

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W. P. No.940/2011

Qaiser Ajaz Abbasi

Versus

Federal Board of Intermediate and Secondary Education
through its Chairman & another

Petitioners by : Mr G. M. Chaudhry, ASC.

Respondents by : Mr Abdul Rahim Bhatti, ASC.
Mr Muhammad Amin Farooqi, AHC.

Date of Hearing : 06-02-2018.

ATHAR MINALLAH, J.- The petitioner, namely, Qaiser Ajaz Abbasi has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*) assailing the appointment of Hamid Mehmood (*hereinafter referred to as the 'respondent'*). The petitioner has also challenged the seniority list whereby the respondent has been shown as senior to him.

2. The facts, in brief, are that the petitioner and the respondent were appointed on 08-06-2005 against the post of Data Processing Assistant (BS-14) in the Federal Board of Intermediate and Secondary Education (*hereinafter referred to as the 'Board'*). The latter circulated provisional seniority list vide Circular, dated 04-05-2010. The respondent was shown as senior to the petitioner. The latter filed a representation but the same was not responded to by the competent authority. He then preferred an appeal on 04-06-2010. The final seniority list was issued vide letter, dated 17-01-2011. The petitioner filed an appeal and the same was rejected vide letter, dated 24-01-2011. The petitioner thereafter challenged the acts and omissions of the respondents by filing the instant petition on 29-03-2011.

3. The learned counsel for the petitioner has contended that; the appointment of the respondent was in violation of the principles of transparency; admittedly he had not applied for the post of Data Processing Assistant (BS-14) and, therefore, could not have been considered; the father of the respondent at the relevant time was working as Director and *Ex Officio* Member of the Departmental Promotion/Selection Committee; the latter had influenced the appointment process; the respondent could not have been appointed against the post for which he had not applied; it is an admitted position that the respondent had applied for the post of Research Assistant (BS-11) and not for Data Processing Assistant

(BS-14); the fixation of seniority is illegal; reliance has placed on the case titled 'Muhammad Yousaf v. Director, Culture Balochistan 3 others' [2015 PLC (CS) 253].

4. The learned counsel who has appeared on behalf of the Board has argued that; appointments were made in the year 2005 and, therefore, the instant petition is hit by the principle of laches; the selection of the respondent was made in the light of recommendations of the Selection Committee; the respondent was eligible to be considered and appointed against the post of Data Processing Assistant (BS-14).

5. The learned counsel who has appeared on behalf of the respondent has contended that; the instant petition is not maintainable nor the petitioner can be treated as an aggrieved person; the petitioner has not come to this Court with clean hands; the respondent was eligible and qualified and had also applied in response to the advertisement whereby applications were invited from eligible candidates; the initial seniority list was issued on 10-03-2006 and the same was not assailed by the petitioner; the respondent being senior to the petitioner was given the charge of the post of Data Processing Supervisor; no illegality has been committed; reliance has been placed on the cases of 'Muhammad Javed, Managing Director Sui Northern Gas and others' [2013 CLC

1276], 'Masroor Hussain and 45 others v. Chairman, Pakistan International Airlines and 45 others' [1010 PLC (CS) 630].

6. The learned counsels have been heard and the record perused with their able assistance.

7. The Board has been established under section 5 of the Federal Board of Intermediate and Secondary Education Act, 1975 (*hereinafter referred to as the 'Act of 1975'*). The composition of the Board is described under section 5 and its powers and functions under section 8. Clause 'q' and 't' of section 8 empowers the Board to regulate and decide administrative matters including creation and abolition of posts under the Board and to do all other acts necessary for carrying out the purposes of the Act of 1975. The appointment, powers and duties of the Secretary of the Board are described under section 12. Section 17 provides that the Board may, with the approval of the Federal Government make regulations for carrying out the purposes of the Act of 1975, inter alia, regarding matters relating to appointment of employees and conditions of their service. Pursuant to powers conferred under section 17, the Board with the approval of the Federal Government has made the Federal Board of Intermediate and Secondary Education Employees (Service) Regulations, 2005 (*hereinafter referred to as 'Regulation of 2005'*). Regulation 3 defines various expressions. Regulation 4 specifies authorities competent to make

appointments against various posts. The appointing authority in case of posts in BS-1 to BS-16 and equivalent is the Chairman. Regulation 9, inter alia, provides that initial recruitment to posts in BS-15 and below shall be made by the appointing authority on the recommendations of the Selection Committee specified at Sr. No.3 of the Schedule. Regulation 11 explicitly provides that all vacancies are required to be filled by initial recruitment through advertisement in prominent newspapers. Regulations 13 to 17 prescribes the conditions of initial recruitment.

8. A plain reading of the provisions of the Act of 1975 and the Regulations of 2005 highlighted above, shows that vacant posts are required to be filled in a transparent manner. The august Supreme Court in the case titled "Dr Naveeda Tufail and 72 others v. Government of Punjab and others" [2003 SCMR 291] has enunciated the principles and law relating to observing transparency while making recruitment. It has been held that recruitment made in a non-transparent manner curtails the legitimate right of appointment of deserving persons and that such appointments are against the policy of law. In the case titled 'Mushtaq Ahmad Mohal and others v. The Honourable Lahore High Court, Lahore and others' [1997 SCMR 1043] the apex Court has held that initial, adhoc or regular appointments made without inviting applications from the public through the press, is violative of Article 18 read with Article 2A of the Constitution. It has been further held that every applicant is to be provided equal opportunity to compete for the advertised post. The principles of transparency have been

reiterated and reaffirmed in the case titled "Syed Mubashir Raza Jaffri and others v. Employees Old Age Benefits Institutions (EOBI) through President of Board, Board of Trustees and others" [2014 SCMR 949].

