

**HIGH COURT AZAD JAMMU AND KASHMIR**

*Writ Petition No. 3452/2022;*

*Date of institution 15.09.2022*

*Date of decision 12.01.2023*

Dr. Syed Dilnawaz Ahmed Gardezi Vice Chancellor University of Management Sciences and Information Technology Kotli, Azad Jammu and Kashmir.

....Petitioner.

***VERSUS.***

1. The Chancellor University of Management Sciences and Information Technology Kotli/ The President of Azad Jammu and Kashmir through Secretary to the President of Azad Jammu and Kashmir at Muzaffarabad.
2. The University of Management Sciences and Information Technology Kotli through its Registrar.
3. The Azad Government of the State of Jammu and Kashmir through Secretary Services and General Administration Department at Muzaffarabad.
4. The Prime Minister of Azad Jammu and Kashmir, through its Secretary at Muzaffarabad.
5. The Secretary Services and General Administration Department, Azad Government of the State of Jammu and Kashmir at Muzaffarabad.
6. Prof.Dr. Rehmat Ali Khan S/o Muhammad Qasim, Vice Chancellor Designate University of Management Sciences and Information Kotli through Registrar University of Kotli.

....Respondents.

**WRIT PETITION**

***Before;- Justice Sadaqat Hussain Raja, C.J***  
***Justice Sardar Liaqat Hussain, J.***

**PRESENT:**

*Raja Amjad Ali Khan, Advocate for the petitioner.*

*AAG, for respondents.*

*Raja Aqib Safeer Khan, legal Advisor on behalf of respondents No.3 & 5.*

*Sardar Pervaiz Akhtar Niazi, Advocate for respondents No.2 & 6.*

**Note:** The correction at Page No. 11 has been made and the judgment has been corrected through corrigendum dated 13.01.2023.

**JUDGMENT:**

**[Justice Sadaqat Hussain Raja, C.J]**Through the instant writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974,petitioner has implored the following relief;-

*“In view of the above submission it is most humbly prayed that by allowing this petition the impugned notification No.S&GAD/Gazetted-II/(144)2014 dated 12.09.2022 may kindly be set aside and the respondents may kindly be directed to make the appointment of the Vice Chancellor University of Kotli in accordance with recommendations of the Search Committee and the Senate strictly following the order of merit determined by the Search Committee/the Senate.”*Any other relief which the Hon’ble Court deems fit and proper may also be granted to meet the ends of justice.

Precise facts as stated by the petitioner are that petitioner is 1<sup>st</sup> Class State subject of Azad Jammu and Kashmir, and was appointed as Vice Chancellor of University of Management Sciences and Information Technology Kotli on the recommendations of Search Committee vide notification dated 19.09.2017 for a period of three years and the same was extended for a period of two years vide notification dated 19.03.2021. It is averred that vide advertisement dated 27.06.2022, the impugned post of Vice Chancellor of University of Management Sciences and Information Technology Kotli was published on 27.06.2022. A Search Committee was constituted

vide notification dated 29.03.2022 to recommend the panel of suitable candidates in respect of order of merit. The Search Committee after due process of law, recommended panel consisting of five suitable candidates for consideration of the Senate. The senate recommended three candidates in order of priority to the Chancellor for appointment of Vice Chancellor. It is submitted that petitioner secured highest marks, as such he is entitled to be appointed as Vice Chancellor University of Kotli, however, respondent No.1 by ignoring and superseding petitioner, appointed respondent No.06 as Vice Chancellor University of Kotli vide notification dated 12.09.2022 by violating the merit as well as relevant provisions of Constitution and law. It is further submitted that respondent No.6 is a Non-State Subject and was placed at serial No.3 of the merit list, therefore, in presence of a State Subject, who also secured top position in the merit list, a Non-State Subject cannot be appointed as Vice Chancellor. It is contended that respondent No.6 was declined for appointment as Professor by the University of Peshawar due to serious allegations were found against him, when he remained as Vice Chancellor in University of Upper Dheer/KPK in Pakistan, as such he was not even entitled to be considered for appointment as Vice Chancellor. It is maintained that petitioner being aggrieved person has no alternate remedy except to

invoke the extra ordinary jurisdiction of this Court, hence the instant writ petition.

Writ petition has been admitted for regular hearing vide order dated 16.09.2022 and respondents were directed to file written statements whereas the same has been filed on behalf of respondent No.1, wherein it is averred that writ petition is not maintainable in the eye of law, as Chancellor University of Management Sciences and Information Technology Kotli appointed, respondent No.6 as Vice Chancellor University of Kotli under Sub Section 1 and 4 of the Section of the University of Kotli, Act, 2014 on the recommendation of the Senate. It is further averred that under section sub Sections of Section 11 of the Act, it is a sole prerogative of the Chancellor to appoint anyone out of the panel of three recommended candidates by Senate, as such the impugned notification dated 12.09.2022 has been issued with lawful authority and in accordance with provision of Act. It is prayed that by accepting the same, the instant writ petition may be dismissed.

