

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.179-W of 2012

International Islamic University and others

Versus

Dr. Shahim Tariq

Date of Hearing:

19.03.2018

Appellants by:

Mr. Rehan-ud-Din Khan Golra, Advocate
for appellant No.1 to 3,
Syed Khawar Amir Bukhari, Advocate for
appellant No.4,

Respondent by:

Mr. Muhammad Umair Baloch, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellants, impugn the judgment dated 06.04.2012, passed by the learned Judge-in-Chambers, whereby writ petition No.18/2012, filed by the respondent (Dr. Shamim Tariq), was allowed, and the order dated 04.10.2011, whereby appellant No.4 (Dr. Sadia Tahir) was appointed as Assistant Professor (BPS-19) in the International Islamic University (appellant No.1), was set-aside.

2. Syed Khawar Amir Bukhari, Advocate, learned counsel for appellant No.4, submitted that on 19.06.2011, appellant No.1 published an advertisement inviting applications from qualified persons for posts including the post of Assistant Professor (BPS-19); that the last date for the submission of applications was 30.06.2011; that appellant No.4 applied for appointment against the post of Assistant Professor–Urdu (BPS-19); that in order to be appointed as Assistant Professor, applicants had to have the minimum qualification of Ph.D in the relevant field from a university or an institution recognized by the Higher Education Commission (“H.E.C.”); that appellant No.4 had completed all the requirements for the award of a Ph.D degree in the discipline of "Urdu" from the National University of Modern Languages (“N.U.M.L.”) in the examination held on 25.08.2011; that a notification in this regard was issued by N.U.M.L. on 15.09.2011, wherein it was stated that the Rector had approved the award of

Ph.D degree to appellant No.4 on the recommendation of the relevant committee; that vide letter dated 04.10.2011, appellant No.1 appointed appellant No.4 as Assistant Professor-Urdu (BPS-19); that the said appointment was made on the basis of the recommendation made by the Selection Board of appellant No.1 in its meetings held on 19.09.2011 and 20.09.2011.

3. Mr. Rehan-ud-Din Khan Golra, learned counsel for respondent No.1 submitted that the minimum qualification required for appointment as a Assistant Professor (BPS-19) in all disciplines at respondent No.1/ university was Ph.D in the relevant field from the university/institution recognized by the Higher Education Commission or a foreign master's degree or M.Phil or an equivalent degree awarded after 18 years of education from university/institution recognized by the Higher Education Commission; that for the holders of a foreign master's degree or M.Phil from Pakistan or an equivalent degree, 4 years of teaching/research experience in the relevant field was also required; that appellant No.4 was appointed on the basis of a Ph.D degree from N.U.M.L.; that on the last date fixed in the advertisement for the submission of application forms, appellant No.4 was not in possession of a Ph.D degree; that by the date of the interview, appellant No.4 had been awarded a Ph.D degree; and that since the statutes, rules and regulations of respondent No.1/university are not statutory, a writ of *mandamus* cannot be issued at the instance of a person seeking the enforcement of such statutes, rules and regulations. Learned counsel for respondent No.1 prayed for the appeal to be decided in accordance with the law.

4. Mr. Muhammad Umair Baloch, Advocate, learned counsel for the respondent submitted that the respondent had filed writ petition No.18/2012, which petition should only be treated as a petition seeking the issuance of a writ of *quo warranto* against appellant No.4, who was respondent No.4 in the said writ petition. In the said writ petition, the respondent herein had

prayed for the appointment order issued in favour of appellant No.4 to be set-aside, and for a direction to be issued to appoint the respondent as Assistant Professor (BPS-19). As mentioned above, learned counsel for the respondent submitted that the case should be confined to the setting aside of appellant No.4's appointment by issuing a writ of *quo warranto*.

