

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.4481/2012

Syed Mohammad Mustahsan Bukhari & 2 others

Versus

Federation of Pakistan

Through Ministry of Inter-Provincial Coordination&12 others

Petitioners by : Mr Nauman Munir Paracha, Advocate.
Respondents by : Mr M. Saifullah Gondal, Asstt. Attorney General.
Barrister Iqbal Khan Nasar, Advocate.
Mr Muhammad Irfan Ullah, Advocate.
Date of Hearing : 13-02-2020.

ATHAR MINALLAH, C.J.- The petitioners have 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'*) seeking the following prayer.-

"It is, therefore, respectfully prayed that the instant writ petition may kindly be accepted and it may be declared that the Ministry of Inter Provincial Coordination has no jurisdiction to post the person in Grade-1 to 19 in the Pakistan Sports Board and it is only the Executive Committee of the Board which has the power to make recruitment in the case of posts in Grade 17 to 19 and Director General of the Board in case of posts in Grade 1 to 16. The respondent Ministry be directed not to make the recruitment in the Pakistan Sports Board on the posts in

Grade 1 to 19. The posting of the respondents No.3 to 13 may kindly be declared to have been made without lawful authority having no legal effect."

2. The facts, in brief, are that respondents no.3 to 13 (*hereinafter referred to collectively as the '**Respondents**'*) were appointed on a contract basis, for a specified period, in various projects/programs under the control of the Ministry of Health, Government of Pakistan (*hereinafter referred to as the '**Devolved Ministry**'*). After the incorporation of the 18th amendment in the Constitution, all the pending matters of the Devolved Ministry were transferred to the Ministry of Inter Provincial Coordination (*hereinafter referred to as '**Respondent no.1**'*). The petitioners assert that, pursuant to order dated 14-12-2011, passed by this Court in W.P. No. 2482/2011, read with order dated 04-12-2011, rendered in W.P. No. 2420/2011, the cases of the Respondents were placed before the Cabinet Sub Committee on Regularization of Contract Employees in the Ministries, Divisions, Attached Departments, Autonomous Bodies, Organizations, etc. (*hereinafter referred to as the '**Committee**'*). The Committee, after considering the cases of the Respondents, recommended their regularization. Respondent no.1 issued notifications regarding appointment of the Respondents on a regular basis and directed the Pakistan Sports Board (*hereinafter referred to as the '**Board**'*) to adjust them against vacant posts. Admittedly, the appointments were made by Respondent no. 1 and the Board was dictated or forced to adjust them against vacant posts. Some of the Respondents are in Grade 17 and above while others were appointed in lower grades. It is noted that this Court, vide judgment dated 01-

11-2017, passed in W.P. No.2117/2016 titled '*Shagufta Hashmat v. Federation of Pakistan, etc.*', has highlighted the principles and law relating to regularization. It was unequivocally held that the "Cabinet Sub Committee" was not vested with the jurisdiction to consider, recommend or direct the regularization of contract employees who were to become civil servants on a permanent basis. The Committee was also bereft of jurisdiction to appoint contract employees on a permanent basis in the entities established under a statute. The said judgment was upheld by a learned Division Bench of this Court vide judgment, dated 21-06-2018, passed in I.C.A. No.340/2017 titled '*Imran Ahmed, etc. v. Federation of Pakistan, etc.*'. Subsequently, judgments passed by this Court and the principles and law highlighted therein were affirmed by the august Supreme Court vide judgment, dated 13-03-2019, passed in C.P. No.2792/2018, titled '*Muhammad Imran Khan v. Federation of Pakistan thr. Secretary to the Government of Pakistan M/o Information Technology and Telecom Division, Islamabad & others*'. It would be appropriate not to comment regarding the legality of the respective appointments of the Respondents under the policy of regularization because it could prejudice any proceedings that may be initiated by the competent authority in future. The prayer sought in this petition is confined to challenging the adjustment of the Respondents against vacant posts of the Board. The Board, in its written comments, has taken the stance that the purported appointments or adjustments against vacant posts were forced upon the Board and in this regard the copy of a letter, dated 28-05-2013, has been placed on the record. The relevant portion of the said letter is reproduced as follows.-