Respondents No.2 to 6 have also filed written statement wherein it is averred that petitioner has no locus standi to file the instant writ petition. It is further averred that official respondents have discharged their responsibilities assigned by the law on the subject in accordance with the law,

statutes and rules. Petitioner failed to bring on record any illegality in the whole process for the appointment of Vice Chancellor; hence writ petition is not maintainable. It is contended that Sub-Section 3 of Section 11 of University of Kotli Act, 2014 empowers the Chancellor to appoint anyone of the recommended persons, hence, no violation of law, rules and procedure has been done. Section 11 of the Act, 2014 relates to the appointment and removal of the Vice-Chancellor and according to the said Section, there is no legal sanctity with the order of merit. Writ petition is also hit by principle of acquiescence and estoppel. The allegations leveled against respondent No.6 in writ petition are also denied.

Petitioner also filed replication, wherein it is averred that the official respondents failed to furnish any justification for violation of merit and unjustified exercise of discretion. Respondents have misinterpreted the provision contained under Sub Section (3) of Section 11 of the Act, 2014, as the same provides that the Chancellor may decline to appoint any of the three persons recommended and seek recommendations of fresh panel and does not empowers the Chancellor to violate the merit without any justification. The stance of the petitioner stands established as un-rebutted in view of contents of the written statement.

The learned counsel for the parties reiterated the facts and grounds of writ petition and written statements, therefore, there is no need to reproduce the arguments of the learned counsel for the parties.

We have given our due consideration to the arguments advanced on behalf of the parties and gone through the available record with utmost care.

In our opinion, to examine the instant case, we consider it appropriate to list the issues before us for determination of case.

- i. Whether the whole process for appointment of Vice Chancellor starting from constitution of Search Committee up to the recommendations of Senate on priority basis is a formality?
- ii. Whether the Chancellor/Appointing Authority has sole discretionary powers for appointment of Vice Chancellor?
- iii. Whether the appointment of Vice Chancellor by the Chancellor without advice of Prime Minister (Chief Executive) is ultra vires of the Constitution and Rules of business;
- iv. Whether the recommendations provided by the Senate and Search Committee based on order of priority are of binding upon the appointing authority;

We would like to resolve the controversy through above formulated points. The first point that **whether the whole**

**process for appointment of Vice Chancellor starting from constitution of Search Committee up to the recommendations of Senate on priority basis is a formality.** The University of Kotli was established through an Act known as *the University of Management Sciences and Information Technology Kotli Azad Jammu and Kashmir Act, 2014*. The method for appointment to the post of Vice Chancellor has been provided in Section 11 of the aforesaid Act, 2014. It is relevant to mention here that section 11 of University Act, 2014 provides appointment and Removal of Vice-Chancellor, which reads as under;-

**Section 11. Appointment And Removal Of The Vice Chancellor**

**(1)** *The Vice-Chancellor shall be appointed by the Chancellor on the basis of recommendations made by the Senate.*

**(2)** *A Search Committee for the recommendation of persons suitable for appointment as Vice Chancellor shall be constituted by the Senate on the date and in the manner prescribed by the statutes and shall consist of two eminent members of society of the senate, two distinguished University teachers who are not members of the Senate and one academician of eminence not employed by the University. The two distinguished University Teachers shall be selected by the senate through a process to be prescribed by the statutes that provides for the recommendation of suitable names by the university teachers in general. The Search Committee shall remain in existence till such time that the appointment of the next Vice Chancellor has been made by the chancellor.*

**(3) The persons proposed by the Search Committee for appointment of Vice-Chancellor shall be considered by the Senate and of these a panel of three, in order to priority, shall be recommended by the senate to the Chancellor;**

*Provided that the Chancellor may decline to appoint any of the three persons recommended and seek recommendation of a fresh panel. In the event of a fresh recommendation being sought by the Chancellor, the Search Committee shall make a proposal to the Senate in the prescribed manner*

**(4) The Vice Chancellor shall be appointed for a renewable tenure of five years on terms and conditions prescribed by statutes;**

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

**(5) The Senate may, pursuant to a resolution in this behalf passed by three fourth of its membership, recommend to the Chancellor the removal of the Vice-Chancellor on the ground of inefficiency, moral turpitude or physical or mental incapacity or gross misconduct, including misuse of position for personal advantage of any kind.**

