

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ

MR. JUSTICE FAISAL ARAB

MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO.216-Q of 2017

(On appeal against the judgment dated 08.11.2017
passed by the High Court of Balochistan, Quetta in
Constitution Petition No.721 of 2015.)

Jahanzaib Malik

... Petitioner

VERSUS

Balochistan Public Procurement Regulatory Authority, through its
Chairman Board of Directors and others

... Respondents

For the petitioner: Mr. Tariq Mehmood, Sr. ASC.

For respondents No.1&2: Mr. Ayaz Swati, Addl. A.G.

For respondent No.3: N.R. (Not represented)

Date of hearing: 04.01.2018

ORDER

IJAZ UL AHSAN, J. – The petitioner seeks leave to appeal against a judgment of the Division Bench of the High Court of Balochistan dated 08.11.2017. Through the impugned judgment, Constitutional Petition No.721 of 2015 filed by Respondent No.3 was partly allowed and the order dated 08.04.2015 and notification dated 29.08.2017 issued by Respondent Nos. 1 and 2 were set aside.

2. The brief facts of the case are that Respondent No.3 Balochistan Public Procurement Regulatory Authority (“BPPRA”) invited applications for appointment against a post of Director

(Monitoring and Evaluation). The qualification for the said post as advertised, was Masters Degree in Social Sciences and 5 years experience in the relevant field. The last date for submission of applications was 28.08.2014. The petitioner and Respondent No.3 applied for the said post. After a test conducted by NTS and interviews taken by a Committee of senior officers, respondent No.3 was appointed against the said post through a contract dated 08.04.2015, for a period of 2 years. On expiry of the said 2 years period, during pendency of Constitutional Petition before the High Court, the petitioner was granted extension for another period of 2 years from 08.04.2017 to 08.04.2019.

3. Respondent No.3 who was also one of the applicants was not appointed. He challenged the appointment of the petitioner before the High Court on the ground that he neither possessed the requisite qualification nor experience in the relevant field on the last date for submission of applications i.e. 28.08.2014. Therefore he was not lawfully appointed. The learned High Court came to the conclusion that the petitioner did not possess the requisite educational qualification when he was appointed against the said post. Further, his appointment could not validly be extended in view of the fact that the extension notification was issued in continuation of the earlier notification. on the basis of which the petitioner had been appointed. Despite the fact that Respondent No.3 did not challenge the extension notification either by way of amendment or through a fresh constitution petition, the High

Court proceeded to take notice of such development and set aside the extension order also. Hence this petition.

4. The learned counsel for the petitioner submits that the qualification for appointment to the post of Director (Monitoring and Evaluation) was a Masters Degree in Social Sciences or equivalent and 5 years experience in the relevant field. He submits that the petitioner possesses a degree of Masters of Science in Electronic Business Management from the University of Warwick, UK. It is recognized by the Higher Education Commission of Pakistan as equivalent to corresponding Masters of Science Degree involving 16 years of schooling in the relevant field from Pakistan. He further submits that the petitioner also had a Masters degree in Business Administration (MBA) from the Institute of Business Administration (IBA), Karachi. He had completed the course work in 2014, however the actual degree was issued on 7th of March, 2015 which was before the employment contract dated 08.04.2015 was issued in his favour. That being the case, the High Court erred in fact in coming to the conclusion that the petitioner was not qualified on the date of his appointment. He further submits that the contract of the petitioner was validly extended with effect from 08.04.2017 by the Competent Authority as per applicable rules on the basis of recommendations made by a Selection Committee, considering very good performance evaluation reports earned by the petitioner from 2015 to 2017.

5. Notice had been issued to Respondent No.3. Despite service he has not entered appearance. He is therefore, proceeded

against ex-parte. The learned Additional Advocate General, Balochistan has supported the arguments advanced by the learned counsel for petitioner.

6. We have heard the learned counsel for the petitioner and carefully examined the record. The petitioner had applied for the post of Director (Monitoring and Evaluation) in BPPRA. The last date for submission of applications was 28.08.2014. At the time when the petitioner filed his application, he mentioned his qualification as holding a Masters Degree in Electronic Business Management from the University of Warwick, UK and an MBA degree from Institute of Business Administration, Karachi. The year of completion of degree was mentioned as 2014.

7. There is no denial of the fact that the petitioner was at the top of the list on the basis of his performance in the test and interview. Further, he was selected on the basis of his MBA degree. The documents examined by us also indicate that the petitioner has completed his degree in January, 2014 with an cumulative Grade Point Average ("GPA") of 3.19. However, the degree was formally issued on 7th of March, 2015 for reasons beyond the control of the petitioner. The degree itself shows that the petitioner had successfully completed the requisite course work and examination in the academic year 2014. The transcript issued by the Institute of Business Administration, Karachi also verifies the fact that the petitioner had completed his degree in January, 2014. That being the case, Respondents No.1 and 2 were justified in

considering the petitioner as duly qualified on the basis of his MBA degree from IBA.

8. The fact that the degree was formally issued in year 2015 is not, in the facts and circumstances of the present case of much significance. The degree itself shows that the petitioner had successfully completed the requisite course work and examination in the academic year 2014. This is further substantiated by the Transcript of Credit issued by the Institute of Business Administration, Karachi which shows that the petitioner had completed his degree in January, 2014 with an cumulative GPA of 3.19.

9. In addition, we notice that the 2 years contract of the petitioner expired on 08.04.2015. In consequence of which the Constitutional Petition as originally filed was rendered infructuous. The petitioner was granted a further extension of 2 years vide office order dated 29th August, 2017 with effect from 08.04.2017. The said office order was not challenged by Respondent No.3 either through amendment in the Constitutional Petition or by filing a fresh petition. By taking Suo Moto Notice of such extension, the High Court appears to have exceeded its jurisdiction for reasons which are not legally sustainable. In addition, through the office order dated 29th August, 2017, six other officials of Balochistan Public Procurement Regulatory Authority had been granted two years extension of service. Such employees were neither before the High Court nor were their appointments or reappointment orders under challenge. Yet without hearing the said persons or

considering their cases, the High Court proceeded to set aside their extensions also, by setting aside office order dated 29.08.2017. This is an additional ground for our inability to uphold the judgment of the High Court.

10. It may be pointed out that the only reason assigned by the High Court for setting aside the extension order dated 29th August, 2017 is that it is in continuation of the original appointment order which had been set aside. We have already held that the original appointment order was validly issued. Therefore the reasons recorded by the High Court for setting aside the extension order automatically pale into insignificance.

11. For reasons recorded above, we convert this petition into an appeal and allow the same. The impugned judgment of the High Court is accordingly set aside.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
4th January, 2018
Naveed Ahmad/*

APPROVED FOR REPORTING