

HIGH COURT OF AZAD JAMMU & KASHMIR

*Writ Petition No.526/2023;
Date of Institution 15.11.2023;
Date of Decision 29.02.2024.*

Professor Dr.Naeem Iqbal Ratyal Chairman
Department of Electrical Engineering
MUST Mirpur.

Petitioner

V E R S U S

1. Azad Government of the state of Jammu and Kashmir through Chief secretary AJ&K Muzaffarabad;
2. Chancellor MUST Mirpur through Secretary President Affairs AJ&K Muzaffarabad;
3. Deputy Secretary President Secretariat AJ&K Muzaffarabad;
4. Mirpur University of Science and Technology Mirpur through its Vice Chancellor;
5. Vice Chancellor MUST Mirpur Azad Kashmir.
6. Registrar Mirpur University of Science & Technology, MUST;
7. Syndicate/Senate, MUST, Mirpur;
8. Dr. Muhammad Sajid Director Advance Studies and Research Board, MUST, Mirpur;

Real-Respondents

9. Professor Dr. Anwar Khitab Dean Faculty of Health and Medical Sciences MUST, Mirpur.

Proforma-Respondent

WRIT PETITION UNDER ARTICLE 44 OF
THE AJ&K INTERIM CONSTITUTION, 1974

Before:- Justice Sardar Muhammad Ejaz Khan , J.

PRESENT:

Sheikh Masood Iqbal, Advocate for petitioner.
Mr. Masood A. Sheikh, Advocate for respondent
No.8.
M/s Legal Advisor MUST & A.A.G. for the
official respondents.

O R D E R:

Through the captioned writ petition
addressed under Article 44 of the Azad Jammu
& Kashmir Interim Constitution, 1974, the
following relief has been implored by the
petitioner:-

*“Under the circumstances
mentioned above, it is very humbly
prayed that appropriate writ in
favour of petitioners against the
non-petitioner may kindly be
issued that:-*

*a- To declare the approval for
appointment of respondent No.8
as Dean of Faculty of
Engineering and Technology
MUST Mirpur No. BP 3237-39
dated 13.11.2023 appointment
of respondent No.8 against the*

- law against the rules liable to be quashed.*
- b- To asked the respondents under what authority of law they issued the approval for appointment of respondent No. 8 against the post of Dean Faculty of Engineering and Technology MUST Mirpur against the recommendation No.BP 2372/23 dated 01.11.2023 and respondent are bound to issue the approval for appointment order of petitioner in accordance with recommendation of Vice Chancellor No. BP 2372/23 dated 01.11.2023 and act upon the recommendation of Vice Chancellor for appointment of petitioner. .*
 - c- To restrained the respondents not to disturb the petitioner from the post hold by petitioner as Dean Faculty of Engineering and Technology MUST Mirpur till appointment of petitioner.*
 - d- To direct the respondents to issue the appointment order of petitioner as Dean Faculty Engineering Technology MUST Mirpur in accordance with recommendation of Vice Chancellor No. BP 2372/23 dated 01.11.2023.*
 - e- To direct the respondent's to act in accordance with law to do what is permitted by law to do*

*and not to do which is not permitted by law to do”
f- Any other relief, which this Court considers proper, may also be awarded.”*

2. Synthesized facts forming the background of the instant writ petition, according to stance of the petitioner, are that he is discharging his duties as Chairman Department Electrical Engineering MUST, Mirpur, and is acting Dean of the Faculty of Engineering and Technology MUST, Mirpur. It has been stated that respondent No.4 forwarded a summary of three candidates of the Faculty of Engineering and Technology MUST, Mirpur, wherein, the petitioner, having score 60.8 as per criteria, is falling at serial No.B while private respondent No.8, having score 54.1 as per criteria, is falling at serial No.C. It has further been stated that the petitioner was recommended by respondent No.5-Vice Chancellor, MUST, Mirpur, against

