

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1828 of 2021

Dr. Amna Mahmood

Versus

Federation of Pakistan through Secretary, Ministry of Federal
Education and Professional Training and others

Date of Hearing:	15.06.2021
Petitioner by:	Barrister Khalique Zaman
Respondents by:	Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General Mr. Jawad Akram, Joint Secretary, Mr. Zulfiqar Samin, Deputy Secretary and Mr. Sohail Ijaz, Deputy Director (Legal), Ministry of F.E.&P.T.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Dr. Amna Mahmood, seeks a direction to the respondents to post her against the position of the Pakistan Chair at the Jordan University. The petitioner also impugns the fresh selection process.

2. Pakistan Chairs have been established in a number of prominent foreign universities with the object of introducing the history, culture and languages of Pakistan. In 2018, fourteen Pakistan Chairs in foreign universities were lying vacant. A Search and Selection Committee comprising of three Senators was constituted with the approval of the Prime Minister to finalize the criteria for the selection of scholars for appointment against the said fourteen vacant positions.

3. Through advertisement dated 14.01.2018 published by the Cabinet Division, applications were invited for filling the positions of Pakistan Chairs abroad including the Chair of Urdu and Pakistan Studies at the Jordan University, Amman, Jordan. The applicants were required to have a Ph.D. degree in the relevant subject with at least seven years of teaching and research experience in a recognized university or a Centre Research Organization and at least eight research publications in recent journals recognized by the

Higher Education Commission (“H.E.C.”). In response to the said advertisement, the petitioner participated in the competitive process for appointment against the Chair at the Jordan University.

4. The Search and Selection Committee, in its meeting held on 27.01.2018, reviewed the record of the candidates and shortlisted 45 out of 113 candidates after conducting their interviews from 07.02.2018 to 09.02.2018. This Committee *inter alia* recommended the petitioner as the principal nominee for the Pakistan Chair at the Jordan University, and Professor Dr. Jahangir Khan Achakzai as the alternate nominee.

5. After considering the recommendations of the Search and Selection Committee, the Prime Minister, on 22.05.2018, approved the appointment of fourteen scholars including the petitioner against the vacant positions of Pakistan Chairs in foreign universities. However, no orders for posting the fourteen scholars were issued. This matter came under discussion at a meeting held on 19.11.2018 under the Chairmanship of the Minister for Federal Education and Professional Training (“F.E.&P.T.”). Apparently, a scrutiny of the candidates’ credentials and qualifications was carried out and in this process, it was found that some of the candidates did not possess the relevant qualifications. It was also decided to seek the Prime Minister’s approval to re-advertise the said positions and to constitute a new Search and Selection Committee. A summary was submitted to the Prime Minister on 04.12.2018 soliciting the Prime Minister’s approval for re-advertising the fourteen vacant positions of Pakistan Chairs at foreign universities and the constitution of a new Search and Selection Committee. On 24.12.2018, the Prime Minister approved the said proposal.

6. The respondents have brought on record advertisements inviting applications for appointment against Pakistan Chairs at (i) Tehran University, Tehran, Islamic Republic of Iran, (ii) Peking University, Beijing, People's Republic of China, (iii) Ruprecht-Karts-University, Heidelberg, Federal Republic of Germany, and (iv) Cambridge University, United Kingdom. These advertisements were

issued in September and November, 2020. Till date, no advertisement has been issued inviting applications with respect to the Pakistan Chair at the Jordan University.

7. Professor Dr. Jahangir Khan Achakzai has filed constitution petition No.231/2021 before the Hon'ble High Court of Balochistan challenging the fresh selection process initiated through a fresh advertisement. He has also sought a direction to be posted against the Pakistan Chair at the Jordan University. The present petitioner has not been made a party in the said Constitutional petition. Vide interim order dated 01.03.2021, the Hon'ble High Court of Balochistan has restrained the respondents in the said petition from finalizing *“the list of the selected candidates to the extent of candidates from Balochistan.”*

8. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that vested rights had accrued in the petitioner's favour after she had been recommended by the Search and Selection Committee to be appointed against the Pakistan Chair at the Jordan University and more so when the Prime Minister approved the said recommendation on 22.05.2018; that the petitioner had the required qualifications and experience to be appointed to the said post; that till date, a fresh advertisement inviting applications for appointment to the said post has not been issued; and that it is incumbent on the Ministry of F.E.&P.T. to post the petitioner against the Pakistan Chair at the Jordan University pursuant to the said approval of the Prime Minister. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

9. On the other hand, learned Assistant Attorney-General submitted that although the Prime Minister had, on 22.05.2018, accorded approval to the recommendations of the Search and Selection Committee to make appointment of scholars against Pakistan Chairs at foreign universities but subsequently the Ministry of F.E.&P.T. had moved a summary on 04.12.2018 to the Prime Minister proposing therein that the fourteen vacant positions,

including the Pakistan Chair at the Jordan University, be re-advertised and a new Search and Selection Committee be constituted; that the reason put forth in the said summary for re-initiating the competitive process was that during the scrutiny process, it was found that some of the candidates did not possess the relevant qualifications for appointment to Pakistan Chairs at the foreign universities; that thereafter the Ministry of F.E.&P.T. has issued advertisements inviting applications for posting against Pakistan Chairs at certain universities abroad; that till date, an advertisement with respect to the Pakistan Chair at the Jordan University has not been issued; and that the petitioner will be at liberty to participate in the competitive process as and when the advertisement inviting applications for posting against the Pakistan Chair at the Jordan University is published. Learned Deputy Attorney-General prayed for the writ petition to be dismissed.

