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Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Case No: W. P. No.81711/2017

Muhammad Hussain Cheema Versus Govt. of Punjab, etc.

JUDGMENT

Date of hearing:	03.11.2017
Petitioner by:	M/s. Asad Ullah Chathha and Qaisar Imam, Advocates
Respondent by:	M/s. Anwaar Hussain and Ahmad Hassan Khan, Addl. Advocates General, Punjab. Malik Ghulam Mustafa Kandwal, Advocate for respondent No.4. Mr. Abdul Rafey, Advocate for respondent No.5. Mirza Haseeb Baig, Assistant Registrar of respondent-University. Irshad Ali, Law Officer (Agriculture Department)

Syed Mansoor Ali Shah, C.J:-

Admitted Facts

Respondent No.4 was appointed as Vice Chancellor of Pir Mehr Ali Shah Arid Agriculture University, Rawalpindi (“**University**”) for a term of four years on 24.01.2013 with immediate effect. After expiry of his tenure on 23.1.2017, the Chancellor was pleased to assign him duties of the post of Vice Chancellor of the University, on temporary basis w.e.f. 24.01.2017 till appointment of a

regular Vice Chancellor, vide *impugned Notification* dated 27.1.2017. At the time of this temporary assignment of duties to Respondent no.4, the post of Pro-Vice Chancellor of the University was also vacant. Subsequently, Respondent no.3 was appointed as Pro-Vice Chancellor of the University on 20-6-2017 for a period of three years or till the date of his superannuation, whichever is earlier.

Arguments

2. Learned counsel for the petitioner submits that under section 14 (8) of the Act, a retiring or incumbent Vice Chancellor cannot be granted extension of tenure. He submits that the Chancellor through the impugned notification has granted extension to a retiring Vice Chancellor which is not permissible under the Act and, therefore, Respondent no.4 could not have been appointed even on temporary basis. He further submits that in terms of section 15-A(2) of the Act, the Pro-Vice Chancellor is to perform functions assigned to him under the Act. Reading section 15A(2) with section 14 (9) of the Act, he submits that, as soon as, the Pro-Vice Chancellor is appointed he is under a statutory obligation to perform his functions, which include the performance of functions of a Vice Chancellor when the post of Vice Chancellor is vacant.

3. Learned counsel for respondent No.4 submits that impugned Notification is not an extension of tenure of the Vice Chancellor as there is no specific time period provided in the said notification. He submits that the impugned notification is just temporary assignment of duties, till such time, that a regular Vice Chancellor is appointed and in the absence of the Pro-Vice Chancellor, the impugned notification has been rightly issued by the Chancellor under section 14 (9) of the Act and cannot be undone due to the subsequent appointment of the Pro-Vice Chancellor.

4. Learned counsel for respondent University has reiterated the same argument, as that of the learned counsel for Respondent no.4. He submits that once an order has been passed in favour of Respondent No.4 under section 14(9) of the Act, subsequent appointment of Pro-Vice Chancellor is inconsequential.

5. Learned law officer, on the other hand supports the contention of the petitioner and submits that after the appointment of Pro-Vice Chancellor, he is bound to perform the functions of the Vice Chancellor in terms of section 15A(2) of the Act. He adds that the impugned notification cannot hold the field after the appointment of the Pro-Vice Chancellor.

OPINION OF THE COURT

6. I have heard the arguments of the parties and gone through the record. The relevant provisions of the Act are reproduced hereunder for ready reference:-

Section 14 Vice Chancellor.– (1) A person who is eligible and who is not more than sixty-five years of age on the last date fixed for submission of applications for the post of the Vice Chancellor may apply for the post.

...

(8) The incumbent Vice Chancellor shall not be allowed any extension in his tenure but subject to eligibility he may again compete for the post of the Vice Chancellor in accordance with the procedure prescribed by or under this section.

(9) If the office of the Vice Chancellor is vacant or the Vice Chancellor is absent or is unable to perform the functions of the Vice Chancellor owing to any cause, the Pro-Vice Chancellor shall perform the functions of the Vice Chancellor but, ***if at any time***, the office of Pro-Vice Chancellor is also vacant or the Pro-Vice Chancellor is absent or is unable to perform the functions of the Vice Chancellor owing to any cause, the Chancellor

shall make such temporary arrangements for the performance of the duties of the Vice Chancellor as he may deem fit.

15-A. Pro-Vice Chancellor.- (1) The Chancellor shall nominate the Pro-Vice Chancellor of the University, from amongst three senior most Professors of the University, for a term of three years.

(2) The Pro-Vice Chancellor shall perform such functions as may be assigned to him under this Act, statutes or regulations.

7. Section 14 (9) of the Act provides that in case office of Vice Chancellor falls vacant, the Pro-Vice Chancellor shall, perform the functions of the Vice Chancellor. This Court in "Iftikhar Ahmad v. King Edward Medical University, etc. (PLD 2017 Lahore 825) has held that Pro-Vice Chancellor shall step into the shoes of the Vice Chancellor and start performing the functions of the Vice Chancellor by operation of law. However, in this particular case, the office of the Pro-Vice Chancellor was also vacant at the time when the term of the Vice Chancellor expired and as a result, the Chancellor made temporary arrangement for the performance of the duties of the Vice Chancellor, by assigning the same to Respondent no.4 under section 14(9) of the Act. The legal question that arises in this case is the status of the temporary arrangement made by the Chancellor under section 14(9) of the Act, once a permanent Pro-Vice Chancellor is subsequently appointed but the post of Vice Chancellor is still vacant.

