

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

I.C.A.No.258/2018  
M.D. PPRA, Islamabad and another  
**Versus**  
Muhammad Zubair and others

**Date of Hearing:** 09.05.2019  
**Appellants by:** M/s Abdul Rahim Bhatti, and Yassar Rahim Bhatti, Advocates for the appellant in I.C.A.Nos.258 and 259 of 2018  
Mr. Muhammad Anwar Mughal, Advocate for respondents No.1 to 5 in I.C.A.No.258/2018  
**Respondents by:** M/s Ummar Zia-ud-Din and Mubashir Najeeb, Advocates for respondents No.1 to 16 in I.C.A.No.259/2018  
Ch. Muhammad Tahir Mahmood, learned Assistant Attorney-General with Muhammad Zubair D.G. M&E, Ali Taimoor D.D. Admin/H.R. and Muhammad Khurshid D.D. Legal

**MIANGUL HASSAN AURANGZEB, J:-** Through this judgment, we propose to decide intra Court appeal Nos. 258 and 259 of 2018 since they entail common questions of law and fact.

2. Through the said appeals, the appellants impugn the judgment dated 21.05.2018, passed by the learned Judge-in-Chambers, whereby writ petition No.348/2018 titled “Muhammad Zubair etc. Vs. Federation of Pakistan etc.” and writ petition No.578/2018 titled “Abdul Nabi Gillal etc. Vs. Secretary, Finance Division etc.” were allowed with the declaration that the concluded process of the appointment of the petitioners in the said petitions could not have been recalled.

3. The facts essential for the disposal of these appeals are that on 14.10.2017, an advertisement was published by the Public Procurement Regulatory Authority (“P.P.R.A.”) inviting applications for appointment against different posts. After passing the written examination, the private respondents (who were the writ petitioners) were called to appear in interviews before the Interview Committee between 20.12.2017 and 27.12.2017. The Board of Directors of P.P.R.A., in its 34<sup>th</sup> meeting held on 02.01.2018, approved the recommendations of the Human Resource Committee (“H.R.

Committee”) of P.P.R.A. regarding the appointments of the private respondents.

4. Learned counsel for the appellants submitted that the advertisement dated 14.10.2017 was violative of P.P.R.A. Service Rules, 2017, and the Government policy on the subject; that the recruitment process was carried out on fast track basis; that the approval of the recommendations of the H.R. Committee made by the Board of Directors of P.P.R.A., in its 34<sup>th</sup> meeting, were not in compliance with Section 7(6) of the P.P.R.A. Ordinance, 2002, which provides that *“all orders, determination and decision of the Board shall be taken in writing and shall be signed by the Managing Director”*; that the minutes of the meeting in which the said decision was taken by the Board of Directors of P.P.R.A. was not subsequently confirmed and not signed by the Managing Director of P.P.R.A.; that the matter regarding the appointments should have been kept in abeyance until the confirmation of the minutes; that on the assumption of charge by the new Managing Director, P.P.R.A., it was decided that to keep the matter regarding appointments pending; that it was subsequently revealed that the Provincial/Regional quota had not been observed in the recruitment process; that the new Managing Director, P.P.R.A. had addressed the letter to the Secretary, Cabinet Division, highlighting the discrepancy regarding the non-observance of the Provincial/Regional quota; that since the minutes of the 34<sup>th</sup> meeting of the Board of Directors had not been confirmed, the same lacked sanctity, and therefore, the private respondents had no vested right for appointments; and that in the 35<sup>th</sup> meeting of the Board of Directors of P.P.R.A. held on 04.01.2018, the recommendations of the H.R. Committee for the appointment of Director Generals in P.P.R.A., was approved.

5. Learned counsel for the appellants further submitted that the recruitment process in question suffers from several legal infirmities; that the process initiated by the previous management to fill promotion posts through direct recruitment was in violation of the law; and that a total ban on appointments had been imposed by the Election Commission of Pakistan, vide notification dated 11.04.2018. Learned counsel for the appellants prayed for the appeals to be

allowed and for the impugned judgment dated 21.05.2018 to be set-aside.

6. On the other hand, learned counsel for the private respondents submitted that since the private respondents had successfully participated in the competitive process, i.e. examination conducted by Open Testing Service and interview conducted between 20.12.2017 and 27.12.2017, they had acquired a vested right to be appointed against the posts for which they had competed; that the H.R. Committee of P.P.R.A. had recommended to the Board of Directors of P.P.R.A. that the private respondents be appointed; that the Board of Directors of P.P.R.A., in its 34<sup>th</sup> meeting held on 02.01.2018, approved the said recommendations of the H.R. Committee of P.P.R.A.; that after the said decision had been taken, the senior management of P.P.R.A. had a change of heart, and wanted to take away the private respondents' vested rights so as to appoint their favorites; that the appellants do not deny that in the 34<sup>th</sup> meeting of the Board of Directors of P.P.R.A., the recommendations of the H.R. Committee of P.P.R.A. to appoint the private respondents had been approved; that the appellants are only agitating the technical ground of the said minutes having not been confirmed and the Managing Director of P.P.R.A. having not signed the said decision; and that procedural lapses or omissions at the end of the senior management of P.P.R.A. cannot be made a ground for depriving the private respondents of their vested rights. Learned counsel for the private respondents prayed for the appeals to be dismissed.

7. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of these appeals have been set out in sufficient detail in paragraph 3 above, and need not be recapitulated.

8. P.P.R.A. is an autonomous body established under the provisions of the P.P.R.A. Ordinance, 2002, and has its own Employees Service Regulations, 2017. All service and disciplinary matters of P.P.R.A's employees are governed under the said Regulations. The Cabinet Division has no role in the matters relating to the internal administration of P.P.R.A. employees.

9. There is no denying the fact that the Board of Directors of P.P.R.A., in its 34<sup>th</sup> meeting held on 02.01.2018, approved the recommendations of the H.R. Committee of P.P.R.A. regarding the appointments of the private respondents. Till date, the said decision has not been annulled. In the 35<sup>th</sup> meeting of the Board of Directors held on 04.01.2018, the recommendation of the H.R. Committee of P.P.R.A. for the appointment of the Director Generals in P.P.R.A. was approved. In the said meeting, the approval regarding the recommendations of the H.R. Committee regarding the appointments of the private respondents had not been undone.

10. The appellants are bent upon not giving sanctity to the recruitment process in which the private respondents emerged successful on the sole technical ground of the minutes of the 34<sup>th</sup> meeting of the Board of Directors of P.P.R.A. having not been signed by the Managing Director in terms of Section 7(6) of the P.P.R.A. Ordinance, 202. It is not the appellants' case that in the said meeting, the Board of Directors of P.P.R.A. had not approved the recommendations of the H.R. Committee of P.P.R.A. to appoint the private respondents. Once the said decision was taken in the 34<sup>th</sup> meeting, it is our view that strong vested rights were created in favour of the private respondents for appointment letters to be issued to them. The private respondents cannot be made to suffer by P.P.R.A. for their own procedural lapses and omissions. The argument advanced by the learned counsel for the appellant is as good as saying: you should suffer for my faults! In the case of Secretary to Government of N.-W.F.P. Vs. Saadullah Khan (1996 SCMR 413), the Hon'ble Supreme Court upheld the decision of the Service Tribunal to reinstate a civil servant, whose appointment had been terminated on the ground that his appointment was irregular. It was held that since the department had itself appointed the civil servant in violation of the rules, it could not be allowed to take the benefit of its lapses in order to terminate the services of a civil servant merely because it had itself committed an irregularity by violating the procedure governing such appointment. In the case of Collector of Customs and Central Excise Vs. Abdul Waheed (2004 SCMR 303), it was held that if a prescribed procedure was not

followed by the concerned authority, the employees could not be blamed for what was to be performed and done by the competent authority. In the said case, the termination of a civil servant on the ground that he was not appointed on merits was set-aside by the Service Tribunal, whose decision was upheld by the Hon'ble Supreme Court. In the case of Muhammad Akhtar Sherani Vs. Punjab Textbook Board (2004 SCMR 1077), it was held that where appointments were made by wrongful exercise of power, the beneficiaries of illegal appointments could not be blamed alone, because primarily the authority which had wrongfully exercised its power was bound to be held responsible for the same. It was also observed that instead of removing the employees from service, action should have been taken against the authority which wrongfully exercised its power. Similar observations were made in the cases of Province of Punjab Vs. Zulfiqar Ali (2006 SCMR 678) and Managing Director, Sui Southern Gas Company Ltd. Vs. Ghulam Abbas (PLD 2003 SC 724).

11. No submission was made by the learned counsel for the appellants as regards the ability of the private respondents to be appointed against the posts for which they had competed. Furthermore, the procedure adopted for their recruitment also did not suffer from any aberration or legal infirmity.

12. As regards the contention of the learned counsel for the appellants that direct recruitment has been made against promotion posts, suffice it to say that the decision to make such appointments through direct recruitment had been made by the Board of Directors of P.P.R.A. in its 31<sup>st</sup> meeting held on 02.02.2017. In the said meeting, it was decided to constitute an H.R. Committee to carry out the selection process for recruitment against the posts of Director Generals and Directors in P.P.R.A. Additionally, the P.P.R.A. Service Regulations, 2017, provides that if no suitable person is available for promotion, the post reserved for promotion shall be filled by initial appointment. No employee of P.P.R.A. petitioned this Court to voice his/her grievance against appointments being made through direct recruitment on posts reserved for promotion. It is also an admitted fact that in compliance with the order dated 25.01.2017 passed by the Hon'ble Supreme Court in criminal original petition Nos.89/2011 and

189/2016, a number of deputationists in P.P.R.A. were repatriated. Therefore, the said ground being agitated by the appellants is spurned being an afterthought.

13. As regards the contention of the learned counsel for the appellants that since a ban on appointments had been imposed by the Election Commission of Pakistan, the private respondents could not have been issued appointment letters, this contention cannot be reconciled with the fact that it was after all P.P.R.A. that had published an advertisement inviting the members of the public to apply for appointments in P.P.R.A. Had the said advertisement not been issued, the appointment process through which the private respondents were selected, would not have been completed. The said ground is again an attempt by P.P.R.A to penalize the private respondents for their own acts.

14. Learned counsel for the appellants submitted that the educational testimonials of one of the beneficiaries of the appointment process in question were found to be fake. Once the appointee who had submitted the fake educational qualification was confronted with this fact, he tendered his resignation. We are of the view that the acceptance of the writ petitions against which these appeals have arisen, does not, in any manner, bar the appellants from proceeding against the appointees for just cause and in accordance with the law. However, it ought to be borne in mind that such employees should not be penalized or blamed for faults or omissions on the part of P.P.R.A.'s management in the recruitment process.

15. In view of the above, we do not find any merit in these appeals, which are accordingly dismissed.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)  
JUDGE

**APPROVED FOR REPORTING**