

P L D 2017 Lahore 825

Before Syed Mansoor Ali Shah, C J

IFTIKHAR AHMAD---Petitioner

Versus

KING EDWARD MEDICAL UNIVERSITY and others---Respondents

Writ Petition No.32046 of 2017, decided on 16th August, 2017.

(a) King Edward Medical University, Lahore Act (V of 2005)---

---Ss. 13 & 9---Constitution of Pakistan, Art. 199 --- Constitutional petition--Statutory appointment---Appointment of Vice-Chancellor---Temporary appointment of Acting Vice-Chancellor---Interpretation of S.13(9) of the King Edward Medical University, Lahore Act, 2005---Petitioner impugned appointment of respondent as acting Vice---Chancellor on a stop-gap arrangement, on the ground that under S.13 of the King Edward Medical University, Lahore Act 2005, if the office of the Vice Chancellor was vacant, the Pro-Vice Chancellor was to perform functions of the Vice-Chancellor, and currently a Pro-Vice-Chancellor was available, therefore, temporary appointment of the respondent was illegal---Validity---Under S.13 of the King Edward Medical University, Lahore Act, 2005, Chancellor was vested with powers to make temporary arrangements for the performance of the duties of the Vice-Chancellor as he may deem fit and such temporary arrangement could only be resorted to when office of the Pro-Vice-Chancellor was vacant and not otherwise and word "temporary" was used in the said section, for arrangements made by the Chancellor and not for the functions of the Vice-Chancellor to be performed by the Pro- Vice-Chancellor---Powers enjoyed by the Chancellor under S.9(7) King Edward Medical University, Lahore Act, 2005 were general powers of appointment to any post in the University and could not override the specific powers of appointing the Vice-Chancellor on a stop-gap arrangement as given in S.13(9) of the King Edward Medical University, Lahore Act 2005 ---Intention of the law was that the Pro-Vice-Chancellor by stepping into the shoes of the Vice Chancellor was to assume the role of the Vice-Chancellor and got to perform his functions and on the other hand, the temporary arrangement made by the Chancellor, in the absence of the Pro-Vice-Chancellor was of a different nature---Such person to be selected by Chancellor was 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 and such "duties" may entail only important obligations and not all the functions and the Chancellor may specify as to which duties were being temporarily assigned to the new person---Functions on the other hand, meant all the functions, under the King Edward Medical University, Lahore Act, 2005---High Court set aside impugned appointment and directed the Pro-Vice-Chancellor to assume functions of the Vice-Chancellor in terms of S.13(9) of the King Edward Medical University, Lahore Act, 2005---Constitutional petition was allowed, accordingly.

Punjab Higher Education Commission v. Dr. Aurangzeb Alamgir and others PLD 2017 Lah. 489 ref.

Black's Law Dictionary, Tenth Edn. p.787 and oxford Advanced Learner's Dictionary, 8th Edn. p.608 rel.

(b) Words and phrases---

---"Function"---meaning---"Function" meant activity that was appropriate to a particular profession, or special activity or the purpose of a person.

Black's Law Dictionary, Tenth Edn. p.787 rel.

(c) Words and phrases---

----"Duty"---Meaning---"Duty" meant legal obligation that was owed or due to another and that needed to be satisfied; that which one was bound to do, something that one feel that he has to do because it wa a legal responsibility.

Black's Law Dictionary, Tenth Edn. p.787 and oxford Advanced Learner's Dictionary, 8th Edn. p.608 rel.

Rana Muhammad Afzal for Petitioner.

Ahmad Hasan Khan, Addl. Advocate-General, Punjab for Respondent.

Muhammad Saleem Shahnazi for Respondent No.8.

Date of hearing: 16-8-2017.

JUDGMENT

SYED MANSOOR ALI SHAH, C.J.--This is a petition seeking a writ of quo warranto against respondent No.8 (Professor Dr. Asad Aslam Khan) who has been appointed as an acting Vice-Chancellor on a stop-gap arrangement at the King Edward Medical University vide order dated 13.03.2017 issued by the Specialized Health Care & Medical, Education Department, Government of the Punjab. This stop-gap arrangement is till the appointment of a regular Vice-Chancellor.