5. Learned counsel for the respondent submitted that appellant No.4 was not qualified to be appointed as Assistant Professor (BPS-19), by 30.06.2011, (i.e. the date of the advertisement); that appellant No.4 was not holding a Ph.D degree on the date fixed in the advertisement for the submission of the application forms; that appellant No.4 was politically well connected, and was extended undue favour by the administration of appellant No.1; that the date of the interview was postponed by appellant No.1 in order to unlawfully accommodate appellant No.4; that appellant No.4 had taken the examination for her Ph.D degree at NUML on 25.08.2011 i.e. after the last date for the submission of application forms fixed by appellant No.1 in the advertisement dated 30.06.2011; that the fact that appellant No.4 was in possession of the Ph.D degree on the date of her interview was immaterial, since the critical date was the last date fixed in the said advertisement for the submission of application forms. Learned counsel for the respondent prayed for the instant appeal to be dismissed.

6. We have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

7. The record shows that on 19.06.2011, appellant No.1 published an advertisement inviting applications from qualified persons for appointment against posts including the post of Assistant Professor–Urdu (BPS-19). The last date for the submission of applications was 30.06.2011. Appellant No.4 applied for appointment against the said post. In order to be appointed as Assistant Professor (BPS-19), applicants had to

have the minimum qualification of Ph.D in the relevant field from a university or an institution recognized by the H.E.C. Appellant No.4, in response to the said advertisement, applied for appointment as Assistant Professor–Urdu (BPS-19). Vide letter dated 15.06.2012, appellant No.1 informed appellant No.4, that she had been short listed for an interview before the Selection Board.

8. It appears that appellant No.1's Personnel Office had told appellant No.4 that since she had not produced a notification regarding her Ph.D, she could not be issued a call letter to appear before the Selection Board. Through C.M.No.1537/2014, appellant No.4 brought on record undated letter addressed by her to the President of appellant No.1 informing the latter that she had completed her Ph.D studies and that the thesis had been submitted in June 2010. Furthermore, it was stated that her thesis was under process with N.U.M.L. Appellant No.4 requested that she may be declared provisionally eligible subject to the condition that she will produce her notification regarding her Ph.D before the date of the interview. On the said undated letter, there is the following noting dated 27.07.2011:-

“Approved as provisionally eligible candidate for appearing before the Selection Board with the understanding that she will produce Ph.D. notification before the date of scheduled interview”.

9. On 15.09.2011, N.U.M.L. issued a notification, wherein it was stated that appellant No.4 had completed the requirements for the award of Ph.D degree in the discipline of "Urdu" from N.U.M.L. in the examination held on 25.08.2011. Furthermore, it was stated that the Rector of the N.U.M.L. had approved the award of Ph.D to appellant No.4 on the recommendation of the relevant committee. Vide letter dated 12.09.2011, appellant No.1 asked appellant No.4 to appear before the Selection Board for an interview on 19.09.2011. Vide letter dated 04.10.2011, appellant No.1 appointed appellant No.4 as Assistant Professor–Urdu (BPS-19). The said appointment was made on the basis of the

recommendation made by the Selection Board of appellant No.1 in meetings held on 19.09.2011 and 20.09.2011.

10. It appears that appellant No.4 was serving as a Lecturer, Department of Urdu at appellant No.1/university on deputation basis from the Directorate of Education. Appellant No.4's resignation was accepted with effect from 03.10.2011 by the Federal Directorate of Education. After her appointment as Assistant Professor (BPS-19), she, on 03.10.2011, resigned from the Federal Directorate of Education. Since appellant No.4 joined her duties as Assistant Professor (BPS-19) at appellant No.1/university, her appointment as a Lecturer on deputation basis ceased with effect from 04.10.2011. An office order, in this regard, was issued by appellant No.1/university on 04.11.2011.

11. On 05.01.2012, the respondent filed writ petition No.18/2012 before this Court praying for *inter-alia* the appointment of appellant No.4 as Assistant Professor (BPS-19) to be set-aside. As mentioned above, the said writ petition was allowed by the learned Judge-in-Chambers, vide judgment dated 06.04.2012. Consequently, vide office order dated 21.06.2012, appellant No.1 dispensed with appellant No.4's services with immediate effect. The said judgment dated 06.04.2012 has been impugned by the appellants in the instant appeal.

12. It appears that the said judgment dated 06.04.2012 was assailed in I.C.A. No.179-W/2012. Vide order dated 14.05.2012, the said I.C.A. was dismissed. Respondent No.4 assailed the said order dated 14.05.2012 in civil petition No.1250/2012 before the Hon'ble Supreme Court. The said petition was allowed and the matter was remanded to this Court with the direction to decide the said I.C.A. afresh.

13. Now, it is well settled that a person who does not have the prescribed qualifications for appointment to a particular post, cannot be appointed to such a post. Such qualifications can be prescribed in the advertisement issued by the appointing authority or in the relevant rules of the establishment where the

appointment is to be made. In the event, the candidate obtains the prescribed qualifications after his/her appointment would not make the appointment valid. Reference in this regard may be made to the following case law:-

- (i) The Hon'ble Supreme Court in the judgment passed in Suo Moto Case No.13/2016 (Action against illegalities, contraventions and violations in appointments within NAB) (2017 SCMR 838), held *inter-alia* as follows:-

“27. The contention that a person can obtain the requisite qualifications subsequently, that is after he had already joined the service of NAB is unsustainable. If this concept or principle is accepted it would render meaningless the stipulated qualification for a particular job.”

- (ii) In the case of Muhammad Muneer Malik Vs. Allama Iqbal Open University (2016 PLC (C.S.) 896), this Court has held as follows:-

“14. It is, therefore, axiomatic that the eligibility criterion and conditions, once unambiguously mentioned in an advertisement published in the Press, cannot be ignored, altered or deviated from during the selection process, particularly after the deadline for the submission of applications has expired. Appointments made in violation of the principles of transparency and fairness are illegal and not sustainable in law.”

- (iii) In the case of Muhammad Waqas Gul Vs. Water and Power Development Authority (2015 PLC (C.S.) 144), the Hon'ble Lahore High Court dismissed writ petition filed by the petitioners who did not have the prescribed qualifications of advertised posts on the date when the advertisement was published and on the last date for submitting applications. The mere fact that the petitioners had obtained the requisite qualifications after their appointment could not save their writ petitions from being dismissed.
- (iv) In the case of Mst. Sugafta Vs. Chairman Federal Public Service Commission, Islamabad (2015 PLC (C.S.) 819), the Division Bench of the Hon'ble Balochistan High Court held that it was the prerogative of the government to prescribe the requisite qualification for a particular post.

Furthermore, it was held that the eligibility of a candidate is to be determined in accordance with the advertisement for the post keeping in view the stipulated requirements. A petitioner, who did not have the requisite qualifications prescribed in the advertisement for appointment against a certain post was held not to be eligible, and, therefore, could not be termed as an 'aggrieved person'.

- (v) In the case of Mitha Khan Umrani Vs. Federation of Pakistan (2014 PLC (C.S.) 571), the Division Bench of the Hon'ble Balochistan High Court, quoted with approval the judgment passed in C.P.No.738/2012 titled "Shazia Vs. Government of Balochistan", wherein it was held that eligibility of a candidate had to be determined in accordance with the advertisement for the post, the service rules governing the appointment and any instructions backed by the law and rules framed thereunder. Furthermore, it was held that a non-qualified person cannot be appointed to a particular post; and that appointment could not be made in violation of the requisite qualification.
- (vi) In the case of Abdul Latif Vs. Government of Punjab (2003 PLC (C.S.) 975), writ petitions filed by petitioners who admittedly lacked the required qualifications for the advertised posts were dismissed by the Hon'ble Lahore High Court. In paragraph 9 of the said report, it was held as follows:-

"9. The petitioners admittedly do not possess Degree of M.A. or M.Sc. Petitioner No.3, possesses B.A. Degree while the remaining petitioners possesses B.Sc. Degree. Although they do possess the requisite professional Degree viz M.A.Ed. but requirement for the post applied by them was also that of an Academic Degree of M.A., M.Sc. which they admittedly do not possess; hence they cannot be deemed to possess the requisite qualification for the post applied for by them i.e. S.S. Educators, basic qualification for which was M.A. or M.Sc. with Additional Qualification of a Professional Degree.

10. Direction in writ jurisdiction cannot be, therefore, issued to the respondents to consider the petitioners'

qualification fit for the post they have applied for and to interview them.”

14. In the case at hand, appellant No.4 admittedly did not have the requisite qualification of Ph.D in the relevant field on the date of the publication of the advertisement as well as on the last date for the submission of the applications for appointment against the advertised post of Assistant Professor–Urdu (BPS-19). In paragraph-11 of the impugned judgment dated 06.04.2012, the learned Judge-in-Chambers held *inter-alia* that appellant No.4 “*was not even eligible to apply to the said post having no qualification of Ph.D. at the crucial and relevant time*”. It appears that the last date (i.e. 30.06.2011) mentioned in the advertisement dated 19.06.2011 for the submission of application forms for appointment against the post of Assistant Professor (BPS-19) was considered as the “*crucial and relevant time*”.

15. The question that crops up in the mind is that whether appellant No.4’s appointment as Assistant Professor–Urdu (BPS-19) could be declared unlawful even though on the date of her interview, she had been awarded a Ph.D degree from N.U.M.L. in the relevant field. The advertisement dated 19.06.2011 did not provide that the candidates had to have the requisite qualifications by the last date fixed for the submission of the application forms. Learned counsel for the respondent as well as the learned counsel for appellant No.1/university could not point out any statute, rule or regulation of appellant No.1 requiring a candidate to have the prescribed qualifications for appointment to a certain post by the date fixed for the submission of the application forms. Although the last date for the submission of the application forms was 30.06.2011, appellant No.4 was admittedly interviewed by the Selection Board on 19th and 20th September, 2011. On 15.09.2011, (i.e. prior to the interview) N.U.M.L. issued a notification, wherein it was stated that appellant No.4 had completed the requirements for the award of Ph.D degree in the discipline of "Urdu" from N.U.M.L. in the

examination held on 25.08.2011. We are of the view that in the absence of such a requirement in the advertisement as well as appellant No.1's statutes, rules or regulations that an applicant had to have the requisite qualifications on the last date fixed for the submission of the applications, appellant No.4 could not be considered as ineligible for appointment so long as she had obtained the required qualifications by the time she was interviewed for the said post. In holding so, we derive guidance from the law laid down in the following cases:-

- (i) In the case of Shazia Munawar Vs. Punjab Public Service Commission (PLD 2010 Lahore 160), the appellants' application forms for appointment against the posts of Civil Judges-cum-Judicial Magistrates were rejected on the ground that they did not possess the required length of practice/experience by the date when the vacancies were advertised in the newspapers. For calculating the experience of a candidate, Regulation No.11 of the Punjab Public Service Commission Regulations, 1987, had provided that the closing date for the submission of applications was relevant. Therefore, the Division Bench of the Hon'ble Lahore High Court held that the critical date for calculating the experience of a candidate was the last date for the submission of application forms, and not the date of the advertisement.
- (ii) In the case of Dr. Muhammad Anwar Khan Gondal Vs. Punjab Public Service Commission, (2010 PLC (C.S.) 1408), an advertisement was published inviting applications for the selection of Additional Prosecutors-General in the Prosecution Department, Government of Punjab. The petitioner in the said case did not have the requisite qualifications by the closing date for the submission of the applications. However, before the written examination and the interview, the relevant rules were amended resulting in the petitioner being qualified. The petitioner had also

cleared the written examination. It was held by the Hon'ble Lahore High Court that after the amendment of the rules, a corrigendum to the advertisement should have been issued so as to bring the same in conformity with the amended rules. Furthermore, it was held that for determining a candidate's qualification for selection/appointment in the recruitment process, the law as applicable on the date of the interview and appointment would be relevant. The writ petition was disposed of with the direction that the result of the petitioner's written examination be declared, and if he has passed the same, the petitioner be interviewed by the respondents. Furthermore, it was held as follows:-

“The aforesaid makes it clear and obvious for the purpose of determining the qualification for selection and appointment in a recruitment process the law as applicable on the date of appointment is relevant and not as it existed on an earlier date. And the terminus quo in this behalf appears to be the date of the interview. The contentions of the parties must necessarily be examined in the above context.”

- (iii) In the case of Mst. Nusrat Rafi Vs. Executive District Officer (Education), Faisalabad (2010 PLC (C.S.) 257), an advertisement was published by the District Education Officer, Faisalabad, inviting applications for various posts. The last date for the submission of the applications was fixed in the said advertisement. A candidate was required to submit his/her educational testimonials and other other necessary particulars like experience certificate, *Nikahnama*, Identity Card, Domicile certificate, etc. by the said date fixed in the advertisement. The application of the petitioner in the said case was rejected on the sole ground that the petitioner did not possess a Master degree on the last date fixed for the submission of the applications. The petitioner was issued a Master degree before the date of the interview. The Hon'ble Lahore High Court allowed the writ petition with the direction to the respondent to consider the petitioner's case for appointment in

accordance with the law. In paragraph 8 of the said report, it was held *inter-alia* as follows:-

“8. Even otherwise, the date for filing the application in the advertisement appears to be an administrative / secretarial act, whereby the relevant testimonials/documents of the candidates are being collected for the purposes of evaluation to be done by the concerned Selection Committee later on, therefore, the date of application cannot be considered to be substantive cut off date or a date after which the case of the petitioner cannot be processed. At least, in the instant case, the advertisement does not specify or underline the importance of the said date and, therefore, the said date has no more importance than that of administrative convenience...”

- (iv) In the case of Dr. Zia Suleman Farooqi Vs. Punjab Public Service Commission, (PLD 1994 Lahore 55), in response to an advertisement, the petitioner in the said case had applied for appointment against the post of Assistant Professor of Radiology in the Punjab Health Department. The last date for submitting applications was mentioned in the said advertisement. After the petitioner submitted his application form along with his certificates relating to academic qualification and experience, he was informed by the respondent in the said case that the petitioner had not supplied the foreign experience certificate recognized by the Pakistan Medical & Dental Council. After the foreign experience certificate from the Pakistan Medical & Dental Council was obtained by the petitioner and provided to the respondent, the latter informed the former that his application had been rejected due to the absence of the unconditional recognition of the petitioner's foreign experience by the Pakistan Medical & Dental Council. This was before the date which was fixed for the interviews of the selected candidates. The Hon'ble Lahore High Court allowed the writ petition by holding that since the petitioner had produced the requisite certificate before the date of the interview, the rejection of his application form was not warranted. Furthermore, the respondent was directed to

treat the petitioner's application form as valid and to allow him to compete for appointment to the said post. In paragraph 30 of the said report, it was held by the Hon'ble Lahore High Court as follows:-

"Be that as it may, I have held above that it was no mandatory requirement of the PPSC that the said certificate of recognition granted by the PM&DC must accompany the Application Form because, as per the language of the notification in question itself, the PPSC had stated that such like certificates should be produced by the candidates. In the absence of any time having been fixed by the Commission for the production of such certificates, the Commission was bound to accept these certificates and not to reject the candidature of any applicant if they were produced at any time before the process of selection was over. Needless to add that any ambiguity in a penal provision has to be resolved in favour of the subject."

In coming to the abovementioned conclusion, the Hon'ble Lahore High Court relied on the law laid down in the cases of Habib-ur-Rehman v. Government of Pakistan and others (1979 SCMR 121), Ghulam Murtaza v. Chairman of Selection Board and others (1981 CLC 274), and Miss Sobia Hadi v. the Principal, King Edward Medical College (PLD 1993 Lah. 673), I deem it appropriate to set out the ratio in the said judgments herein below:-

- (v) In the case of Habib-ur-Rehman v. Government of Pakistan and others (Supra), it was held as follows:-

"...But merely because this certificate was produced after the prescribed date for interviewing candidates from this Agency would not mean that the fourth respondent was debarred from applying for admission if he was otherwise so entitled to do, provided the certificate was produced before the authorities announced the list of candidates granted admission. And, as the fourth respondent admittedly obtained the correct certificate a month before the Government announced the list of successful candidates, nothing turns on the fact that he produced a correct certificate at least in the absence of some mandatory provisions to the contrary, and no such provision has been produced before us. In these circumstances, as the fourth respondent had admittedly obtained far higher marks than the petitioner, the only question was whether the certificate of domicile granted to the fourth respondent by the Political Agent, Orakzai Agency was in order, therefore, we agree with

the view of the learned Judges of the High Court that the fourth respondent's application had been illegally rejected and as he had higher marks than the petitioner, he was clearly entitled to admission as against petitioner."

- (vi) In the case of Ghulam Murtaza v. Chairman of Selection Board and others(*supra*), it was held by the Hon'ble Lahore High Court, as follows:-

"it would appear from the statement of facts made above that the petitioner had filed a certificate of having completed the NCC training alongwith his application/admission form in time. The defect, if any, of signing of the certificate was also removed and formal certificate submitted before final selection. A little technicality has been made a fetish of deprivation. Merit has to be calculated for admission with reference to facts and reality. If this existed at the relevant time but the certification thereof which is not in the hands of the candidate follows subsequently, the candidate cannot be punished for the acts of others .."

- (vii) In the case of Miss Sobia Hadi v. the Principal, King Edward Medical College and others(*Supra*), the Division Bench of the Hon'ble Lahore High Court held as follows:-

"The right of the candidate for admission and his/her merit is to be determined on the date when the final selection was to be made and admittedly in this case this was finalized on 31.01.1992 after 31.10.1992 when the result of the petitioner was already there

Furthermore, it was held as follows:-

"The petitioners cannot be denied admission on the ground that the Result Card was not produced on or before 25-10-1992. The publication of the result and issuance of the Result Card is not within the control of the petitioners but within the domain of Educational Authorities. In these circumstances, the petitioners are entitled to the Maxim "Lex non cogit ad impossibilia" i.e. the law does not compel a man to do that which he cannot possibly perform ..."

16. The Hon'ble Judges who authored the judgments in the cases of Shazia Munawar Vs. Punjab Public Service Commission (*supra*), Dr. Muhammad Anwar Khan Gondal Vs. Punjab Public Service Commission (*supra*), Mst. Nusrat Rafi Vs. Executive District Officer (Education), Faisalabad (*supra*), Dr. Zia Suleman Farooqi Vs. Punjab Public Service Commission, (*supra*), rose to

grace the Hon'ble Supreme Court, therefore, the said judgments deserve reverence and respect.

17. Recently, vide judgment dated 14.02.2018, passed by this Court in writ petition No.395/2017, titled “Dr. Shamaila Sajjad Vs. The Higher Education Commission etc.”, this Court upheld the objection to the maintainability of a writ petition against the International Islamic University primarily on the ground that its statutes, rules and regulations were not statutory in nature. Therefore, we are of the view that the learned Judge-in-Chambers could not have issued a writ of *mandamus* against appellant No.4 with respect to the appointment process for the post of Assistant Professor (BPS-19). There was, however, no legal impediment before the High Court to have entertained the writ petition to the extent of determining whether or not to issue a writ of *quo warranto* against appellant No.4.

18. In view of the above, the instant appeal against the judgment dated 06.04.2012, is allowed to the extent of the findings of the learned Judge-in-Chambers that appellant No.4’s order of appointment dated 04.10.2011, is illegal, and same is accordingly set-aside. There shall be no order as to costs.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2018.

(JUDGE)

(JUDGE)

*Qamar Khan** **APPROVED FOR REPORTING**