

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.2348/2024.

Date of institution 13.09.2024.

Date of decision 22.11.2024.

Professor Dr. Naznain Habib, Chairman Sociology and Psychology Department, University of Azad Jammu and Kashmir, Muzaffarabad.

....Petitioner

Versus

1. University of Azad Jammu and Kashmir through its Registrar, Muzaffarabad.
2. Vice Chancellor University of Azad Jammu and Kashmir, Muzaffarabad.
3. Chancellor University of Azad Jammu & Kashmir through Secretary to President, Azad Jammu and Kashmir, Muzaffarabad.
4. Registrar University of Azad Jammu and Kashmir, Muzaffarabad.
5. Professor Dr. Sameena Sabir, Kashmir Institute of Economics University of Azad Jammu and Kashmir, Muzaffarabad.
6. Prof. Dr. Sardar Javaid Iqbal Khan Professor Kashmir Institute of Economics King Abdullah Campus, UAJ&K, Muzaffarabad, AJ&K.

....Respondents

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Writ Petition No.2857/2023.

Date of institution 03.10.2023.

Professor Dr. Javaid Iqbal Khan, Professor Kashmir Institute of Economics, King Abdullah Campus, University of Azad Jammu and Kashmir, Muzaffarabad.

....Petitioner

Versus

1. University of Azad Jammu and Kashmir through the Presidential affairs Azad Jammu and Kashmir having his office at President House Jalalabad, Muzaffarabad, Azad Jammu and Kashmir.
2. University of Azad Jammu and Kashmir through Chancellor of University of Azad Jammu and Kashmir.
3. The Vice Chancellor of The University of Azad Jammu and Kashmir having his office at ChellaBandi, Muzaffarabad.
4. Registrar, University of Azad Jammu and Kashmir having his office at Chellah Bandi, Muzaffarabad.
5. Prof. Dr. Abdul Qadir Khan, (Appointed as Dean Faculty of H&SS by violating seniority and merit position) Dean Faculty of Humanities and Social Sciences, University of Azad Jammu and Kashmir, Muzaffarabad.

....Respondents

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Writ Petition No.2999/2023.

Date of institution 27.10.2023.

Professor Dr. Javaid Iqbal Khan, Professor Kashmir Institute of Economics, King Abdullah Campus, University of Azad Jammu and Kashmir, Muzaffarabad.

....Petitioner

Versus

1. University of Azad Jammu and Kashmir through the Chancellor of University of Azad Jammu and Kashmir having his office at President House, Muzaffarabad.
2. Vice Chancellor of The University of Azad Jammu and Kashmir having his office at ChellaBandi, Muzaffarabad.
3. Registrar, University of Azad Jammu and Kashmir having his office at ChellaBandi, Muzaffarabad.
4. Syndicate of the University of Azad Jammu and Kashmir having his office at ChellaBandi, (Meeting Section), Muzaffarabad.
5. Professor Dr. Muhammad Qayyum Khan, Authorized officer Ex-Dean Faculty of Sciences and Engineering Department of the University of Azad Jammu and Kashmir, Muzaffarabad.
6. Authorized Officers, Ex Director Advance Studies and Research and Quality Enhancement Cell, University of Aza Jammu and Kashmir, Muzaffarabad.

....Respondents

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WRIT PETITIONS

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Raja Sajad Ahmed Khan, Advocate for the petitioner Dr. Naznain Habib.
Syed Zulqarnain Raza Naqvi, Advocate for the petitioner Dr. Sardar Javed Iqbal Khan.

Raja Gul Majeed Khan, Legal Advisor for University of AJ&K.

Barrister Humayun Nawaz Khan, Advocate for respondent No.5-Dr. Sameena Sabir.

Haider Rasheed Mughal, A.A.G for the official respondents.

Petitioner Sardar Javaid Iqbal Khan, in person.

Judgment:

Identical law points and facts are involved in all the titled writ petitions, therefore, these were clubbed up, heard together and are decided through this single judgment.