10. I have heard the contentions of the learned counsel for the petitioner and the learned Assistant Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 above and need not be recapitulated.

11. It is an admitted position that the Search and Selection Committee had recommended the petitioner as the principal candidate for posting against the Pakistan Chair at the Jordan University and that the said recommendation was approved by the Prime Minister on 22.05.2018. No order for the petitioner's posting against the Pakistan Chair at the Jordan University was issued pursuant to the said approval of the Prime Minister. The only reason that has been found in the documents brought on record by the respondents for re-initiating the selection process for appointment against the fourteen vacant positions of Pakistan Chairs at foreign universities was that during a detailed scrutiny of the candidates' credentials and qualifications, *"it dawned that some of the candidates do not possess the relevant qualification."*

12. The qualifications which a candidate was required to possess to participate in the competitive process for posting against Pakistan Chairs at foreign universities were clearly set out in the advertisement dated 14.01.2018. As mentioned above, an applicant was required to possess a Ph.D. degree in Urdu, Pakistan Studies, Industrial Relations, Political Science, History, Sociology, Iqbaliyaat or relevant subject of social sciences with at least seven years of teaching and research experience in a university or Centre Research Organization and eight research publications in H.E.C.'s recognized journals.

13. Neither does the summary dated 04.12.2018 submitted by the Ministry of F.E.&P.T. to the Prime Minister nor any other document brought on record by the respondents show as to whether the petitioner was among "*some of the candidates*" that were found not to possess the relevant qualifications. Assuming that the petitioner was among such candidates, the question that would arise is that which of the qualifications prescribed in the advertisement dated 14.01.2018 the petitioner did not possess. No plausible answer could be given by the learned Assistant Attorney-General and the representatives of the Ministry of F.E.&P.T. to this question. There is no allegation of any nepotism or favouritism in the process culminating in the Prime Minister's approval dated 22.05.2018.

14. After the Prime Minister's approval dated 22.05.2018, if it had been found that the petitioner did not have the relevant qualifications, the very least that she was entitled to was a right of a hearing so that she could have had an opportunity to satisfy the respondents as to her qualifications and experience being as per the requirement of the advertisement dated 14.01.2018.

15. The reason put forth by the Ministry of F.E.&P.T. in its summary dated 04.12.2018 is generalized and ambiguous. The entire selection process culminating in the Prime Minister's approval dated 22.05.2018 could not have been put at naught on the ground that "*some of the candidates*" did not possess the relevant qualifications. If the petitioner was not among such candidates, she should not have

been made to suffer for the deficiencies in the qualifications of other candidates. And if she was among the candidates who had been found not to possess the relevant qualifications, she was entitled to be subjected to due process in accordance with the principles of natural justice. In the case of Abdul Saleem Vs. Government of N.-W.F.P. through Secretary, Department of Secondary Education (2007 PLC (C.S.) 179), a teacher had challenged his termination from service on the ground that his appointment had been found to be illegal. The Hon'ble Supreme Court had held that the absence of reasons as to how the appointment was illegal was sufficient to hold that the termination was *malafide*, and that had a specific reason been intimated to the petitioner for removing him from service, he might have been able to defend himself. Paragraph 6 of the said report is reproduced herein below:-

“6. For any irregularity whatsoever, if committed by the department itself, the appointee cannot be harmed, damaged or condemned subsequently when it occurs to the department that it had itself committed some irregularities qua any appointment. This Court has on numerous occasions held that for the irregularities committed by the department at itself qua the appointment of a candidate, the appointees cannot be condemned subsequently with the change of the heads in the department or on the upper level. Government is an institution in perpetuity and its orders cannot be reversed simply because the heads have changed. Such act of departmental authorities is all the more unjustified when the candidate is otherwise fully qualified to hold the job.”

16. True, an order for posting the petitioner against the position of Pakistan Chair at the Jordan University has not been issued but I am of the view that after the Prime Minister's approval dated 22.05.2018, the issuance of a posting order would only be a ministerial act pursuant to the said approval. The decisive step in this case was the approval of the Prime Minister to the recommendations made by the Search and Selection Committee. The Prime Minister could recede or recall the said approval but only for reasons sustainable in law. In the case of Muhammad Majid Vs. Secretary, Ministry of Manpower and Overseas Employment (PLD 2017 Islamabad 19), this Court held *inter alia* that the condition to give reasons introduces clarity and excludes

or at any rate minimizes arbitrariness, and that it gives satisfaction to the party against whom an order is made.

17. Vide order dated 15.06.2021, this Court had dismissed writ petition No.1827/2021 filed by Dr. Bushra Hassan who had been recommended by the Search and Selection Committee to be posted against the Pakistan Chair at the University of Oxford. The said petition was dismissed due to *laches* since it was filed more than one year after a fresh advertisement had been issued for appointment against the said position.

18. In the case at hand, the position of Pakistan Chair at the Jordan University is lying vacant and a fresh advertisement inviting applications for appointment against the said position has not been issued as yet. Therefore, I am inclined to dispose of this petition with the direction to the Ministry of F.E.&P.T. not to re-advertise the position of the Pakistan Chair at the Jordan University until an opportunity of a hearing is afforded to the petitioner and a reasoned order is passed on whether or not she had the required qualifications set out in the advertisement dated 14.01.2018. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 06/07/2021

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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