*Provided that the Chancellor 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 Vice Chancellor that have come to his notice. After consideration of the reference the Senate may, pursuant to a resolution in this behalf passed by two thirds of its membership, recommend to the Chancellor the removal of the Vice Chancellor*

*Provided further that prior to a resolution for the removal of the Vice Chancellor being voted upon, the Vice Chancellor shall be given an opportunity of being heard.*



*(6). A resolution recommending the removal of the Vice Chancellor shall be submitted to be Chancellor forthwith. The Chancellor may accept the recommendation and order removal of the Vice Chancellor or return the recommendation to the Senate.*

*(7). At any time when the office of the Vice Chancellor is vacant, or the Vice Chancellor is absent or is unable to perform the functions of his office due to illness or some other cause, the Senate shall make such arrangements for the performance of the duties of the Vice Chancellor as it may deem fit.”*

*(Underlinings are ours)*

A bare reading of above reproduced Section clearly reveals that the Vice Chancellor can be appointed by the President on the recommendations of the Senate. Sub Section (2) of Section 11 of Act 2014 postulates that a Search Committee for the recommendation of a person suitable for appointment of a Vice Chancellor shall be constituted by the Senate in the manner prescribed by the statutes and word “prescribed” is defined in Section 20 of Act 2014, as “**prescribed**” means prescribed by Senate, Regulations or Rules made under the Act, 2014. The Universities are Governed by Higher Education Commission (HEC) in Pakistan and Azad Jammu and Kashmir. Section 11 of the said Act deals with the appointment and removal of Vice Chancellor. Sub Section (2) of the said Act also provides that the Search Committee for recommendations of the suitable person, for appointment of the Vice Chancellor be

constituted by the Senate in the manner prescribed by the Statutes. The language of Section 11(2) of the Act 2014 and Section 11(2) of the Federal Universities Ordinance 2002 is the same which also provide that the Search Committee shall be constituted by the Senate in the manner prescribed by the Statutes.

The University Management Sciences and Information Technology of Kotli invited applications from the eligible candidates for the Post of Vice Chancellor of Kotli through an advertisement published in “Daily Dawn”, “The News” and “Jhang” on 27.06.2022. The scrutiny committee was constituted to scrutinize the application. Later on, under clause 3(1) of the Act 2014 for the appointment of Vice Chancellor of statute of University of Kotli, the Search Committee was constituted on 29.03.2022. The Search Committee consists of the following members;-

1. *Mr. Justice Azhar Saleem Babar, former Chief Justice of High Court of AJ&K;*
2. *Prof. Dr. Bushra Mirza, Vice chancellor, Lahore College for Women University, Lahore;*
3. *Prof. Dr. Samina Amin Qadir, former vice chancellor Fatima Jinnah Women University Rawalpindi;*
4. *Mr. Khalid Mahmood Mirza, Secretary Higher Education Department GOAJK;*
5. *Prof. Dr. Muhammad Aslam Baig, Distinguished National Professor National center for physics, Quid-e-Azam University;*
6. *Brigadier (R)Tahir Jaral, resident of Mirpur AJ&K;*

The aforesaid Search Committee after due process of law, following criteria for assessment and interviewed on 27<sup>th</sup> August 2022 short listed the following 17 candidates by the Search Committee.

