

## **JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**ICA No. 01/2022**

**Engineer Muhammad Zubair**

*Versus*

**Federation of Pakistan, etc.**

**Appellant by:** Hafiz Arfat Ahmed Ch. and Mr. Tariq Zaman Ch.,  
Advocates.

**Respondents by:** Barrister Muhammad Mumtaz Ali, AAG.  
Wajid Ali Khan (DS), Ms. Ramish Hassan Rana  
(SO) and Muhammad Arfan (SO), Establishment  
Division, Islamabad.

**Date of Decision:** 31.01.2022.

**MOHSIN AKHTAR KAYANI, J:-** Through this ICA, the appellant has assailed the order dated 09.12.2021, passed by learned Single Judge in Chambers, whereby writ petition No.4198/2021, filed by appellant was dismissed.

2. Learned counsel for the appellant contends that appellant is permanent employee of Public Procurement Regulatory Authority (PPRA) and is working as Director General (Monitoring & Evaluation) PPRA, who has applied against the advertisement dated 13.01.2020 on the website of department including OTS for the post of Deputy Secretary-General (Transport and Communications, Project and Economic Research and Statistics & CFU) at Economic Cooperation Organization (ECO) Secretariat Tehran, Iran on deputation basis, whereby he was declared successful in written examination and interview by the Special Selection Board, where-after approval of competent authority has been communicated by the Establishment Division to Ministry of Foreign Affairs vide letter dated 12.08.2021, which was further communicated to the appellant on

31.08.2021, subject to clearance of Director General Intelligence Bureau; that security clearance from Intelligence Bureau has already been completed on 21.09.2021 and in the meanwhile Ministry of Foreign Affairs has communicated the appellant qua the approval for issuance of diplomatic/official passports of appellant and his family members vide letter dated 10.09.2021, as a result whereof appellant has applied for the passport and received token on 29.09.2021 but till date passports have not been issued though Ministry of Foreign Affairs has already communicated the nomination alongwith C.V of appellant to the ECO Secretariat; that respondents are now reluctant to acknowledge the rights of appellant primarily on the ground that appellant is not a civil servant though the original scheme provided by ECO requires the appointment to the post of Deputy Secretary-General in category-I through advertisement with specific qualification and experience prescribed in Annexure-II of the Staff Regulation of the ECO Secretariat, whereby 15 years experience with government and/or private sector, academia and international organizations is required but the respondents are now applying the criteria to the extent of civil servant only which is contrary to the original scheme; that learned Single Judge in Chambers has not appreciated all these aspects and dismissed the writ petition on a different venue by declaring that recruitment process shall not be completed adverse to the State policy; that principle of *locus poenitentiae* comes into way where right has already been accrued in favour of appellant who could not be deprived from his right; that Civil Servants Act, 1973 has been amended vide order dated 20.04.2016, whereby Section 10-A has been inserted, which provides the concept of service in the international organization and other foreign donor agency but surprisingly rules knows as Civil Servants (Service in International Organization) Rules, 2016 has been notified by the Federal Government vide notification dated 07.10.2016 has been promulgated in terms of Civil Servants

Act, 1973, which is entirely different concept as only the Parliament has authority to promulgate the rules under Section 10-A; that respondents after due selection of the appellant could not scrap the entire selection process on the ground that entire process is only meant for civil servants and appellant being employee of PPRA is not a civil servant though there is no requirement in the original ECO Regulation, hence, scheme prepared by Establishment Division under the amended Act of Civil Servants Act, 2016 is contrary to the spirit of law, hence, the same may also be declared ultra vires; that separate writ petition was filed whereby vires of rules have been assailed but the said writ petition has been disposed of, therefore, he is only agitating the matter before this court in ICA.

3. Conversely, learned AAG alongwith officials of Establishment Division contends that appellant's case has been processed against the advertisement dated 13.01.2020, notified on the website of OTS, whereby only civil servants are eligible person to apply for the post of Deputy Secretary-General (Transport and Communication, Project & Economic Research and Statistics, and CFU) ECO Secretariat, Tehran but despite that appellant being employee of PPRA claims to be civil servant applied for the said post and has successfully passed the examination and interview but he is not eligible for the said position; that matter came into lime light when the case forwarded to the Prime Minister, who is the competent authority for giving approval against the post of BS-20 and above, hence, the entire process in which appellant has been selected/recruited is likely to be scraped.

