

**I.C.A. No. 03/2024**

Govt. of Punjab, etc.

Instant intra-court appeal is directed against decision dated 11.12.2023, whereby learned Judge-in - Chambers dismissed appellant's constitutional petition *inter alia* on the premise that factual controversy could not be decided and further observed that decision of offering retainership assignment to respondent No.8 was a transitory arrangement.

2. Learned counsel for the appellant fundamentally objected against the capricious exercise of discretion by the Central Selection Committee, which proceeded to allow respondent No.8 to work under retainership arrangement, conspicuously overlooking prior recommendation of the appellant, by the Interviewing Committee, for the same task. It is argued that procedure adopted for offering retainership arrangement was obscure, exclusive and promotes nepotism.

3. On last date of hearing, learned counsel for respondent No.8 appeared, who submitted that

retainership assignment was for one year, which had already expired. Adds that respondent No.8 could not otherwise perform fully due to pending litigation.

4. The instant case highlights important aspects pertaining to how the retainership agreement by the Central Selection Committee, PESSI is awarded across the Province in various social security hospitals. This is the context of this appeal. Upon hearing, we consider that nothing could be declared illegal or reversed, when illegality outlived itself. No academic exercise intended.

5. However, it has been noted that there are no standards or criteria carved out by the Central Selection Committee in this regard on the strength of which the recommendation by the Interviewing Committee can be set aside. Therefore, we tend to make certain observations to enable the management/Governing Body to take remedial measures to ensure fairness, transparency and regimenting of discretion. Lack of standards/criteria to offer the retainership agreement have perpetuated the unstructured exercise of discretion which cannot be countenanced under the jurisprudence developed by the Supreme Court of Pakistan regarding exercise of discretion by the public functionaries. Case reported as “Walayat Ali Mir v. Pakistan International Airlines Corporation through its Chairman and another” (1995 SCMR 650) is referred in this regard. Similarly, in

case reported as “Mushtaq Ahmad Mohal and others v. The Honourable Lahore High Court, Lahore and others” (1997 SCMR 1043), it has been held by the Hon’ble Supreme Court of Pakistan that in matters which involve public participation pertaining to pursuit of profession through permanent jobs or otherwise, the matter should be advertised properly inasmuch as Article 27 read with Articles 18, 25 and 2A of the Constitution of Islamic Republic of Pakistan, 1973, mandates that every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business.

6. It has been conceded before us that no applications were invited for awarding the retainership contract but walk-in-interviews were conducted. Meaning thereby that besides lack of standards/criteria pertaining to exercise of discretion by the Central Selection Committee, process is also bereft of transparency and fair-play as the retainership contract can be dished out to the aspirants of liking on the basis of mere walk-in-interview without any formal advertisement in a newspaper inviting applications thereof, so that larger pool of the candidates can come to know about the creation/existence of vacancy of retainership contract in a social security hospital functioning under the auspices of PESSI as the same carries an opportunity for any citizen

interested to apply for the same and if qualified, gives an opportunity to earn bread and butter, which is fundamental right of every citizen. The lack of standards/criteria depicting transparency allowed lateral entry to respondent No.8. Delay caused in considering recommendations of the appellant speaks of conspicuous omission. We refrain from attributing insinuations. When asked that what measures have been adopted to check unstructured discretion by the Central Selection Committee, learned counsel, representing PESSI, explained that assigning retainership arrangement to respondent No.8 was a stop-gap arrangement, who conceded that no applications were invited but walk-in-interviews conducted. He explained that pursuant to the recent policy decision by the Governing Body, recruitment of two posts of Physiotherapist, on contract basis for a period of three years, in social security hospital, is sought through the Punjab Public Service Commission. We hope that this policy decision is not simply a point-scoring strategy to deal with instant litigation, but such practice must be followed consistently, throughout the Province, in social security hospitals for the relevant posts. There is no cavil that in extraordinary situations transitory and adhoc appointments are required but it should be a rarity not a

routine practice. We are sanguine that the Central Selection Commission shall endeavour to espouse fairness, impartiality and transparency while discharging the duties and obligations entrusted. We direct Office of this Court to send the copy of this order to the Governing Body of the PESSI as well as Secretary, Labour and Human Resource Department, Government of Punjab, who is head of the administrative department concerned.

7. **Disposed of.**

**(Asim Hafeez)**  
**Judge**

**(Anwaar Hussain)**  
**Judge**

*Approved for reporting.*

**(Asim Hafeez)**  
**Judge**

**(Anwaar Hussain)**  
**Judge**