**Interview for the position of Vice Chancellor, University of Kotli Azad Kashmir dated 27.08.2022.**

sr.no	Name of candidates	Quantification Marks (Total Marks: 70)										Interview Marks (Marks 30)							Grand Total (6+14)	
		Length of Services	Research Outcome	Academic Performance	Educational Leadership	Development	Project undertaken	Funding Raising for the Institution	International Experience	Research Publications	Prof. Dr. G Raza Bhatti, Convenor	Justice Azhar Saeed, Member	Prof. Dr. Bilal Mirza, Member	Prof. Dr. Samina Amir Qadir, Member	Brig (rtd) Tahir Jaral, Member	Prof. Dr. M. Akram, Member	Mr. Khalid Mirza, Member	Mirza, Member		Obtained Marks averaging of (7 to 13)
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19		
	Prof. Dr. Syed Dilnavaz Ahmed Gardezi	10	16	13	12	3	2	2	58	25	24	25	26	24	25	26	25	83		
	Prof. Dr. Rehana Asghar	10	14	20	9	0	0	3	56	22	23	21	22	21	23	22	22	78		
	Prof. Dr. Rehmat Ali Khan	10	14	11	12	3	0	1	51	20	20	21	19	21	18	21	20	71		
	Prof. Dr. Muhammad Naeem Khan	10	9	10	12	3	2	2	48	19	18	20	18	19	19	20	19	67		
	Prof. Dr. Muhammad Masood ul Hassan	10	14	17	3	3	0	1	48	18	17	18	17	18	20	18	18	66		
	Prof. Dr. Mughammad Jamal Khan	10	14	14	12	3	0	3	56	8	7	8	9	8	8	8	8	64		
	Prof. Dr. Muhammad Sharif	10	14	13	9	0	0	1	47	9	9	9	9	10	8	9	9	56		
	Prof. Dr. Muhammad Qayyum Khan	10	9	13	9	3	2	1	47	8	7	8	9	8	8	8	8	55		
	Prof. Dr. Muhammad Akmal	10	14	16	3	0	0	3	46	8	7	8	9	8	8	8	8	54		
	Prof. Dr. Maqsood Ahmed	10	14	8	11	1	0	1	45	8	9	8	7	8	8	8	8	53		
	Prof. Dr. Ahmed-ur-Rehman Saijoqi	10	14	11	7	0	0	1	43	9	9	9	9	10	8	9	9	52		
	Prof. Dr. Jamshed Iqbal	9	14	16	3	0	0	1	43	9	9	9	9	10	8	9	9	52		
	Prof. Dr. Imtaiz Ali Khan	10	14	10	9	0	0	0	43	8	7	8	9	8	8	8	8	51		
	Prof. Dr. Nadeem Haider Bukhari	10	14	10	9	0	0	0	43	8	9	8	7	8	8	8	8	51		
	Prof. Dr. Wajid Aziz Lone	8	16	13	3	0	1	1	42	8	7	8	9	8	8	8	8	50		
	Prof. Dr. Muhammad Arshad	6	14	14	9	0	0	0	43	8	6	5	5	5	8	7	6	49		
	Prof. Dr. Athar Muhmud	10	14	16	3	0	0	0	43	A	B	S	E	N	T	-	0	43		

The Search Committee conducted interviews of 17 shortlisted candidates on 27<sup>th</sup> August, 2022. The aforesaid search committee after due process of law recommended penal consisting of five suitable candidates for consideration of the Senate. The Search Committee recommended the top 05 candidates as per Section 11 (2) of University Statutes for the appointment of V.C University of Kotli, AJ&K in order of merit on the basis of comprehensive evolution of documents (70) and

interview (30) carried out by each member of the Search Committee, keeping in view the length of service, research, outcome, academic performance, education etc. The selected top five (5) candidates are as under;-

Sr. No	Name	Marks out of 100	Position
i.	Prof.Dr.Syed Dilnawaz Ahmed Gardezi	83	1 <sup>st</sup>
ii.	Prof. Dr. Rehana Asghar	78	2 <sup>nd</sup>
iii.	Prof. Dr. Rehmat Ali Khan	71	3 <sup>rd</sup>
iv.	Prof.Dr. Muhammad Naeem Khan	67	4 <sup>th</sup>
v.	Prof.Dr.Muhammad Masood ul Hassan	66	5 <sup>th</sup>

In the 19<sup>th</sup> meeting of the Senate University of Kotli Azad Jammu and Kashmir was held on 01.09.2022, item No.7 was inserted for appointment of Vice Chancellor, University of Kotli Azad Jammu and Kashmir. Item No.7 is reproduced as under:

**Item No. 07, Appointment of Vice Chancellor University of Kotli Azad Jammu and Kashmir**

**Discussions:** In accordance with the clause 3(1) of the Vice Chancellor Appointment Statutes of University of Kotli, Azad Jammu and Kashmir, the Search Committee was constituted by the Senate through Notification Meeting/ Special Meeting/Senate/493-502/2022 dated 29.03.2022. The Search Committee after required proceedings recommended the following penal of consideration of the Senate in accordance with the Clause 11(2) of Vide Chancellor appointment Statutes of University of Kotli, Azad Jammu and Kashmir.

1. Prof. Dr. Syed Dilnawaz Ahmed Gadezi;
2. Prof. Dr. Rehana Asghar;

3. Prof. Dr. Rehmat Ali Khan;
4. Prof. Dr. Mohammad Naseem Khan;
5. Prof. Dr. Mohammad Maseed ul Hasan.

**Decision:**

The Senate in accordance with the clause No. 11(3) of the Vice Chancellor Appointment Statutes of University of Kotli and based on the recommendations of the Search Committee recommended the following penal **in the order of priority** to the Chancellor for the appointment of Vice Chancellor, University of Kotli for a period of 5 years.

