

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Syed Hasan Azhar Rizvi
Justice Rozi Khan Barrech
Justice Syed Arshad Hussain Shah

F.C.P.L.A. No.754 of 2026

(Against the judgment dated 05.03.2026 of the Peshawar High Court, Peshawar in W.P No.3405-P/2025)

Sifatullah Khan ...Petitioner(s)

Versus

Government of Khyber Pakhtunkhwa ...Respondent(s)
through Chief Secretary and others

For the Petitioner(s) : Mr. Shumail Butt, ASC

For the Respondent(s) : N.R

Date of Hearing : 30.04.2026

ORDER

Rozi Khan Barrech, J.- The instant petition has been filed under Article 175(f)(c) of the Constitution of the Islamic Republic of Pakistan, 1973, (the **Constitution 1973**) assailing the judgment dated 05.03.2026 passed by the learned Peshawar High Court, Peshawar, whereby the notification dated 13.05.2025 appointing the present petitioner as Chairman, Board of Intermediate and Secondary Education, Bannu (**BISE, Bannu**) was set aside. The learned High Court further directed that the post of Chairman be re-advertised in accordance with the criteria notified on 01.09.2025 and, in the interim period, the controlling authority may entrust the duties of the Chairman to any other suitable person, with the direction that the Chairman shall be selected within three months.

2. The pivotal question of law arising for determination by this Court is whether, in the facts and circumstances of the case, the impugned notification dated 13.05.2025 appointing the petitioner as Chairman,

BISE, Bannu, was issued in lawful exercise of the executive discretion vested under the applicable statutory framework and notified criteria, or whether the same was made in violation of the governing principles, thereby justifying interference by the High Court and re-advertisement of the post.

3. Before advertizing to the legal issue, it would be advantageous to briefly recapitulate the relevant facts. Upon occurrence of the vacancy of the office of Chairman, BISE, Bannu, applications were invited from eligible and suitable candidates. In order to fill the said vacancy, the Controlling Authority, through notification dated 02.02.2021, constituted a Search and Scrutiny Committee (“**SSC**”)¹ for interviewing shortlisted candidates for the said post. In terms of its Terms of Reference (“**ToRs**”),² the SSC was mandated to evaluate and interview the shortlisted candidates and recommend a panel of three officers for each post for further approval by the Chief Minister, Khyber Pakhtunkhwa.

4. The SSC conducted interviews of the shortlisted candidates on 26.09.2024, who had applied for the post of Chairman, Board, Bannu, after fulfillment of the requisite criteria. Consequently, the SSC recommended the following officers, including Respondent No. 6, Mr. Jehangir Khan, for appointment as Chairman, BISE, Bannu, for a period of two years:

S.No	Names & Designation
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¹ The Search and Scrutiny Committee for interviewing and shortlisting of the candidates for appointment of various positions of the Chairman Boards in KPK was constituted vide Notification No. SO(B/T) E&SE/10-1/AII BISE dated 8th of February 2021 by Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department.

² The Search and Scrutiny Committee for interviewing and shortlisting of the candidates for appointment of various positions of the Chairman Boards in KPK was constituted vide Notification No. SO(B/T) E&SE/10-1/AII BISE dated 8th of February 2021 by Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department. The TORs of the Committee are as under:

- (i) The committee shall evaluate and interview the shortlisted candidates and recommend a panel of three (03) officers for each post for the approval to the Chief Minister.
- (ii) The Committee Shall Complete the process withing two weeks.

1.	Mr. Jehangir Khan Controller of Examinations (BS-19), BT & CE Higher Education
2.	Mr. Jehandad Khan Marwat Principal (BS-19). GHSS Khanispur, Ayubia Abbotabad
3.	Muhammad Ishaq (PMS BS-19), Registrar Cooperative Societies, KP

The recommendation of the SSC was formally forwarded through the Secretary, Elementary and Secondary Education, Secretary, Establishment, Chief Secretary, and Secretary Law, and was thereafter placed before the Chief Minister for formal approval of any of the names recommended in accordance with law. The record reveals that later a revised summary was prepared wherein the petitioner's name was placed at Serial No. 4, and thereafter he was appointed as Chairman, BISE, Bannu, on deputation for a period of three years vide notification dated 13.09.2025, while the recommendation of the SSC was ignored.

5. Learned counsel for the petitioner, during the course of arguments, contended that under Section 14 of the Board of Intermediate and Secondary Education Act, 1990 ("the **Act of 1990**"), appointment to the office of Chairman falls within the discretion of the Controlling Authority, and the learned High Court erred in curtailing such discretion by importing procedural fetters not contemplated by the statute. It was submitted that the recommendation of the Search and Scrutiny Committee was merely advisory in nature and did not restrict the authority of the Chief Minister to select any eligible candidate.

