

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1072 of 2014
Ghulam Rasool and another
Versus
Muhammad Shahid and others

Petitioner by	Mr. Mushtaq Hussain Bhatti, Advocate
Respondent No.1 by	M/s Hafiz Ahmad Rasheed, Qari Abdur Rasheed Advocates,
Respondent No.3 by:	Mr. Mohammad Irfan Ullah, Advocate.
Date of Hearing :	24.08.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant writ petition, petitioner impugns the appointment of respondent No.1 (*Muhammad Shahid*) as Deputy Director General, BPS-19 ("D.D.G") in Pakistan Sports Board ("PSB") being in contravention of Pakistan Sports Board Service Rules, 2000 ("Rules of 2000").

2. Facts, relevant for the disposal of instant writ petition, are that the respondent No.1 was initially appointed as "Media Coordinator,BSP-18" on contract basis for a period of two years with effect from 14.10.2004 in the Ministry of Railways and thereafter stood transferred to the Ministry of Sports for the remaining contract period with effect from 14.10.2004; he then joined the PSB as "Media Coordinator BS-18" with effect from 22.05.2006 vide letter dated 25.05.2006; that services of respondent No.1 were then requisitioned by the Establishment Division on deputation basis for a period of three years as Section Officer of BPS-18 in the Ministry of Sports and after completion of said period, repatriated to PSB vide letter dated 07.03.2012. That there were two posts of DDG vacant at the relevant time, to be filled by direct recruitment under Rules of 2000 but due to ban imposed by the Federal Government on fresh recruitments, said vacancies could not be filled; that the Departmental Promotion Committee "D.P.C." recommended promotion of the two officers to the post of D.D.G on Acting

Charge basis subject to the condition that they would be reverted to their original posts on the availability of incumbents through direct recruitment; that said officers assumed the charge of the post on 13.07.2012; that thereafter Ministry of Inter Provincial Coordination ("IPC"), PSB convened meeting of D.P.C on 04.11.2013 and the promotion of respondent No.1 as D.D.G was approved on regular basis with effect from the same date against one of the posts of D.D.G, reserved for direct recruitment; that pursuant to said decision, Notification was issued on 18.11.2013.

3. According to the petitioner, the induction of respondent No.1 and subsequent promotion to the post of D.D.G was in contravention of Rules of 2000 by colourful exercise of authority, whereby respondent No.1 was initially brought from Ministry of Railways to the P.S.B on contract basis, promoted on regular basis to the post of D.D.G against a vacancy, meant for direct recruitment, hence the instant writ petition.

4. The respondent No.3 (P.S.B) in their written comments endorsed the stance of the petitioner in terms that as per Rules of 2000, 75% posts of D.D.G meant for promotion quota while 25% had to be filled through direct recruitment; that at the relevant time, promotion quota was exhausted while only posts to be filled through direct recruitment were available against which the respondent No.1 could not have been appointed.

5. During the course of hearing, on 04.08.2020 in order to understand the exact rule position, relevant record was summoned from the P.S.B. In response, Mr. Saeed Akhtar Director P.S.B appeared and reiterated the stance contained in written comments and also documented the petition through C.M.A 2281 of 2020.

6. Learned counsel for the petitioner argued that the post reserved for direct recruitment could not be filled by way of

promotion; that the D.P.C in its meeting dated 06.07.2012 had held that the posts of D.D.G could not be filed through promotion as there was ban on direct recruitment by the Federal Government at the relevant time, two incumbents were promoted on Acting Charge Basis but the said decision was reviewed in the subsequent meeting of the D.P.C in sheer disregard to the Rules of 2000, therefore, very appointment of respondent No.1 as D.D.G is liable to be revoked.

7. On the other hand, learned counsel for the respondent No.1 argued that the post of D.D.G against which the respondent No.1 was promoted is meant for promotion quota; that the procedure adopted was transparent and on the recommendations of D.P.C, which is the competent authority, promotion was made, therefore, the instant petition being tainted with malafide is liable to be dismissed.

8. However, learned AA-G endorsed the stance of the petitioner that the appointment of respondent No.1 as D.D.G was in contravention of Rules of 2000 and the recommendations of 1st D.P.C as well.

