
2024 P L C (C.S.) 402

[Lahore High Court]

Before Muhammad Sajid Mehmood Sethi, J

Dr. GHULAM SARWAR

versus

PROVINCE OF PUNJAB through
Vice-Chancellor and 5 others

Writ Petition No.76581 of 2021, decided on 2nd November, 2022.

PLC (Service)

University of Sargodha Ordinance (LXXX of 2002)---

---S.10---Professors, appointment of---Selection Board/Scrutiny Committee recommended one of the petitioners for appointment as Professor---On such recommendation, Syndicate appointed said petitioner as Professor on regular basis, on two years' probation---Feeling aggrieved respondent No.6 filed an appeal against petitioner's appointment before the Chancellor, who declared petitioner's appointment as null and void---Certain other professors also challenged the Chancellor's actions of constituting a committee to examine all cases of appointments---Validity---Perusal of record showed that from the very beginning of the respondent-University way back in the year 2002, the standard practice of the Selection Board was to recommend candidates to the Syndicate for appointment against the posts of Associate Professor and Professor on the basis of assessment of foreign and local referees---However, in its meeting held on 22-23rd July, 2018, the Selection Board digressed its own practice and decided to award marks to the candidates for the posts in question out of 30 marks, which decision was forthwith implemented without getting it approved---In that backdrop the Chancellor of the University after discussing material aspects of the matter, proceeded to nullify the proceedings/recommendations of the Selection Board dated 22nd-23rd July, 2018 and the subsequent approval by the Syndicate dated 27 July, 2018---Evidently, the Chancellor had passed a speaking order as per law, however, there was only one aspect of the matter which needed reconsideration on part of the respondent-authorities i.e. whether petitioners procured their appointments through ill-will, mala fide, fraud or illegal means and if the appointees were not at fault, the appointing authority ought to have been proceeded against as the party should not be made to suffer for action or inaction of the authority, who was obliged to follow the law---High Court noted with concern that the Selection Board and Syndicate, who appointed petitioners to the posts in question, presumably, the applicable law/rules and regulations should have been on their sleeves at the time of appointment of petitioners---If respondents were of the opinion that appointment of petitioners was made without approval of the competent authority, then instead of de-notifying petitioners' appointment, respondents should have blamed themselves rather than claiming premium of their own wrongs---Constitutional petitions were allowed to the extent that respondent-University shall re-examine each and every case and if the persons, who had already been appointed, were not at fault, and no mala fide was there on the part of the Selection Board, they shall not be disturbed and the persons, who were higher on merit, possibility of creating new seats shall also be explored so as to redress their

grievance for their appointment on merit in terms of the advertisement already published. [pp. 407, 408, 409] A, B & C

Mian Tariq Javed v. Province of Punjab through Chief Secretary, Government of Punjab, Lahore and 2 others 2008 SCMR 598; Mst. Basharat Jehan v. Director-General, Federal Government Education, FGEI (C/Q) Rawalpindi and others 2015 SCMR 1418; Pakistan Medical and Dental Council through President and 3 others v. Muhammad Fahad Malik and 10 others 2018 SCMR 1956; Uzma Manzoor and others v. Vice-Chancellor Khushal Khan Khattak University, Karak and others 2022 SCMR 694; Muhammad Yasin Saqib v. Chairman, Pakistan Telecommunication Corporation; Islamabad and 7 others 2003 PLC (C.S.) 1105; Abdul Wahab v. Khyber Pakhtunkhwa Public Service Commission through Chairman and 18 others 2014 PLC (C.S.) 926; Dr. Khalil ur Rehman v. Government of Punjab through Chief Secretary, Punjab and 5 others 2015 PLC (C.S.) 793; Ayaz Ahmed Khan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad and 4 others 2021 PLC (C.S.) 1394; Altaf Hussain v. FPSC through Chairman and another 2022 PLC (C.S.) 92; Danish Usman v. Government of Khyber Pakhtunkhwa, through Chief Secretary and 6 others 2022 PLC (C.S.) 418; Pradeep Kumar Rai and others v. Dinesh Kumar Pandey and others (2015) 11 Supreme Court Cases 493; Madras Institute of Development Studies and another v. K. Sivasubramaniyan and others (2016) 1 Supreme Court Cases 454; Ashok Kumar and another v. State of Bihar and others (2017) 4 Supreme Court Cases 357; Dr. W. B. Vasantha v. The Chairman and Board of Governors Indian Institute of Technology, Madras 2013 SCC Online Mad 2171; Smt. Kamlesh Devi v. State of Haryana and others 2016 SCC Online P&H 9912 and Mahesh MR. and another v. State of Kerala, Represented by Secretary to Government and others 2019 SCC Online Ker 19645(sic) ref.

