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**JUDGMENT SHEET**

**LAHORE HIGH COURT**

**MULTAN BENCH MULTAN**

**JUDICIAL DEPARTMENT**

**Writ Petition No.10689 of 2024**

Hafiz Muhammad Atif Mumtaz

*Versus*

*Senior Member Board of Revenue Punjab, etc.*

**JUDGMENT**

<b>Date of Hearing:</b>	09.09.2024
<b>Petitioner by:</b>	Mr. Tariq Mehmood Dogar, Advocate.
<b>Respondents by:</b>	Mr. Khalid Masood Ghani, Assistant Advocate General.

**Anwaar Hussain, J.** The post of *Patwari* was advertised by the Office of the Assistant Commissioner, Saddar, Multan, through advertisement, available as Annex-A of the case file, inviting applications from the residents of District Multan, and the petitioner along with others participated in the said process.

2. It is the case of the petitioner that he has been non-suited on the ground that the post in question is Tehsil specific and since the petitioner is resident of Tehsil City, Multan and the post pertains to Tehsil Saddar, Multan, he is not entitled to the appointment. Learned counsel for the petitioner submits that it is fourth round of litigation. Adds that in the first round of litigation constitutional petition bearing W.P No.4816/2022 was filed laying challenge to the irregularities in the recruitment process of *Patwaris* wherein direction was given to Deputy Commissioner, Multan to probe the matter. In second round of litigation W.P. No.8238/2022 was filed and the order dated 21.04.2022, impugned therein was set at naught by this Court, *vide* order dated 07.12.2022, and the respondents were directed to decide the matter afresh whereafter order dated 05.06.2023

was passed against the petitioner, which was challenged through W.P. No.11477 of 2023 that was allowed by this Court, *vide* order dated 18.04.2024, while holding that if the posts advertised were Tehsil specific, the matter should have been re-advertised by stipulating so, since an advertisement for recruitments amounts to promise stating all the rules, which the Authority undertakes to observe but the same has not been adhered to by the respondents. In support of his contentions, places reliance upon cases reported as “Usmat Batool v. Bahauddin Zakariya University, Multan through Registrar and 5 others”<sup>1</sup> and “Rasheed-ud-Din and another v. Provincial Government through Chief Secretary, Gilgit Baltistan, Gilgit and others”<sup>2</sup>. Adds that while passing the impugned order, this aspect has not been addressed.

3. Conversely, learned Law Officer submits that the impugned order has been passed after thorough examination of the record and nowhere in the earlier order dated 18.04.2024, this Court while allowing W.P. No.11477/2023 has held that the appointment letter is to be issued to the petitioner. Further contends that the rules have to take preference over the inadvertent errors in the advertisement.

4. Arguments heard. Record perused.

5. The pivotal question of law emanating from the facts spelled out hereinabove is the interplay between the appointment rules of a post and the advertisement for the said post as well as the impact of an apparent inconsistency between the two. In the present case, admittedly the post of *Patwari* is Tehsil specific in terms of the applicable Rules<sup>3</sup> and the merit list was accordingly compiled *albeit* pursuant to an advertisement, which does not depict the fact that the post is Tehsil specific. Schedule to the Rules contemplates as under:

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<sup>1</sup> [2013 PLC (C.S.) 484]

<sup>2</sup> [2020 PLC (C.S.) 1029]

<sup>3</sup> The Punjab Revenue Department (Revenue Administration Posts), Rules, 2009 (“the Rules”)

Name of Department	Functional Unit	Name of the Post with Grade	Appointing Authority	Minimum Qualification for Appointment by		Method of Recruitment	Age for initial Recruitment	Examination training & other conditions required for confirmation
				Initial Recruitment	Promotion			
Board of Revenue	Revenue Administration	4-Patwari (BS-9)	Collector Incharge of Tehsil concerned	(i) ICA 2 <sup>nd</sup> Division/Grade-B; or Intermediate 2 <sup>nd</sup> Division from a recognized Board; and (ii) 40 WPM typing speed on Computer.		By initial recruitment <b>Note:</b> <u>Vacancies in the service shall be reserved for bona fide residents of the Tehsil in which they occur</u>	18 25	Passing of prescribed departmental examination after one year's training at a Revenue School/Institution established by the Government .

