

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3413 of 2019
Muhammad Safdar Janjua

Versus

Federation of Pakistan through its Secretary, Ministry of National
Food Security & Research and others

Date of Hearing: 11.12.2019
Petitioner by: Hafiz Abdul Rehman Ansari, Advocate
along with the petitioner-in-person.
Respondents by: Mr. Arshid Mehmood Kiani, learned
Deputy Attorney-General.
Mian Abdul Rauf and Mr. Tariq Mehmood,
Advocates for respondent No.6.
Mr. Nadeem Arshad, Section Officer,
Establishment Division.
Mr. Muhammad Tahir Saleem, Deputy
Director (Admin), P.A.R.C.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Safdar Janjua, who is an Advocate of the High Court, impugns the notification dated 25.09.2019, whereby respondent No.6 (Dr. Muhammad Azeem Khan) was appointed as the Chairman, Pakistan Agricultural Research Council ("P.A.R.C.") in MP-I scale on contract basis for a period of two years.

2. The facts essential for the disposal of the instant petition are that vide advertisement dated 03.02.2019 published by the Ministry of National Food Security and Research, applications were invited for appointment as Chairman, P.A.R.C. for a period of two years on contract basis in MP-I scale. The applicants were required to possess a Ph.D. degree in Agricultural and Allied Sciences or a discipline of relevance from a globally recognized university. Furthermore, the applicants were also required to have at least twenty years experience of holding administrative positions, and were also required to submit a dossier of their publications in research journals of international repute along with their curriculum vitae. No age limit was prescribed for the applicants in the said advertisement.

3. On 07.02.2019, a corrigendum was published to the said advertisement dated 03.02.2019 providing for a minimum age of 55 years and a maximum age of 62 years for the applicants.

4. Two writ petitions (i.e. W.P.No.1189/2019, titled "*Dr. Muhammad Yousaf Hayat Khan Vs. Ministry of National Foods Security & Research etc*" and W.P.No.1190/2019, titled "*Dr. Sher Muhammad Vs. Ministry of National Foods Security & Research etc*") were filed before this Court challenging the maximum and minimum age limit for the applicants provided in the said corrigendum dated 07.02.2019. During the pendency of the said petitions, the petitioners were issued letters dated 12.04.2019 calling upon them for an interview. Consequently, vide orders dated 19.04.2019, the said writ petitions were dismissed as withdrawn. Both the petitioners in the said petitions were not appointed against the position of Chairman, P.A.R.C.

5. The competitive process for the appointment of Chairman, P.A.R.C. culminated in the issuance of the impugned notification dated 25.09.2019 by the Establishment Division, whereby respondent No.6 was appointed as a Chairman, P.A.R.C. in MP-I scale on contract basis for a period of two years. The said notification has been assailed by the petitioner in the instant writ petition.

6. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the corrigendum dated 07.02.2019 had narrowed the competitive arena for the appointment to the position of Chairman, P.A.R.C.; that the said corrigendum had the effect of several eligible applicants below the age of 55 and above the age of 62 not applying for appointment to the position of Chairman, P.A.R.C.; that the said corrigendum was issued only four days after the advertisement dated 03.02.2019; that the introduction of an age limit for the applicants who were otherwise eligible for appointment to the post of Chairman, P.A.R.C. was illegal and unconstitutional; that prior to the issuance of the impugned notification dated 25.09.2019, the petitioner had filed writ petition No.1939/2019 challenging the selection process for the

appointment against the position of Chairman, P.A.R.C.; that since the appointment process had not been completed when the said petition was taken up for hearing, this Court, vide order dated 21.05.2019, dismissed the said writ petition; and that since the process adopted for respondent No.6's appointment as Chairman, P.A.R.C. was highly restrictive and non competitive, the said appointment is liable to be set aside. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

