

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

Writ Petition No.3222 of 2021

*Muhammad Azhar Abbasi and
Masood Ahmad Abbasi* **V/S** *Municipal Corporation
and others*

JUDGMENT

Date of hearing	11.09.2023
Petitioner(s) by	In person.
Respondent(s) by	Ch. Sarfraz Ahmad Chadhar, Advocate for Respondents No.1&2. Malik Amjad Ali, Additional Advocate General for Respondent No.3 with Abid Aziz, Assistant Advocate General. Malik Muhammad Siddique Awan, Additional Attorney General with Arshad Mehmood Malik, Assistant Attorney General.

JAWAD HASSAN, J. The Petitioners have filed this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) by making following prayer:

“It is, therefore, respectfully prayed that writ petition may kindly be accepted and directed the Respondents to pay arrear as well as current retainership/professional fee to the petitioners since 1st June 2019 till now and may also be pay the retainership fee till the respondent avail duties of the legal advisor of the petitioners”.

I. BACKGROUND

2. The Petitioners are practicing advocates being active members of the High Court Bar Association Rawalpindi and District Bar Association, Rawalpindi and according to them, they have been

engaged as legal advisors by the Administrator Municipal Corporation Tehsil Murree, District Rawalpindi for the Lahore High Court, Rawalpindi Bench and District Courts Rawalpindi as well. They claim that their retainership fee was fixed as Rs.20,000/- (for Lahore High Court, Rawalpindi Bench) and Rs.15000/- (for District Courts, Rawalpindi) respectively. As per their version, they have been engaged through letter No.159 dated 19.12.2019 and letter No.501 dated 21.03.2020. Their sole grievance is that the Respondents have withheld their professional/retainership fee since June, 2019 for the services provided to them as legal advisors.

II. PETITIONERS ARGUMENTS

3. The Petitioners argued that they have been engaged as legal advisors by the Administrator Municipal Corporation Tehsil, Murree, District Rawalpindi pursuant to which they conducted cases before this Court as well as District Courts, Rawalpindi however, their professional fee has been withheld by the Respondents without reason. They further argued that the Respondent No.2 in report and parawise comments has admitted regarding rendering of their services for the said Respondent but due to reasons best known to the Respondents, claimed payment has not been made so far.

III. RESPONDENTS ARGUMENTS

a. Respondents No.1&2/Municipal Corporation, Murree

4. Ch. Sarfraz Ahmad Chadhar, Advocate/Legal Advisor for the Respondents No.1&2 filed report and parawise comments whereby it was stated that the period of appointment of the Petitioners had ended on 31st May, 2019 and thereafter their appointment was not formally extended by the authority, however, they kept on rendering their services as legal advisors. It was further stated that the Respondents had written numerous letters to the concerned authority for the continuation of petitioners' contract but no reply was received.

b. Respondent No.3/Secretary LG&CD Department

5. Report and parawise comments were submitted by the Respondent No.3/Secretary LG&CD Department vehemently

agitating that the Petitioners were never appointed by the competent authority to act as legal advisors, MC, Murree hence they have no *locus standi* to file this petition. It has further been stated that letters dated 19.12.2019 and 21.03.2020 are though addressed to the Secretary LG&CD Department but competent authority in the matter is the Secretary Law and Parliamentary Affairs Department, under the Punjab Local Government Legal Advisors Rules, 2003 (the “**Rules**”).

c. Reply of Secretary Law & Parliamentary Affairs Deptt.

6. Malik Amjad Ali, Additional Advocate General filed the report and parawise comments on behalf of the Secretary Law and Parliamentary Affairs Department denying the stance of the Petitioners. It has been stated that in terms of instructions dated 22.05.2018, no department/body can engage a private advocate in anticipation of approval and no request for ex post facto approval will be entertained or granted and in case, an officer who appoints any private advocate, such officer shall be responsible to pay the professional fee from his own pocket and shall also be liable to disciplinary action, as per law. It has further been stated that the Petitioners were never appointed to act as legal advisors as three posts of legal advisors in Municipal Committee, Murree were occupied through the order of the competent authority hence, the Petitioners’ claim that they were appointed through letters dated 19.12.2019 and 21.03.2020 is based on misconception.