4. Arguments heard, record perused.

5. Perusal of record reveals that appellant is mainly aggrieved with the order dated 09.12.2021, passed in W.P No.4198/2021, whereby learned Single Judge in Chambers has dismissed the writ petition whereby appellant is seeking direction to the D.G Immigration and Passports for issuance of diplomatic passport to the

appellant and his family members as he is only successful candidate for the post of Deputy Secretary-General, ECO Secretariat, Tehran, who has been selected by the Special Selection Board comprising of Federal Secretaries including Secretary Establishment but his request for issuance of diplomatic passport has not been acceded to primarily on the ground that he is not a civil servant as considered by Special Selection Board under misconception though this aspect has not been highlighted before any of the authority at the initial stage.

6. Record further reflects that advertisement for the post of Deputy Secretary General (Transport & Communications, Project & Economic Research and Statistics, and CFU), ECO Secretariat, Tehran was published through advertisement through O.M dated 13.01.2020 on the website [WWW.OTS.ORG.PK](http://WWW.OTS.ORG.PK), whereby OTS was authorized to initially scrutinize the applications, however, eligibility of candidate notified in the said O.M clearly spells out that *“only Civil Servants (as defined in Section 2-b of Civil Servants Act, 1973) are eligible to apply”*, this aspect has not been looked into by the OTS, nor by the Special Selection Board though the appellant was admittedly not a civil servant, who was Director General (Monitoring & Evaluation) PPRA, at the relevant time, therefore, the very basic eligibility has not been meted out by the appellant, even though appellant claims that under the ECO Staff Regulations *“any person having 15 years experience with government and/or private sector, academia and international organizations”* can apply for the said position but Government of Pakistan has restricted the competitive process by only referring the civil servant to be eligible person, who runs contrary to the basic scheme though this might be the aspect of this case. Now question arises as to whether the Government of Pakistan is competent authority and they are following the Staff Regulations of ECO Secretariat or otherwise, is a question of policy which could not be interfered by the Courts.

7. Even otherwise, advertisement through which appellant's case has been processed clearly spells out the eligibility to only those candidates who are civil servants, such aspect put the appellant in a disqualification compartment, which could not be rectified in any manner. The appellant has also argued his case on the strength of Section 10-A, newly amended in the Civil Servants Act, 1973, whereby *"No civil servant shall, during his service, serve in any international organization, including an international non-governmental organization, international financial institution and foreign donor agency"*, as such under the said provision the Establishment Division has notified the Civil Servants (Service in International Organization) Rules, 2016 in exercise of powers conferred by sub-section (1) of section 25 of the Civil Servants Act, 1973 vide notification dated 07.10.2016, whereby civil servants seeking employment on reserved and specific posts, open posts and deputation in any international organization including an international non-governmental organization, international financial institution and foreign donor agency shall be subject to prior approval of Federal Government, which is government policy though at this stage, appellant claims that he is also aggrieved with the making of said rules, which have been prepared in contravention to the spirit of ECO Staff Regulations but question remains the same that all these matters fall within the purview of Foreign Policy or under the policy domain of the Government, which could not be interfered by the courts. The appellant has failed to establish any of his legal right under the law. Even otherwise, the very nomenclature of said position reflects that it is "deputation post", such aspect further confers that if at all appellant would be a civil servant, Federal Government has clear authority to withdraw his nomination or to recall his position even after his selection or joining of the said position, which falls within the sole authority of the Federal Government.

8. Keeping in view the above position, it is settled law that when the appellant is not holding requisite qualification being civil servant as provided in the advertisement, he could not get any benefit on the basis of illegality committed by Special Selection Board or the recruitment company i.e. OTS, who has initially scrutinized the applications, therefore, entire recruitment process is considered to be futile and worthless exercise in which appellant's case has been processed.

9. In view of above, judgment rendered by learned Single Judge in Chambers is within four corners of law and has rightly observed that process of recruitment would ultimately not be completed in conformity with the national interests and the foreign policy of the State, hence, no right has accrued in favour of the appellant in any manner. Hence, instant ICA is dismissed.

(SAMAN RAFAT IMTIAZ)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE