

Judgment Sheet
IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH,
BAHAWALPUR
(JUDICIAL DEPARTMENT)

Writ Petition No. 1287 of 2023
(Rozina Ahmed Vs Province of Punjab, etc.)

JUDGMENT

Date of decision:	13.03.2024
Petitioner by:	Mr. Muhammad Yaseen Ataal, Advocate.
Respondents by:	Mr. Zafar Iqbal Awan, Addl. Advocate General.

AHMAD NADEEM ARSHAD, J. Through this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner Rozina Ahmed has called in question the *vires* of Orders dated 24.10.2017, 10.01.2019, 01.02.2019 and 09.01.2023 passed by the respondent-authorities.

2. Relevant facts forming background of this writ petition are that the petitioner in response to an Advertisement, got published by the Deputy Commissioner/Chairman District Recruitment Committee, Bahawalpur (*respondent No.2*) in the newspapers, applied for the post of ESE (Sci-Math); that on the strength of her educational certificates duly fulfilled the prescribed criteria for the said post, was appointed as such in BS-9 in Government GPS School, Chak No.114/DNB, Tehsil Yazman, District Bahawalpur on contract basis through '*Letter of Agreement*' dated 31st July, 2017; that after fulfilling all codal formalities including verification of academic qualifications, she was allowed to join service; that in response to that letter of agreement petitioner submitted her joining report on 01.08.2017 and started teaching in the said School; that within a short span of time District Education Officer (M-EE), Bahawalpur (*respondent No.5*) withdrew her Letter of Agreement vide Order dated 24.10.2017 on the sole ground

that Result Card of MCS issued by the concerned Institution/University was incompatible with the cut-off date of advertisement meaning thereby the petitioner at the time of applying for the aforementioned post was not in possession of degree of MCS, hence, the same was not acceptable according to the terms and conditions contained in the Recruitment Policy 2016-2017; being offended by that order, the petitioner approached this Court through Writ Petition No.9488 of 2017/BWP which was disposed of vide order dated 24.04.2018 whereby matter was remitted to the Secretary Education (Schools), Government of the Punjab, Lahore (*respondent No.1*) with a direction to consider her petition as ‘Representation’ and decide the same in accordance with law, rules and policy on the subject after granting an opportunity of hearing to the petitioner and others; that in compliance with order of this Court, respondent No.1 after considering the submissions of the petitioner and other stakeholders dismissed her Representation vide order dated 10.01.2019 with further direction to initiate departmental proceedings against the members of scrutiny committee under PEEDA Act, 2006 for extending undue benefit to the petitioner in violation of the provisions contained under Recruitment Policy 2016-2017; that later on in compliance with order passed by the Secretary Education (Schools), as mentioned above, respondent No.5 restored his order dated 24.10.2017 vide fresh order dated 01.02.2019.

3. It is worth mentioning that in another Writ Petition No.10020/2017 involving the identical proposition of law, was allowed by this Court vide judgment dated 29.01.2019 in which petitioner of the said writ petition was allowed to continue his service on the post. Present petitioner Rozina Ahmed by taking the support of that judgment previously filed W.P No.1775/2019 before this Court whereby vide order dated 01.06.2022 matter again referred to respondent No.1 to re-consider her case in the light of judgment dated 29.01.2019 and pass fresh order after providing proper opportunity of hearing to all concerned without being prejudiced by his earlier order

dated 10.01.2019. In compliance with said order, respondent No.1 without taking into consideration the law point discussed in the aforementioned judgment again dismissed the *Representation* of the petitioner vide order dated 09.01.2023. Feeling aggrieved petitioner has challenged the *vires* of orders dated 24.10.2017, 10.01.2019, 01.02.2019 and 09.01.2023 passed by the respondent authorities through the instant writ petition.

4. Learned counsel for the petitioner in support of his contentions *inter alia* argued that the petitioner could not have been removed from service as she had obtained degree of MCS much prior to the last date for applying to the post of ESE (Sci-Math); adds that the petitioner was duly selected after going through recruitment process, therefore, could not have been terminated in view of principle laid down in the judgment dated 29.01.2019 with regard to rule of locus poenitentiae in favour of the employees as enunciated by the Hon'ble Supreme Court of Pakistan in a number of judgments. He placed reliance on the cases titled Mst.Basharat Jehan Versus Director General, Federal Government Education, FGEI (C/Q) Rawalpindi and others (2015 SCMR 1418), Executive District Officer (Edu), Rawalpindi and others Versus Mst. Rizwan Kausar and 4 others (2011 SCMR 1581), Collector of Customs and Central Excise Peshawar and 2 others Versus Abdul Waheed and 2 others (2004 SCMR 303) and Muhammad Shoaib and 2 others Versus Government of N.W.F.P. through The Collector, D.I. Khan and others (2005 SCMR 85).