"PSB is of the considered view that the adjustment of these employees is detrimental to public interest on the following grounds:-

- i) Adjustment of employees of different programmes of the (defunct) Ministry of Health against vacant posts in PSB was made on the basis of their pay scales without taking into consideration their suitability viz-a-viz the job descriptions of the post. Adjustment of the Chief Statistical Officer (BPS-18) and Health Officer (BPS-17) against the posts of Director (BPS-18) and Assistant Director (Women Cell), BPS-17 respectively can be quoted as examples.*
- ii) The new entrants have no background of sports management and hence they are not making any contribution towards the performance of the Board.*
- iii) Their adjustment has resulted in increase in the administrative expenses of PSB which is adversely affecting the sports activities which is the main function of the organization.*
- iv) Both the Board and the Executive Committee in their recent meetings expressed serious concern over the over-staffing in the PSB. An exercise for restructuring of PSB has already been started and quite a large number of employees are likely to be rendered surplus to the genuine requirements of the Board."*

3. The learned counsels for the petitioners have argued that; the Board has been constituted under the Sports (Development and Control) Ordinance, 1962 (*hereinafter referred to as the 'Ordinance*

of 1962); pursuant to powers conferred under section 5 *ibid*, the Pakistan Sports Board Rules, 1981 (*hereinafter referred to as the 'Rules of 1981'*) have been framed and they were duly notified vide notification, dated 16-03-1981; Respondent no.1 was not empowered to give directions regarding appointment/adjustment against vacant posts of the Board; the President of the Board was not vested with jurisdiction to appoint officials against the posts created by the Board; reliance has been placed on rules 9 and 12 of the Rules of 1981.

4. The learned counsel who has appeared on behalf of the Respondents has referred to powers vested in the President, described under rule 11; according to the learned counsel, the President of the Board and Respondent no.1 were empowered to appoint/adjust the Respondents against the posts of the Board; the services of the Respondents were regularized pursuant to direction given by this Court.

5. The learned Assistant Attorney General was not able to show any provision in the Ordinance of 1962, nor the Rules of 1981, empowering the Ministry of Inter Provincial Coordination i.e. Respondent no.1 to appoint/adjust against posts of the Board.

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

7. The crucial questions in this petition required to be considered and adjudicated are, whether Respondent no.1 was empowered to appoint/adjust the Respondents against vacant posts of

the Board and whether the latter could have been dictated in this regard. In order to answer these questions, it would be beneficial to survey the provisions of the Ordinance of 1962 and the Rules of 1981.

8. The Ordinance of 1962 was enacted with the object to regulate the development and control of sports in Pakistan. Section 2 defines the expressions 'Sports' and 'Board'. The Board has been established under section 3. According to the said provision, the Federal Government, for the purpose of promoting and developing uniform standards of competition in sports in Pakistan, comparable to the standards prevailing internationally and regulating and controlling sports on a national basis, by notification in the official gazette, may constitute one or more Boards for the control of sports in Pakistan. Sub section (2) of section 3 describes the status of the Board as a body corporate having perpetual succession and common seal, with power to acquire, hold and dispose of property, both moveable and immovable. Section 4 provides that the name, constitution, powers and functions of the Board shall be such as may be determined by the Federal Government. Section 5 empowers the Board to make rules or regulations for giving effect to its objects.

