

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Maqbool Baqar
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Petition No.2119 of 2018

*(Against judgment dated 02.04.2018 passed
by the Islamabad High Court Islamabad in ICA
No.179-W/2012)*

Dr. Shamim Tariq

...Petitioner(s)

Versus

***International Islamic University, Islamabad
through its President & others***

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Shoaib Shaheen,
ASC
Mr. Ahmad Nawaz Chaudhry, AOR

For Respondent No.1: Mr. Rehan-ud-Din Khan, ASC

For Respondent No.4: Mr. Babar Awan, Sr.ASC
Syed Razaqat Hussain Shah, AOR

Date of hearing: 12.2.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.-Dr. Shamim Tariq, petitioner herein, has a turbulent academic career in the Faculty of the International Islamic University, an institution chartered by Ordinance No.XXX of 1985, hereinafter referred to as the University; credited with a Doctorate in Urdu Literature, she was first appointed, under Tenure Track System, hereinafter referred to as the T.T.S, as an Assistant Professor (Urdu) in BPS-19, way back on 13.6.2009; her services were terminated on 29.9.2010. A Constitutional Petition i.e. W.P. No.3138 of 2010, disputing termination was withdrawn by her on 20.1.2010, statedly in lieu of assurance pledged by the University to take her on board for consideration in future appointment and it is in this backdrop that

she was appointed as Lecturer (Urdu) in BPS-18, IIU on 8.2.2011, on *ad hoc* basis; after availing extension for further six months, she was still on job when the University advertised on 19.6.2011 various academic posts that included Assistant Professor (Urdu) in BPS-19; in the meanwhile she was terminated once again on 5.10.2011. The petitioner applied once again, however, failed to join five short listed candidates, namely, Dr. Robina Shahin, Rashida Qazi, Dr. Fareeha Nighat, Farhat Jabeen Virk and Sadia Tahir; successive droppage on account of previous adverse evaluation under the T.T.S. was cited as the reason behind her exclusion. From amongst the short listed candidates, Dr. Sadia Tahir, respondent secured the appointment. The petitioner resorted to law once again through W.P. No.18 of 2012; she prayed for a declaration against the respondent as well as a direction for her appointment as Assistant Professor (Urdu). A learned Judge-in-Chamber of Islamabad High Court vide judgment dated 6.4.2012 set aside respondent's appointment while directing the University to draw up the process afresh so as to consider the petitioner. Dissatisfied, the University as well as the respondent preferred an Intra Court Appeal i.e. I.C.A. No.179-W/2012; a learned Division Bench vide order dated 14.5.2012 dismissed the Intra Court Appeal *in limine* on the ground of its being non-maintainable in absence of statutory rules; this Court, however, vide judgment dated 15.2.2013 set aside the decision and remanded the case in the following terms:-

"We have noted that Respondent No.1 has taken as many as 13 grounds in the memorandum of appeal and the same had not been adverted to. Even otherwise, it appears from the impugned judgment that other grounds were taken up but *"main emphasis of the learned counsel for the appellants was on the maintainability of writ petition due to non-statutory rules."* This being the position, we convert this petition into appeal and allow the same. The impugned judgment is set aside and the case is remanded to the High Court for deciding afresh Intra Court Appeal No.179-W of 2012 on merits, which shall be deemed to be pending."

The Intra Court Appeal came up for hearing before a Larger Bench of the Islamabad High Court; it was clubbed with cases wherein the Court examined the status of the Rules adopted by the University; quest by the University met with no better fate; the

battle continued to rage once again before this Court in Civil Petition No.2430 of 2015, resulting into another remand order on 7.12.2015. It is in pursuance thereto that the judgment dated 6.4.2012 by the learned Judge-in-Chamber was finally set aside, in consequence whereof, appointment of the respondent was finally affirmed, vide judgment dated 02.04.2018, *vires* whereof are being assailed on grounds more than one.

2. Learned counsel for the petitioner contends that notwithstanding petitioner's eligibility/qualification, she was excluded from the array of short listed candidates for reasons far from being fair or *bona fide*; according to him, the entire exercise was carried out for extraneous purposes to accommodate the respondent who was not even qualified for the post on the relevant date, as she had yet to defend her dissertation/thesis, a mandatory requirement for the position advertised; the bottom line is that entire process of appointment smacked favoritism and as such was liable to be struck off; it is further argued that a direction for petitioner's appointment as Assistant Professor (Urdu) in BPS-19 would be just and fair to remedy the wrong, being endured by her since 2011. Learned counsel for respondent No.4 contends that much water has flown under the bridge since her appointment and as she has been aptly performing her duties to the satisfaction of University Authorities as well as the students, it would be most inexpedient to oust her from the job as, by now, she holds a Doctorate in Urdu Literature; according to him, she met the requirements of the job as advertised in the newspaper dead line whereof was 30th June, 2011 without there being any reference to a Ph.D. as one of the preconditions; it is next argued that the respondent after sacrificing her previous jobs secured the appointment on her own merit, being best in the lot and that the petitioner cannot step into her shoes through a *Quo Warranto*. Mr. Rehan-ud-Din Khan, ASC while faithfully defending the University, nonetheless, fairly conceded that respondent did not hold a Doctorate when applied for the job.

