Department and others Vs. Abdul Rauf and others (PLD 2021 SC 313)”.

4. The learned Additional Attorney General, representing the respondent-Federation, supported the arguments of learned counsel representing the petitioners and stated that the process of appointment of Vice Chancellors has unnecessarily been made disputed despite the fact that for considerable long time, the Public Sector Universities are functioning without regular Vice Chancellors.

5. Arguments heard and record perused.

6. Impugned herein is the decision of the Provincial Government to re-advertise the positions of Vice Chancellors for the Public Sector Universities in Khyber Pakhtunkhwa on the ground that the appointment process was violative of Section 230 of “the Act of 2017”, because, Members of the Academic Search Committee were substituted by the Interim Government. To thrash out this point as to

whether, the substitution of the names of the Academic Search Committee has violated Section 230 of "the Act of 2017" in any manner, we would first refer to the relevant provisions of law, under which, the position of Vice Chancellor of the University is filled.

7. The Universities established or to be established by the Government of Khyber Pakhtunkhwa are being dealt with under the Khyber Pakhtunkhwa Act No.X of 2012. The Act is called as "the Khyber Pakhtunkhwa Universities Act, 2012 (hereinafter to be referred as "the Act of 2012)". The Vice Chancellor of the University is the most important position responsible for running the affairs of the University. His powers and functions are provided in Section 11 of "the Act of 2012" while Section 12 of "the Act of 2012" deals with his appointment and removal. Section 12 of "the Act of 2012", being relevant, is reproduced as under:-

12. Appointment and Removal of the Vice-Chancellor.

1) The Vice-Chancellor shall be appointed by the Chancellor on the advice of Government from a panel of three candidates recommended by the Academic Search Committee.

2) An Academic Search Committee, for the recommendation of persons suitable for appointment as Vice-Chancellor, shall be constituted by the Chancellor on the advice of Government and shall consist of-

- (a) an academician of national/international with at least fifty (50) international publications, who shall be the chairman and convener of the Academic Search Committee;

- (b) two of the most eminent educationist of Pakistan outside the Province of the Khyber Pakhtunkhwa having academic and administrative experience as Chairman, Dean or Vice Chancellor etc;
- (c) one eminent academician or researcher of the Province of the Khyber Pakhtunkhwa with additional experience of working with any industry or Government agencies;
- (d) Secretary to Government, Higher Education Department shall act as the Secretary of the Academic Search Committee:

Provided that no member of the Academic Search Committee shall be a candidate for the position of Vice-Chancellor, during period of his membership; and

- (e) two persons from society at large being persons of eminence on the recommendation of Academic Search Committee.
- 3) The process of selection of a new Vice-Chancellor shall be initiated six months prior to the expiration of the existing term of the incumbent.
 - 4) The Academic Search Committee shall remain in existence for a period of two years from the date of its constitution.
 - 5) The Academic Search Committee shall adopt the procedure as provided in Schedule-II for the recommendation of the panel of upto three suitable candidates.
 - 6) The Vice-Chancellor shall be appointed by the Chancellor for a term not exceeding three years on market based salary and fringe benefits depending on qualification and experience of the candidate and his or her suitability to the task:

Provided that the tenure of three years may be extended once for another such term on the basis of performance to be evaluated by Government against the key performance indicators to be set up by Government:

Provided further that a Vice-Chancellor may work in the same University for a maximum of two such tenures.

7) The Vice-Chancellor shall hold office during the pleasure of the Chancellor: Provided that before removing a Vice-Chancellor from his position, the Chancellor may grant an opportunity of personal hearing to the Vice-Chancellor.

8) The Chancellor may send the Vice Chancellor on forced leave for ninety (90) days extendable once if the circumstances so demands for reasons to be recorded”.

8. While going through the provisions of Section 12 of “the Act of 2012”, we find that the whole process for appointment of Vice Chancellors is to be supervised and managed by Academic Search Committee. The formation of the Academic Search Committee is provided under Section 12(2) of “the Act of 2012”. In the instant case, the unfortunate aspect of the case is that about 24 Government Universities are functioning without regular Vice Chancellors. The elected Provincial Government, in order to fill these positions after hectic exercise, shortlisted the names of Academic Search Committee and referred it to the Chancellor/Governor of Khyber Pakhtunkhwa for its approval and accordingly, vide Notification dated 02.02.2022, the names of 07 Members constituting Academic Search Committee were notified. Accordingly, the vacant positions of Vice Chancellors of the Public Sector Universities of Khyber Pakhtunkhwa were duly published in different newspapers, inviting applications from potential candidates having the essential qualification and experience mentioned in the advertisement.