Province of Punjab through Secretary, Agriculture, Government of Punjab and others v. Zulfiqar Ali 2006 SCMR 678 rel.

Barrister Haris Azmat, Barrister Maryam Hayat, Hamza Amjad, Ahmad Saeed, Abid Hussain Sial, Faizal Ahmad, Daniyal Akbar Tarar, Wajahat Ali and Rahil Riaz for Petitioners.

Barrister Ameer Abbas Ali Khan, Additional Advocate General.

Khalid Ishaq and Usman Nassir Awan for Petitioners (in connected W.P. No.1444 of 2022).

Barrister Muhammad Ahmad Pansota, Jawad H. Tarar, Barrister Hamza Shahid Buttar, Barrister Scheherzad Sheharyar, Barrister Safi Ul Hassan, Barister Ahtasham Mukhtar, Ali Umrao and Shahjahan Khan, Legal Advisors for Respondent-University.

Salman Mansoor and Abdul Majid Abid for Respondent No.6.

Malik Muhammad Awais Khalid for Respondent No.6 (in connected W.P. No.1444 of 2022).

ORDER

MUHAMMAD SAJID MEHMOOD SETHI, J.----This consolidated order shall dispose of instant writ petition along with connected petition i.e. W.P. No.1444 of 2022 as common questions of law and facts are involved in these cases.

2. Through instant petition, petitioner has assailed vires of order dated 22.11.2021, passed by respondent No.3 / Chancellor, University of Sargodha, Lahore, whereby revision petition filed by respondent No.6 was allowed and petitioner's appointment to the post of Professor of Soil and Environmental Sciences, University of Sargodha (BS-21) ("post in question") and recommendations of the Selection Board were declared null and void *ab initio*. Petitioner has further challenged subsequent notification dated 29.11.2021, issued by respondent No.2 / Vice Chancellor, University of Sargodha, whereby appointment of petitioner as Professor of Soil and Environmental Sciences was de-notified w.e.f. the date of issuance of appointment order i.e. 02.08.2018.

3. Brief facts, as narrated in the petition, are that in response to an advertisement for the post in question, petitioner having requisite qualification i.e. Ph.D. from an HEC recognized institution, 15-years' teaching experience and having 15 publications with at least 05 publications in the last 05-years in HEC recognized journals, applied for the said post. Meanwhile, respondent No.6 also applied for the post in question. Respondent No.5 / Selection Board, University of Sargodha, Sargodha ("the Selection Board") constituted a committee of three experts (two foreign and one local), who was invited to scrutinize the applications of petitioner as well as respondent No.6 and it forwarded recommendations for appointment of petitioner to the post in question having requisite qualification / experience, to respondent No.4 / Syndicate, who appointed the petitioner to the post in question vide notification dated 02.08.2018, on regular basis, on two years' probation. Feeling aggrieved, respondent No.6 filed appeal against petitioner's appointment before respondent No.3, in response whereof petitioner filed reply. Respondent No.3, after hearing the parties, proceeded to pass the

impugned order dated 22.11.2021 declaring petitioner's appointment to the post in question along with recommendations of the Selection Board to award marks to the candidates made in its meeting dated 22nd-23rd July, 2018 and approval thereof by the Syndicate in its meeting dated 27th July, 2018 w.e.f. 22nd July, 2018 as null and void *ab initio* and directed the respondent-University to de-notify the appointment of petitioner. Pursuant to the aforesaid order, respondent No.2 issued notification dated 29.11.2021, de-notifying the appointment of petitioner w.e.f. the date of issuance of appointment order i.e. 02.08.2018. Hence, instant petition.

