

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

ICA No. 56780 of 2020

Madeeha Munir

Versus

Government of the Punjab and 06 Others

JUDGMENT

<i>Date of hearing</i>	06.04.2023
<i>Appellant(s) by</i>	<i>Mr. Junaid Babar Khan, Ms. Sahar Illyas and Mr. Shehzad Chaudhary, Advocates</i>
<i>Respondent(s) by</i>	<i>Mr. Farrukh Janahangir Wahla, Ch. Jawad Mehmood Pasha, Advocates</i>
<i>Province by</i>	<i>Mr. Muhammad Naseem Kashmiri, Additional Advocate General with Abdul Sattar, Legal Advisor CEO, Education, Faisalabad.</i>

SULTAN TANVIR AHMAD, J:- Through the present judgment, the captioned Intra Court Appeal along-with connected appeals bearing numbers 188669 of 2018, 188663 of 2018, 212729 of 2018, 212730 of 2018, 188666 of 2018, 58851 of 2020 and 65606 of 2022, filed under section 3 of the Law Reforms Ordinance, 1972 and Constitution Petition No. 21507 of 2020, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, having common question of law

and facts shall be decided. The appeals No.212729 and 212730 of 2018 are filed by the Province of Punjab, whereas, the remaining appeals are filed by the private individuals (hereinafter called as the '*private appellants* ').

2. Concise facts of the case are that the Government of Punjab invited applications for filling various vacant posts of educators including ESE (Science, Math and Arts) through advertisement issued by National Testing Service Pakistan. The names of petitioners in writ petitions No. 75664 of 2017 and 64465 of 2017, now private respondents in Intra Court Appeals (hereinafter called as the '*private respondents* '), were reflected in the list of successful candidates. Accordingly, their appointment agreements were signed and the *private respondents* were sent for training. Thereafter, the agreements of the *private respondents* were suspended through letter dated 16.08.2017 on account of some error in the software and their training was stopped. The *private respondents* were called to report the office of District Education Officer (M-EE), Faisalabad on 22.08.2017. Allegedly, due to certain software error, as detailed in report and para-wise comments, the *private respondents* were erroneously selected, despite the fact that as per the scrutiny by the department, they secured less marks than the *private appellants*. As a result thereof, the appointments of the *private respondents* were withdrawn and the *private appellants*, being more deserving candidates were appointed as ESE (Science, Math and Arts), who joined against their respective posts w.e.f. 23.08.2017. Dissatisfied from the above position, the *private respondents* instituted Constitutional petitions, which were allowed by the learned Judge-in-Chambers vide judgment dated 28.02.2018. Aggrieved from the said judgment, the titled Intra Court Appeal as well as the

connected appeals have been instituted.

3. Mr. Junaid Babar Khan, Ms. Sahar Illyas and Mr. Shehzad Chaudhary, learned counsel for the *private appellants*, have submitted that the suspension order dated 16.08.2017 was assailed in the writ petition No. 64465 of 2017 while concealing the fact that by the time the constitution petition was instituted contracts of the *private respondents* stood withdrawn vide order dated 22.08.2017 and the *private appellants* were issued fresh appointments letters against their respective posts; that by concealing the same, the *private respondents* were deliberately avoided to be impleaded in array of parties, which resulted into entire confusion, causing injustice to the *private appellants*, who have been condemned unheard, which is also in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. It is further contended by the learned counsel that it is an admitted position that the *private appellants* secured more marks than the *private respondents* and they remained higher in merit list, thus, by allowing the claim of the individuals lower in merit with less marks comparing with the *private appellants* would confer undue advantage, resulting into miscarriage of justice. It is further argued that the *private respondents*, through the constitution petition, in essence have challenged breach of contract, for which the sole remedy was to seek damages in civil Court, as already settled in case titled "*Qazi MUNIR AHMAD Versus RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL through Principal and others*"(2019 SCMR 648).

4. Learned Law Officer and Mr. Abdul Sattar, Legal Advisor, Education Department Faisalabad, have supported the case of the *private appellants* and it is submitted that appointment letters of the *private appellants* have been issued

as per merit and in the absence of any allegation of political interference, evidence as to any *malafide* on the part of the Government or respondent-department or for that matter any individual officer, the intervention in the constitutional jurisdiction, is not warranted.

5. Mr. Farrukh Janahangir Wahla and Ch. Jawad Mehmood Pasha, learned counsel for the *private respondents* have submitted that upon issuance of appointment letters to the *private respondents*, the principle of *locus poenitentiae* became fully applicable that protected the rights of the *private respondents*; that once the agreements are executed between the parties the same cannot be withdrawn, unilaterally. They have strongly supported the judgment passed by the learned Judge-in-Chambers.

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

7. Record reflects that process of recruitment of educators against various posts including ESE (Science, Math and Arts) was initiated, as per recruitment policy 2016/2017, through advertisement in daily newspapers, inviting applications until 07.02.2017. The entire process of recruitment was completed on software provided by education-department, Government of the Punjab. Admittedly, the appointments, on contract basis, were to be made against vacant seats in schools of particular area and on the basis of school specific merit. Soon after the execution of agreements of the *private respondents*, some error in the software was detected, which purportedly resulted into selection of candidates having lower marks, as per the criteria in the concerned policy. Those securing higher

marks than the appointed candidates could not be appointed due to the software error. In para-wise comments filed by District Education Officer / respondent No. 2 the software error has been explained as follows:-

1. *A candidate apply for the Recruitment as Educator for same categories of ESE (Arts and Science) in both sides (Male & Female) separately, if any short document is required by any one side from the candidate, he / she provides when it is feeded in the software then its entry become in both sides (Male & Female). Due to which the problems of many kinds are created.*
 2. *Making selection of the eligible candidates in place of demerit candidate, the software does not show its selection / unselection.*
 3. *If a candidate apply for two posts ESE (Arts and Science), he / she is selected for one post, other post is made unblocked, but shown blocked.*
 4. *If any seat of Educator is missing from selection, the software does not show it even all seats may refresh.*
8. Upon detection of above error, the District Recruitment Committee held meeting on 21.07.2017. This meeting was attended by the Chairman of the committee and seven other members that included representative of the Provincial Government and District Education Officers. They unanimously resolved to rectify the merit list and to issue appointment contracts in favour of the eligible candidates, as per Recruitment Policy, 2016 / 2017.
9. After rectification and detailed analysis, following position emerged, as per the report furnished in writ petition No.69869 of 2017:-

Demerit Candidates			Candidates on Merit		
Sr. No	Name of Candidates/petitioners and place of posting (which are not on merit.)	Marks obtained as per criteria and merit position	Name of candidates who were selected on merit instead of demerit candidates (column No.2)	Marks obtained as per criteria and merit position	Remarks
1	2	3	4	5	6
1	Mst. Munazza Munawar D/O Munawar Hussain GPS 19/JB-I	60.59/48	Saher Tariq D/o Muhammad Tariq	61.208/38	
2	Raffat Siddique d/o	Not related to the DEO (M-EE) FSD			
3	Sidra Rasheed D/O Rasheed Ahmad GPS 152/RB	59.234/4	Khadija Asghar Ali D/O Asghar Ali	71.954/02	Excluding local marks
4	Hafiz Mehmood Qasim S/O Abubakar GPS 281/GB	59.239/58	Tahir Iqbal S/O Bashir Ahmad	60.308/38	
5	Shahroze Ali S/O Nasir Ali GPS 220/RB	64.238/69	Qasim Ali S/O Muhammad Sadiq	66.656/32	
6	Amara Ilyas D/O Muhammad Ilyas GHS 204/RB FSd	64.51/50	Muhammad Asad S/O Naseer Ahmad	65.226/41	Excluding local marks
7	Hina Khalid D/O Khalid Mehmood GPS 591/GB-II	67.276/6	Nadia Akbar D/O Muhammad Akbar	75.525/1	Excluding local marks
8	Amman Fatima D/O Qamer ud Qamar GPS Jalli Fatiana	57.476/64	Muhammad Boota S/O Muhammad Ashraf	57.501/62	
9	Amina Shahid D/O Muhammad Shahid GPS, 129/RB	62.089/28	Maqadas Rasheed D/O Abdul Rasheed	63.639/20	
10	Sadia Mehmood D/O Mehmood ul Hassan GPS 65/JB	66.19/18	Javeria Zaighum d/o Zaighum ul Haq	70.852/5	Excluding local marks
11	Kamran Ali Hameed s/o Abdul Hameed GPS 546/GB	59.841/82	Muhammad Waseem S/O Muhammad Asghar	60.054/74	
12	Khalida Perveen D/O Rasheed Ahmed GPS 621/GB	57.658/70	Khalida Nazir d/o Nazir Hussain	57.768/69	

As per report in writ petition No. 75664 of 2017
the following position is reflected:-

Sr. No.	Selected candidate name	Designation	Merit of selected candidate	Demerit candidate name	Demerit candidate merit	Name of school	Difference
1.	Abida Kalsoom	ESE (Sci/Math)	69.939	Shamim Akhtar	62.81	GGPS 78/GB Est	7.129
2.	Saqlain Shehzadi	ESE (Arts)	70.294	Aniqa Liaqat	68.94	GGPS 254/RB -III	1.354
3.	Razwna	ESE (Sci/Math)	67.439	Saira	64.04	GPS 220/RB -II	3.399
4.	Nazia Anjum	ESE (Sci/Math)	60.376	Naila Jabeen	58.5	GGPS 614/GB	1.876
5.	Muhammad Junaid	ESE (Sci/Math)	63.77	Syed Faisal Rehman	63.2	GES 29/JB South	0.57

10. The above details reflect that the candidates appointed, after detection of error in software and rectification of the same, secured more marks as per the given criteria for their posts in the relevant schools. As already discussed, the appointments were to be made on the basis of school specific merit. For example, for school located in 19/JB-I, Ms. Sehar Tariq d/o Muhammad Tariq has obtained 61.2 marks, whereas, earlier (before detection of software error) one Ms. Munazza Munawar was given the contract who has actually secured 60.59 marks, which are less than the marks obtained by Ms. Sehar Tariq. Similar is the position of the rest of the candidates.