9. In exercise of powers conferred under sections 3, 4 and 5 of the Ordinance of 1962, the Federal Government has framed the Rules of 1981 and has constituted the Board for the control of sports, excluding cricket, called the "Pakistan Sports Board". The expressions "Director General", "Executive Committee", "President", "Secretary" and "Vice President" have been defined in clauses (ia), (ii), (v), (vi)

and (viii) of rule 2 of the Rules of 1981 respectively. Rule 2A declares the Prime Minister to be the Patron-in-Chief of the Board while rule 3 describes the composition of the Board. It is noted that the President of the Board is its Chairman. Rule 4 describes the functions of the Board. The composition of the Executive Committee has been described under rule 9 and the President is one of its members. The powers of the Executive Committee have been described under rule 10 and clause (vi) empowers it to create posts and to make appointments to posts in Grade 17 and above. The functions and powers of the Director General are described under rule 12 while clause (f) exclusively empowers the latter regarding appointments to posts upto and including Grade 16 and to delegate such powers to subordinate officers not below Grade 17. Rule 11 is reproduced as follows.-

"17. Power of the Federal Government to issue directions.- *The Federal Government may, from time to time issue directions to the Board to take such measures as the Federal Government considers necessary for the efficient management of the affairs of the Board, and the Board shall comply with such directions."*

10. The above reproduced rule empowers the Federal Government to issue directions to the Board from time to time so as to enable the latter to take such measures as it considers necessary for the efficient management of affairs of the Board. It is mandatory for the Board to comply with the directions given under rule 17. It may be noted that the scope of rule 17 does not extend to giving directions regarding matters that are exclusively vested under the Rules of 1981

either in the Executive Committee or the Director General. No direction can be given regarding appointments, transfers or postings.

11. A combined reading of the Ordinance of 1962 and the Rules of 1981 explicitly shows that the Board, established under section 3, is an independent juridical person, a body corporate having perpetual succession and common seal with power to acquire, hold and dispose of property, both moveable and immoveable. The President of the Board is also its Chairman and one of the members of the Executive Committee. The power and jurisdiction to create posts, appoint officials in Grade 17 and above, exclusively vests in the Executive Committee while the power to appoint against posts upto and including Grade 16 is within the domain of the Director General. The powers of the President are confined to matters described under rule 11 and a decision or sanction pursuant to powers conferred under this rule is required to be reported to the Executive Committee in its next meeting. The Federal Government, under rule 17, can issue directions but its scope is confined to measures which it considers necessary for the efficient management of the affairs of the Board. The power to create posts or to make appointments neither vests in the President nor in the Federal Government. Both are not empowered nor vested with jurisdiction to issue any direction to appoint a person to any post of the Board. The language of rules 17 and 11 is explicit and does not extend to empowering the President or the Federal Government to appoint persons against the posts of the Board. Sub rule (4) of rule 7 explicitly provides that all decisions at the meeting of the Board or the Executive Committee, as the case may be, shall be by majority of votes

of the members present and, in the event of equality of votes, the President is entitled to have a second or casting vote. The President on his own, therefore, cannot exercise the powers vested in the Executive Committee.

12. In the case in hand, the Respondents were contract employees of various projects under the Devolved Ministry. They assert that they were appointed on a permanent basis pursuant to directions given by this Court. A plain reading of the orders passed by this Court unambiguously shows that directions were confined to considering the cases of the Respondents. Respondent no.1 had no authority to appoint the Respondents against the posts of the Board. Moreover, employees and officials of the Board do not enjoy the status of a civil servant. They are employees of an entity established under a statute i.e. the Ordinance of 1962. The respective notifications regarding regularization of the Respondents were issued by Respondent no.1 i.e. the Ministry of Inter Provincial Coordination and the Board was directed to adjust them against its vacant posts. The prescribed procedure in the case of project employees was not observed. The Ministry of Inter Provincial Coordination is part of the Federal Government and its officials and employees enjoy the status of civil servants. This Court, in the aforementioned judgments, has unequivocally held that the effect of regularization by the Federal Government is to appoint a person against a post under the Civil Servants Act 1973 (*hereinafter referred to as the 'Act of 1973'*) and the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (*hereinafter referred to as the 'Rules of 1973'*) on a permanent basis. It, therefore, amounts to