2. Brief facts of the petition No.2348/2024 filed under Article 44 of Azad Kashmir Interim Constitution, 1974, by the petitioner Prof. Dr. Naznain Habib (Chairman Sociology and Psychology Department UAJ&K) are that petitioner is a permanent employee of the University of AJ&K and currently; a Professor in Sociology BPS-21. Petitioner contended that according to University Statute, Dean of Faculty shall be appointed by Chancellor on the recommendations of Vice Chancellor from amongst 3 senior most of the Faculty for the period of 3 years. Petitioner averred that Dean of faculty of Humanities and Social Sciences Dr. Abdul Qadir Khan has been sent on deputation at Allama Iqbal Open University Islamabad vide notification dated 15.08.2024 and post of Dean became vacant. Petitioner contended that according to Statute of University, respondent No.2 (Vice Chancellor University of AJ&K, Muzaffarabad) sent three names of senior most professors i.e. (1) Petitioner, (2) Professor Sardar Javed, (3) Dr. Sameena Sabir and recommended the petitioner for appointment of Dean, but according to reliable sources the Worthy Chancellor approved/appointed private respondent as Dean Faculty of Humanities and Social Sciences and petitioner tried her best to obtain recommendations and appointment/approval order but respondents refused to issue the same, however, formal notification has not been issued as yet.

3. In petition No.2857/2023, the petitioner Dr. Sardar Javaid Iqbal Khan briefly stated that currently he is Professor of Economics in BPS-21. Petitioner contended that according to the Statute of the University (Calendar), Dean of Faculty shall be appointed by the Chancellor on the recommendation of Vice Chancellor from amongst the three senior most Professors in the faculty for a period of three years. The petitioner vehemently contended that he is senior most in the order of seniority and only two years are left in his retirement from the University. Petitioner averred that he moved an application for the notification of Dean of H&SS and moved various applications for the appended record but was not supplied by the respondents. Petitioner prayed that the order/Notification of new Dean of Humanities and Social Sciences if passed in favour of Prof. Abdul Qadir Khan may very kindly be declared as null and void. He further prayed that the respondents may very kindly be directed to appoint the petitioner as Dean Faculty of Humanities and Social Sciences, UAJ&K, Muzaffarabad.

4. In writ petition No.2999/2023 filed under Article 44 of Azad Jammu and Kashmir, the petitioner Prof. Dr. Sardar Javed Iqbal Khan, is seeking infra relief:-

“It is therefore, very humbly prayed on behalf of the petitioner that by accepting this writ petition in following manners:-

1. That, the one side Inquiries orders No.67-5460/AC/2010 dated 11.11.2010 and order of Authorized officers, Ex-Director Advanced Study and Research and Director Quality Enhancement Cell of the University and Registrar No.F15-17/AC/81-378/17, dated 24.02.2017 may very kindly be set aside declaring as illegal, against the University rules.

2. That, without this justice, the petitioner will suffer irreparable loss in his career of last two years of his service because petitioner will retire in 2025.
3. That the petitioner also requests respected High Court to bound the University for the determination of seniority list to resolve the faculty Seniority issue.”

In the instant matter, the Hon'ble Apex Court vide order dated 27.09.2024 directed this court to decide the lis expeditiously.

5. Written statement has been filed on behalf of respondents No.1, 2 and 4 in writ petition No.2348/2024, wherein the official respondents contended as under:-

’4- یہ کہ ضمن نمبر 4 کے جواب میں عرض ہے کہ یونیورسٹی سٹیجیٹس کے عین مطابق جناب وائس چانسلر نے فیکلٹی کے تین سینئر پروفیسر کا انتخاب کیا جو تین سینئر ماسٹ پروفیسر اپنا اپنا Tenure مکمل کر چکے تھے لہذا Next order of seniority کے مطابق پروفیسر کی لسٹ کو شامل کیا گیا اس لسٹ میں شامل سینئر ماسٹ پروفیسر سردار جاویدا کو ڈین کیلئے Consider نہیں کیا گیا چونکہ ان کے خلاف E&D سٹیجیٹس کے تحت ایک فیصلہ ہوا تھا جس میں انہیں کسی بھی ایڈیٹسٹریوٹ پوسٹ کیلئے غیر موزوں قرار دیا گیا تھا ان کے بعد Next order of seniority میں موجود پروفیسرز کو ڈین کیلئے Recommend کیا گیا نیز Recommendations کی کاپی براہ راست پروفیسر کو نہ دی جاسکتی ہے۔ جناب وائس چانسلر نے تین سینئر پروفیسرز کا پینل جناب چانسلر کو ارسال کیا اور پروفیسر کی تقرری بطور ڈین سینئر پروفیسر ہونے کی بناء پر سفارش کی نیز جناب چانسلر نے پروفیسر ڈاکٹر شمیمہ صابر کی تقرری بطور ڈین منظوری صادر کی جو پینل میں موجود ہیں۔“

6. Separate written statement has also been filed on behalf of respondent No.6, wherein the claim of the petitioner has been negated and he contended that he is senior most professor and is eligible for the post of Dean of Humanities and Social Sciences.