9. It is pertinent to mention here that in view of the dissolution of the Provincial Government, the Governor appointed Interim Setup under Article 224 (1A) of the Constitution of Islamic Republic of Pakistan, 1973. Section 230 of "the Act of 2017" places an embargo on powers of the Interim Setup from taking major policy decisions in their tenure and is mandated only to the extent of running the day-to-day affairs of the Government. Section 230 of "the Act of 2017", being relevant, is reproduced as under:-

230. Functions of caretaker Government.

(1) A caretaker Government shall:-

- (a) perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government;**
- (b) assist the Commission to hold elections in accordance with law;**
- (c) restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and**
- (d) be impartial to every person and political party.**

(2) The caretaker Government shall not:-

- (a) take major policy decisions except on urgent matters;**
- (b) take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;**
- (c) enter into major contract or undertaking if it is detrimental to public interest;**
- (d) enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case;**

- (e) make promotions or major appointments of public officials but may make acting or short term appointments in public interest;
- (f) transfer public officials unless it is considered expedient and after approval of the Commission; and
- (g) attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

Provided that sub-sections (1) and (2) shall not apply where the caretaker Government has to take actions or decisions regarding existing bilateral or multilateral agreements or the projects already initiated under the Public Private Partnership Authority Act, 2017 (VIII of 2017), the Inter-Governmental Commercial Transactions Act, 2022 (XXX of 2022) and the Privatization Commission Ordinance, 2000 (LII of 2000).

- (3) The Prime Minister, Chief Minister or a Minister or any other members of a Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B and the Commission shall publish the statement of assets and liabilities in the official Gazette.

- (4) In this section, 'caretaker Government' means the caretaker Federal Government or a caretaker Provincial Government".

10. Unfortunately, due to the unprofessional approach of the relevant quarters, the interviews scheduled on different dates i.e. 25th to 26th February, 2023, 22nd to 23rd May, 2023, 19th to 20th July, 2023 were postponed through

different Notifications dated 24.02.2023, 20.05.2023, 17.05.2023; similarly, there was also stay orders by the High Court and Civil Courts in the matter. Fed up of such situation, three Members of the Academic Search Committee separately submitted resignations mentioning the same reasons of repeated postponement of interviews and their inability to continue further as Members of the Academic Search Committee. The Chancellor of the University has also from time to time conveyed his concerns to the Caretaker Setup regarding delay in the appointment of the Vice Chancellors in Public Sector Universities. The matter was discussed in the Government and accordingly, the Election Commission of Pakistan was approached for allowing approval for continuation of the selection process for appointment of Vice Chancellors of the Universities vide letter dated 26.01.2023, necessary permission was so granted. It is pertinent to mention here that the matter was also discussed within the Interim Setup with the understanding that it is day-to-day affairs of the Government and the process already initiated is to be carried forward for taking it to its logical end.

11. Accordingly, vide Notification dated 22.12.2023, the Members and Convener of the Academic Search Committee were appointed/substituted and the process continued, the Academic Search Committee interviewed the eligible candidates from 23rd to 26th January, 2024 and recommended three candidates for 19 Universities each. The

summary was placed before the worthy Chief Minister of the Caretaker Setup at the relevant time and it was accordingly approved.

12. After the General Elections, when affairs of the Government were taken by the Party holding majority, the Provincial Cabinet of the present Government, in its meeting held on 12.07.2024, discarded the whole process on the ground that it was processed by the Caretaker Setup and that reconstitution of the Academic Search Committee was beyond their mandate and thus, vide the impugned advertisement, the positions of Vice Chancellors were re-advertised.

13. It is pertinent to mention here that even when the matter was under discussion, the Law, Parliamentary Affairs and Human Rights Department, Government of Khyber Pakhtunkhwa and Secretary, Higher Education Archives & Libraries Department, Government of Khyber Pakhtunkhwa have opined that "reconstitution of the Academic Search Committee was a routine day-to-day affair and its summary was duly routed through the Law Department, as such, even no NOC was required from the Election Commission of Pakistan in the matter". However, the learned Advocate General, Khyber Pakhtunkhwa has given his opinion that the whole process be scraped and the Academic Search Committee be reconstituted and the process for appointment be reinitiated. When this matter was referred to

the Principal Officer of the Provincial Government/Chief Secretary, he gave his opinion as follows:-

“The advice given by learned Advocate General at para 20/s is contradicting with what has been stated at para 19/s and para 12(v)/s. Appointment of VCs is being made by the Elected Provincial Government and not by the Care-taker Government. Constitution of Academic Search Committee has to remain apolitical. I don't find anything adverse against any member of Academic Search Committee that may support reconstitution at this stage.

The only observation, at this stage, I would like to raise is, that whether security clearance of all panelists have been received by the Administration Department”.

14. No doubt, Section 230 of “the Act of 2017” prohibits the Caretaker Government from taking major policy decisions, however, the Caretaker Government is not restrained from performing functions to attend to day-to-day affairs which are necessary to run the affairs of the Government. The decision to initiate the process was duly taken by the elected Government and it was during that process that when some of the Members of the Academic Search Committee have resigned, it was the duty of the Caretaker Government to have appointed Academic Search Committee, substituting the Members who have resigned. It is pertinent to mention here that Academic Search Committee has nothing to do with Government as it was apolitical and has only performed its assigned duty.

15. It is pertinent to mention here, a Constitution Petition No.07/2024 is pending in the Hon'ble Supreme Court

of Pakistan filed by All Public Universities BPS Teachers Association against the pathetic affairs of the Universities established by the Federal Government as well the Provincial Government for not appointing the Vice Chancellors of the Universities. Interestingly, the learned Additional Advocate General, Khyber Pakhtunkhwa, while appearing on behalf of the Government of Khyber Pakhtunkhwa, owned the process of appointment already carried out by the Academic Search Committee constituted by the Caretaker Setup. Relevant para of the order dated 15.05.2024 is reproduced as under:-

“Khyber Pakhtunkhwa: The learned Additional Advocate-General, Khyber Pakhtunkhwa, states that there are 34 public sector universities in the Province and 19 of them are functioning under acting Vice-Chancellors. He states that search committees had selected eligible candidates for appointment as Vice-Chancellors, but they have not been appointed yet. Therefore, we asked him to refer to the said recommendations and he said that such information has not been filed as it is required to be kept secret, which surprises us and raises the question why people of the Province are not entitled to know this. Public sector universities are paid by taxpayers, who are entitled to know where and how their monies are spent. Freedom of information is also now enshrined as a Fundamental Right in Article 19A of the Constitution. The learned AAG states that the manner of selection and appointment of Vice-Chancellors, Pro Vice-Chancellors and Deans of Faculties is provided for in the Khyber Pakhtunkhwa Universities Act, 2012 and submits that all such vacant positions will be filled in accordance therewith. We expect the said vacant positions to be filled-in as soon as practicable. The learned AAG has also referred to orders passed by courts restraining appointments from being made,

and that the orders did not given any reason for the interim injunction. Since the law requires that these positions should not remain vacant, therefore, we expect that if such matters are agitated before courts and that the same shall be decided expeditiously”.

16. In view of the above, the objection of the worthy Chief Minister to the effect that at the relevant time, the Chairman and two Members of the Academic Search Committee have resigned during the Caretaker Government and no NOC was found on file regarding permission of the Election Commission of Pakistan for constituting new Academic Search Committee is not according to law and never hit by the judgment of the Hon'ble Supreme Court of Pakistan reported as “2013 SCMR 1205 (Khawaja Muhammad Asif Vs. Federation of Pakistan and others). As stated above, the process for appointment was initiated by the elected Government and thus, it was the policy decision duly taken by the Government, merely because, some of the Members of the Academic Search Committee have resigned and their names were substituted by the Interim Government would not amount to policy decision taken by that Interim Setup within the meaning of Section 230 of “the Act of 2017” as the Caretaker Government was duly empowered to pass any order while running the day-to-day affairs of the Government.

17. Though, for and against, numerous judgments have been relied upon to the effect that there were legitimate expectations of the petitioners of their appointments; similarly, the judgments referred by the learned Advocate General

Khyber Pakhtunkhwa regarding the mandate of the Caretaker Setup are not applicable and is not fatal to the case of the petitioners. We are of the view that this very reason for revamping of appointment process has no legal standing, therefore, judgments relied upon by the parties are distinguishable. The wording of Section 230 of "the Act of 2017" is very clear and needs no further deliberation.

18. For what has been discussed above, this writ petition is allowed. The process of re-advertising the positions of Vice Chancellors of the Government Universities in Khyber Pakhtunkhwa is struck down. The respondents are directed to place the recommendations made by the Academic Search Committee before the worthy Chief Minister, Khyber Pakhtunkhwa for approval in accordance with Section 12 of "the Act of 2012".

Announced
Dt:22.08.2024

Senior
Puisne Judge

Judge

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Muhammad Ijaz Khan