3. Heard. Record perused.

4. Advertisement soliciting applications reads "*Applications are invited from qualified persons for the following*

posts"; job description/qualification is further explained as follows:-

Assistant Professor BPS-19/TTS

*"Economics (Female); Comparative Religion (Male & Female); Psychology (Male); Mechanical Engineering (Male); English Linguistic & Literature (Male & Female); Mass Communications (Male); Mathematics (Male & Female); Politics & IR (Female); Software Engineering (Male & Female); Management Sciences (Male & Female); Islamic Art & Architecture (Male & Female) Hadith (Female); Tafseer (Female); Seerah & Islamic History (Female); **Urdu (Male & Female)**; Physics (Male & Female); Computer Science (Male & Female); Education (Male); Sociology (Female); History and Pakistan Studies (Male & Female); Business Communication for Management Sciences (Male & Female); Bio Informatics (Male & Female) Environmental Sciences (Male & Female); Arabic Translation (Male & Female); Law (Male & Female); Electronic Engineering (Male & Female)."*

The advertisement refers the candidates to look for required qualifications for each position provided in the University Website (www.iiu.edu.pk) and for the post of Assistant Professor in all disciplines other than Arabic & Law, the following requirements are mentioned:-

"Ph.D in the relevant field from an HEC recognized University/Institution.

OR

Master's degree (foreign) or M.S/M.Phil equivalent degrees awarded after 18 years of education as determined by the HEC in the relevant field from and HEC recognized University/Institution. Four years teaching research experience in a recognized university or a post-graduation Institution or Professional experience in the relevant field in a National or International Organization."

The candidates were required to meet the above criteria on the date of submission of their applications i.e. 30th June, 2011; the respondent did not possess the requisite qualification on the said date and as such was not qualified to be considered for the job, a position at a seat of learning, maintained by the exchequer. Respondent's acclaimed academic brilliance as well as extensive teaching experience notwithstanding, nonetheless, digression from the prescribed criteria cannot be countenanced without setting an ominous precedent, casting its fall out on other disciplines as well. Adherence to the statutory rules and procedures for selection of public jobs is the only surest method to objectively select the best out of the best from a competing lot; it is rooted into the fundamentals of equal opportunity, equal treatment and equal protections; any deviation therefrom would rock the bottom of the

Republic, resting upon equiponderance. State authority in every sphere of life is a sacred trust to be exercised fairly and justly by the functionaries to accomplish the purposes assigned to them by law; it is their bounden duty to do right to the all manner of people, without any distinction. It is most important that right people are selected for official positions to serve the Republic as it is imperative to survive and sustain into today's competitive World; deviation would be treacherously seditious. Constitutionally recognized principle of equal opportunity is strengthened by divine affirmation, upheld and followed by every modern constitution of the day.

مُرْكُمُ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا
حَكْمُوهُمْ فَيَلِينُ النَّاسُ ۖ أَنْ تُحْكَمُوا بِالْعَدْلِ
اللہ تم کو حکم دیتا ہے کہ امانت والوں کی امانتیں ان
کے حوالے کر دیا کرو اور جب لوگوں میں فیصلہ
کرنے لگو تو انصاف سے فیصلہ کیا کرو (سورۃ النساء
(۴)

As the respondent did not possess requisite qualification, the Selection Board had no occasion to consider her in preference to those who possessed the qualifications as advertised by the University itself; argument that the impugned appointment is based upon considerations other than noble does not appear to be beside the mark. Similarly, contention that the respondent acquired the requisite qualification soon after her selection and during the subsequent years, irretrievably gone by, mentored excellence and, thus, her expulsion from the service so late in the day would be an option, most inexpedient in circumstances, fails to impress us; none other than herself has to debit the blame, Selection Board being accomplice next to her. Stream of justice must run pure and clean. Consequently, respondent's appointment as Assistant Professor (Urdu) in BPS-19 is declared to have been made without lawful authority and accordingly set aside. The Selection Board shall convene at the earliest to appoint a suitable candidate from amongst the already short listed candidates, excluding both the petitioner as well as the respondent; exercise be completed within a period of three months with a dispatch of compliance report.

Petitioner's prayer for appointment as Assistant Professor (Urdu) in BPS-19 against the same post in her quest through *quo warranto* cannot be granted inasmuch as the Court can certainly

issue a direction for an incumbent's departure from the office for lack of credentials, nonetheless, conclusion of such an exercise would not, by itself, pave way to fill the vacancy merely on the ground that the competitor had no justification to hold the same and that she was better placed in circumstances. Civil Petition is disposed of in the above terms.

These are the reasons of our short order of even date, reproduced as under:-

"For the reasons to be recorded, this petition is disposed of by declaring the appointment of respondent No.4 to the post of Assistant Professor (Urdu) in the respondent No.1/University as illegal and direct the university to re-evaluate and re-interview the other candidates who were found eligible to be considered to the post in accordance with law and make the appointment accordingly. Such exercise be concluded within a period of three months from today and compliance report of the order be submitted to this Court soon thereafter."

Judge

Judge

Judge

Islamabad, the
12th February, 2020
Approved for reporting
Azmat/-