9. Heard the learned counsels for the parties and perused the record with their able assistance.

10. The Pakistan Sports Board Service Rules, 2000 ("Rules of 2000") were framed in terms of Section 5 of the Sports (Development and Control) Ordinance, 1962 (XVI of 1962) read with Rule 4(XIX) of the Pakistan Sports Board Rules, 1981. Clause 8 of the Rules of 2000 determines 'appointing authorities' for the employees of the Board and its subordinate offices as under:-

8.	APOINTING AUTHORITIES	
i.	The appointing authorities for the employees of the Board and its subordinate offices shall be as under:-	
	<u>POSTS IN GRADES</u>	<u>APPOINTING AUTHORITY</u>
	20	Federal Government
	17 to 19	Executive Committee
	01 to 16	Director General

11. The method of appointment of the employees is contained in Clause 9 of the Rules ibid while under Clause 9 (c) (b), Sr. No. 1 lays down the method for the appointment to the post of D.D.G which is as under:-

9. RECURITMENTS AND APPOINTEMENTS
- i. EMPLOYMENT POLICY
- a. ...
- b. ...
- c. METHOD OF APPOINTMENT
- The following rules will be followed while making recruitment/promotion to posts in BPS-1 and above in the Pakistan Sports Board:-

- a. Director General – This post will be filled by the Federal Government.
- b. Other posts will be filled as mentioned below against each post:-

<u>NAME OF POSTS</u>	<u>BY PROMOTION</u>	<u>BY TRANSFER OR BY DIRECT RECRUITMENT</u>	<u>ELIGIBILITY FOR PROMOTION</u>
<u>BPS-19</u>	75%	25%	Directors (BPS-18) subject to the fulfillment of all conditions prescribed under the rules.

12. The above rule position clearly indicates that under Clause 8, the appointing authority in case of appointment to the posts of BPS-17 to 19 is the Executive Committee, while under Clause 9 sub-clause (i) (c) item (b) under the head of ‘*method of appointment*’, the post of D.D.G is to be filled 75% by promotion and 25% through direct recruitment.

13. Now, it is to be seen that what the vacancy position was at the relevant time? For the purpose, Roster of vacancies of D.D.G as per Rules of 2000 for the year 2012 is to be looked into, which is as under:-

ROSTER OF VACANCIES FOR THE POST OF DEPUTY DIRECTOR GENERAL (BPS-19) PSB SERVICE RULES 2000

S.#	Date of occurrence of vacancy	Reason of occurrence	Method of appointment Promotion (75%)	Method of appointment Direct Recruitment (25%)	Name of the officer appointed	Allocation	Remarks
1.	22.02.2008	Creation of a new post of DDG (Reh & Treatment)	01	-	Dr. Waqar Ahmed by promotion	P	Cycle under the new Rules 2000 is 3 P and 1 D. Out of the 3 P, 2 to be adjusted against previous deficiency in direct recruitment. Hence 2 P's
2.	09.02.2009	Retirement of Mr. Jawaid Akhtar	-	-	Mr. Afzal Ahmed appointed by transfer	X	
3.	13.05.2009	Repatriation of Mr. Afzal Ahmed	-	-	Mr. Sharafat Ali appointed by transfer	X	

4.	26.09.2010	Retirement of Mr. Mohammad Ashfaq	-	-	Vacant	P (diverted to D)	against 4&5 have been allocated to direct recruitment quota. After adjustment of previous deficiency in direct recruitment quota, the cycle stands closed.
5.	16.06.2011	Promotion of Dr. Akhtar Nawaz Ganjera, DDG (Tech) as DG (T&T)	-	-	Vacant	P (diverted to D)	
6.	02.04.2012	Repatriation of Mr. Sharafat Ali to his parent department	-	-	Vacant	P	New Cycle. 1 st vacancy allocated to promotion quota

14. It is manifest from the Roster ibid that in the year 2012 three posts of D.D.G were lying vacant out of which two were reserved for direct/initial recruitment, depicted at Sr. No. 4 and 5 while one post was reserved for promotion quota, mentioned at Sr. No.6.