8. Section 14(9) envisages that if at any time, the office of Pro-Vice Chancellor is also vacant or the Pro-Vice Chancellor is absent or is unable to perform his functions owing to any cause, the Chancellor may make temporary arrangements. Reading of section 14(9) shows that the temporary arrangement of assignment of the duties of the Vice Chancellor to any person is a stop-gap arrangement only for the intervening period, when the Pro-Vice Chancellor is not available for

the reasons mentioned above. “If at any time’ in section 14(9) refers to this intervening period - a period when the University is undergoing temporary dysfunctionality due to non-availability of the Pro-Vice Chancellor. This intervening period and the corresponding temporary arrangement come to an end, as soon as, either of the two events take place i.e., the Pro-Vice Chancellor becomes available or is appointed or the regular Vice Chancellor is appointed.

9. In support of the above, consider a situation, where the seat of Vice Chancellor falls vacant at a time when the Pro-Vice Chancellor is on a foreign tour, hence he is absent or is hospitalized, hence is unable to perform his functions. In such an eventuality, the Chancellor can proceed to make temporary arrangement and assign the duties of the Vice Chancellor to any person he deems fit. But, as soon as, the Pro-Vice Chancellor returns from his foreign tour or recuperates and is back in office, the temporary arrangement automatically comes to an end. Same is the case if the post of the Pro-Vice Chancellor is vacant and is filled subsequently. **Temporary arrangement** is made only **if at any time** (the intervening period) there is a temporary dysfunctionality due to the non-availability of the Pro-Vice Chancellor. As soon as, this dysfunctionality is cured or removed, the intervening period and the corresponding temporary arrangement comes to an end.

10. Additionally, once appointed, the Pro-Vice Chancellor has to perform his functions under the Act in terms of section 15A(2) of the Act. One of his statutory responsibilities is to perform the functions of the Vice Chancellor, if the post of the Vice Chancellor is vacant, under section 14(9). Any temporary arrangement prior to the appointment of the Pro-Vice Chancellor cannot override the statutory mandate of the aforesaid provisions and therefore automatically comes to an end.

11. Even otherwise, when viewed in the context of good governance, a permanent Pro-Vice Chancellor is certainly a far more effective manager of the affairs of the University and the office of the Vice Chancellor, than a person who has been assigned duties on a temporary basis. In the present case, the post of the Vice Chancellor fell vacant on 24.01.2017 and after almost ten months the post of Vice Chancellor has not been filled. Temporary arrangement if allowed to continue indefinitely would not be in the larger interest of the institution.

12. Another dimension is that Pro-Vice Chancellor is the next officer in the administrative hierarchy after the Vice Chancellor, (see section 9 of the Act). It is for this reason that the law [(section 14(9)] provides that the Pro-Vice Chancellor performs the functions of the Vice Chancellor as opposed to just perform the duties of the Vice Chancellor in the case of a person appointed on a temporary basis. There is a distinction between the words functions and duties. In Iftikhar Ahmad v. King Edward Medical University and others (PLD 2017 Lahore 825) while examining the difference between functions and duties under section 14 (9) of the Act I have held as under:-

“Learned counsel for respondent No.8 without any further elaboration has argued that there is a difference between the words “functions” and “duties” under Section 13 (9) of the Act. Initial reading of Section 13 (9) of the Act shows that these two words are similar and interchangeable, however, upon a detailed examination there appears to be a difference between the two words. The word “function” means; activity that is appropriate to a particular profession, or special activity or the purpose of a person. While the word “duty” means; a legal obligation that is owed or due to another and that needs to be satisfied; that which one is bound to do, something that you feel you have to do because it is a legal responsibility. The above definitions show that the intention of the law is that the Pro-Vice Chancellor by stepping into the shoes of the Vice-Chancellor gets to assume the role of the Vice Chancellor and gets to

perform his functions. On the other hand, the temporary arrangement made by the Chancellor, in the absence of the Pro-Vice-Chancellor is of a different nature. The person to be selected by the Chancellor has to perform a temporary stop-gap arrangement and is only to perform the duties of the Vice-Chancellor, as deemed appropriate by the Chancellor, as opposed to the functions of the Vice Chancellor under the law. Such “duties” may entail only important obligations and not all the functions. The Chancellor may specify which duties are being temporarily assigned to the new person. Functions on the other hand, mean all the functions, under the Act.”

13. There is more. While functions encompass the “powers and duties” of the Vice Chancellor under section 15 of the Act. “Duties” are limited to obligations and responsibilities, without the exercise of power, under the Act. A person on temporary arrangement as a Vice Chancellor can only attend to day to day affairs and ensure that the provisions of this Act, the Statutes, the Regulations and the Rules are faithfully observed. He may preside over meetings of the Authorities of which he is a Chairman and is entitled to attend any other meeting of any other Authority of the University. His temporary role defines the extent of his limited duties. He cannot, however, exercise the powers envisaged under section 15(4) which can only be exercised by a Pro-Vice Chancellor or the Vice Chancellor himself, who are authorized to perform the functions of the post.

14. For the above reasons, impugned notification dated 27.01.2017 assigning the duties of the Vice Chancellor to Respondent No.4 on temporary basis till the appointment of regular Vice Chancellor is declared to have been automatically superseded by the appointing notification of Respondent no.3 as a Pro-Vice Chancellor. The newly appointed Pro-Vice Chancellor shall perform the functions of the post of Vice Chancellor till such time that a regular Vice Chancellor is appointed with immediate effect.

15. Through this judgment instant writ petition, as well as, connected matter bearing W.P. No.73400/2017 are **allowed** in the above terms with no order as to costs.

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(Syed Mansoor Ali Shah)
Chief Justice

APPROVED FOR REPORTING