

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN

MR. JUSTICE SARDAR TARIQ MASOOD

MR. JUSTICE FAISAL ARAB

CIVIL APPEALS NO. 843 TO 863 AND 969 TO 970 OF 2012 AND
CIVIL APPEALS NO. 263-L TO 265-L OF 2013 AND 984, 127-P AND
129-P TO 134-P AND 136-P TO 141-P AND 143-P TO 148-P OF
2014 AND CIVIL PETITIONS NO. 1353-L OF 2012 AND 3474 OF
2015 AND CMAs. NO. 1378 OF 2014 AND 6497 OF 2014.

(On appeal against the judgments dated 23.04.2012, 2.4.2014, 29.5.2012, 12.06.2012, 15.5.2012, 25.4.2013, 30.05.2013, 11.9.2013, 16.9.2013, 27.6.2013, 14.5.2014, 10.6.2014, 15.5.2014, 3.6.2014 and 23.9.2015 of the Lahore High Court, Lahore, Lahore High Court, Rawalpindi Bench, Peshawar High Court, Peshawar and High Court of Balochistan Quetta in W. P. Nos. 3002, 3519/ 2010, 256/11, ICA.87/10, WP. 4208/10, 5468/10, ICAs. 232/11, 258/10, WPs. 1229/09, 23067/09, 2130/10, 15724/10, 3751/10, 3752/10, 21755/10, 23465/10, ICAs. 87/2010, 248/10, 249/10, 257/10, WPs. 9878/10, 15813/10, 15918/10, 16844/10, 15638/11, ICAs. 233/11, 234/11, WPs. 4146/10, 3173-P/12, 3172-P/12, 3174-P/12, 3239-P/12, 3240-P/12, 1297-P/12, 3032-P/12, 3283-P/13, 3321-P/12, 3362-P/12, 3378-P/12, 122-P/13, 1279-P/12, 1499-P/12, 1349-P/14, 1746-P/14, 207-M-P/14, 1393/14 and CP. 811/2015).

DCO/Chairman District Recruitment Committee,
Khanewal and others.

EDO (Education), Lodhran/Member Recruitment Committee,
Lodhran and others.

DCO/Chairman District Recruitment Committee, Sahiwal and others.

DCO/Chairman District Recruitment Committee, Sahiwal and others.

DCO/Chairman District Recruitment Committee,
Faisalabad and others.

DCO/Chairman District Recruitment Committee,
Hafiz Abad and others.

DCO/Chairman District Recruitment Committee, Hafizabad and others.

DCO/Chairman District Recruitment Committee, Bahakkar and others.

Secretary Govt. of the Punjab Education Deptt., Lahore, etc.

DCO/Chairman District Recruitment Committee,
Nankana Sahib and others.

Province of the Punjab through Secretary (Schools) and others.

Govt. of the Punjab thr. Secy. Education, Lahore and others.

EDO (Education) Member Executive Committee, Lodhran and others.

EDO (Education) Member Executive Committee, Lodhran and others.

EDO (Education), Multan and others.

EDO (Education), Multan and others.

DCO Jhang and others.

Govt. of Punjab thr. Secy Education, Lahore and others.

Executive District Officer (Education) Khanewal and others.

DCO/Chairman District Recruitment Committee, Bhakkar and others.

DCO/Chairman District Recruitment Committee, Bhakkar and others.

DCO/Chairman District Recruitment Committee, Bhakkar and others.

EDO (Education) Chakwal/Member Recruitment Committee, etc.

EDO (Education) Chakwal/Member Recruitment Committee, etc.

The Secy. Govt. of Punjab Education Department, Punjab, Lahore, etc.

District Co-ordination Officer Bahawalnagar and another.

District Co-ordination Officer Bahawalnagar and another.

District Co-ordination Officer Bahawalnagar and another.

District Co-ordination Officer Bahawalnagar and another.

Secy. School Education Department, Govt. of Punjab Lahore, etc.

