

JUDGMENT SHEET

INTHE ISLAMABAD HIGH COURT ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No. 5276 of 2010

Saleem Ullah Khan Versus Muhammad Ismail Qureshi Etc.

Date of hearing:

24.01.2011

Petitioner by:

Petitioner in person.

Respondents by:

Mr. Mohammad Abid Raja, learned Standing Counsel.

MUHAMMAD ANWAR KHAN KASI. J: The
petitioner has sought a writ of quo-warranto by
challenging the appointment of respondent No.1 as
Rector National School of Public Policy, Government of
Pakistan on numerous grounds. It is firstly objected
that the respondent No.1 has superannuated having
attained 60 years of age on March 10, 2009 and was
granted extension/re-employment/contract employment
for two years. The second objection about his
appointment is that, it was done without advertising the
post through press. It is further objected that the
respondent No.1 had been a Member of the Board of
Governors of National School of Public Policy (NSPP) and
sitting there as such, could not have been lawfully
appointed for the post of Rector. Another objection is
about the initiation of the summary for the Prime
Minister as it, was done by the respondent No.1 in his
capacity as Establishment Secretary meaning thereby
that he himself made his own recommendations.
According to the petitioner, the codal formalities were
not observed in making the appointment of respondent
No.1 and therefore, the appointment made in a
clandestine manner is liable to be set aside as he is
unfit to hold the said post.

2. In support of his contentions, the petitioner relied
upon case laws reported in **2010 PLC (CS) 1023, PLJ 2006**
SC 427, 1999 PLC (CS) 931, PLD 2004 SC 313, 2005 SCMR
85, 2005 SCMR 1263, 2003 PLC (CS) 1029, 1997 PLC (CS)
885, 1992 SCMR 32, 2006 SCMR 978 and 2000 PLC (CS) 769.

3. The petitioner submitted that the facts, grounds and law cited in writ petition in toto be treated as his arguments.

4. The respondent Nos. 2 and 3 while contesting the petition submitted their parawise comments, whereby maintainability of the petition was challenged on the ground of having no locus-standi of the petitioner and no cause of action in his favour. On merits it is submitted that the appointments and affairs of the NSPP are governed by especial law enacted as National School of Public Policy Ordinance, 2002 and under this statute the Board of Governors has the powers to appoint Rector. It is further submitted that the tenure post or contract appointments can be made according to the applicable law, rules and policy, guidelines issued by the Federal Government. In support of it, Office Memorandum No.6/2/200-R.3 dated 06.05.2000 has been placed on record. The relevant policy guidelines (i) and iv) of the Memorandum are reproduced for ready reference;

- i. In the case of tenure posts, appointment to which is regulate by specific provisions of law, rule and policy instructions, contract appointment may be made in the manner prescribed in the applicable law, rules and policy guidelines / directions issued by the Federal Government.
- iv. In the case of contract appointments / reemployment of retired civil servants, retired armed forces and retired Judges of superior courts, the condition of open advertisement shall not be applicable provided that such appointments shall be made by or with the prior approval of the prescribed authorities in the Federal Government.

5. Finally it is submitted that Section 14 (1) of the Civil Servants Act, 1973 provides that a retired civil servant can be re-employed if it is necessary in the public interest and is made with the prior approval of the authority next above the appointing authority.

6. I have heard the arguments and gone through the authorities, relevant laws and ordinance referred to by the parties.

7. As far as the maintainability of the instant petition is concerned, it is held to be maintainable because it is a petition seeking writ of quo-warranto and one of the key features that distinguishes this writ from others is that it can be sought by any person even if he is not an aggrieved person. Reliance is placed on a decision of Hon'ble Lahore High Court, reported in **2010 PLS (CS) 1023**. Thus the petitioner could have filed this petition.

8. Coming to the merits of the case, it is first mentioned that the Civil Servants Act, 1973 empowers the authority for re-employment if it is in the public interest and is approved by the authority next to appointing authority. As far as the appointment of respondent No.1 is concerned, it is governed by Special Law and when there are special statutory rules, they overpower the general rules. According to NSPP Ordinance, 2002 the Board of Governors has the authority to make the appointments. Section 9 of the Ordinance very specifically states that the Board shall appoint the Rector on such terms and conditions as it may determine, who shall be a whole time officer of the School and shall serve during the pleasure of the Board. The summary/recommendations for the approval of Prime Minister were put up by the Senior Joint Secretary Establishment Division. Since the appointment was made by the Board and approved by the Prime Minister, therefore, it cannot be said to be an illegal appointment.

9. Reverting to the point of publication, the guideline (iv) of the Policy Guidelines contained in Office Memorandum No. No.6/2/2000-R.3 dated 06.05.2000, exempts the contract appointments of retired Civil Servants, retired Armed Forces Officers and retired Judges of Superior Courts for re-employment through publication. Therefore, in the present case when the Board had the authority to appoint, the advertisement

for filling the vacancy was not necessary. The Ordinance 2002 does not place any bar for the appointment of a Member as Rector of the NSPP. According to the record, the meeting was chaired by the Vice Chairman and five other members were present when this decision was taken. The appointment so made and approved by the Prime Minister cannot be declared as unlawful or illegal.


10. The case laws referred to by the petitioner are distinguishable as they are about the appointments under general law and about the regular posts, therefore, they do not extend any help to the petitioner.

11. Viewing the above, the present petition is devoid of merits and is dismissed with no orders as to costs.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE.

M. Suhail

Announced in open Court, on this 4th day of
February, 2011.


(MUHAMMAD ANWAR KHAN KASI)
JUDGE.

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