'initial' appointment of a civil servant under the said law. It has also been explained by this Court in the aforementioned judgments relating to regularization, which have been upheld by the august Supreme Court, that contract employees of statutory entities have to be dealt with for the purposes of regularization in accordance with the relevant respective statutes. As a corollary, neither the Ministry of Inter Provincial Coordination nor the Federal Government was empowered to appoint a person as a civil servant under the policy of regularization against the vacant posts of the Board. The appointment could only have been made in accordance with the Act of 1973 read with the Rules of 1973. The Ministry of Inter Provincial Coordination was bereft of jurisdiction to dictate to the Board to adjust the Respondents against its vacant posts. Such a direction could also not have been given under rule 17 of the Rules of 1981. It is alarming to note that the Ministry of Inter Provincial Coordination had virtually forced the Board to illegally adjust the Respondents against its vacant posts despite strong resistance from the management. It was clearly pointed out to the Ministry that the Respondents were not competent nor had the requisite experience in relation to the object and purpose unambiguously stated in the preamble of the Ordinance of 1962 i.e. to regulate the control and development of sports in Pakistan. The Respondents were not appointed by the Board under the Ordinance of 1962 read with the Rules of 1981. The adjustment of the Respondents against vacant posts of the Board was alien to and ultra vires the Ordinance of 1962 read with the Rules of 1981.

13. It is noted that the mode and manner in which the Respondents were initially appointed under the policy of regularization by the Ministry of Inter Provincial Coordination and then forced to be adjusted against the vacant posts of the Board speaks volumes for the misgovernance and complete disregard for the enforced laws. While a few may have benefitted by purportedly getting employed on a permanent basis and subsequently becoming entitled to pensionary benefits, the people of Pakistan have definitely been harmed. Notwithstanding the damage such illegal appointments must have caused to the Board. It is settled law that the interest of the public at large is always given preference over the interest of a few individuals. Reliance is placed on the cases of '*H.R.C. No.40927-S of 2012 – Application by Abdul Rehman Farooq Pirzada*' [PLD 2013 SC 829] and '*Ghazala Tehsin Zohra v. Mehr Ghulam Dastagir Khan and another*' [PLD 2015 SC 327].

14. It is such illegal recruitment that has weakened organizations and entities established to serve the people. This may only be the tip of the iceberg. The culture of recruitment otherwise than on merit, has encouraged nepotism and corruption and has inevitably led to violation of the fundamental rights of the public at large besides jeopardizing interests of the future generations. The people of Pakistan have, and continue to suffer because of such detestable recruitment practices. The Board has a pivotal role in enabling the youth of this country to show to the world its talent at the international forums. There can be no compromise on merit. There must be an end to impunity against the culture of recruitment otherwise than on merit. The test for the ability of the Board to perform

its statutory obligations is the standard of sports and opportunities offered to the youth. I am afraid that this is not manifest from the falling standards of sports across the country. The victims are the people of Pakistan, particularly the youth.

15. The matter regarding the initial appointment of the Respondents by the Ministry of Inter Provincial Coordination has not been raised through this petition. A request on their behalf has been made to repatriate them to the Ministry. I am afraid that this request is misconceived because repatriation applies to those who are posted on the basis of deputation. The legality of the initial appointment of the Respondents under the regularization policy is also a mystery and needs to be probed. Could they have been appointed when the respective projects in which they had been employed on contract basis were not transferred nor had posts been created correspondingly. They definitely could not have been adjusted against the vacant posts of the Board. The appointment/adjustment of the Respondents against the posts of the Board was illegal, void and ultra vires the Ordinance of 1962 read with the Rules of 1981. The Respondents, therefore, shall forthwith be relieved by the Board. Their legal status shall be determined by the Federal Government, inter alia, in the light of the principles and law highlighted by this Court in the aforementioned judgments relating to regularization.

16. The above are the reasons for the order announced in the open Court whereby the petition was allowed.

(CHIEF JUSTICE)

Approved for reporting.

Luqman Khan/*

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