7. On the other hand, learned counsel for respondent No.6 submitted that the petitioner had concealed material facts from this Court; that in the writ petition, it had not been pleaded that writ petition No.2940/2019, titled "*Dr. Ghulam Muhammad Ali Vs. Federation of Pakistan etc.*" had also been filed before this Court challenging the appointment of the Additional Secretary, Ministry of National Food Security and Research as Chairman, P.A.R.C. on current charge basis for a period of three months through notification dated 05.07.2019; that respondent No.6's appointment as Chairman, P.A.R.C. was made after a competitive process in which 55 applicants/candidates participated; that the candidates who were less than 55 years and more than 62 years of age also participated in the competitive process and they were considered for appointment by the selection committee; that the process culminating in respondent No.6's appointment did not suffer from any legal infirmity; that respondent No.6 has remained at the top of policy making positions for a considerably long period of time; that respondent No.6 has also served on MP-I scale in the Planning Commission, Ministry of Planning, Development and Reform; and that respondent No.6 had the requisite qualifications to be appointed as Chairman, P.A.R.C. Learned counsel for respondent No.6 prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

9. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

10. The petitioner has made adequate disclosure as to the filing of writ petition No.1939/2019, titled "*Muhammad Safdar Janjua, Advocate Vs. Federation of Pakistan etc*" in the instant writ petition. Writ petition No.1939/2019 was dismissed, vide order dated 21.05.2019, primarily on the ground that the petitioner had not applied for the post of Chairman, P.A.R.C., and since at that stage, the Chairman, P.A.R.C. had not been appointed. As regards writ petition No.2940/2019, titled "*Dr. Ghulam Muhammad Ali Vs. Federation of Pakistan etc.*" in which the present petitioner had represented the petitioner in the said writ petition as a counsel, the same was not against the appointment of respondent No.6 as Chairman, P.A.R.C., but against the appointment of the Additional Secretary, Ministry of National Food Security and Research as Chairman, P.A.R.C. on acting charge basis. Therefore, I am of the view that the non disclosure in the instant petition as to writ petition No.2940/2019 is of no consequence.

11. It is not the petitioner's case that respondent No.6 in any manner lacked the qualifications for appointment against the post of Chairman, P.A.R.C. It is also not the petitioner's case that the prescribed process for respondent No.6's appointment had been violated. In paragraph 5 of the writ petition, it has been pleaded that in the past, advertisements inviting applications for the position of Chairman, P.A.R.C. did contain an upper age limit of 62 years. Such advertisements were published on 06.09.2015 and 20.12.2015. The petitioner did not challenge such advertisements. As regards the lower age limit of 55 years introduced through the corrigendum dated 07.02.2019, the documents brought on record by the respondents show that there were several applicants below the age of 55 years who had applied for appointment as Chairman, P.A.R.C. and were also interviewed/considered for appointment against the said position. In the competitive process culminating in respondent

No.6's appointment, there were nine applicants below the age of 55 years who applied and were considered for appointment against the post of Chairman, P.A.R.C. Other than Dr. Sher Muhammad (who had filed writ petition No.1190/2019 before this Court and who was admittedly called for an interview), no other prospective applicant below the age of 55 years challenged the corrigendum dated 07.02.2019. Even Dr. Ghulam Muhammad Ali, who was the petitioner's client in writ petition No.2940/2019, had not challenged the said corrigendum. There was no material on the record to show that any other prospective applicant for the post of Chairman, P.A.R.C. had not applied for the said position due to the said corrigendum.

12. In the case of Dr. Farzana Bari Vs. Ministry of Law, Justice and Human Rights (PLD 2018 Islamabad 127), this Court has held that the two conditions which are essential for the issuance of a writ of *quo warranto* are that (i) the appointment under challenge must be to a public office; and that (ii) the said appointment should have been made without the authority of law or in other words contrary to the relevant statutory provisions. Learned counsel for the petitioner could not point out any provisions of the Pakistan Agricultural Research Council Ordinance, 1981 or the Rules/Regulations made thereunder which had been violated in making respondent No.6's appointment as Chairman, P.A.R.C. As mentioned above, it is not the petitioner's case that respondent No.6 lacked the prescribed qualifications for appointment as Chairman, P.A.R.C.

13. In view of the above, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

*Qamar Khan**

(JUDGE)