2. Contention of the petitioner is that in terms of Section 13(9) of the King Edward Medical University, Lahore (Amendment) Act, 2012 ("Act") if the office of the Vice-Chancellor is vacant owing to any cause, the Pro-Vice-Chancellor shall perform the functions of the Vice-Chancellor and it is only if the office of the Pro-Vice-Chancellor is also vacant owing to any cause, the Chancellor is vested with the powers to make such temporary arrangement for the performance of the duties of the Vice-Chancellor, as he may deem fit. He submits that the power vested in the Chancellor can only be invoked if the office of the Pro-Vice-Chancellor is vacant, otherwise the Pro-Vice-Chancellor automatically assumes the functions of the Vice-Chancellor in terms of Section 13(9) of the Act and it does not require any specific order by the Chancellor.

He submits that the Pro-Vice-Chancellor of the University is available and, therefore, stop-gap appointment of respondent No.8 through impugned order dated 13.03.2017 issued by the Chancellor is violative of Section 13 (9) of the Act and, therefore, not sustainable in law.

3. Learned counsel for respondent No.8 submits that the impugned order passed by the Chancellor is well within the powers of the Chancellor and in this regard has placed reliance on Section 9(7)(b) of the Act whereby the Chancellor is authorized to make appointments to any post of the University. He submits that unless the Chancellor is prohibited from passing the impugned order, he is well within his powers to pass the impugned order. In support of his contention he placed reliance on Article 4(b) of the Constitution.

4. Learned counsel for respondent No.8 further submits that instant petition is tainted with mala fide and, therefore should not be entertained. He further submits that Section 13 (9) of the Act provides that Pro-Vice-Chancellor shall perform the functions of the Vice-Chancellor whereas the Chancellor is empowered to make such temporary arrangements for the performance of the duties of the Vice-Chancellor as he may deem fit. He contended that there is a difference between the words "functions" and "duties" and, therefore, there are two independent provisions under Section 13 (9) of the Act.

5. Learned Law Officer while adopting the arguments of learned counsel for respondent No.8 submits that process of appointment of regular Vice-Chancellor is underway in the light of judgment of Division Bench of this Court reported as Punjab Higher Education Commission v. Dr. Aurangzeb Alamgir and others (PLD 2017 Lahore 489).

6. I have heard the arguments of the parties and have gone through the provision of the Act, as well as, the record of the case. Section 13 (9) of the Act provides as under:

(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."

The above provision clearly shows that if office of the Vice-Chancellor is vacant owing to any cause, Pro-Vice-Chancellor shall perform functions of the Vice-Chancellor. By virtue of this provision Pro-Vice-Chancellor automatically takes over the functions of the Vice Chancellor by operation of law. However, it is only when the office of the Pro-Vice-Chancellor is also vacant, owing to any cause, that the Chancellor is vested with the powers to make temporary arrangements for the performance of the duties of the Vice-Chancellor as he may deem fit. Such temporary arrangement can only be resorted to when office of the Pro-Vice-Chancellor is vacant and not otherwise. It is important to note that the word "temporary" is used for arrangements made by the

Chancellor and not for the functions of the Vice-Chancellor to be performed by the Pro-Vice-Chancellor.

7. Section 13 (9) of the Act shows that Pro-Vice-Chancellor, who also happens to be next officer in the order of seniority to the Vice-Chancellor (see section 8 of the Act), automatically assumes the office of the Vice-Chancellor and starts performing functions of the said office. The powers and functions of the Vice-Chancellor are listed in section 14 of the Act and it is expected that the Vice-Chancellor performs the said functions in terms of Section 13(9) of the Act. In the present case, the Pro-Vice-Chancellor was available, therefore, the Chancellor could not invoke the powers under Section 13(9) of the Act and pass the impugned order appointing respondent No.8.

8. Powers enjoyed by the Chancellor under Section 9(7) are general powers of appointment to any post in the University and cannot override the specific powers of appointing the Vice-Chancellor on a stop-gap arrangement as given in Section 13(9) of the Act.

9. 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 I 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.

10. For the above reasons, impugned order dated 13.03.2017 issued by the Specialized Health Care & Medical, Education Department, Government of the Punjab, is declared to be violative of Section 13 (9) of the Act and is, therefore, set aside. Pro-Vice-Chancellor of the University is directed to assume the functions of the Vice-Chancellor with immediate effect in terms of Section 13(9) of the Act till such time the regular Vice Chancellor is appointed.

11. For the above reasons, this petition is allowed with no order as to costs.

KMZ/I-26/L Petition allowed.