- 1. Prof. Dr. Syed Dilnawaz Ahmed Gardezi;**
- 2. Prof. Dr. Rehana Ashgar;**
- 3. Prof. Dr. Rahmat Ali Khan**

The meeting was concluded on a vote of thanks to and from the Hon'ble/Chairman Senate/Chancellor University of Kotli /President of the Azad State of Jammu & Kashmir.

**Dated 01 September 2022**

**(Dr. Iftikhar Hussain)**

**Registrar/Secretary Senate**

The Search Committee interviewed the candidates and awarded marks and prepared merit list. The Search Committee recommended the name of candidates in the order of priority by awarding marks to the candidates where the petitioners Prof. Dr. Syed Dilnawaz Ahmed Gardezi (petitioner herein) obtained 83 marks out of 100 and attained 1<sup>st</sup> Position, whereas another named Prof. Dr. Rehana Ashgar obtained 78 marks out of 100 and attained 2<sup>nd</sup> position and respondent No. 6 Prof. Dr. Rehmat Ali Khan obtained 71 marks out of 100 and attained 3<sup>rd</sup> position. The President of Azad Jammu and Kashmir while exercising of powers conferred by Chancellor under

Section 11(1) and 11(4) of the University of Kotli Act, 2014, appointed Prof. Dr. Rehmat Ali S/o Mohammad Qasim as Vice Chancellor University of Kotli for a period of 5 years vide notification dated 12.09.2022. The relevant notification is reproduced as under:

**Azad Government of the State of Jammu and Kashmir  
Services and General Administration Department.  
Muzaffarabad**

Dated 12.09.2022

**Notification:**

No. S&GAD (Gazetted-II)-I (144)2014: The President, Azad Jammu & Kashmir, in exercise of powers conferred by Chancellor under Section 11(1) and 11(4) of the University of Kotli, Act, 2014 and on the recommendations of Senate of the University has been pleased to accord approval for appointment of Prof. Dr. Rehmat Ali Khan S/o Mohammad Qasim as Vice Chancellor, University of Kotli, for a period of five years along with entitlement to draw salary package as admissible to Vice Chancellor of Public Sectors Universities w.e.f. September 20,2022.

**(Zahid Maqsood Awan)**  
Section Officer (Gazetted-II)  
Ph. 05822-921038

The petitioner has challenged the appointment order of respondent No.6, as Vice Chancellor University of Management Sciences and Information Kotli and claimed that the same has been made without lawful authority, against the provisions of Constitution and law on the subject. The petitioner has also claimed that he secured top position in the order of merit finalized by the Search Committee, however, despite of that Chancellor illegally and wrongly appointed respondent

No.06 as Vice Chancellor, who was placed at serial No.3. Petitioner has also alleged that respondent No.06 is a non-State subject, thus, the official respondents in violation of law deprived of the petitioner from his legal right and considered a non-State Subject for the appointment without considering the fact that petitioner is a 1<sup>st</sup> class State subject and also placed at serial No.1 of merit.

The Senate recommended only three candidates in order of priority to the Chancellor for appointment of Vice Chancellor.

Now, we would like to define "**priority**". In Black's Law Dictionary, the word "**Priority**" is defined as under:-

**"Priority"** The status of being earlier in time or higher in degree or rank, precedence.

The determination that one among several patent applications, for sub-stantially the same invention.

In the instant case, the recommendation of Senate as well as Search Committee by awarding marks are based on merit position which has been ignored by the Appointing Authority without mentioning any reason whatsoever and appointed respondent No.6 as Vice Chancellor. According to the Principle laid down by the Hon'ble Court of Pakistan in **Human Rights Case No. 13865-P of 2018** which has been relied upon by the Hon'ble Supreme Court of Pakistan in a case titled as "**Dr.**

***Iqrar Ahmed Khan Vs. Dr. Muhammad Ashraf and others***

[2021 SCMR 1509], the Apex Court of Pakistan laid down the

following guidelines as under:-

**“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 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 the opinion suitable for appointment to the post of Vice Chancellor, to the Government.

The matter of appointments of Vice Chancellor came up before this Court in Human Rights case No.13865-Petitioners of 2018 (hereinafter referred to as “HRC Case”).



Objections were raised in the HRC Case against the appointments which are 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 Committee, acting Vice Chancellor will be appointed in the following manner:-

- (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 Science, 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 Committee 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 Committee 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 justifiable.

**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.”

The Apex Court has provided the aforementioned guidelines 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 the Apex Court that the appointments have to be made on the principle of merit unless cogent reasons for not appointing the person who is at the highest merit are given, which would also be subject to judicial review. From the judgment of the Hon'ble Supreme Court of Pakistan it is crystal clear that the Appointing Authority cannot exercise its powers arbitrarily, in an unstructured, unregulated manner and is bound to follow the principle of merit for appointment of Vice Chancellor, hence, the recommendations of Search Committee based on priority basis by awarding marks to the candidates is

not a formality and it is a process as provided in Section 11 of University Act 2014.