the post of Dean of the Faculty of Engineering and Technology through script dated 01.11.2023 and the same was forwarded to respondent No.2-Chancellor MUST, Mirpur, for approval but respondent No.2-Chancellor, MUST, Mirpur, without taking into account the recommendation made by respondent No.5-Vice Chancellor in favour of the petitioner, issued an approval of private respondent No.8 as Dean of the Faculty of Engineering & Technology, MUST, Mirpur, vide order/letter dated 13.11.2023 against law and rules, which is liable to be *set-aside*. It has been craved that the petitioner has no other alternate and efficacious remedy except to invoke the jurisdiction of this Court, hence, this writ petition.

3. Writ petition was admitted for regular hearing vide order dated 20.02.2024 and the learned counsel for the respondents were

directed to file written statement, however, the learned counsel for official respondents No.1 to 7 and private respondent No.8 filed separate applications for treating comments as their written statement, which were allowed, wherein, the averments taken in writ petition by the petitioner were denied from top to bottom and in response thereof, the petitioner filed replication, in which, contents of written statement were denied.

4. The learned counsel for the petitioner, more or less, reiterated the grounds of writ petition, which have sufficiently been incorporated in pre-paras, hence, there is no need to reiterate the same here in black & white.

5. The learned counsel representing the official respondents as well as private respondent defended the impugned appointment order dated 13.11.2023 on all

counts, hence, it has been prayed for dismissal of writ petition.

6. Having heard the respective arguments advanced by the learned counsel for the petitioner, I have perused the record appended along-with the writ petition with my utmost care and caution.

7. The main contention of the learned counsel for the petitioner that vis-à-vis to private respondent No.8, the petitioner, being senior most professor of the faculty, was recommended by respondent No.5-Vice Chancellor, MUST, Mirpur, on account of fulfilling the requisite qualification and experience for appointment of Dean of the Faculty of Engineering & Technology, MUST, Mirpur, but respondent No.2-Chancellor without considering the recommendation of respondent No.5-Vice Chancellor, issued an approval on political basis, which is contrary to

law and rules particularly the petitioner is in possession of 60.8 score as per criteria while private respondent has score 54.1 score as per criteria, hence, appointment order/letter dated 13.11.2023 of private respondent No.8 may be *set-aside* and the official respondents may also be directed to issue an approval in favour of petitioner for appointment as Dean of the Faculty of Engineering & Technology, MUST, Mirpur, is concerned. The point is yet to be determined as to whether respondent No.2-Chancellor MUST, Mirpur, could have made an approval for appointment of private respondent No.8 as Dean of the Faculty of the above discipline without considering the recommendation of respondent No.5-Vice Chancellor, by which, the petitioner was recommended for assigning the duties of Dean of the Faculty? For proper appreciation of the matter, following mode has been defined in

Calendar of Mirpur University of Science and Technology (MUST), Mirpur, (Statutes relating to Appointment, Powers and Duties of Dean) for appointment of Dean:-

“Appointment

- 1. There shall be a Dean of each Faculty, who shall be the Chairperson and Convener of the Board of the Faculty.*
- 2. The Dean of each Faculty shall be appointed by the Chancellor on the recommendation of the Vice Chancellor from amongst the three senior most Professors in the Faculty for a period of three years and shall be eligible for re-appointment.*

Provided that if no Professor is available in a Faculty, a Professor from some other Faculty may act as Dean till a Professor of the Faculty itself is appointed.

2) Eligibility Criteria

Should have a minimum Ph.D. degree, be active in research and have published atleast 15 papers in HEC recognized journals of international repute. Only in case where such qualified individuals are not available should the next level of position (i.e. Associate Professor with a Ph.D. degree) be temporarily considered and efforts

be made to recruit professors to these positions. Retired faculty members should not be appointed at academic or other administrative positions (i.e. Chairperson/ Director/ Dean)."