7. In reply of writ petition No.2857/2023, written statement has been filed on behalf of official respondents wherein the claim of the petitioner in the above writ petition has been denied and prayed for dismissal of the writ petition.

8. In reply of the writ petition No.2999/2023, the official respondents submitted comments /written statement wherein the claim of the petitioner has been denied and contended that instant petition has been filed with unclean hands. They contended that previously

petitioner approached this Court with same cause of action and petition of the petitioner was dismissed by this Court, hence, principle of resjudicata is applied and writ is liable to be dismissed on this score. The respondents denied the whole stance of the petitioner and lastly prayed for dismissal of the writ petition.

9. I have heard the learned counsel for the parties at considerable length and gone through the case with utmost care.

10. As adumbrated it is candidly oozing from the University Statutes that panel of 03 senior candidates is to be recommended by the Vice Chancellor to the worthy Chancellor for consideration. No bar has been imposed by the Statute to the candidates for reconsideration and inserting their names in the fresh panel on the reason that they have already served for a term of 3 years against the post of Dean. Consideration of remaining Professors from seniority list excluding senior-most Professor who had already served as Dean Faculty of Arts receives no recognition from bare perusal of the University Statutes. Thus, such like arbitrary and self-created criterion cannot be allowed to substitute plain language of the University Statutes. It is celebrated cannon of construction of Statutes that no word can be added or read in the Statute if it is not provided therein.

11. Stance of the University authorities that it is consistent practice of the University authorities to fill up the post of Dean on the basis of rotation after completion of 3 years term from rest of the employees left in the seniority who have not enjoyed the status of the

post in order to provide equal opportunity to all the relevant employees from the seniority.

12. Be that as it may, whatever might be the wisdom behind the unwritten policy or consistent practice of the University, no such like policy or practice can take the place of command of the Statute.

13. Trite that Act of the Assembly cannot oppose the Constitution, vis-à-vis rules made under the Act cannot override the Act, likewise policy or for that matter any Circular or practice cannot be allowed to take a different way which is not indicated in the Statute. Thus, in this sense, practice of the University authority in the guise of accommodating all the employees from the seniority list is alien and runs counter to the Statute which cannot be approved and endorsed.

14. It is within province of the Vice Chancellor to recommend a panel of 03 candidates, thus he can only recommend the panel of 3 candidates not a single candidate without pointing out any specific candidate. Selection of the candidate from the panel of 03 candidates is up to the learned Chancellor. Appointment and selection of candidate from panel of 03 is to be carried out by the Chancellor of the University.

15. As reflecting from the record the Panel sent by the Vice Chancellor on the basis of claimed consistent practice is ex-facie in violation of the command of the Statute i.e. Statutes Relating to appointment, powers and duties of Dean. The relevant portion of the aforesaid Statutes is as under:-

**“Statutes Relating to Appointment,
Powers and Duties of Dean**

Appointment, Powers and Duties of Dean

1. There shall be a Dean of each Faculty, who shall be the Chairman and Convener of the Board of the Faculty.
2. **The Dean of each Faculty shall be appointed by the 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.**

(Emphasis supplied)

16. Neither the University authorities have taken into consideration this aspect of the matter at eve of sending panel and subsequently the matter was also overlooked by the learned Chancellor at the time of consideration of Panel as per seniority list appended with the petition. The name of the petitioner is figuring at Sr.No.6 of the Seniority list appended with the written statement offered by the University authorities as Annexure "A", while employees who are figuring at Sr. No.1, 2, 3 and 5 have been totally ignored, neither their names have been inserted in the Panel nor they are under consideration. Order of the seniority as given in the Seniority list "Annexure A", attached with the written statement, is reproduced as under:-

**The University of Azad Jammu and Kashmir Muzaffarabad
(Establishment-I)**

List of Professors Faculty of Humanities & Social Sciences

Sr.#	Name	Department	Date of Birth	Date of Retirement	Initial appointment	Date of appointment				Academic qualification	Remarks
						As Asst. Prof. (BPS-19)	As Asst. Professor (BPS-20)	As Professor (BPS-21)	As Meritorious Professor (BPS-22)		
1.	Dr. Nadeem Haider Bukhari, University Meritorious Professor	Department of English	...	...	...	..	...	..	...	..	..
2.	Prof. Dr. Ayesha Sohail	Department of English	...	...	...	..	...	..	...	...	..

3.	Prof. Dr. Haroon-ur-Rashid	Department of English	...	...	...	..	...	..	...	...	..
4.	Prof. Dr. Sardar Javid Iqbal Khan	Kashmir Institute of Economics	...	...	...	..	...	..	...	...	..
5.	Prof. Dr. Abdul Qadir Khan	Department of English	...	...	...	..	...	..	...	...	..
6.	Prof. Dr. Naznain Habib	Department of Sociology	...	...	...	..	...	..	...	...	..
7.	Prof. Dr. Samina Sabir.	Kashmir Institute of Economics	...	...	...	..	...	..	...	...	..

17. As far as the point raised by the petitioner Prof. Dr. Sardar Javed Iqbal Khan with regard to setting aside the one side inquiries dated 11.11.2010 and order of Authorized officer dated 24.02.2017 in writ No.2999/2023 is concerned, it is important to mention here that against the aforesaid orders, the said petitioner has failed to file appeal before any competent forum or authority concerned, i.e. Syndicate, and said orders have attained finality. Now at this stage after lapsing so many years, instant petition has been moved for setting aside the same, which in my view is not maintainable.

18. **It is pre-requisite qua maintainability of a constitutional petition to indicate any violation committed by the respondents' side under the rules and regulations by which the petitioner is being governed.**

19. Constitutional petition would not be maintainable where petitioner fails to point out any violation of law.¹

20. Modus operandi adopted by the University authorities qua appointment against the post of Dean runs counter to the University Statutes. Proceedings qua sending Panel excluding the most senior

¹. 2000 YLR 1369 + 2000 CLC 2029.

professors available in the faculty in guise of consisting practice or un-written policy cannot be attended and approved unless rules are not amended, or modified for the purpose. Under umbrella of law, a thing requiring its performance in a specific way can only be carried out in specific indicated alignment of law, any zigzag in this connection to derail the proceedings from the track of rules can safely be held nullity in the eye of law.

(Underling is mine)

21. It is now almost settled principle of law that when a particular method of performance of an act is prescribed under an Act or rule then such act must be performed according to the prescribed method alone or not at all.²

22. For the above multiple reasons, as the entire proceeding qua sending the panel against the post of Dean Faculty of Humanities and Social Sciences is at odds with the University Statute, therefore, no relief can be extended in favour of the petitioners nor the panel in deviation of the Statute, can be endorsed by any way.

23. Consequently, the petition No.2348/2024 titled “Prof. Dr. Naznain Habib vs. University of AJ&K” stands disposed of with the direction to the respondents to reinitiate the matter of appointment against the post of Dean, strictly in accordance with the scheme of the University Statute as per order of seniority and finalize the matter within 02 months. In writ petition No.2999/2023, the petitioner is seemingly re-agitating the matter previously decided. Petitioner has failed to

². M. Muneer Raja vs. Chairman AJK Council [2018 SCR 48],
Govt. of Punjab vs. Messers United Sugar Mills [2008 SCMR 1148].

challenge the decision of competent authority qua declaring him non-suitable for any administrative post in the University; this Court has already dismissed a writ petition of the petitioner on 06.10.2023, matter to that extent has become past and closed, and cannot be re-opened. Extraordinary equitable relief cannot be extended, relief declined.

In writ petition No.2857/2023, the petitioner is asking for the similar relief which has been prayed for in the writ petition No.2348/2024, keeping in view the rationale expounded in said constitutional petition, the instant petition shall follow the same fate.

No order as to cost. File shall be kept in the shelf of record.

Muzaffarabad,
22.11.2024.

JUDGE

Approved for reporting

JUDGE