9. The august Supreme Court, in the case titled "Suo Motu Action Regarding Eligibility of Chairman and Members of Sindh Public Service Commission etc" [2017 SCMR 637], has held as follows:

"If through a discriminatory selection process civil servants are selected and appointed it would infringe Article 27 of the Constitution which states that, "No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against." Article 25, prescribing the equality of citizens, is another Fundamental Right which is attracted if all those who are tested and interviewed are not treated equally."

10. The august Supreme Court has emphasized in the case titled "Muhammad Ashraf Tiwana and others v. Pakistan and others" [2013 SCMR 1159] that due diligence must be exercised while making appointments and while doing so a fair and transparent selection process ought to be adhered to. In the case titled 'Muhammad Yasin v Federation of Pakistan through Secretary, Establishment Division, Islamabad and others' [PLD 2012 S.C. 132] the august Supreme Court has observed that adherence to a credible and transparent selection process with due diligence is a pre requisite. Reliance is also placed on the cases titled "Asaf

Fasihuddin Khan Vardag v. Government of Pakistan and others” [2014 SCMR 676] and “Chief Secretary Punjab and others v Abdul Raoof Dasti” [2006 SCMR 1876]. In the latter judgment the august Supreme Court has held as follows:

"We need to remind ourselves that choosing persons for public service was not just providing a job and the consequent livelihood to the one in need but was a sacred trust to be discharged by the ones charged with it, honestly, fairly, in a just and transparent manner and in the best interest of the public. The individuals so selected are to be paid not out of the private pockets of the ones appointing them but by the people through the public exchequer. Therefore, we must keep it in mind that not selecting the best as public servants was a gross breach of the public trust and was an offence against the public who had right to be served by the best. It is also blatant violation of the rights of those who may be available and whose rights to the said posts are denied to them by appointing unqualified or even less qualified persons to such posts. Such a practice and conduct is highly unjust and spreads a message from ones in authority that might was right and not vice versa which message

gets gradually permeated to the very gross root level leading ultimately to a society having no respect for law, justice and fair play. And it is the said evil norms which ultimately lead to anarchic and chaotic situations in the society. It is about time we suppressed such-like evils tendencies and eliminated them before the same eliminated us all."

11. In the case titled "Government of N.W.F.P through Secretary Forest Department, Peshawar and others v Muhammad Tufail Khan" [PLD 2004 Supreme Court 313] the august Supreme Court reiterated the law expounded in the earlier judgments titled "Munawar Khan v. Niaz Muhammad" [1993 SCMR 1287], "Mushtaq Ahmed Mohal v. Lahore High Court" [1997 SCMR 1043], "Obaidullah v. Habibullah" [PLD 1997 S.C. 835] and "Abdul Rashid v. Riazuddin" [1995 SCMR 999] by observing as follows:

"The Courts are duty bound to uphold the Constitutional mandate and to keep up the salutary principle of rule of law. In order to uphold these principles it has been stated time and again by the superior Courts that all the appointments are to be made after due publicity in a transparent manner after inviting applications through Press from all

those who are eligible, deserving and desirous."

12. It is, therefore, obvious from the above precedent law that statutory organizations, such as the Board, are under an obligation to fill vacant posts by selecting qualified, eligible and most deserving persons in a fair and transparent manner while any appointment made in a non-transparent and discriminatory manner offends the fundamental rights guaranteed under Articles 25 and 27 of the Constitution and thus is illegal and void.

13. In the instant case the petitioner has been persistently agitating the appointment of the respondent made in a non-transparent manner which had affected his seniority. It appears from the record that the respondent had not applied for the post of Data Processing Assistant (BS-14). It has also not been denied in the comments filed either by the Board or the respondent that the latter's father at the time of his appointment held a responsible post in the Board and was also an ex-officio Member of the Departmental Promotion/Selection Committee. Mere fact that the respondent had not applied for the post for which he was recommended and subsequently selected definitely offended the mandatory requirements relating to the principles of transparency. This further becomes relevant keeping in view that when the father of the

respondent at the relevant time was holding a senior post in the hierarchy of the Board. Transparency is not only to be observed but it ought to be visible while making appointments against vacant posts. An appointment made in violation of the principles of transparency is indeed void and cannot be regularized at a later stage. I am afraid that the Secretary of the Board in the facts and circumstances of the instant case was not empowered to have decided the appeal of the petitioner. Furthermore, lapse of time can neither condone nor legalize an appointment made in violation of the mandatory principles of transparency. It is stated in the order, dated 25-02-2011 signed by the Secretary of the Board that the representation/grievance of the petitioner was rejected with the approval of the competent authority. There is nothing on the record to show that the latter while taking such a decision had afforded an opportunity of hearing to the petitioner. A plain reading of order, dated 25-02-2011 clearly reflects that the aspect of appointment of the respondent having been made in a non transparent manner was not taken into consideration.

14. In the light of the above, order, dated 25-02-2011, is declared as illegal and having been issued/passed without lawful authority and jurisdiction and the same is accordingly set aside. The representation/grievance of the petitioner shall be deemed to be pending before the Board. The matter shall be placed before the Board pursuant to powers vested, inter-alia, under clauses (d) and

(q) of section 8 of the Act of 1975. The Board after affording an opportunity of hearing to the petitioner as well as the respondent shall decide the representation/grievance, inter-alia, in the light of the principles of law highlighted above. The grievance of the petitioner shall be decided through a speaking order.

15. The petition is, therefore, disposed of in the above terms.

(ATHAR MINALLAH)
JUDGE

Announced in open Court on 06-03-2018.

JUDGE

Luqman Khan/*