8. From bare reading of contents of writ petition, it depicts that eligibility criteria is not matter in issue between the parties rather the matter has to be resolved to the extent of recommendation of the petitioner forwarded by respondent No.5-Vice Chancellor to respondent No.2-Chancellor MUST, Mirpur, for approval vide script dated 01.11.2023, hence, for proper perception, the said script/letter, which is at page 11 of file, is usefully reproduced as under:-

"MIRPUR UNIVERSITY OF SCIENCE AND TECHNOLOGY (MUST), MIRPUR
AZAD KASHMIR-PAKISTAN

Chancellor

No.PS/2372/23
Dated: 01.11.2023

Subject: **Appointment of Dean of the Faculty of Engineering and Technology**

1. As per Section 1(2) of the Statutes relating to the Appointment, Powers and Duties of Dean of the University, the Chancellor of the University is empowered to approve the appointments of the Deans from amongst the three senior most Professors in the faculty for a

period of three years. Excerpt of the Statutes is attached.

2. Prof. Dr. Syed Hassan Mujtaba Jafri, Dean Faculty of Engineering and Technology, has completed his term on 05.10.2023. A new Dean is required to be appointed. The order of seniority and score of the University professors as per criteria prescribed for the appointment of Deans and their present assignments is as under:-

Sr.#	Name	Score as per Criteria	Designation
a.	Prof. Dr. Anwar Khitab	—	Dean Faculty of Health & Medical Sciences
b.	Prof. Dr. Naeem Iqbal Ratyal	60.8	Chairman Department of Electrical Engineering
c.	Prof. Dr. Muhammad Sajid	54.1	Director Advanced Studies and 1 Research Board (AS&RB)

3. As the Professor mentioned at Serial No. 01 is already working as Dean Faculty of Health and Medical Sciences, so Prof. Dr. Naeem Iqbal Ratyal is the senior most Professor of the faculty and hence is recommended for assigning the duties of the Dean Faculty of Engineering and Technology w.e.f. 06.10.2023.

Brig. (R) Prof. Dr. Muhammad Younus Javed, SI(M)
Vice Chancellor

Hon'ble President of AJ&K/Chancellor,
Mirpur University of Science & Technology (MUST)
President Block, Kashmir House, Sector F-5/2,
Islamabad"

9. It is apparent on the face of record after perusal of relevant provisions of law that the Chancellor on the recommendation of Vice Chancellor shall appoint Dean of the Faculty from amongst three senior most professors in

the Faculty for a period of three years and shall be eligible for re-appointment, hence, it is the prerogative of the competent authority i.e. Chancellor, MUST, Mirpur, to make an approval and choose one of the nominees out of three from the panel forwarded by Vice-Chancellor meaning thereby that three nominees who were recommended for appointment of Dean of the Faculty of Engineering and Technology are senior most professors of the said discipline but the Vice Chancellor of MUST, Mirpur, is under the legal obligation to forward a summary for appointment of Dean of the Faculty to the Chancellor from amongst three senior most professors of the Faculty and all the recommended nominees would be considered on equal basis and one will not have any preference or advantage over the others and it does not mean that Vice Chancellor has not

recommended the other two senior professors of the Faculty vis-à-vis to the petitioner. If it were so, the Vice Chancellor had to narrate reasons in a summary for not recommending the other senior professors of the Faculty but the Vice Chancellor, under the relevant provisions of Statutes, has to forward the panel of three senior most professors of the Faculty to the Chancellor and each of them will be treated as recommended nominees of the panel and recommendation of one of them will not create any preferential right to be appointed as Dean of the Faculty of Engineering & Technology, as such, the Chancellor of the University was vested with the authority to choose one of the most suitable nominees from the summary, forwarded by Vice Chancellor, consisting of three senior most faculty professors.