15. In order to consider the cases for promotion in accordance with above Roster, D.P.C was held on 06.07.2012. The minutes of the said meeting reveal that one Ch. Salamat Ali, Director, was promoted as D.D.G against the post, reserved for promotion quota, while it was also recommended that as there was ban on direct recruitment, two posts of D.D.G, reserved for direct recruitment, could not be filled on regular basis thus two Directors were promoted against the said positions on Acting Charge Basis with stipulation that they would be reverted to their original positions as and when regular incumbents of the posts through direct recruitment would be available. It also emerged from the said minutes, that respondent No.1 at that very time, was also considered for promotion to the post of D.D.G but was not recommended for want of requisite length of service. It is thus quite obvious that the proceedings and the decisions of the D.P.C were in accordance with the Rules of 2000 and the Roster as well and the appointments so made against the positions, meant for direct recruitment, were just a stop gap arrangement on Acting Charge Basis as there was ban on direct recruitment by the Federal

Government. It was specifically decided that the promotees in case of availability of incumbents through direct recruitment had to go back to their original positions. Meaning thereby the two posts meant for direct recruitment to the post of D.D.G had been kept vacant due to imposition of ban at the relevant time by the Federal Government.

16. Subsequently, another D.P.C was convened on 04.11.2013 wherein the respondent No.1 along with others was considered for promotion to the post of D.D.G against two vacancies, which, as mentioned above, were exclusively meant for direct recruitment but despite the clear rule position, the D.P.C recommended promotion of the respondent No.1 against the post of D.D.G on regular basis with immediate effect. Thus the proceedings of the second D.P.C and the decision were in clear violation of Rules of 2000 and the vacancy position contained in the Roster, which amounts to transgression of authority.

17. It also emerged during the proceedings of the instant writ petition that the respondent No.1 had been dealing with like nature cases, being job description, as he was holding the post of Director and then D.D.G and as such no one else but he, who could be the most relevant person having understanding of the rule position. The respondent No.1 has failed to show as to under what authority he is holding the post of D.D.G.

18. Moreover, the proceedings of the second D.P.C explicitly guides to observe that the Committee was either misguided or the proceedings were manipulated, as asserted by the respondent No.3/P.S.B. The Hon'ble Apex Court in "Human Right Case No.11827-5 of 2018 (in the matter of selling of National Assets including P.I.A at thrown away price) has graciously held that "the Court has also to see if statutory provisions have been violated in making the appointments. The invalidity of appointment may rise not

only from want of vacancies but also from violation of legal provision of appointment." (Emphasis added)

19. As far as the question of maintainability of the instant quo warranto petition is concerned, reliance is placed upon case of **"Sohail Baig Noori V. High Court of Sindh through the Registrar and 2 others (2017 PLC (C.S) 1142)** wherein it is held that *"for the purpose of maintaining writ of quo warranto, there is no requirement of an aggrieved person, but a whistle blower need not to be personally aggrieved and only lay the information to the Court to inquire from the person holding public office."* It was further laid down that *"conditions necessary for issuance of writ of quo warranto are that the office must be public and created by a statute or constitution itself; the office must be substantive one not merely the functions of an employment of a servant at the will during the pleasures of others; there has been contravention of the Constitution or statute or statutory instrument and appointment of such person to that office, while essential grounds for issuing writ of quo warranto are that the holder of the post do not possess the prescribed qualifications; the appointing authority is not competent to make appointment and that the procedure prescribed by law has not been followed and the burden to prove is upon the appointee who has to demonstrate that his appointment is in accordance with law and rules."*

20. In the case of **"Dr. Farzana Bari V. Ministry of Law, Justice & Human Rights (PLD 2018 Islamabad 127)**, this Court held that *"in case of any violation of rules or statutes in making the appointment of a statutory body, anybody can point out those illegalities and can approach the Court for issuance of writ of quo warranto."*

21. As a corollary, it is held that the instant quo warranto petition is maintainable, the respondent No.1 has failed to discharge the burden to prove that his appointment was in accordance with law and rules, the proceedings of 2nd

D.P.C vide Minutes dated 04.11.2013 are held to be without lawful authority in contravention of the Rules of 2000, consequent thereto the appointment of respondent No.1 as D.D.G is held to be in contravention of Rule 9 (i) (c) (b) of the Rules of 2000 and the Roaster of vacancies of D.D.G for the year 2012.

22. In view of above, the instant writ petition is allowed, Notification dated 18.11.2013 regarding promotion of the respondent No.1 as D.D.G is set-aside. He shall relieve the charge of the post-in-question forthwith while all actions and acts done by the respondent No.1 while holding the post of D.D.G shall stand protected under the '*defacto doctrine*'.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail

Announced in open Court on 30.09.2020

JUDGE

APPROVED FOR REPORTING

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