

## **JUDGMENT SHEET**

### **IN THE ISLAMABAD HIGH COURT,** **ISLAMABAD**

#### **WRIT PETITION NO.1376 OF 2020**

**Amir Sattar.**

**Vs.**

**Federal Government of Pakistan, etc**

**Petitioner by : Mr. Zulfiqar Abbas Naqvi and Mr. Mudassar Hussain Malik, Advocate.**

**Respondents by : Ms. Ruqayya Sami, AAG.  
Syed Ali Raza Zaidi, Deputy Director (Legal), Ministry of Climate Change.  
Faisal Nadeem, GIS Manager, Ministry of Climate Change.  
Ms. Sana Ishaq, GIS (A), Ministry of Climate Change.  
Mr. Shujaullah, Advocate for Respondent No.3.**

**Date of hearing : 21.07.2020.**

**LUBNA SALEEM PERVEZ, J.** The petitioner through instant petition has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and has sought the following prayer:-

*“In view of the above, it is respectfully prayed that the instant petition may kindly be accepted and the appointment of respondent No. 3 and similarly other persons who have been appointed as GIS Analyst without having basic qualification as required, be declared illegal void capricious and a colourable exercise of jurisdiction and the same may be set aside. It is further prayed that the respondent No. 1 and 2 may kindly be directed to act in accordance with law and candidates who fulfill the requisite qualification and experience be considered for the appointment as GIS Analyst in PPS-7 in the best interest of justice.”.*

2. Facts giving rise to the filing of this petition are that Respondent No. 1 i.e. Ministry of Climate Change announced certain vacancies through advertisement published in daily newspapers on 2<sup>nd</sup> January, 2020, for “10 Billion Tree Tsunami Program”, which includes thirty three (33) vacancies of GIS Analyst amongst various other vacancies. The requisite academic qualification for the said post was

Master's degree in "Computer Science/I.T. or GIS and Remote Sensing" (serial No. 8 of the advertisement). The process of conducting screening test and physical skill test of the candidates was outsourced to a testing agency known as Open Testing Service, Pakistan (OTS). The petitioner applied for the post of GIS Analyst according to the advertisement and passed all the tests conducted by the OTS and also the interview conducted by the respondents, however, when he was not appointed on the post, he filed present petition challenging the appointment of Respondent No. 3 on the ground that he does not possess the basic qualification as required for the post announced through advertisement.

3. Learned counsel for the petitioner submitted that the Respondent Nos. 1 & 2 have considered those candidates for appointment against the post who are not qualified as per advertisement published for the vacancies in the above program; that the selection of Respondent No. 3 is in gross violation of merit; that Respondent No. 3 holds Master degree of Geography which is a different and distinct subject from Geographic Information System (GIS) and Remote Sensing; that the basic qualification for the post of GIS Analyst as mentioned in the advertisement was a Master degree in Remote Sensing & Geographic Information System/Computer Science/I.T. with experience of two years in the field; that the petitioner was lawfully eligible candidate who possesses the required academic qualification for the post of GIS Analyst announced for province of Punjab according to the proclamation; that despite the fact that the petitioner qualified all the tests conducted by OTS, obtained 44 marks and also cleared the interview was not selected for the advertised post and instead Respondent No. 3 was appointed who does not have basic requisite qualification for the post as he holds a Master degree in Geography and a diploma in GIS; that the request of the petitioner for sharing merit list of the successful candidates was also rejected by the respondents; that about 18 candidates selected and appointed against the post do not even possess the basic qualification and have been selected on the recommendations of influential persons; that the respondents acted illegally, unlawfully and have deprived the petitioner from his lawful right of employment despite being fully

eligible in accordance with the requirement for the post; that the whole process of selection and appointment for the post advertised through proclamation is illegal, void and colorable exercise of jurisdiction.

4. On the other hand, Mr. Ali Raza Zaidi, Deputy Director (Legal), Ministry of Climate Change, appearing on behalf of Respondent No. 1, submitted that the testing services are being hired to counter the allegations of nepotism and selection of favorites against the vacancies; that OTS and such like agencies being a third party used to conduct all the process from inviting applications to conducting of all tests in a transparent manner; that OTS was responsible for scrutiny of applications, short listing of candidates and written test for 10 Billion Tree Tsunami Project (TBTTP) of Respondent No. 1, as per agreement dated 23.12.2019; that present petitioner passed all the tests and also the interview but was at serial No. 37 in the overall merit list and as such top 33 candidates from the merit list were appointed as GIS Analyst. On the directions of Court, Respondent No. 1 submitted the statement containing names and qualification of 33 successful candidates.