7. I have heard the arguments of counsel for the parties and perused the record.

IV. DETERMINATION BY THE COURT

8. The version of the Petitioners is that they were engaged by the Respondent No.2 through letters appended with this petition at Annex-B and Annex-C (Page 7 and 8) while on the other hand stance of the Respondent No.3 is that aforesaid letters do not show in any manner that the Petitioners were engaged by the Respondent No.2 on the dates mentioned therein. Admittedly, the procedure for

appointment, extension and remuneration of legal advisors or engagement of special counsel by a local government is dealt with under “Rules”. In order to resolve this controversy, this Court will interpret Rule 4 of the “Rules” which deals with the procedure for appointment of legal advisor. The said Rule is reproduced as under:

4. Procedure for appointment - (1) *A Local Government desirous of engaging a Legal Adviser on regular basis shall invite applications through advertisement at least in two National daily newspapers indicating the requisite qualifications, experience, standing of the advocate and the maximum remuneration offered:*

Provided that it would be clearly indicated in the advertisement that a Legal Adviser may be appointed at a remuneration, which may be less than the remuneration offered: Provided further that where the remuneration to be paid does not exceed one thousand rupees, the advertisement may be dispensed with.

(2) *The candidates shall be advised to address their applications to the Local Government concerned and also forward a copy of the application along with annexure to Government.*

(3) *The Local Government concerned shall forward to Government all applications of the candidates along with its recommendations.*

(4) *The recommendations received from the Local Government concerned shall be considered by a Selection Committee comprising the following:-*

- (i) *Law Minister Chairman*
- (ii) *Secretary to Government of the Punjab, Law & Parliamentary Affairs Department, Member*
- (iii) *representative of the Local Government & Rural Development Department who shall be an officer not below the rank of BPS-18; and Member*
- (iv) *representative of the DCO: Member*

Provided that Government may at any time alter the constitution of the committee or increase or decrease the number of its members.

(5) *The committee shall approve the name of the Advocate to be appointed as a Legal Adviser and the remuneration to be paid to him.*

(6) *The Advocate approved by the committee shall be appointed by the Local Government concerned on the terms and conditions fixed by Government.*

9. Under Rule 4(1) of the “Rules”, a local government desirous to engage a legal advisor on regular basis shall invite applications through advertisement at least in two national daily newspapers indicating the requisite qualifications, experience, standing of the

advocate and minimum remuneration offered while under Rule 4(2) of the “Rules” the candidates are advised to address their applications to the local government concerned and also forward a copy thereof alongwith annexures to the Government as defined under Rule 2(b) of the “Rules” which means the Government of the Punjab in the Law & Parliamentary Affairs Department. In terms of Rule 4(3) of the “Rules”, the local government as defined under Rule 2(c) of the “Rules” shall forward to Government all applications of the candidates alongwith its recommendations which are placed before the Selection Committee constituted under Rule 4(4) of the “Rules”. Rule 4(5) of the “Rules” provides that the committee shall approve the name of advocate to be appointed as legal advisor and the remuneration to be paid to him and the said approved advocate by the committee is appointed by the local government concerned on the terms and conditions fixed by the Government.

10. It is admitted by the Respondent No.2 while appearing before this Court on 01.03.2023 and in the report and parawise comments as well that appointments of the Petitioners were ended on 31.05.2019 and same were not formally extended by the Authority and this fact has been affirmed by Malik Amjad Ali, Additional Advocate General. The said Respondent has appended letters dated 19.12.2019, 21.03.2020 on the basis of which the Petitioners are claiming to be the appointees. Bare perusal of these letters reveals that the Respondent No.2 advertised the posts of legal advisors and in response thereto twelve applications were received out of which only three candidates namely Masood Ahmad Abbasi (Petitioner No.2), Raja Imran Khalil and Imran Khan were recommended by the Respondent No.2. Likewise, in letter dated 21.03.2020, an advice was sought from the Secretary LG&CD Department regarding appointment of legal advisor namely Mr. Jawad Asghar, Advocate and it was admitted that the appointment letter of said legal advisor was issued by the Secretary, Government of Punjab, Law & Parliamentary Department, Lahore. Importantly, an appointment letter is an official

communication between an employer and a candidate who is selected for a job position. It is a legal document that confirms the appointment of the candidate for a particular job opportunity containing various details about designation, remuneration, incentive structure, joining date, and other terms and conditions which is generally sent after the acceptance of the offer letter by the candidate. It legally binds the final communication between the organization and employee and confirms the offer made by the employer that is accepted by the candidate. In the case in hand, the Respondent No.2 invited applications in terms of Rule 4(1) of the “Rules” and forwarded the same alongwith recommendations as per Rule 4(3) of the “Rules” but these recommendations were required to be placed before the Selection Committee in terms of Rule 4(4) of the Rules for approval as per Rule 4(5) of the “Rules”. Pertinently, the Respondent No.2/MC, Murree appointed the Petitioners at his own without following the procedure provided under the “Rules” and getting approval from the Competent Authority while he was well aware of the instructions contained in letter dated 23.07.2016 followed by instructions dated 22.05.2018 issued by the Secretary to Government of Punjab, Law and Parliamentary Department. The relevant clause of the abovementioned instructions is reproduced as under:

- (d) No department/body shall engage a private advocate in anticipation of the approval under the aforesaid circular letters, and, no request for ex post facto approval will be entertained or granted. The office who appoints any private advocate in violation of the said instructions shall be responsible to pay the professional fee from his own pocket and may also be liable to disciplinary action in accordance with law.