Similarly, through connected petition i.e. W.P. No.1444 of 2022, petitioners have assailed vires of Notification dated 17.12.2021, issued by the respondent-University, whereby a committee was constituted pursuant to the Chancellor's order dated 22.11.2021 (impugned through titled writ petition), to examine all cases of appointments of Professors and Associate Professors.

4. Learned counsel for petitioners submit that the appointments of petitioners were made strictly in accordance with law and after following the due process and procedure. They add that certain rights have accrued in favour of petitioners and they cannot be penalized for the irregularities, if any committed by the respondents. They argue that the Syndicate is the executive body of the University and is empowered to take effective measures to raise the standards of the University, thus, after going through the provisions of the University of Sargodha Ordinance, 2002, it had rightly awarded the marks out of 30 to the candidates, as such, the impugned orders as well as notification, being *ultra vires*, are unsustainable in the eye of law. In support, they relied upon Mian Tariq Javed v. Province of Punjab through Chief Secretary, Government of Punjab, Lahore and 2 others (2008 SCMR 598), Mst. Basharat Jehan v. Director-General, Federal Government Education, FGEI (C/O) Rawalpindi and others (2015 SCMR 1418), Pakistan Medical and Dental Council through President and 3 others v. Muhammad Fahad Malik and 10 others (2018 SCMR 1956), Uzma Manzoor and others v. Vice-Chancellor Khushal Khan Khattak University, Karak and others (2022 SCMR 694), Muhammad Yasin Saqib v. Chairman, Pakistan Telecommunication Corporation; Islamabad and 7 others (2003 PLC (C.S.) 1105), Abdul Wahab v. Khyber Pakhtunkhwa Public Service Commission through Chairman and 18 others (2014 PLC (C.S.) 926), Dr. Khalil-ur-Rehman v. Government of Punjab through Chief Secretary, Punjab and 5 others (2015 PLC (C.S.) 793), Ayaz Ahmed Khan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad and 4 others (2021 PLC (C.S.) 1394), Altaf Hussain v. FPSC through Chairman and another (2022 PLC (C.S.) 92), Danish

Usman v. Government of Khyber Pakhtunkhwa, through Chief Secretary and 6 others (2022 PLC (C.S.) 418), Pradeep Kumar Rai and others v. Dinesh Kumar Pandey and others ((2015) 11 Supreme Court Cases 493), Madras Institute of Development Studies and another v. K. Sivasubramaniyan and others ((2016) 1 Supreme Court Cases 454), Ashok Kumar and another v. State of Bihar and others [(2017) 4 Supreme Court Cases 357], Dr. W. B. Vasantha v. The Chairman and Board of Governors Indian Institute of Technology, Madras (2013 SCC Online Mad 2171), Smt. Kamlesh Devi v. State of Haryana and others (2016 SCC Online P&H 9912) and Mahesh M.R. and another v. State of Kerala, Represented by Secretary to Government and others (2019 SCC Online Ker 19645(sic)).

5. On the other hand, Barrister Muhammad Ahmad Pansota, Advocate, learned counsel for respondent-University and Mr. Salman Mansoor, Advocate, learned counsel for respondent No.6 defend the impugned order / notification.

6. Likewise, Malik Muhammad Awais Khalid, Advocate, learned counsel for respondent No.6 Dr. Sher Muhammad Shahzad (in connected petition), submits that decision of Syndicate extending the scope of statutes by allowing the Selection Board for awarding marks is without jurisdiction.

7. Arguments heard. Available record perused.

8. Perusal of record shows that from the very beginning of the respondent-University way back in the year 2002, the standard practice of the Selection Board was to recommend candidates to the Syndicate for appointment against the posts of Associate Professor and Professor on the basis of assessment of foreign and local referees, however, in its meeting held on 22nd-23rd July, 2018, the Selection Board digressed its own practice and decided to award marks to the candidates for the posts in question out of 30 marks, which decision was forthwith implemented without getting it approved. In this backdrop, respondent No.3 / Chancellor, University of Sargodha, Lahore, after discussing the material aspects of the matter, proceeded to nullify the proceedings / recommendations of the Selection Board dated 22nd-23rd July, 2018 and the subsequent approval by the Syndicate dated 27th July, 2018.

For ease of reference, relevant part of impugned Chancellor's order dated 22.11.2021 is reproduced hereunder:-

"16. For what has been stated above, I, in exercise of powers conferred upon me, under Section 10 of the University of Sargodha Ordinance, 2002, am inclined to decide the instant revision petition in the following terms:-

- i. Proceedings of the Selection Board dated 22nd-23rd July 2018 and the Syndicate dated 27th July, 2018, to the extent of appointment of Professor of Soil and Environmental Sciences, University of Sargodha, are declared null and void ab initio.
 - ii. The recommendations of the Selection Board to award marks to the candidates for posts of Associate Professor and Professor made in its meeting dated 22nd-23rd July 2018 and approval thereof by the Syndicate in its meeting dated 27th July 2018 w.e.f. 22nd July 2018, being made and implemented without the approval of the Competent Authority are declared null and void ab initio.
 - iii. The University is directed to de-notify the appointment of Dr. Ghulam Sarwar as Professor of Soil and Environmental Sciences being void ab initio. However, he will be entitled to hold his position in the University as he was holding prior to joining as Professor of Soil and Environmental Sciences.
 - iv. The Selection Board and the Syndicate are directed to reconsider the candidature of Dr. Muhammad Ashraf and Dr. Ghulam Sarwar for the post of Professor of Soil and Environmental Sciences on the basis of the criteria / procedure being followed prior to the meeting of the Selection Board held on 22nd-23rd July 2018, wherein it was decided to award marks to the candidates for the posts of Associate Professor and Professor out of 30 marks.
 - v. The Selection Board is further directed to examine credentials of Dr. Muhammad Ashraf with regard to his eligibility for appointment as Professor of Soil and Environmental Sciences, especially in view of concerns shown on this aspect of his application by Dr. A. Paul Schwab and Dr. Ghulam Jilani in their evaluation reports and a clear decision, duly supported by right reason and concrete evidence, be made on his eligibility for the post of Professor of Soil and Environmental Sciences (BS-21).
 - vi. The University is directed to ensure implementation of this order within 90 days of issuance of the order. A report, in this regard, be submitted to Governor's Secretariat."
9. It is evidently clear that respondent-Chancellor has passed a speaking order as per law, however, there is only one aspect of the matter which needs reconsideration on part of the respondent-authorities i.e. whether petitioners procured their appointments through ill-will mala

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fide, fraud or illegal means and if the appointees are not at fault, the appointing authority ought to have been proceeded against as it is settled law that party should not be made to suffer for action or inaction of the authority, who was obliged to follow the law. The Hon'ble Supreme Court of Pakistan, vide judgment dated 11.06.2014, passed in *C.P. No.51-L of 2014* titled *Ahsan Jabbar v. Government of the Punjab and others* has held that if some fault was committed by the departmental authorities while assessing eligibility for appointment, the employee could not be deprived from his job due to faults of the department.

10. I am constrained to note with concern that it was the respondents i.e. Selection Board and Syndicate, who appointed petitioners to the posts in question, therefore, presumably, the applicable law / rules and regulations should have been on their sleeves at the time of appointment of petitioners. If respondents are of the opinion that appointment of petitioners was made without approval of the competent authority, then instead of de-notifying petitioners' appointment, respondents should have blamed themselves rather than claiming premium of their own wrongs. Reference can be made to *Province of Punjab through Secretary, Agriculture, Government of Punjab and others v. Zulfiqar Ali* (2006 SCMR 678).

When confronted with the above, learned Legal Advisor for respondent-University, after taking instructions from the respondents, submits that respondent-University is ready to reconsider the matter on case to case basis and explore the possibility of creating new seats in favour of respondents, if such observation is made by this Court.

11. In view of above discussion and keeping in view the above statement of learned Legal Advisor for respondent-University, these petitions are allowed to the extent that respondent-University shall re-examine each and every case and if the persons, who have already been appointed, were not at fault, and no *mala fide* was there on the part of the Selection Board, they shall not be disturbed and the persons, who are higher on merit, possibility of creating new seats shall also be explored so as to redress their grievance for their appointment on merit in terms of the advertisement already published. The needful shall be done within a period of thirty days. The impugned order dated 22.11.2021 and subsequent notification dated 17.12.2021 are modified in the above terms.

JK/G-30/L

Petition allowed.

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