6. We have heard the learned counsel for the petitioner and perused the record.

7. In view of the foregoing, the principal question for adjudication is whether, in the facts and circumstances of the case, the impugned notification dated 13.05.2025 appointing the petitioner as Chairman, BISE, Bannu, was issued in lawful exercise of the executive discretion vested under the applicable statutory framework and notified criteria, or whether the same was made in violation of the governing principles. The allied issue is whether the Controlling Authority, having itself adopted and

acted upon a structured selection process through a notified Search and Scrutiny Committee, could thereafter arbitrarily depart from such process and appoint a candidate who was neither validly recommended nor considered through the prescribed mechanism.

8. The record shows that after advertisement of the post of Chairman, BISE, Bannu, the Government constituted a Search and Scrutiny Committee on 08.02.2021 to evaluate the candidates and recommend three names in accordance with the ToRs. The Committee examined the shortlisted candidates and forwarded three names for consideration by the Chief Minister. The original summary, which was duly processed through the administrative hierarchy, was subsequently altered without any fresh deliberation by the Committee, without any recorded reasons, and without any lawful justification apparent from the record. The Petitioner, who was not among the candidates recommended by the Committee, was later inserted in the summary dated 28.01.2025 and ultimately appointed by the competent authority through notification dated 13.05.2025.

9. It is relevant to observe that the mode and manner of appointment of the Chairman of the Board are provided under the Khyber Pakhtunkhwa Board of Intermediate and Secondary Education Act, 1990 (Khyber Pakhtunkhwa Act No. V of 1990) (**the Act 1990**) as amended in 2005. Further as per the Act 1990, the Chief Minister or his nominee shall be the Controlling Authority. The relevant provision would be reproduced here for ready reference.

Section 11. *The [Chief Minister], [Khyber Pakhtunkhwa], or his nominee shall be the Controlling Authority of a Board or Boards, if there are more Boards than one.*

Furthermore, Section 12 (8) and 14 (1) of the Act of 1990, which governs the appointment of the Chairman of the Board, is reproduced below for ready reference:

Section: 12. (1)...

(2)...

(3)...

(4)...

(5)...

(6)...

(7)...

(i)...

(ii)...

(iii)...

(8) Notwithstanding anything to the contrary contained in this Act, the Controlling Authority may—

(i) place the services of any of the officers or other employees of any Board at the disposal of Government or any other Board or institution for such period and on such terms and conditions as may be determined by him; provided that such terms and conditions shall not be less favourable than those admissible to him immediately before his transfer;

(ii) make appointment to any post in the Board in any capacity from persons in the service of Pakistan or from officers or other employees of any other Board; and

(iii) make regulations concerning efficiency and discipline of officers and other employees of the Board.

Moreover, Section 14 (1) governs the appointment of the Chairman of the Board and vests the Controlling Authority with the power to make such appointment.

14. (1) The Chairman shall be a whole-time officer and shall be appointed by the Controlling Authority on such terms and conditions as may be determined by the Controlling Authority.

(2) The Chairman shall hold the post during the pleasure of the Controlling Authority for a term not exceeding four years.

(3) If at any time the office of the Chairman is vacant, temporarily or otherwise, by reason of leave illness or other cause for a period not exceeding one year, the Controlling Authority shall make such arrangements for carrying on the duties of the Chairman as it may think fit.

(4) The Chairman shall be the principal executive and academic officer of the Board and shall, when present, preside at the meetings of the Board or of Committee specified in sub-section (2) of section 18.

(5) It shall be the duty of the Chairman to ensure that the provisions of this Act and the regulations and rules are faithfully observed and carried out, and he shall exercise all powers necessary for this purpose.

(6) Subject to clause (xvii) of sub-section (2) of section 10, the Chairman may, in case of urgency, create temporary post in the Board and may appoint a person against that post for a period not exceeding six months: Provided that every appointment so made shall be reported within sixty days of such appointment to the Board for confirmation.

(7) In any emergency arising out of the administrative business of a Board and requiring, in the opinion of the Chairman, immediate action, the Chairman may take such action as he deem necessary and shall report the action taken to the Board at its next meeting for approval.

(8) The Chairman shall exercise such other powers as may be prescribed by regulation.