District Education Officer (Male) Charsadda and others.

District Education Officer (Male) Peshawar and others.

District Education Officer (Male) Peshawar and others.

District Education Officer (Male) Peshawar and others.

District Education Officer (Male) Peshawar and others.

Provincial Govt. thr. Secy (E&S) Education, Peshawar, etc.

Director Education FATA, Peshawar and others.

Director Education FATA, Peshawar and others.

Director Education FATA, Peshawar and others.

Additional Chief Secretary FATA, Peshawar and others.

Additional Chief Secretary FATA, Peshawar and others.

Secretary to Govt. of KPK (E&S) Education Peshawar and others.

Govt. of KPK thr. Chief Secretary, Peshawar and others.

District Education Officer, Peshawar and others.

District Education Officer, Peshawar and others.

District Education Officer, (Male) Dir Lower and others.

Govt. of KPK thr. Chief Secretary, Peshawar and others.

Muhammad Siddique and others.

...Appellant(s)/Petitioner

VERSUS

Kishwar Sultana and others.

Mst. Imtiaz Khadim and others.

Nasim Akhtar and others.

Muhammad Ejaz Kamran and another.

Mst. Shazia Ambreen and others.

Nazra Batool and others.

Nazra Batool and others.

Samina Bibi and others.

Muhammad Asghar and others.

Mst. Azra Bano and others.

Asif Ali and others.

Saira Younas and others.

Mst. Sanobar Tabassum and others.

Sheikh Irfan Ahmad and others.

Nasir Abbas and others.

Muhammad Imran Hussain and others.

Nasim Akhter.

Ayisha Mumtaz and others.

Mst. Zubaida Nazli and others.

Abdul Ghaffar Noon and others.

Saeeda Malik and others.

Mehboob Alam Khan and others.

Sajid Mumtaz and others.

Ataf Hussain and others.

Mst. Yasmeen Tahira and others.

Adeela Afzal.

Adeela Afzal.

Atta-ul-Ghafoor, etc.

Talib Hussain, etc.

Samina Sikandar and another.

Muslah ud Din and others.

Raees Khan.

Abid Hussain and another.

Inayatullah.

Saeedullah.

Contre Research of Education thr. Zafar Iqbal.

Shabana and others.

Mst. Naheeda Nizam.

Shakirullah and others.

Tariq Aziz and others.

Rifaqat Khan and others.

Mst. Shakeela Naz and others.

Mst. Neelam Waris.

Syed Ibne Abbas.

Iftikhar Ali and others.

The Secretary, Govt. of Balochistan, Education Department,
Quetta and others.

...Respondent(s)

For the Appellant(s): Mr. Mudassar Khalid Abbasi, AAG, Pb.

 Mr. Waqar Ahmed Khan, Addl. A. G. KPK.

 Majeedullah, Legal Representative DE(E&SE)
Peshawar.

 Fazl-e-Khaliq, Legal Representative DEO (Male)
Sawabi.

For the respondents : Mr. Ijaz Anwar, ASC.
 (in CAs. 145-P to 147-P/14 and 128-P/14).

 Molvi Ejaz-ul-Haq, ASC.
 (in CAs.843, 844, 850, 854, 969, 856 and
859/2012)

 Syed Wasat-ul-Hassan Shah, ASC
 (in CA. 843/12)

 Mr. Abdul Rehman Siddiqui, ASC
 (in CMAs.1490 and 6497/14)

 Mr. M. Siddique Khan Baloch, ASC
 (in CMAs. 2366-2367/16)

 Rehmanullah, In person.
 Farooq Ahmed, In person.
 Musharaf Shah, In person.
 M. Ishaq, In person.
 M. Zia-ul-Haq, In person.
 (in CA. 145-P/2014).

On Court's Notice:

Mr. Sohail Ahmed, DAG.