5. Learned counsel for Respondent No. 3 challenged the maintainability of the petition and submitted that the petition is in the nature of quo warranto and petitioner being an interested party cannot file writ of quo warranto; that the issues raised in the petition involved factual controversies which cannot be looked into by this Hon'ble Court while exercising powers in writ jurisdiction under Article 199 of the Constitution; that the petition is required to be dismissed on the ground of non-joinder of parties as the petitioner is also seeking writ against the 33 successful candidates for the post of GIS Analyst who have not been made party to the petition and any adverse order would also affect them without hearing them; that regarding academic qualification of Respondent No. 3, he submitted that he even hold additional academic qualification as to the requisite qualification published in the advertisement for the post being M.Phil in Geography; that all his degrees have been duly verified by the Higher Education Commission (HEC); that in this regard he referred section 10(o) of Higher Education Commission Ordinance, 2002,

according to which HEC has power to determine the equivalence and recognition of degrees; that the HEC has considered the subjects of Remote Sensing & GIS as a sub-discipline of Geography and furnished a photo copy of letter dated 20.02.2020, of HEC. Learned counsel in support of his contentions relied on the judgment re: Haji Nasir Mehmood Versus Mian Imran Masood (2010 PLD SC 1089) and Qamar Aziz Vs. Government of the Punjab through Secretary and others [2019 PLC (CS) 932 Lahore].

6. Learned counsel for the petitioner while rebutting the arguments submitted that the present writ petition is in the nature of mandamus as the petitioner has challenged the action of excess jurisdiction of respondents and relied on Dr. Shamim Tariq versus International Islamic University, Islamabad (2020 SCMR 568); that no factual controversy is involved in the present petition as the respondents have violated the fundamental right of the petitioner. Learned counsel challenged the process and transparency of test conducted by OTS and submitted that interviews are even being taken by the OTS. He relied on the latest unreported judgment of this Court in case of Raja Nouman Ashraf & another vs. The Federation of Pakistan in W.P. No. 4600/2018, dated 26.02.2020, whereby, the hiring of private testing agencies like OTS for recruitment of civil servants by the State/Government department have been deprecated and held to be illegal.

7. Heard learned counsel for the parties and perused the relevant record.

8. Learned counsel for the petitioner initially contended that the present petition is in the nature of quo warranto as the appointment of Respondent No. 3 has been challenged on the ground that he is not qualified for the post of GIS Analyst. However, learned counsel in rebuttal to the arguments of learned counsel for Respondent No. 3 contended that the present writ is a writ of mandamus as his right to appointment being a qualified person for the post has been infringed. This Court, vide judgment in *Dr. Farzana Bari vs. Ministry of Law, Justice and Human Rights (PLD 2018 Islamabad 127)* has distinguished the writ of mandamus from writ of quo warranto and held that for writ of mandamus it was

necessary that a right sought to be enforced should ordinarily be personal or individual right of the individual petitioner. For writ of quo warranto it has been held in the same judgment that any member of the public could sue if he had no private interest to serve and was for public advantage. It has been further held that the purpose of writ of quo warranto is that a public office should not be occupied by an unauthorized, incompetent and unqualified person, however, in order to maintain a writ of quo warranto, the petitioner need not be an aggrieved person and relied on the judgment in case of *Dr. Azim-ur-Rehman Meo v. Government of Sindh (2004 SCMR 1299)*. Thus, writ of mandamus is filed by the aggrieved person seeking declaration for enforcement of his personal right in contrast of which writ quo warranto can be filed by any person from the public to challenge the appointment of public office holder if it is in violation of rules and statutes. The contention of the learned counsel for the respondent that writ of quo warranto is not maintainable by the interested party is rejected.