The findings of Question No. 2 have already discussed in detail in question No.1 therefore, need not to be discussed.

The next question which needs resolution is that whether the appointment of Vice Chancellor by the Chancellor without advice of Prime Minister (Chief Executive) is ultra vires of the Constitution and Rules of Business. This point has been resolved by the Apex Court of Azad Jammu and Kashmir in a case titled **“The Chancellor and others Vs. Dr. Iqrar Ahmed Khan & others [2019 SCR 985].** *The relevant portion of the judgment is reproduced as under:*

*“While perusing the record we have noticed that the chief executive had advised for appointment of Pro. Dr. Iqrar Ahmed Khan, as Vice Chancellor MUST and his appointment was approved by the worthy President but while appointment Prof. Dr. Habib-ur-Rehman, the concerned department has neither placed any summary before the Chief Executive nor the advice has been tendered by the Chief Executive for his appointment. The approval of the President, thus, was without the advice of the Chief Executive and illegal. Such type of orders can only be taken as recommendatory in nature and after receipt of the same the department should have processed the file in accordance with the Rules of Business afresh. In Our view, that approval of the Chief Executive without proper summary was violative of the Rules of Business.”*

From perusal of record and bare reading of the impugned notification, it transpires that the impugned notification was issued by the approval of Chancellor without following the dictum laid down by the apex Court in supra titled case. In light of the dictum of the Apex Court the approval of the President without the advice of the Chief Executive is illegal.

The Hon'ble Apex Court of AJ&K in case titled **"Prof. Dr. Abdul Hamid Vs. Prof. Dr. Muhammad Kaleem Abbasi & others"** decided on **04.10.2016** has set a criteria for the appointment of Vice Chancellor for all the Universities in Azad Jammu and Kashmir. The relevant portion of the judgment is usefully reproduced as under;-

*"17. The Vice Chancellor has to be appointed under section 11 of Act, 2014, on the recommendations of the Search Committee constituted in the prescribed manner in the Statutes. The Statutes for appointment of the Vice Chancellor have not been framed. The matter cannot be left open on the discretion of the authority that it shall constitute the Search Committee according to its discretion. It is high time that the authorities shall act promptly and fulfill the requirement of section 11 of the Act, 2014 and frame the Statutes for appointment of the Vice Chancellor. The official respondents are directed to do the needful not only for University of Poonch, Rawalakot but for all the Universities in Azad Jammu and Kashmir. Till that time the appointment of the Vice Chancellor shall be made according to the Model Statutes framed by the H.E.C."*

(Underlinings are ours)

Thus, in view of the above dictum and guidelines provided by the Apex Court, it was enjoined upon the department/authority to make the appointment of the Vice Chancellor of the University according to the Statutes framed by the H.E.C.

The next question is that whether the recommendations provided by the Senate and Search Committee based on order of priority are of binding upon the appointing authority; The Search Committee while sending the recommendations of 5 persons to the Senate also determined the order of merit. The University is governed under Act, 2014, the Search Committee has to perform its function under the statutory provisions and not in arbitrary manner. Sub Section (3) of Section 11 of Act, 2014 lays down that the persons proposed by the Search Committee for appointment as Vice Chancellor shall be considered by the Senate and of these panel of three in order of priority shall be recommended by the Senate to the Chancellor. The Search Committee shall recommend the name to the Senate and after consideration the Senate shall send the panel of three persons in order of merit to the Chancellor. So, recommendations provided by the Senate and Search Committee are of binding upon the appointing authority as laid down by the Hon'ble Supreme Court of Azad Jammu and

Kashmir in a case titled Prof. Dr. Abdul Hamid Vs Prof. Dr. Mohammad Kaleem Abbasi and others decided on 04.10.2016.

It has also been recognized by the apex Courts of Pakistan and Azad Jammu and Kashmir in a chain of judgments that even an Obiter Dicta of the Supreme Court is binding upon the High Court. In the case reported as Mohammad Younas Tahir and another Vs. Shoukat Aziz Advocate and others [2012 SCR 213}, the apex Court of Azad Jammu and Kashmir held as under:-

“Even an Obiter Dicta of this Court has a binding effect and I say so with great respect to the learned Judges of the High Court, that the reasons which led them to the conclusion that Amjad Hussain’s case was distinguishable are not sustainable in view of the clear statement of law in the passage quoted above that a quo warranto writ is maintainable against a Judge which does not mean only a Shariat Court Judge. This reason alone is sufficient dismissal of writ petition petition cannot be maintained.

The observation of the Judges of the Supreme Court, if they were Obiter would be entitled to the highest esteem for the High Court. An identical proposition came under consideration before the apex Court in a case titled **“Ghulam Mustafa Mughal Vs The Azad Govt. and others [1993 SCR 131].**

The same principle has also been laid down by the apex court of Pakistan in a precedent reported as **[2017 SCMR 206]**, which is as under:-

“ A fourteen member bench of this court in a case titled Justice Khurhseed Anwar Bhinder Vs Federation of Pakistan [PLD 2010 SC 483} has concluded that where the Supreme Court deliberately and with the intention of setting the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of Art. 189 of the Constitution and is binding on all courts in Pakistan. Such pronouncement obiter dictum. Even Obiter dictum of the Supreme Court, due to the high place which the Court holds in the hierarchy in a highly respected position as if it contains a definite expression of the Court’s view on a legal principle of the meaning of law.”

In this view of matter, we could not find any option except to follow the procedure provided by the apex Courts of Pakistan and Azad Jammu and Kashmir.

In the instant case, the petitioner claims that respondent No.6 was declined for appointment as Professor by the University of Peshawar due to serious allegations against him, during his posting as Vice Chancellor in University of Upper

Dheer/KPK, as such he was not even entitled to be considered for appointment as Vice Chancellor. In this regard a letter issued by Section Officer Governor's Secretariat KPK as Annexure "PH" is also attached with the paper book. The relevant letter is reproduced as under:

GOVERNOR'S SECRETARIAT,  
Khyber Pakhtunkhwa, Peshawar  
No. SO-I/12-1/GS/2020/1013-15  
Dated 11.08.2021.

To,  
The Secretary to Govt. of Khyber Pakhtunkhwa,  
Higher Education Department,  
Peshawar.

**Subject: Inquiry into complaints against professor Dr. Rehmat Ali VC, SBBU, Sheringal, Upper Dir & others.**

Dear Sir,

Kindly refer to your office letter No. SO(U-IV)HE/16-3/Misc/SBBUS2020/6011-12. WE dated 08.04.2021 and this Secretariat letter of even number dated 01.03.2021 alongwith Governor's Inspection Team. Peshawar letter No. 16-667/Inq/GIT/20/468 dated 21.01.2021 on the subject noted above (copies enclosed for ready reference).

2. Keeping in view the recommendations of GIT in its Review Report dated 15.07.2021(copy enclosed). I am directed to request that the Higher Education Department may kindly proceed with the recommendations of earlier GIT report forwarded vide this office letter No. SO-I/12-1/GS/2020/1616-17 dated 01.03.2021 summarily please.

Yours faithfully

(Asif Iqbal)  
Section Officer\_I

Respondent No. 6 has also leveled same allegations against the petitioner when he remained Vice Chancellor in the University of Kotli. In this regard, applications on behalf of one named Sardar Sajjad Ahmed Khan in which different complaints are to be shown which have been made part of file. In these



circumstances, the Appointing Authority while exercising his powers under Section 11 of the Act 2014 has to resend the case to the Senate for further consideration on priority basis instead of appointing respondent No. 6.

In the light of what has been stated above, the instant writ petition is partially accepted and the impugned Notification No.S&GAD/(Gazetted-II)/(144)2014 dated 12.09.2022, is hereby set-aside being ultra-vires to the Constitution and dictum of the Hon'ble Supreme Courts of Pakistan and Azad Jammu and Kashmir and the Chancellor/Appointing Authority is directed to resend the case to the Senate and Senate shall send the list of three eligible candidates on order of priority while considering the allegations against the petitioner as well as respondent No.6 through proper channel as provided in the Judgment of Apex Court of AJK in a case titled ***"The Chancellor and others Vs Dr. Iqrar Ahmed Khan and others"*** [2019 SCR 985] for seeking advice of the Chief Executive and the appointing authority has to make appointment of eligible person within a period of 01 month from the receipt of the instant judgment.

Muzaffarabad:

12.01.2023

**CHIEF JUSTICE**

**JUDGE**

**Approved for Reporting.**

**CHIEF JUSTICE**

**JUDGE**

**HIGH COURT AZAD JAMMU AND KASHMIR**  
**(Corrigendum)**

Dr. Syed Dilnawaz Ahmed Gardezi

VERSUS

The Chancellor University of Management Sciences and Information Technology Kotli

Order:-

The captioned case has been decided by Division Bench vide judgment dated 12.01.2023. It is noticed that in the judgment at page No. 11 mark sheet prepared by Search Committee some figures have inadvertently been wrongly entered. The correct figures are reproduced as under:-

**Interview for the position of Vice Chancellor, University of Kotli Azad Kashmir dated 27.08.2022.**

sr.no	Name of candidates	Quantification Marks (Total Marks: 70)								Interview Marks (Marks 30)								Grand Total (6+14)	
		Length of Services Marks 10	Research Outcome Marks 20	Academic Performance Marks 20	Educational Leadership Marks 12	Development Marks 03	Project undertaken, Published, Rating for the Institution Marks 02	International Marks 03	Experience Marks 03	Total (0+4+5+8+7+0+0+3)	a) Strategic vision & Leadership Abilities (10 Marks) b) Knowledge Pertaining to Higher Education (10 Marks) c) Personal Traits (10 Marks)								
											Prof. Dr. G Raza Bhakti, Convener	Justice Azhar Saleem Babar, Member	Prof. Dr. Bushra Mirza, Member	Prof. Dr. Samina Amir Qadir, Member	Brig (rtd) Tahir Jaral, Member	Prof. Dr. M. Aslam Baig, Member	Mr. Khalid Mahmood Mirza, Member		Obtained Marks [7 to 13]
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
	1 Prof. Dr. Syed Dilnawaz Ahmed Gardezi	10	16	13	12	3	2	2	58	25	24	25	26	24	25	26	25	83	
	2 Prof. Dr. Rehana Asghar	10	14	20	9	0	0	3	56	22	23	21	22	21	23	22	22	78	
	3 Prof. Dr. Rehmat Ali Khan	10	14	11	12	3	0	1	51	20	20	21	19	21	18	21	20	71	
	4 Prof. Dr. Muhammad Naeem Khan	10	9	10	12	3	2	2	48	19	18	20	18	19	19	20	19	67	
	5 Prof. Dr. Muhammad Masood ul Hassan	10	14	17	3	3	0	1	48	18	17	18	17	18	20	18	18	66	
	6 Prof. Dr. Mughammad Jamal Khan	10	14	14	12	3	0	3	56	8	7	8	9	8	8	8	8	64	
	7 Prof. Dr. Muhammad Sharif	10	14	13	9	0	0	1	47	9	9	9	9	10	8	9	9	56	
	8 Prof. Dr. Muhammad Qayyum Khan	10	9	13	9	3	2	1	47	8	7	8	9	8	8	8	8	55	
	9 Prof. Dr. Muhammad Akmal	10	14	16	3	0	0	3	46	8	7	8	9	8	8	8	8	54	
	10 Prof. Dr. Maqsood Ahmed	10	14	8	11	1	0	1	45	8	9	8	7	8	8	8	8	53	
	11 Prof. Dr. Ahmed-ur-Rehman Saijoqi	10	14	11	7	0	0	1	43	9	9	9	9	10	8	9	9	52	
	12 Prof. Dr. Jamshed Iqbal	9	14	16	3	0	0	1	43	9	9	9	9	10	8	9	9	52	
	13 Prof. Dr. Imtaiz Ali Khan	10	14	10	9	0	0	0	43	8	7	8	9	8	8	8	8	51	
	14 Prof. Dr. Nadeem Haider Bukhari	10	14	10	9	0	0	0	43	8	9	8	7	8	8	8	8	51	
	15 Prof. Dr. Wajid Aziz Lone	8	16	13	3	0	1	1	42	8	7	8	9	8	8	8	8	50	
	16 Prof. Dr. Muhammad Arshad	6	14	14	9	0	0	0	43	8	6	5	5	5	8	7	6	49	
	17 Prof. Dr. Athar Muhmud	10	14	16	3	0	0	0	43	A	B	S	E	N	T	-	0	43	

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Prof. Dr. Bushra Mirza  
(Member)

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Mr. Justice Azhar Saleem Babar,  
(Member)

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Prof. Dr. Samina Amin Qadir  
(Member)

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Prof. Dr. Mohammad Aslam Baig,  
(Member)

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Mr. Khalid Mahmood Mirza,  
(Member)

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Brig (R) Tahir Jaral  
(Member)

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Pro. Dr. Raza Bhatti  
(Convener)

It may be stated here that the mistake pointed out in the judgment is clerical in nature and according to Sec. 152 of the Code of Civil Procedure 1908, clerical or arithmetical mistakes can be corrected at any time by the Court either of its own motion or on the application of any of the parties. Hence, while exercising powers conferred upon this Court under Section 152 CPC, this corrigendum is issued for correction of mistakes. This order shall be part and parcel of the judgment dated 12.01.2023 and wrongly entered figures shall be deemed to have been substituted by correctly reproduced above figures.

Muzaffarabad:  
13.01.2023

**CHIEF JUSTICE**

**JUDGE**