Date of Hearing: 08.04.2016 (Judgment Reserved)

J U D G M E N T

EJAZ AFZAL KHAN, J.- These appeals with the leave of the Court have arisen out of the judgments dated 23.04.2012, 29.5.2012, 12.06.2012, 15.5.2012, 25.4.2013, 30.05.2013, 11.9.2013, 16.9.2013, 27.6.2013, 14.5.2014, 10.6.2014, 15.5.2014, 3.6.2014 and 02.04.2014 of the Lahore High Court, Lahore, Lahore High Court, Rawalpindi Bench, Rawalpindi and Peshawar High Court, Peshawar whereby they dismissed the Intra Court Appeals and Writ Petitions filed by the appellants. Civil Petition No. 3774 of 2015 has arisen out of the judgment dated 23.09.2015 of the High Court of Balochistan, Quetta whereby the petition filed by the petitioner was dismissed in limine.

2. As the points urged in these appeals as well as petitions are identical, we dispose them of by this single judgment.

3. The learned AAG, Punjab appearing on behalf of the appellants contended that Skill Development Council was established under the National Training Ordinance, 1980 and the rules made thereunder, for providing technical and vocational training and not for awarding any certificate or diploma in the fields of art, craft, education or physical education; and that the Skill Development Council overstepped its limits by offering courses in the fields mentioned above and issuing certificates or diplomas therein. He next contended that since the certificates or diplomas issued by the Skill Development Council do not conform to the course, curriculum or training required for art, craft, education or physical education, any appointment made on the basis of such certificate or diploma being against the provisions of the Ordinance

and rules made thereunder is liable to be annulled. Even the National Training Board, the learned AAG maintained, constituted under the Ordinance cannot issue any directive to protect any such diploma or certificate when its role in the whole affair is recommendatory. The learned AAG to support his contention also placed reliance on the letter No: SO(SE-IV)4-461/09 dated 16.08.2010 issued by the Secretary Schools Education Department, Govt. of Punjab.

4. The learned Additional A.G. KPK endorsed the arguments of learned AAG, Punjab.

5. Learned ASC appearing on behalf of respondents contended that where respondents have qualified diplomas or certificates under the aegis of Skill Development Council in the fields of art, craft, education or physical education, their appointments were rightly made on the basis of such diplomas and certificates in various departments of Government, therefore, no exception could be taken to their appointments at this stage. Such appointments, the learned ASC contended, cannot be undone even under the doctrine of *locus poententia*, when not only decisive steps have been taken, but valuable rights have also accrued to the respondents. Learned ASC went on to argue that many respondents whose appointments have been made on the basis of diplomas or certificates issued by the Skill Development Council, also possessed requisite qualifications at the time of their appointments and many acquired it after their appointments, therefore, their appointments cannot be undone, even if it is assumed that the diplomas or certificates issued by the Council have no statutory sanction.

6. We have gone through the record carefully and considered the submissions of learned AAG Punjab, learned Addl. AG, KPK as well as learned ASCs for the respondents.

7. What is National Training Board? What is Skill Development Council? What is vocational training? Answer to these questions and allied thereto are fully answered by Section 2 of the Ordinance which reads as under:-

"Definitions. – In this Ordinance, unless there is anything repugnant in the subject or context. –

- a) *"establishment" means any office, firm, industrial unit, undertaking, shop or premises in which workmen are employed for the purpose of carrying on any industry;*
- b) *"industry" means any business, trade, manufacture, calling, service, employment or occupation;*
- c) *"institution" means a school, college or institute, by whatever name called, imparting vocational training;*
- d) *"National Board" means the National Training Board constituted under section 3 ;*
- da) *"National Trade Testing Board" means National Trade Testing Board constituted by the National Training Board under sub-section (2) of section 4 ;*
- e) *"prescribed" means prescribed by regulations made under this Ordinance;*
- f) *"Provincial Board" means a Provincial Training Boards constituted under sub-section (2) of section 5;*