5. On the other hand, learned law officer has vehemently opposed the contentions. The bottom line of arguments advanced on behalf of the respondent authorities was that at the time of applying for the post of ESE (Sci-Math) petitioner had not possessed MCS degree. He maintains that under the Recruitment Policy 2016-2017 she was required to file complete application in all respects; he adds that a candidate was required to have prescribed qualifications and or complete the degree before the last date of filing the application; that during the process of verification/scrutiny on a complaint it came to

notice that the petitioner did not have the requisite qualification/degree of MCS at the time of applying for the post of ESE (Sci-Math); that on query the petitioner produced her final Result Card/Final Transcript issued by her Institution/University whereby date of completion was mentioned as 07.04.2017 and date of issuance of the same was 13.04.2017 with variation of marks obtained by the petitioner, therefore, she was not entitled to apply for the said post at the time of advertisement.

6. I have heard arguments of learned counsel for the parties and perused the record with their able assistance.

7. It evinces from the record that after fulfilling all codal formalities including scrutiny process, written examination as well as interview, etc., the petitioner was selected against the post of ESE (Sci-Math) and as a consequence of which she was issued letter of Agreement/Appointment letter dated 31.07.2017. She submitted her joining report on 01.08.2017 and then started working as Teacher in GPS School Chak No.114/DNB, Yazman. Almost two months later, her appointment letter was withdrawn by respondent No.5 through impugned order dated 24.10.2017 on the sole ground that petitioner had passed the MCS Examination after cut-off date of advertisement *i.e* 07.02.2017 which was not acceptable.

8. Undeniably, at the time of submission of application petitioner annexed Provisional Result Card issued by the Government Sadiq College Women University Bahawalpur on which date of issuance was mentioned as 27.01.2017 relating to academic Session 2014-2016. As per record, cut-off date mentioned in the advertisement was 07.02.2017 meaning thereby that she had passed the MCS degree Examination successfully much prior to the cut-off date. Record further reveals that after passing through the recruitment process, the petitioner was declared as successful candidate by the Recruitment Committee. She was selected/appointed as ESE (Sci-Math) in BS-9 vide Letter of Agreement dated 31.07.2017 and asked to join the duty.

In compliance with said order she joined her duty as Teacher ESE (Sci-Math) in GPS Yazman. After two months of her joining the duty, she was asked by respondent No.5 to produce final Result Card. Petitioner submitted Final Transcript/Result Card. It was containing the date of completion as 07.04.2017 whereas date of issuance was 13.04.2027. The respondent authorities instead of first getting clarification from the concerned University as to whether on 07.02.2017 petitioner had passed the MCS Examination (*Sessions 2014-2016*) straightaway withdrew her appointment letter vide impugned order dated 24.10.2017 maintaining that the same was issued after the cut-off date mentioned in the advertisement.

9. Admittedly, the Provisional Result Card and Final Transcript pertain to the same MCS Session 2014-2016. It is further observed that in both result cards marks obtained by the petitioner against each subject were same. Even the name of subjects were same in both the Result Cards. The main reason prevailed with respondent authorities for recalling appointment letter of the petitioner was that there was a difference with regard to total marks secured by her in the Provisional Result Card and Final Transcript.

10. In order to proceed further, firstly it is better to understand the meaning of ‘Provisional’. In this respect, guidance has been sought from the renowned dictionaries. The gist of which is reproduced below:-

The Black's Law Dictionary defines the word 'Provisional' as under:

‘**Provisional**’: Temporary <a provisional injunction>. 2. Conditional.

The Cambridge Advanced Learner's Dictionary defines the word 'Provisional' as under:

‘**Provisional**’: For the present time but likely to change, temporary.

The Longman Dictionary of Contemporary English defines the word 'Provisional' as under:

'Provisional': 1. Intended to exist for only a short time and likely to be changed in the future.

The Concise Oxford Thesaurus defines the word 'Provisional' as under:

'Provisional': Interim, temporary, pro tem; transitional, changeover, stopgap, short-term, fill-in, acting, caretaker, subject to confirmation, penciled in, working, tentative, contingent.

The Oxford English Urdu Dictionary defines the word 'Provisional' as under:

صرف فوری۔ ضرورت کے لیے؛ عارضی: **'Provisional'**

11. From the above connotation, it has been gathered that provisional document is issued only for the time being which is always temporary in nature and likely to vary in future. In the case in hand one thing is clear that academic session of both result cards reflecting the year 2014-2016, marks secured by the petitioner against each subject in the four semesters are same even name of subjects were also same in both result cards. So, variation in both result cards with regard to CGPA, Percentage, Credit Hours and marks of the petitioner by the concerned Institution/University was a natural phenomenon. No doubt in the Provisional Result Card the total marks obtained by the petitioner in the examination was shown as 1714 against total marks 2200 with 77.91 percentage. Likewise, marks reflected in the Final Transcript were shown as 1784 against total marks 2300 with 77.57 percentage. From the above, it was clear that result of one of the subjects was kept in waiting and the same was yet to be declared. However, Institution/University in routine or on the request of petitioner as she had to apply for the post under reference issued Provisional Result Card which clearly mentioned that number of one of the subjects was yet to be prepared/calculated by the Controller of Examination's Department of the Institution/University. However, almost two months later when the petitioner was issued Final Transcript against total subject, her total marks were shown as 1784 out of 2300. It does not mean that when Provisional Result Card

