

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

I.C.A. No.39471/2024

Lahore College for Women **VS.** Dr. Rehana Kausar etc.
University through its
Vice Chancellor etc.

Date of hearing	12.09.2024
Appellants by	Mr. Gohar Mustafa Qureshi, Advocate
Respondent No.1 by	Hafiz Tariq Nasim, Advocate
Respondent No.2 by	Ch. Awaiz Ahmad Qazi, Additional Advocate General

Ch. Muhammad Iqbal, J:- Through this Intra Court Appeal, the appellants have challenged the validity of judgment dated 07.06.2024 passed by the learned Single Judge whereby Writ Petition No.57365/2023 filed by the respondent No.1 was accepted and direction was passed to the appellants to issue appointment letter of the respondent No.1.

2. Brief facts of the case as contended by learned counsel for the appellant are that two posts of Professor of Urdu (BS-21) were advertised on 07.12.2017. In response to the said advertisement, two candidates including the respondent No.1 applied for the said posts but after obtaining external expert evaluation reports and the interview of the candidates, the Selection Board unanimously found both the candidates as not upto the marks and decided to re-advertise the posts. Thereafter, the said posts were re-advertised on 23.09.2018 wherein three candidates including respondent No.1 applied for the said post.

The Sub-Committee instead of obtaining fresh external expert evaluation as required under Service Statutes Clause 6(5), decided to consider previous external evaluation report. The Selection Board on the report of the Sub-Committee recommended the respondent No.1 for appointment on the post. In 57th meeting, Selection Board made recommendations in favour of respondent No.1. The matter was placed in 71st meeting of Syndicate which unanimously remitted back the case for review. Under the direction of Syndicate, the Selection Board in its 58th meeting after hearing both the candidates unanimously decided to re-advertise the post. Again case was placed before Syndicate in 75th meeting wherein it was decided to get fresh external evaluation report instead of re-advertising it. In 81st meeting of Syndicate a dissent view was taken with regard to the recommendations of the Selection Board and under Clause 7(2) of the Service Statutes of Lahore College for Women University, the matter was referred to the Chancellor. The Chancellor vide order dated 17.01.2023 recommended that the post of Professor Urdu (BS-21) be re-advertised. Respondent No.1 challenged said order dated 17.01.2023, notification dated 04.07.2023 and 04.09.2023 through Writ Petition [No.57365/2023]. The learned Single Judge in Chamber allowed the writ petition vide judgment dated 07.06.2024 and passed direction to the appellants to issue appointment letter of respondent No.1. Hence, this appeal.

3. Arguments heard. Record perused.

4. Admittedly, first advertisement for the post of Professor Urdu was published on 07.12.2017 and two candidates including respondent No.1 applied for the said post. After obtaining external evaluation report, the Selection Board in its 56th meeting unanimously decided to re-advertise the post by holding that both the candidates are not up to the mark for the post. The Syndicate

in its 66th meeting approved the recommendations of the Selection Board. Subsequently, another advertisement of the aforesaid post was published on 23.09.2018 and three candidates including respondent No.1 applied for the post. The Sub-Committee did not follow the prescribed procedure and decided to consider the previous evaluation report which is violation of Clause 6(5) of the Service Statues of Lahore College for Women University as in 57th meeting of Selection Board, the recommendations were given in favour of respondent No.1 as under:

“Recommendations: the above mentioned candidates were interviewed and Dr. Rehana Kausar D/O Muhammad Siddique was found suitable for the post of Profession Urdu (BPS-21) as per average marks. However, permanent members gave her not qualifying marks.”

When this matter was placed in 71st meeting of Syndicate who unanimously decided to refer it back to the Selection Board by holding as under:

“Item No.10
Professor Urdu (BPS-21) (Review Case)

Review Date: 05-11-2019

With reference to the Writ Petition No.39468/2019 titled (Azmat Rubab Versus Chancellor), the Review Case of Professor Urdu was held on 05-11-2019. The member of the Selection Board gave chance to both candidates (Dr. Rehana Kausar & Dr. Azmat Rubab) to appear before the Selection Board. The said candidates explained their point of view regarding their appointments/ Selection Board. After that the members of the Selection Board asked them to write their statement, only Dr. Azmat Rubab gave in writing but Dr. Rehana Kausar refused to provide anything. After reviewing the rules & procedure for Selection, the Board unanimously agreed to re-advertise the post of Professor Urdu (BPS-21) on the basis that all the permanent members did not give the qualifying marks to Dr. Rehana Kausar in the meeting of 57th Selection Board. It was also noticed that the evaluation reports were considered for the interview held on 28th May, 2019 for the post of Professor Urdu (BPS-21) were previously obtained for the Post of Professor Urdu (BPS-21) advertised on 7th Dec, 2017.

The members of the Selection Board also recommended that, for select any candidate (Teaching / Non-Teaching), the candidate must obtain qualifying marks (50%) independently by the permanent members as well as subject expert.”

In 58th meeting, the selection Board decided to re-advertise the post on the ground that the sub-committee of the external evaluation has wrongly relied upon the earlier external evaluation reports. The relevant part of decision is reproduced as under:

“With reference to the Writ Petition No.39468/2019 titled (Azmat Rubab Versus Chancellor), the review case of Processor of Urdu was held on 05-11-2019. The member of the Selection Board gave chance to both candidates (Dr. Rehana Kausar & Dr. Azmat Rubab) to appear before the Selection Board. The said candidates explained their point of view regarding their appointments/ Selection Board. After that the members of the Selection Board asked them to write their statement, only Dr. Azmat Rubab gave in writing but Dr. Rehana Kausar refused to provide anything. After reviewing the rules & procedure for Selection, the Board unanimously agreed to re-advertise the post of Professor Urdu (BPS-21) on the basis that all the permanent members did not give the qualifying marks to Dr. Rehana Kausar in the meeting of 57th Selection Board. It was also noticed that the evaluation reports were considered for the interview held on 28.05.2019 for the post of Professor Urdu (BPS-21) were previously obtained for the Post of Professor Urdu (BPS-21) advertised on 07.12.2017.”