9. The contention of the learned counsel for the petitioner is that he has been malafidely dropped from the merit list despite the fact that he possessed the degrees of Geo Information System and Remote Sensing as per requirement of the post advertised and he has cleared all the tests and interview conducted by the OTS, but the favorites who are not holding the relevant qualification have been appointed. The perusal of documents, furnished along with parawise comments by Respondents, revealed that petitioner stood at 37<sup>th</sup> position in the merit list and for available 33 vacancies candidates at serial No. 1 to 33 were appointed. So far as assertion of the learned counsel for the petitioner that Respondent No. 3 holds M.Phil degree in Geography, neither required nor advertised for the subject post, the learned counsel for Respondent No. 3 furnished letters issued by HEC dated 18.07.2017 and 25.02.2020, whereby in accordance with the opinion the remote sensing and GIS is a sub discipline of Geography. In this regard provision of section 10(o) of HEC Ordinance, is also perused according to which the HEC is the competent authority having powers for verification, determining equivalence and recognition of the degrees, diplomas and certificates awarded by the Institution

in Pakistan as well as from institutions abroad. The said provision is also reproduced as under:-

***“10. Powers and functions of the Commission.***

*(1) For the evaluation, improvement and promotion of higher education, research and development, the Commission may*

*(o) determine the equivalence and recognition of degrees, diplomas and certificates awarded by Institutes within the country and abroad;”.*

*Prima facie* the photo copies of educational / academic degrees of Respondent No.3 are recognized by HEC and he appears to be over qualified as compared to requisite qualification for the post as per advertisement which cannot be treated as his disqualification. In this regard I am in agreement with the judgment of the Lahore High Court re: ***Qamar Aziz vs. Government of Punjab [2019 PLC(CS) 932]*** whereby it has been held that Court could not interfere with the policy matter of the government and the government had right to enhance qualification and standard of recruitment; It has been further held in the said judgment that HEC is a regulator, maintenance and improvement of higher education under the federation. Thus, in the light of the opinion of HEC rendered, vide its letters dated 18.07.2017 and 25.02.2020, it cannot be said that Respondent No.3 did not possess the requisite qualification for appointment against the post of GIS Analyst and petitioner’s contentions in this regard is ill founded.

10. Learned counsel for petitioner relied on the unreported judgment of this Court in case titled *Raja Nouman Ashraf and another vs. Federation of Pakistan and others* passed in *W.P. No. 4600/2018*, dated 26.02.2020, and submitted that the Hon’ble Court has declared all the recruitment through OTS and testing agencies as illegal and, therefore, since the present recruitment has been processed through OTS is also illegal. This judgment has been carefully perused and it transpired that the Hon’ble Court has dismissed the petition on merit, however, has declared all future recruitment processed through private testing companies as illegal. Relevant observation is as under:-

*“8. Moreover, in my humble view, if the process of recruitment is entrusted to private agencies, then how the concept of merit and transparency in the recruitment process would be meted out and whether such testing agencies are*

*otherwise devised to curb evil of unfair practices in the recruitment process in government departments. It is also pertinent to mention here that hiring private testing companies by the state departments also reflects performance by state/government departments, which are unable to even meet with the recruitment process and have left the recruitment process at the mercy of private testing agencies which is, against the spirit of law and constitution. Therefore, the federal government shall take up appropriate measure to eliminate such kind of practice in future and in case service of private testing company are hired for recruitment process of civil servants, the entire process would be illegal. If competent authorities in the helm of affairs in the ministries are unable to recruit their staff by way of their own criteria and requirements it clearly spells out lack of confidence and mismanagement and inefficiency on the part of the government officials in the concerned ministries”..*

The above judgment has been rendered on 26.02.2020, whereas, in the present case the process of recruitment for the subject post has been initiated by advertisement dated 02.01.2020, and the test and interviews were conducted on 09.02.2020 & 18.03.2020, respectively. Thus, except the interview, the entire process of testing by OTS was completed before 26.02.2020, hence, the process could not be declared illegal being completed prior to the judgment passed in W.P. No. 4600/2018. Respondent Nos. 1 & 2 have also submitted the photocopies of office memorandum issued by Cabinet Secretariat, Establishment Division on 06.05.2020 and 04.06.2020, according to which the above judgment of this Court dated 26.02.2020, have been duly implemented and the orders of outsourcing of the recruitment process has been withdrawn.

11. For what has been discussed above, no merits has been found in the present petition, hence, same is **dismissed** accordingly.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

***Announced in the Open Court on 29.07.2020.***

**JUDGE**