- fa) *“Provincial Trade Testing Board” means provincial Trade Testing Board constituted by the Provincial Training Board;*
- fb) *“Skill Develop Council” means the Skill Development Council, constituted by the National Training Board under sub-section (2) of section 4;*
- fc) *“Technical Education and Vocational Training Authority” means the Technical Education and Vocational Training Authority constituted by the Provincial Government;*
- g) *“Vocational training” means training in any physical and professional skill, trade, calling or occupation”.*

8. What are the functions of National Training Board are enumerated in Section 4 of the Ordinance which reads as under :-

“4. Functions of the National Board.—(1) The National Board shall --

- i) collaborate with the source of labour market information as determined from a survey of establishments with a view to assessing on a continuing basis existing and future training needs, both local and foreign;*
- ii) systematically study existing training programmes with respect to their relevance, duration and size and recommend such measures to be taken as seem desirable to improve the quality of training;*
- iii) establish criteria for evaluating and determining training programmes and facilities;*
- iv) develop training syllable and establish and specify national training standards and trade testing rules to ensure horizontal and vertical mobility;*

- v) *supervise such training programmes are funded from the Federal budget;*
- vi) *prepare national training plan, programs and projects in view of local as well as foreign requirements and monitor their implementation;*
- vii) *recommend to the Federal Government means for financing training programmes;*
- viii) *promote and finance training of establishment based or institution-based training officials and instructor's;*
- ix) *organize and conduct seminars and work-shops for various types of personnel associated with training activities';*
- x) *collect and compile statistics related to training;*
- xi) *co-ordinate the working of Provincial Boards and Technical Education and Vocational Training Authority;*
- xii) *review existing and propose legislation on vocational training and recommend necessary legislative provisions with the concurrence of the Provincial Boards and Technical Education and Vocational Training Authority;*
- xiii) *issue to establishments, Provincial Boards, Technical Education and Vocational Training Authority or institutions for compliance directives within the framework of the approved plans and projects;*
- xiiia) *assist and establish institutions in collaboration with private sector to promote technical, vocational and in-plant training and skill development;*

- xiiib) undertake registration and licensing of all establishment, organizations or institutions which are offering or providing vocational training;*
- xiiic) develop system and conduct trade testing and certification of skilled workers who have received vocational training through any source or acquired skills through experience or informal system;*
- xiv) do all other acts necessary for carrying out the purposes of this Ordinance;*

(2) The National Board may set up such administrative and technical committees, skill development councils, authorities, trade testing boards or other such bodies for the efficient performance of its functions, and entrust to such committees, skill development councils, authorities, trade testing boards or other such bodies such functions as it may consider necessary."

9. Functions of Skill Development Council have been dealt with by Rule 6 of the Rules of Business of Skill Development Council, 2013 which reads as under :-

"6. Functions of the Council: The Council will perform following functions :

- a) Provide a productive link between employers, employees, training providers and trainees;*
- b) identify training needs of the geographical area, analyze and orientalize training needs and arrange training, retraining as well as skill up-gradation through contracted arrangement with public and private training institutes/establishments and in-plant training mode.*
- c) Develop National Vocational Qualifications for prescribed levels from pre to post education of*

technical/professional skills and knowledge based on employment and industry/market need analysis and submits for approval of NTB.

- d) Assure quality training for youth and already employed persons by preparing courses, setting standards, developing Quality Management System and final trade testing and certification, Trade Testing and certification up to six months duration will be carried out by SDC with the concurrence of National Training Board and the courses more than six months duration will be conducted by the NTB/PTB.*
- e) Develop the potential of work-force by increasing their standard of skill and basic education so as to increase productivity, quality of product and to meet the needs of both domestic and international market.*
- f) Motivate employers to operate as investor in human capital, so as to encourage organizations to invest in people through participation in skill development programmes besides arranging skill competitions for enhancing the popularity of vocational training in all areas and improving proficiency of skilled workers as well as promote self employment by providing loan to winners.*
- g) Support informal sector i.e. Ustad-Shagird system through provision of training for skill enhancement and trade testing. Provide skill training and structured education to working children at small garages and workshops to protect child Labour and bring them into main stream of vocational education and training.*
- h) Develop and implement special training programme for women, children of industrial workers and under privileged youth to prepare*

them for gainful employment or to engage in some income generating activities to raise their standard of living and social up lifting through self employment.