issued by the University/Institution on 27.01.2017 petitioner was failed in one subject or she had not appeared in one of the subjects rather it was the University which withheld the result of one of the subjects due to its non-availability at the relevant time. It is also not the case of respondent authorities that petitioner had committed fraud, cheating or she obtained the post in question on the basis of fake MCS degree at the time of Test/Interview. In the comments, the only allegation against the petitioner was that she submitted incomplete result card of MCS. In fact, examination result of one subject which was reflected in the Final Transcript was yet to be awaited by the University/Institution at the time of issuing Provisional Result Card. This observation gets further support from the fact that if petitioner was failed in one of the subjects the Institution/University would definitely mention this fact in the Final Transcript that candidate (*petitioner*) had qualified the MCS degree examination in '**Parts**' whereas no such thing was noted in the Final Transcript. With sorry to say that none of the side could assist the Court on this very important fact.

12. So far as disparity in dates on both Result Cards is concerned, suffice it to say, that when material facts as discussed above fully proved that petitioner had passed the MCS Examination much before the cut-off date, it does not have any significance. She at the time of applying for the post in question was a qualified female candidate duly fulfilled the criteria set out in the advertisement, got published by the respondents in the newspapers. Of course, whenever a job application is given by a candidate, the same goes through the scrutiny process by the Department and after short listing only eligible candidates are allowed to appear in the Test/Interview. There is nothing on the record that prior to the issuance of Agreement Letter, any objection qua qualification of the petitioner was ever raised by the Recruitment Committee. Even at the time of interview, she presented the Provisional Result Card but no objection was raised. Record shows that she passed the written test/interview and successfully

qualified for the post of ESE(Sci-Math) purely on merit. It is worth mentioning that in pursuance of the Agreement Letter dated 31.07.2017 petitioner submitted the joining report on 01.08.2017. She was allowed to work on the said post and then all of a sudden in absence of any complaint qua her work and conduct the petitioner was stopped to perform duty and then removed her from service through impugned order/letter dated 24.10.2017.

13. Record further reveals that in an identical situation this Court in another case (*i.e W.P No.10020 of 2017/BWP*) recalled order dated 20.11.2017 passed by respondent No.5 and allowed the petitioner (*Muhammad Saqib*) to continue his service. It was held in the said order that “if any right is created by the act of the Appointing Authority and rule of locus poenitentiae in favour of the employees of either side, they be treated in the light of judgments of august Supreme Court of Pakistan reported as Executive District Officer (Edu), Rawalpindi and others Versus Mst. Rizwan Kausar and 4 others (2011 SCMR 1581), Collector of Customs and Central Excise Peshawar and 2 others Versus Abdul Waheed and 2 others (2004 SCMR 303) and Muhammad Shoaib and 2 others Versus Government of N.W.F.P. through The Collector, D.I. Khan and others (2005 SCMR 85).⁷

The august Supreme Court of Pakistan in its judgment reported as Mst. Basharat Jehan v. Director General, Federal Government Education, FGEI (C/Q) Rawalpindi and others (2015 SCMR 1418) observed as under:-

“Once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae, well recognized and entrenched in our jurisprudence (One may refer to Director, Social Welfare, N.W.F.P., Peshawar v. Sadullah Khan (1996 SCMR 1350).”

Keeping in view the identical situation of the case in hand, it appears that respondent No.1 did not keep in mind the principle enunciated in the said illuminated judgments of the Superior Courts before passing the impugned orders rather haphazardly dismissed the

Representations of the petitioner twice on the reasons alien to the facts and circumstances of the case in hand.

14. From the overall analysis of the case, it is clear that the petitioner had qualified her MCS degree on 27.01.2017 before the cut-off date of advertisement. She was simply awaiting her Final Result Card/Final Transcript and in the meanwhile posts of ESE (Sci-Math) were invited by the respondent authorities. Since at the relevant time she had not in possession of Final Transcript and the cut-off date was going to expire she relied on her Provisional Card already issued by her Institution/University and applied for the post of ESE (Sci-Math) and then successfully compete the same among so many other candidates.

15. The sum up of above discussion is that this writ petition is allowed. The impugned orders passed by the respondent authorities are set aside being illegal and unlawful. They are directed to allow the petitioner to resume her duty as ESE (Sci-Math) forthwith on receipt of certified copy of this order.

**(AHMED NADEEM ARSHAD)
JUDGE**

APPROVED FOR REPORTING.

JUDGE

*Saeed**