*(Emphasis supplied)*

In the same vein, it is also admitted feature of the case that the only requirement stipulated in the advertisement was that a candidate must be resident of District Multan. Thus, there is apparent disconnect between the applicable rules and the advertisement pertaining to the post of the *Patwari*. While the Rules require the appointment of a candidate who belongs to the Tehsil where appointment is to be made, the advertisement only required the candidate to be resident of the District Multan. It is also borne from the record that there are still three vacant posts available in the Tehsil Sadar but the petitioner has been denied appointment on account of not being resident of the Tehsil Sadar to which the said post belongs. This Court is of the view that the Rules stipulating the candidate to be resident of the Tehsil to which the post belongs is to be accorded the precedence over the requirement stipulated in the advertisement as the Rules are conferred with the statutory force, which cannot be trumped and nullified by intentional and/or unintentional mistake on part of the department while advertising the posts of *Patwari*. The Rules provide for the criterion and the mechanism for the appointment and filling up the post whereas the advertisement is one of the steps and/or subsets of the overall scheme of

appointment envisaged under the law. Therefore, it belies logic if a subset of the process is permitted to attain primacy over the entire scheme envisaged under the Rules itself.

6. The plea of the petitioner that a candidate at Sr. No.103 of the waiting list has been appointed whereas the petitioner is at Sr. No.93 is also of no help to the petitioner inasmuch as the petitioner has not been able to demonstrate that either the said candidate at Sr. No.103 of the merit list or any other candidate has been appointed who belongs to the Tehsil other than Tehsil Sadar. Even otherwise, any such possibility might also not have been of any help to the petitioner as the ground of discrimination is available and can be invoked only if favourable treatment to some other similarly placed person is meted out in accordance with law and the person claiming discrimination is denied such treatment. If some other person has been favoured in unlawful manner and against the law, the same cannot be made basis to confer such treatment to others as the same is against the law as held by the Supreme Court of Pakistan in case titled "Muhammad Yasin vs. The Director General, Pakistan Post Office, Islamabad and another"<sup>4</sup>.

7. As far as the plea that the respondents by providing the requirement of residence in the District Multan are now estopped by claiming otherwise and denying the appointment to the petitioner, the same lacks persuasion as it is settled law that there is no estoppel against the law. Thus, department is justified in exhibiting strict adherence to the Rules providing for the appointment criterion. The rules are to be strictly adhered to and even if there was an omission in the advertisement, the department has not violated the legal provision thereof to operate as an estoppel on the respondents.

8. The judgments cited at the bar by learned counsel for the petitioner are distinguishable from the facts of the instant case. In case of Rasheed-ud-Din supra, the recruitment criterion provided under the rules pertaining

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<sup>4</sup> 2023 SCMR 394

to the appointment thereof had been changed subsequent to the written examination. In the said case, at the time of advertisement and written examination, 20 marks were allocated for past experience in the field of disaster management whereas 10 marks were allocated for interview and the rules were amended subsequent to the advertisement as well as written examination, and 20 marks of past experience were deleted and merged into interview making the marks of interview as 30. Thus, case of *Rasheed-ud-Din supra*, is of no help to the case of the petitioner, rather the same is inimical to the case of the petitioner as the Court in the said case preferred and accorded primacy to the rules providing for the appointment criterion. Similarly, in case of *Usmat Batool supra*, in the advertisement thereof, it was specifically laid down that no experience was required but while adopting the short listing criteria, 4 marks per year for the work experience, upto maximum of 20 marks, were awarded and therefore, the said petition was allowed, however, in the said case, the question whether short listing criteria was envisaged under the rules was not under discussion, hence, no violation of the rules was under consideration in case of *Usmat Batool supra*. In the instant case, if the plea of the petitioner is accepted, this would amount to change in the Rules and/or the violation thereof, which is not permissible. This is clearly the domain of the executive as this Court cannot substitute the Rules, which have been framed under and in exercise of the legislative domain and power of the State.

9. In view of the above discussion, the present petition is devoid of any merit and hence, **dismissed**. No order as to costs.

(ANWAAR HUSSAIN)  
JUDGE

Approved for reporting

*Judge*

\**Maqsood*\*