(emphasis supplied)

Later on, the matter was placed before 75th Syndicate Meeting who directed to procure fresh evaluation report of the candidates as under:

“The Syndicate referred back the case of Professor of Urdu to the Selection Board with the directions to review the appointment of Dr. Azmat Rubab & Dr. Rehana Kausar as Professor of Urdu (BPS-21) along with fresh external evaluation reports of the said post as per procedure. After recommendations by the Selection Board/ Syndicate, the said candidate may be appointed from the date of the appointments made through the current (75th) meeting of the Syndicate.”

The Selection Board decided to re-advertise the post whereas the Syndicate directed to take fresh evaluation report. Thereafter, in 81st Syndicate Meeting the matter of appointment of respondent

No.1 was referred to the Chancellor. The said recommendation is reproduced as under:

“Since as per recommendations of the 59th Selection Board, the post of Professor Urdu (BPS-21) should be re-advertised but the members of the Syndicate did not endorse the said decision. There is a conflict between recommendations of Selection Board and Syndicate as per Clause 7 (2) of the First Statutes appended with the Schedule of LCWU, Lahore Ordinance 2002; the case of both candidates (Dr. Rehana Kausar & Dr. Azmat Rubab) should be forwarded to Worthy Chancellor/ Governor of Punjab for final decision. However, the members of the Syndicate recommend that the Chancellor may kindly approve the appointment of Dr. Rehana Kausar as Professor Urdu as per decision of 57th Selection Board and her joining would be after the approval of Chancellor / Governor decision.”

Due to dissent view, the matter was referred to the Chancellor under Clause 7(2) of the Service Status. The Chancellor finally directed to re-advertise the post. For ready reference, relevant portion of order passed by the Chancellor is reproduced as under:

“For what has been stated above, I, in exercise of powers conferred upon me under Statute 7 (2) of the First Statutes appended as Schedule with the Lahore College for Women University, Lahore Ordinance, 2002 am inclined to uphold the recommendations of the Selection Board made in its 56th meeting held on 4th & 5th November 2019 to re-advertise the post of Professor of Urdu (BPS-21). The University is directed to re-advertise the post of Professor of Urdu (BS-21), accordingly.”

5. Further, in response of the first advertisement the respondent No.1 was not appointed on the basis of the external expert evaluation report. Thereafter, when the post was re-advertised, the Sub-Committee while relying on the earlier external expert evaluation report, recommended the respondent No.1 for the said post which is patently illegal. Thereafter, the Syndicate decided to re-advertise the post. As per Clause 7(2) of the First Statutes appended as Schedule with the Lahore College for Women University, Lahore Ordinance, 2002 when there is difference of opinion between Selection Board and Syndicate, the

matter shall be referred to the Chancellor and the Chancellor is the final authority in such like matters whose decision cannot be questioned through constitutional petition.

6. Even otherwise, it is settled law that it is not the domain of the Court to examine the qualification and the eligibility criteria in the recruitment process and such matters can be best resolved by the institution itself according to the suitability and requirements of a certain post. The Courts are not the substitute of a Selection Board or Syndicate and cannot direct an appointing authority to issue appointment letter in favour of any candidate rather can only direct the said authorities for reconsideration of a matter if any illegality or irregularity is found. Reliance is placed on a case cited as *Muhammad Ashraf Sangri Vs. Federation of Pakistan and others (2014 SCMR 157)* wherein the Hon'ble Supreme Court of Pakistan has held that “*6....Essentially an interview is a subjective test and it is not possible for a Court of law to substitute its own opinion for that of the Interview Board in order to give the petitioner relief. What transpired at the interview and what persuaded one member of the Board to award him only 50 marks is something which a Court of law is certainly not equipped to probe and to that extent we cannot substitute our own opinion with that of the Interview Board.*” In another case cited as *The Secretary Punjab Public Service Commission, Lahore and others Vs. Aamir Hayat and others (2019 SCMR 124)* the Hon'ble Supreme Court of Pakistan has held that “*7... We also find that the High Court exceeded its jurisdiction by issuing a direction to the petitioner that an appointment letter be issued to the Respondent against a post of Sub-Inspector (BS-14) on the basis of list dated 29.4.2016. By doing so, the High Court arrogated itself to the position of an appointing authority which is obviously and clearly beyond the scope of its jurisdiction while exercising powers under Article 199 of the Constitution.*” Further

reliance is placed on cases cited as Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Hayat Hussain and others (2016 SCMR 1021) and Waheed Gul Khan and another Vs. Province of Sindh and others (2024 SCMR 1701).

7. Moreover, the recommendation for appointment of a candidate against a certain post exclusively falls within the domain of the concerned authority and interfering in that domain would amount to committing judicial overreach which is unwarranted by law. Reliance is placed on judgments cited as Chief Executive Officer, Multan Electric Power Company Ltd. Khanewal Road, Multan Vs. Muhammad Ilyas and others (2021 SCMR 775). Further, as the Chancellor is the final authority in the matter in question who directed to re-advertise the post as such no prejudice is caused to anyone including the respondent No.1.

8. For what has been discussed above, this appeal is allowed and by setting aside the judgment dated 07.06.2024 passed by the learned Single Judge in Chamber, Writ Petition [No.57365/2023] filed by the respondent No.1 is dismissed.

(Ahmad Nadeem Arshad)
Judge

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge

Judge