- i) Develop and arrange specialized training programme in information Technology for un-employed educated youth (Matriculate-Graduate) to provide them maximum employment opportunities locally and abroad.*
- j) Introduction and promotion of distance learning, computer based training and new training technologies including video conferencing through support and affiliation with international institutions/Universities involving local institutions.*
- k) Customized training programme for the rehabilitation of expatriates and employers being declared surplus due to privatization as well as downsizing programmes of the Government.*
- l) Any other programme and activity to promote technical vocational education and training in the country with the approval of NTB."*

10. How the Council shall conduct its business or what is procedure therefor has been chartered out in Rule 7 of the above mentioned rules which reads as under :-

"7. Procedure to Conduct Business :

- a) The SDCs shall set its targets regarding number of trainees to be trained in various Vocational Qualifications from proficiency and competency based certificate and diploma level for better employment opportunities to the trainees.*

- b) *The SDCs shall identify the training need through surveys, direct interaction with employer associations/individual employers and keeping in view the local and international market trend.*
- c) *The SDCs shall design and Develop the training programmes through technical committees comprised of representatives from business organizations and training providers and will arrange the training of educated youth and already employed at various public and private training institutes including industry individually or with group of institutes on contractual basis.*
- d) *The Selection of the Institute/Training Providers will be made keeping in view the facilities available at the institute(s) and the contents of the course.*
- e) *The Council will recommend registration of public and private institutes including industry based training institutes to NTB/PTB as covered under National Training Ordinance 2002.*
- f) *Training programme will be announced in the newspapers and selection of trainees will be made by the SDCs on merit with the help of participating institutes.*
- g) *The SDC shall also register and impart training to school leavers Matric dropouts, educated and uneducated unemployed, child trainee and other workers in the formal and informal sectors for the purpose of imparting training and skill up grading in all programmes sponsored by the Government or any other donor agency or body.*
- h) *The SDC will charge at an average 10% service charges from the training institutes for each training programme to cover the cost of*

advertisement, brochure, registration and certification and other expenses of the Council. The rate of service charges may be reduced or increased keeping in view the nature and potential of the training programme. However, the fee structure should be on cost recovery basis.

- i) The Council will develop a mechanism to provide financial assistance in shape of repayable loan, free sponsorship to the deserving trainees/government servants and their employees but number of such cases would depend on the availability of funds.*
- j) The Council may issue to the trainee a trainee card which may be used as the basis for reimbursing the training cost to the training institution or employer where training is to be imparted. A system of training credit for crediting training cost to the training provider may be established.*
- k) The Council will draw its own action plan for attaining the objectives and making the Council to operate on a self financing basis with the approval of NTB.*
- l) All SDCs will forward the following to NTB.*
 - a) Annual Training Plan by 1st Week of December every year.*
 - b) Six month progress report and expenditure statement.*
 - c) Yearly progress report.*
- m) The Chairman shall appoint a Director SDC, subject to approval of the Council, who will be responsible for administering and implementing the decisions of the Council and who will be fully accountable to the Council for all his actions. The Director will also act as Secretary of the Council.*

- n) *For smooth and efficient administration and implementation of the affairs of the Council, the Chairman will contract tasks and assignments.*
- o) *The Council will constitute various committees for the smooth functioning of the work.*
- p) *The Chairman will be the ex-officio Chairman of all committees formed by the Council.*
- q) *The Director will be the ex-officio Secretary of all committees constituted by the Council.*
- r) *The SDC may delegate any or all of its power to the Chairman, or any member or committee(s) appointed by it subject to such conditions as it may deem fit.*
- s) *The Chairman shall use the powers of the council in its absence or whenever the council is not in session subject to confirmation of all the decisions taken in exercise of the powers under this provision, of the Council in its next meeting."*

