

Stereo. H C J D A 38.
Judgment Sheet
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P No.27148/2023

Nousheen Akram versus Federation of Pakistan etc.

J U D G M E N T

| | |
|----------------------------------|---|
| Date of Hearing | 15.11.2023 |
| Petitioner By: | Mian Qaisar Mahmood, Advocate. |
| Respondents No.1 to 5 By: | Mr. Muhammad Anwar Khan, Assistant Attorney General along with Arshadullah, Deputy Director, Department of Archaeology & Museums, Government of Pakistan. |
| Respondents No. 6 | Mr. Shams Mehmood, Advocate. |

Anwaar Hussain J. The petitioner, having secured the highest marks in the written test held for the recruitment against a single post of Assistant (BS-15), in the Department of Archaeology & Museums, Government of Pakistan, Islamabad, was amongst the top five short-listed candidates to be interviewed for the said post. It is her case that she has been non-suited by abuse of process as respondent No.3, who happens to be the father of respondent No.6 and also the Chairman of Departmental Selection Committee (“**the DSC**”), has appointed his own son/respondent No.6, hence, the said appointment is result of nepotism and liable to be set aside.

2. Conversely, in report and parawise comments filed by respondents No.1 to 4, it has been averred that the allegations levelled are incorrect and the appointment of respondent No.6 was made after fulfilling all *codal* formalities, however, it has not been denied that respondent No.6 is the real son of respondent No.3. Learned Assistant Attorney General, on instructions, submits that since the DSC comprises of 03 members, constituted in accordance with law, therefore, it was not possible for respondent No.3 to select his own son (respondent No.6), on his wishes and whims and the decision was that of the DSC and not respondent No.3 alone.


3. Arguments heard. Record perused.

4. In relation to the formal decision making processes concerning recruitment and selection, possibility that potential conflict of interest may arise cannot be ruled out. Integrity of a selection panel like the DSC vested with power to award marks in interview matters a lot and it is expected that if any conflict of interest arises, the disclosure is made and such member of the selection committee should recuse from proceeding further in order to lend credence and maintain transparency and public confidence in recruitment process, let alone heading the DSC as it happened in the instant case.
5. There is no denial to the fact that interview was one of the major components of the impugned recruitment process inasmuch as the same constituted 30% of the total marks, and out of the said marks, the Chairman of the DSC was vested with the highest number of marks to be awarded to a candidate as compared to other members of the DSC, individually. Moreover, respondent No. 3 is admittedly a Grade-20 officer of the respondent department whereas the other two members are in Grade-19. It is also admitted feature of the case that respondent No.6 was given the highest marks in interview. The final point table prepared by the DSC headed by respondent No.3, who is father of respondent No.6, reads as under:


CONSOLIDATED MARKS SHEET REGARDING FOR TEST/INTERVIEW FOR THE POST OF ASSISTANT (BPS-15) IN THE
DEPARTMENT OF ARCHAEOLOGY AND MUSEUMS, ISLAMABAD.

ON 27-03-2023

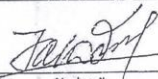
| | | Total Marks 30 | | | | | | | | | | | | | | | | |
|---------|--|--|-----------------|----------------|--------------|------------------------------------|-----------------|----------------|---------------|---|-----------------|----------------|--------------|---|--------------------------------|------------------|-------------------------------------|---------|
| Sr. No. | Name of candidate | Relevant Qualification / Experience 30% | | | | Knowledge / Skill Relevancy 40% | | | | Personality / Interpersonal Communication Skills 30% | | | | Total Marks Obtained in Interview Column (5+9+13) | Marks Obtained in Written Test | 70% of Column 15 | Total Marks Obtained Column (14+16) | Remarks |
| | | M-1 30%(2.7) | M-2 30%(2.7) | CH 40%(3.6) | Total (9) | M-1 30%(3.6) | M-2 30%(3.6) | CH 40%(4.8) | Total (12) | M-1 30%(2.7) | M-2 30%(2.7) | CH 40%(3.6) | Total (9) | | | | | |
| | | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | | | | | |
| 1 | Ayesha Naseer D/o Ch Naseer ul Haq | 2 | 2 | 3 | 7 | 2 | 2 | 2 | 6 | 2 | 2 | 2 | 6 | 19 | 98 | 68.6 | 87.6 | 3rd |
| 2 | Muhamamd umar Azeem S/o Abdul Azeem | 2 | 2 | 3 | 7 | 3 | 3 | 3 | 9 | 2 | 2 | 3 | 7 | 23 | 98 | 68.6 | 91.6 | 1st |
| 3 | Nousheen Akram D/o Muhammad Akram | 2 | 2 | 3 | 7 | 2 | 2 | 3 | 7 | 2 | 2 | 3 | 7 | 21 | 98 | 68.6 | 89.6 | 2nd |
| 4 | Fakhira Nawaz D/o Muhammad Nawaz | 2 | 2 | 2 | 6 | 2 | 2 | 2 | 6 | 2 | 2 | 2 | 6 | 18 | 96 | 67.2 | 85.2 | 4th |
| 5 | Ms.Sania Javed D/o Javed Akhter Satti | 2 | 2 | 2 | 6 | 2 | 2 | 2 | 6 | 2 | 2 | 2 | 6 | 18 | 96 | 67.2 | 85.2 | 5th |




Member-I
Naveed Khalid
Deputy Secretary (Org-IV)
NH&C Division



Chairman
Dr. Abdul Azeem
Director General
DOAM, Islamabad



Member-II
Dr. Tahid Saeed
Director
DOAM, Islamabad


ARSHADULLAH
Assistant Director
Department of Archaeology & Museums
Government of Pakistan
Islamabad

6. On a pointed question by this Court, learned Assistant Attorney General along with the Departmental Representative in attendance, as also learned counsel for respondent No.6, could not refute that respondent No.3, who was Chairman of the DSC never recused himself from the chairmanship of the DSC constituted for conducting the interviews of the short-listed candidates, including his own son/ respondent No.6. Mere fact that respondent No.3 never recused himself from heading the DSC before whom his son/respondent No.6 was to appear for interview offends the principle of transparency required for filling public posts. It was the two extra marks in the interview granted by the DSC that gave advantage to respondent No.6 to occupy the single post as there was close tie between the top five short listed candidates including the petitioner, who stood second by difference of said two marks. The question mark on the process of recruitment is obvious and level of transparency prevailing in the DSC becomes acute in view of the fact that the petitioner had a Masters' degree as opposed to respondent No.6, who is a graduate, which fact has not been denied by the respondents *albeit* that higher qualification of the petitioner has no bearing on the short listing as also the interview as no additional marks were to be given on account of higher qualification, possessed by a candidate. This fact is also belied by columns No. 2 to 5 of the above table that pertains to "relevant qualifications and experience".

7. Be that as it may, in view of above discussion, the interview process, on the face of it is violative of principle of transparency and fairness that is stone etched rule to be followed and observed in recruitment process to the public post(s). The manner in which respondent No.6 has been appointed impinges upon the basic constitutional guarantees enshrined in Articles 4, 18, 25 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973 hence, cannot sustain. As a natural corollary, the appointment of respondent No.6 (Umer Azeem) as Assistant (BS-15) is declared to be result of favoritism and abuse of process and, therefore, set aside. The

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administrative department/competent authority is directed that top five(5) candidates, who obtained the highest marks in the written test for the said post shall be re-interviewed by a new, independent and impartial DSC, in accordance with law.

8. This constitutional petition is **allowed**, in the above terms.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

*Allah Bakhsh**