Emphasis Added

10. In the context of the statutory scheme, it is evident that Sections 11, 12(8), and 14(1) of the Act of 1990 confer upon the Controlling Authority the power to appoint the Chairman of the Board; however, such power is neither absolute nor unfettered. The relevant provisions must be read conjointly and harmoniously, and in a manner consistent with the constitutional discipline of lawful administration. Although the Controlling Authority is vested with the authority to make appointment to the office of Chairman and to determine the terms and conditions of such appointment, the exercise of that power must conform to the settled principles of fairness, transparency, reasonableness, and non-arbitrariness. Where the executive itself has structured the appointment process through a notified procedure and a Search and Scrutiny Committee, the discretionary power under the Act cannot be exercised in disregard of the prescribed mechanism or in a manner that undermines institutional integrity. Public appointments are not to be made on subjective preference or undisclosed considerations, but through a process that reflects merit, accountability, and due application of mind. The principle of “seven instruments” of administrative justice, legality, fairness, transparency, reasoned decision-making, proportionality, non-arbitrariness, and accountability must therefore govern the exercise of the Controlling Authority’s powers under the Act of 1990. In the present case,

the impugned action, having been taken without adherence to the structured recommendation process and without recorded reasons for departure therefrom, falls short of these constitutional and administrative standards. Although, under section 12(8) read with section 14(2) of the Act, the appointment to the office of Chairman is made by the Controlling Authority, and the Chairman holds office during the pleasure of the Controlling Authority, this does not imply that such power is absolute, unfettered, or unregulated. Rather, the discretion so conferred must be exercised strictly in accordance with law, on relevant considerations, and in observance of the principles of fairness, reasonableness, and due process, as embodied in the well-recognized “seven instruments” of administrative justice. Likewise, in “Aman Ullah Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others” (PLD 1990 SC 1092), the Supreme Court, while dealing with the scope of discretionary powers under the relevant statutory framework, approvingly referred to the following exposition from Kenneth Culp Davis’ Administrative Law Text:

“62. ... Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Text by Kenneth Culp Davis (page 94) that the structuring of discretion only means regularising it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure. Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalise it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times.”

Similarly, in case titled *Abid Hassan and others v P.I.A.C and others* (2005 SCMR 25), the Supreme Court, while examining the scope of discretionary powers under the relevant statutory framework held as follows:

14. *In his Treatise 'Discretionary Powers' which is Legal Study of Official Discretion D.J. Galligan has acknowledged that "the general principles that discretionary decisions should be made according to rational reasons means, (a) that there be findings of primary facts based on god evidence and (b) that decisions about the facts be made for reasons which serve the purposes of the statute in an intelligible and reasonable manner" According to the celebrated author, the actions which do not meet these threshold requirements are arbitrary, and may be considered a misuse of powers.*

16. *The judicial consensus seems to be that the functionaries of any organization or establishment cannot be allowed to exercise discretion at their whims, sweet-will or in an arbitrary manner; rather they are bound to act fairly, evenly and justly. Aman Ullah Khan v: Federal Government of Pakistan PLD 1990 SC 1092, Chairman R.T.A. v. Pakistan Mutual Insurance Company PLD 1991 SC 14, Pacific Multinational (Pvt.) Ltd. v. I.G. of Police PLD 1992 Kar. 283, Presson Manufacturing Ltd. v. Secretary, Ministry of Petroleum and Natural Resources 1995 MLD 15, Ramana v. I.A. Authority of India AIR 1979 SC 1628, Dwarka Nath Prasad Atal v. Ram. Rati Devi AIR 1980 SC 1992, Ram and Shyam Company v. State of Haryana AIR 1985 SC 1147 and Nizamuddin v. Civil Aviation Authority 1999 SCMR 467.*

Emphasis applied

Similar view was taken and duly endorsed in the case titled *Abu Bakar Siddique and Others v. Collector of Customs, Lahore and Others* (2006 SCMR 705) wherein it was held:

"It is fundamental principle that an authority enjoying the discretionary powers, exercise the same without any guideline but at the same time such authority must not exercise the discretion in arbitrary and capricious manner."

Additionally, the Supreme Court dealing with the proposition of discretionary powers and the selection criteria laid down the following principles in case titled *Muhammad Yasin v Federation of Pakistan through Secretary Establishment Division* (PLD 2012 SC 132) wherein it was held:

"36. To test the validity of the appointment process in this case, it would be useful to adopt a test based on the following considerations:

- (a) *whether an objective selection procedure was prescribed;*
- (b) *if such a selection procedure was made, did it have a reasonable nexus with the object of the whole exercise, i.e. selection of the sort of candidate envisaged in section 3 of the Ordinance;*
- (c) *if such a reasonable selection procedure was indeed prescribed, was it adopted and followed with rigour, objectivity, transparency and due diligence to ensure obedience to the law.”*

The Supreme Court, in *Muhammad Yasin v. Federation of Pakistan through Secretary Establishment Division* (PLD 2012 SC 132), laid down a clear test for examining the validity of an appointment process, namely: whether an objective selection procedure was prescribed; whether such procedure had a reasonable nexus with the object of the exercise; and whether the prescribed procedure was adopted and followed with rigour, objectivity, transparency, and due diligence. Applying the said principles to the present case, it is manifest that once the Government itself instituted a structured selection mechanism through the Search and Scrutiny Committee, the same could not thereafter be departed from arbitrarily or without recorded reasons. The impugned appointment, having been made *dehors* the duly notified process and in disregard of the recommendations already made, fails to satisfy the above test and, therefore, cannot be sustained in law.

11. The doctrine of pleasure, or the existence of administrative discretion, cannot be invoked to legitimize a process which, on its face, departs from the very mechanism devised by the executive itself. To accept the petitioners' contention would be to endorse an unstructured and opaque exercise of power, divorced from accountability, which has consistently been disapproved in administrative jurisprudence. Where the executive has consciously elected to regulate the process by constituting a Search and Scrutiny Committee and by prescribing Terms of Reference for evaluation and recommendation, it cannot thereafter treat such framework as inconsequential or optional.

12. We find ourselves in agreement with the learned High Court that once the executive voluntarily structures the exercise of statutory discretion through a notified procedure, such procedure cannot thereafter be disregarded in an arbitrary or unguided manner. Even where the statute confers discretion in broad terms, such discretion cannot be construed as untrammelled or absolute. It remains conditioned by the constitutional requirements of fairness, transparency, reasonableness, and non-arbitrariness.

13. The learned High Court rightly held that the Search and Scrutiny Committee was constituted to secure an objective, merit-based, and transparent selection process, and that its recommendations could not be bypassed through an undisclosed, unilateral, and unrecorded alteration of the panel. The absence of any fresh meeting of the Committee, any reconsideration of the earlier recommendations, or any recorded reasons supporting the revision of the summary renders the impugned appointment legally unsustainable. Administrative decisions affecting public appointments must disclose the basis of departure from the prescribed procedure; silence of the record in this regard is fatal to the validity of such action.

14. The doctrine of pleasure, in its constitutional and administrative sense, does not confer an unfettered licence upon the executive to act in disregard of self-imposed procedural discipline. While the executive may, subject to law, appoint and remove public functionaries, the exercise of such power remains subject to the rule of law and the constitutional obligation to act fairly and rationally. The doctrine of pleasure cannot be used as a shield for arbitrariness, nor can it override an institutional process already adopted by the competent authority to ensure integrity in selection.

15. In the present case, the record reveals that the Government itself opted to structure the appointment process by creating a Search and Scrutiny Committee with defined TORs to shortlist and recommend eligible candidates for consideration of the Chief Minister. Once such process was set in motion and the Committee had submitted its panel, any departure therefrom had to be justified on sound legal grounds and supported by a reasoned administrative record. No such material is forthcoming. The subsequent insertion of the petitioner's name in a revised summary³, without any fresh deliberation by the Committee and without explanation for exclusion of the originally recommended candidates, militates against the settled principles of lawful administrative action.

16. It is by now well settled that where public power is exercised through administrative discretion, such discretion must operate within recognizable legal limits. The "seven instruments of power" in administrative governance, namely legality, fairness, transparency, reasoned decision-making, proportionality, non-arbitrariness, and accountability are not mere aspirational ideals but enforceable standards which lend legitimacy to state action. In the field of public appointments, these principles assume heightened significance because the process concerns not private preference but public trust. The present matter is a classic illustration of why structured procedures must be respected, particularly where the State has itself chosen to institutionalize the selection process through a formal committee mechanism.

17. The impugned notification, in the facts and circumstances of this case, was not the product of a lawful deviation from a discretionary framework; rather, it was issued in disregard of a structured process that had already been set in motion and culminated in a duly recommended

³ The subsequent "Summary for The Chief Minister Khyber Pakhtunkhwa" Subject: Filling the Post of Chairman in The Board of Intermediate and Secondary Education Banuu, dated 6-12-2024.

panel. Such departure, absent recorded reasons, fresh evaluation, or any lawful basis, amounts to arbitrariness proscribed by constitutional and administrative law. The learned High Court, therefore, committed no error in interfering with the impugned action.

18. We are accordingly satisfied that the judgment under appeal suffers from no legal or constitutional infirmity warranting interference by this Court. The petition, being devoid of merit, is dismissed. Leave is refused.

19. Before parting, we deem it appropriate to observe that appointments to important public offices must demonstrably conform to constitutional standards of fairness, transparency, institutional integrity, and merit-based governance. Public authority cannot be exercised on undisclosed considerations, nor can structured procedures be reduced to empty formalities. The legitimacy of public administration depends not merely on the existence of power, but on the disciplined and transparent exercise of that power in accordance with law.

Judge

Judge

Judge

Islamabad
30.04.2026
Zahid Hussain/Ihtaram Ul Haq
Approved for Reporting