11. Ch. Muhammad Jahangir Wahla the learned counsel for the petitioners in Writ Petition Nos. 75664 of 2017 and Writ Petition No. 64465 of 2017 has primarily built up his case on the basis of principle of *locus poenitentiae*. A reading of the said petitions reflects that the number obtained, as per the rectified merit list is not disputed on the basis of any record or document but it is stated that once the contracts of employment have been issued they could not have been withdrawn keeping in view the principle of *locus poenitentiae*. The same is argued before us, today. However, we are of the opinion that if an act is

wrongly done due to some misunderstanding, error or illegality, the principle of *locus poenitentiae* does not come into operation to protect such wrong. If foundation of an action is based on an illegality or error, the protection of *locus poenitentiae* cannot be provided to beneficiary of said action at cost of others who are otherwise placed higher in merit. In this regard, the Honourable Supreme Court of Pakistan in case titled “Syed Azam Shah Versus Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another”(2022 SCMR 201) has observed as follows:-

“...This Latin phrase is connected with contractual law which expresses an opportunity to withdraw from a contract or obligation before it is completed but in our comprehension, there is no hard and fast rule that if some benefit was wrongly extended due to some misunderstanding, error, misconception of law or without sanction of competent authority, that act should be treated so sacred and sacrosanct which could not be withdrawn to retrace or redo the wrong decision or action under the guise of *locus poenitentiae* principle. A wrong benefit extended beyond the scope of law and rules/policy cannot be claimed in perpetuity or eternity hence the applicability of this doctrine depends on the circumstances of each and every case and cannot apply universally or randomly without adverting to the merits of each case in its peculiar circumstances. In the case of Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin (PLD 1992 SC 207), this Court held that the order under which the payment was made had no sanction of law. *Locus Poenitentiae* is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be

gained on the basis of an illegal order.....”
(Emphasis supplied)

12. Further reference can be made to cases titled “Province of Punjab through Secretary, Finance Department, Civil Secretariat, Lahore and Others Versus Atta Muhammad Zafar and Others”(2021 SCMR 1195) and “Muhammad Nadeem Arif and Others Versus Inspector-General of Police, Punjab, Lahore and Others”(2010 PLC (C.S) 924). Here, It will also be beneficial to reproduce the relevant extract of “Province of Punjab through Secretary, Finance Department, Civil Secretariat, Lahore and Others” case (*supra*):-

“...We are unfortunately unable to agree with the simplistic and over generalized view taken by the High Court in the impugned judgment. This Court has in a large number of judgments clearly and categorically held that *locus poenitentiae* is the power of receding till a decisive step is taken but is not a principle of law that an order once passed becomes irrevocable and it is a past and closed transaction. **If an order is illegal then, a perpetual right cannot be created on the basis of such illegal order.** In this regard, reference may usefully be made to the case of Engineer-in-chief Branch v. Jalaluddin (PLD 1992 Supreme Court 207)....”

(Emphasis supplied)

13. It is equally settled that in the absence of any specific evidence or material showing favoritism, political interference or departure from merits or *malafide* established through clear evidence, the interference in the process of requirements is not warranted by law. Reliance in this regard can be placed to the cases titled “Malik Munsif Awan, Advocate Chairman, Pakistan Justice Party, Lahore Versus Federation of Pakistan through Secretary, Law and Justice, Islamabad and

Others"(PLD 2021 Supreme Court 379) and "Province of Punjab through the Director (E.E.), Lahore Division, Lahore and Others Versus Muhammad Afzal"(2003 PLC (C.S.) 1434).

14. There is no evidence or document produced before us that reflect any favoritism or interference by political elements. No material is available on the record leading to inference that the relevant education department has appointed the *private appellants* without merit or against the policy or rules. The learned counsel of the *private respondents* could not deny that the *private appellants* do possess the requisite qualifications, therefore, we consider it unwarranted to interfere in such process of appointments through jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

15. For the reasons recorded above, the present Intra Court Appeal as well as appeals No.188669 of 2018, 188663 of 2018, 212729 of 2018, 212730 of 2018, 65606 of 2022 and 188666 of 2018 are ***allowed*** and as a consequence thereof, Writ Petition Nos. 75664 of 2017 and 64465 of 2017 stand ***dismissed***, whereas, Intra Court Appeal No. 58851 of 2020 and Writ Petition No. 21507 of 2020 are ***disposed of*** in the light of above findings. No order as to costs.

(CH. MUHAMMAD IQBAL) (SULTAN TANVIR AHMAD)
JUDGE JUDGE

APPROVED FOR REPORTING

JUDGE

JUDGE

J.A Hashmi