11. Letter dated 16.08.2010 of the Secretary Schools Education Department, Govt. of Punjab is also relevant which reads as under :-

"Govt. of the Pakistan, Ministry of Labour and Manpower National Training Bureau, Islamabad vide No.1(57)NTB-TT&C/2009/66 dated 2.6.2010 has replied that 'Skill Development Councils (SDCs) were established and their Rules of Business were framed by the Ministry vide No.3/2/2001-TT-II dated 17.7.2002. These Rules of Business authorize SDCs to conduct courses and issue certificate for only 06 months duration with the concurrence of National Training Board. Diplomas of Art and Craft, Oriental Teacher and Physical Education are not including in the list

provided by the Govt. of Pakistan, Ministry of Labour and Manpower, National Training Bureau, Islamabad (list attached). Therefore, awarding of such diplomas by SDCs is complete violation of Rules of Business of SDCs."

12. A careful reading of the above quoted provisions of the Ordinance and the Rules would reveal that domain of the National Training Board and Skill Development Council is clearly demarcated by the provisions of the Ordinance and Rules made thereunder. The purpose behind the establishment of Board is to provide technical education and vocational training in any physical and professional skill, trade, calling or occupation. The Board does not do all this in a vacuum. It makes a survey and systematic study of the market to assess the existing and future training needs, both at local and foreign level and establishes criteria for evaluating and determining training programmes and facilities. After doing so, it develops syllabi, establishes and specifies national training standards and trade testing rules to ensure horizontal and vertical mobility, develops system and conducts trade testing and certification of skilled workers who have received vocational training through any source or acquired skills through experience and informal system, as is provided in Section 4 of the Ordinance. The Skill Development Council as the very name suggests focuses on labour, market, information and launches technical education and vocational training in any physical and professional skill, trade, calling or occupation so that the people who cannot acquire higher or specialized education may get opportunities of employment, according to the needs and requirements of the market. Art, craft, education and physical

education are well beyond the domain of the Council and capacity of its faculty. It thus could not launch programmes in any of these fields. The Board and the Council travelled beyond what they were established for by launching programmes falling exclusively in the domain of art, craft, education or physical education. The letter reproduced above also clearly demarcated the domain of the Board and the Council. In spite of that the Council issued certificates and diplomas in such fields, even in respect of the courses of one year duration. Another amazing and intriguing fact is that appointments have been made on the basis of such diplomas and certificates in the educational institutions without caring to know that the Council does not have the power and competence to launch such programmes, courses and curriculums and issue certificates and diplomas in this behalf. The education being a specialized field having many dimensions in today's context could not thus be left to the faculty which did not have specialized qualification and training therefor. Persons on the peak of Education Department went into deep slumber. Even if a few of them were awake, they watched the sight and spectacle with hands folded and legs crossed. By the time they realized and raised hue and cry, the water had gone above their heads. Yes, it is never too late to mend but what to do! Retain them, is the answer of the protagonists of *status quo*. Don't worsen the bad if correction is possible, is the answer given by those who are guided by prudent and progressive outlook. We deliberated over the pros and cons of the answers thus given. The solution we have come out with is simple! Let them continue, if they besides the certificates or diplomas, issued by the Council, possess the requisite or equivalent

qualifications. Let those also continue, who improved their qualifications even thereafter. Those who could not improve their qualification up till now should improve it within a period of one year, which would be reckoned from the date of commencement of the next available academic session of the respective programme. We, therefore, allow the appeals, convert the petitions into appeals and allow them in the terms mentioned above.

Judge

Judge

Judge

Announced in open Court at Islamabad on **28.04.2016**.

Judge

'Not approved for reporting'
M. Azhar Malik