10. It is relevant to mention here that although, it is sole discretion of the Chancellor

of MUST, Mirpur, to select one of the nominees of the panel yet such discretion must to be exercised judiciously in view of administrative interest rather under sub-section (2) of Section 1 of the Statutes, *Ibid*, the Chancellor has to concur with the summary forwarded by Vice Chancellor by considering one of the recommended nominees for which it is not necessary for the authority i.e. Chancellor to definitely select the nominee who is falling at top of summary or otherwise, one of them was recommended by Vice Chancellor then the purpose of sending three nominees in the panel to the Chancellor would not be served. As record does not substantiates that respondent No.8 was not eligible to be considered for appointment as Dean of the Faculty of Engineering and Technology, hence, appointment of respondent No.8 as Dean of the Faculty of Engineering & Technology cannot be

said to have been made contrary to law. My this view finds support from a case reported as *Dr. Razia Sultana and others vs. Professor Dr. Ghazala Yasmeen and others* [2016 SCMR 992], in which, it has been held that:-

“We have gone through the entire record minutely and carefully considered the submissions of learned counsel for the parties. From perusal of record, it appears that respondent Dr. Ghazala Yasmeen averred in her memo of petition before the High Court that she secured higher marks than appellant Dr. Razia Sultana and as such if, for any reasons, the Chancellor/Governor had decided not to appoint her, he ought to have interviewed her and give reasons for her supersession. In order to appreciate the contention raised by the respondent, we have carefully gone through the record and found that the contentions of the respondent have no basis. The marks were allocated to the candidates on the basis of evaluation proforma for the purpose of short listing the candidates who applied for the position of Vice Chancellor. On the basis of these marks, the Search Committee, constituted under section 12(2) of the Khyber Pakhtunkhwa Universities Act, 2012, interviewed all the fifteen (15) out of twenty (20) candidates. The Search Committee,

consisting of eminent professionals, has not allocated any marks to any candidate as is evident from the minutes of the said Committee. The Search Committee, after a lengthy interview consisting of questions relating to University administration, professional and academic abilities etc. unanimously recommended three names out of which the Chancellor/Governor, in exercise of his powers under section 12(1) of the Khyber Pakhhtunkhwa Universities Act, 2012, appointed the appellant as Vice Chancellor.”

(Underlinings are mine)

It has further been opined in para 9 & 10 of the above report, which reads as under:-

“The purpose of judicial review are first, to check abuse or detournement of such power; would, to ensure to citizens an impartial determination of their disputes with officials; and third, to protect them from unauthorized encroachment on their rights and interest.

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 lengthy interview of each candidate, recommended three

names which, as per parawise 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.”

(Underlinings are mine)

Similar proposition has been resolved in a case reported as *Dr. Munir Khan Khattak vs. Chancellor, the University of Agriculture, Khyber Pakhtunkhwa and 4 others* [2017 PLC (C.S.)

Note 10], wherein, it has been observed that:-

“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 mala fide, 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 mala fide 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 v. 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.”

(Underlinings are mine)

11. By considering the dictum laid down in the above quoted case law and keeping in view the settled position of the case in hand, it is well established principle of law that this Court, in exercise of powers as enshrined

under Article 44 of the Constitution, *Ibid*, cannot substitute opinion of the appointing authority on mere allegation of political involvement, which is admittedly question of fact and cannot be determined in extraordinary constitutional jurisdiction, as such, the appointment order of private respondent No.8 appears to have been issued in accordance with law, which cannot be said to have been issued without lawful authority, hence, the petitioner is neither an aggrieved party within the purview of Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 nor has *locus-standi* to invoke the extra-ordinary jurisdiction of this Court because such jurisdiction can only be invoked or exercised in extra-ordinary situation where any violation of rules and departure of law has been made but no eventuality appears to have been arisen in the case in hand.

12. The nutshell of the foregoing reasons is that the instant writ petition, having no statutory backing, is hereby dismissed and the same shall be consigned to record with no order as to costs.

Circuit Mirpur:
29.02.2024(J.ZEB)

JUDGE

Approved for reporting

JUDGE