Underlying for emphases

11. Undoubtedly, the Respondent No.2 while appearing before the Court on 01.03.2023 admitted that the Petitioners were appointed and they continued as legal advisor of the Municipality till October, 2022 but this fact was refuted by Dr. Irshad Ahmad, Secretary Local

Government and Community Development Department who appeared before the Court on 07.03.2023 and stated that the Petitioners were never appointed by the Ministry of Law and Parliamentary Affairs Department as was required under the relevant rules as the regular incumbents (three in numbers) were already appointed through the process of law. So far as the letters/correspondence annexed by the Respondent No.2 with report and paraiwise comments, it is his stance that he wrote numerous letters to the concerned authority for approval of appointment as well as payment of fee but all these letters were issued for *ex post facto* approval which under the above referred instructions cannot be given, and same is also evident from the statement dated 27.03.2023 made by Mr. Ahmad Raza Sarwar, Additional Chief Secretary, Punjab who stated that Law Ministry cannot give any *ex post facto* sanction for the release of amount in question in favour of the Petitioners and the matter in issue falls within the domain of Administrator concerned. Moreover, the Petitioners have neither brought on record anything to show that at the time of applying for the post of legal advisors, they forwarded their applications to the Law & Parliamentary Affairs Department in terms of Rule 4(2) of the “Rules” nor valid appointment letters duly approved and issued by the Competent Authority has been placed on record hence, they have no locus standi to institute this petition. Furthermore, the Respondent No.2 has neither annexed documents in terms of Rule 4(3) of the “Rules” to show that the applications of the Petitioners were forwarded to the Law & Parliamentary Affairs Department nor the case of the Petitioners for appointment as legal advisors was ever placed before the Selection Committee in terms of Rule 4(3) of the “Rules”.

12. There is no denying that Article 4 of the “*Constitution*” guarantees right of individuals to be dealt with in accordance with law, but at the same pedestal Article 5 (2) thereof requires obedience to the “*Constitution*” and law is the inviolable obligation of every citizen. Record reveals that the Petitioners were not ever appointed in

due course of law and the letters based by them to establish their alleged appointment at the most may be taken up as only nomination/recommendation for relevant job and it has already been held in “MUHAMMAD AKBAR versus FEDERATION OF PAKISTAN, Ministry of Law and Justice (Justice Division), Islamabad through Secretary and another” (1996 SCMR 1017) that *“The Government is, therefore, not bound to accept the recommendation nor a vested right is created in favour of the petitioner merely because his name was recommended for consideration for appointment against the post”*. Further, it is later held in “NAZIR A. KHAN SWATI versus MINISTRY OF LAW & JUSTICE and others” (1998 PLC (C.S) 372) that *“mere nomination of the petitioner for the appointment against the advertised post did not create any vested right in the petitioner”*.

13. It has already been held by the Supreme Court of Pakistan in “HADAYAT ULLAH and others versus FEDERATION OF PAKISTAN and others” (2022 SCMR 1991) that *“The appointments to the posts or services in any organ or instrumentality of the State (such as, corporations, organizations, or bodies established under law or controlled by Government) that do not fall within the 'service of Pakistan', as defined in Article 260 of the Constitution, are covered under the wide import and amplitude of 'equality' guaranteed under Article 25 of the Constitution. Therefore, such appointments are also to be made by providing equal opportunity to all citizens by public advertisement and ensuring maximum transparency in the selection process to dispel any impression of favouritism and nepotism”*. In peculiar circumstances of case in hand, relevant law/“Rules” themselves provide complete and exhaustive procedure for appointment in consideration and it is otherwise a settled principle of law that when a law describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all. Reliance in said regard may well be placed upon observation

in “ATTAULLAH KHAN versus ALI AZAM AFRIDI and others”
(2023 PLC (C.S) 182).

14. In view of above discussion and law laid down in the judgments of superior Court, referred to above, it is unequivocal that mere recommendation or nomination for appointment does not create any vested right until it has been done through proper procedure/mechanism provided under the law which, admittedly in the case in hand, has not been adopted therefore, the instant petition has no merit which is accordingly **dismissed**.

15. Before parting with the judgment, it is observed that the Respondent No.2 gave appointments to the Petitioners of his own without following the procedure provided under the “Rules” and the instructions issued from time to time by the competent authority, which otherwise were well within his knowledge, therefore the concerned department shall also initiate disciplinary action against the said Respondent in accordance with law.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE