

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P.No.224 of 2019**  
**Syed Irfan Shah Noshahie**  
**Versus**  
**Full Bench, N.I.R.C. and others**

**Date of Hearing:** 22.07.2020  
**Petitioner by:** Mr. Abdul Hafeez Amjad, Advocate.  
**Respondents by:** Mr. Sadique Akbar Abbasi, Advocate for respondent No.3.

---

**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Syed Irfan Shah Noshahie, impugns the order dated 02.01.2019 passed by the learned Full Bench, N.I.R.C., whereby his appeal against the order dated 12.02.2018 passed by the learned Member, N.I.R.C., was dismissed. Vide the said order dated 12.02.2018, the learned Member, N.I.R.C. dismissed the petitioner's grievance petition against the letter dated 26.06.2015 from Pakistan International Airlines Company Limited ("P.I.A.C."), whereby the petitioner was dismissed from service for having submitted a bogus B.A. degree.

2. The facts essential for the disposal of this petition are that on 28.12.2001, P.I.A.C. issued a circular inviting applications from workers, who had been engaged in P.I.A.C. on daily wages basis, in order to determine their suitability for deployment in P.I.A.C. on contract basis against different positions including passenger services assistants. In the said circular, it was clearly mentioned that the candidates for the position of Passenger Service Assistants must possess a graduation degree from a recognized university. In response to the said circular, the petitioner applied for the position of Passenger Service Assistant. In his application form, he had mentioned that he was a graduate having been awarded a B.A. degree in the second class in the year 1994. He had also submitted a B.A. degree, bearing Roll No.061181 issued by the University of the Punjab.

3. Vide letter dated 11.06.2003 issued by the Human Resources Division of P.I.A.C., the petitioner was appointed as Passenger

Service Assistant on contract basis for a period of one year with effect from 02.05.2003 to 01.05.2004. It is an admitted position that the duration of the petitioner's employment contract was extended from time to time. The petitioner's services were regularized pursuant to a decision taken by the Cabinet Sub-Committee on Regularization of Contract / Daily Wages Employees in the Ministries / Divisions / Attached Departments / Autonomous Bodies / Organizations. Vide letter dated 29.08.2008, the petitioner was permanently absorbed in P.I.A.C.

4. On 12.02.2014, the University of the Punjab informed P.I.A.C. that the petitioner's B.A. degree, bearing Roll No.061181 was bogus. Consequently, P.I.A.C. issued the show cause notice dated 09.04.2014 to the petitioner wherein, it was alleged that by submitting a bogus intermediate certificate, the petitioner had committed misconduct as defined in Section 75(aj) of the P.I.A.C. Employees (Service and Discipline) Regulations, 1985 ("the 1985 Regulations"). There is nothing on the record to show that the petitioner submitted a reply to the said show cause notice.

5. Vide letter dated 26.06.2015, the petitioner was dismissed from service. On 30.06.2015, the petitioner issued a grievance notice to P.I.A.C., and on 28.07.2015, he filed a grievance petition under Section 33 of the Industrial Relations Act, 2012 ("the 2012 Act") before N.I.R.C. assailing the order, whereby he was dismissed from service. This petition was dismissed by the learned Member, N.I.R.C. vide order dated 12.02.2018 against which the petitioner preferred an appeal before the learned Full Bench, N.I.R.C. Vide interim order dated 27.07.2018, the learned Full Bench, N.I.R.C. suspended the operation of the order dated 26.06.2015, whereby the petitioner was dismissed from service. In compliance with the said interim order, P.I.A.C. permitted the petitioner to rejoin his duties on 31.08.2018. Vide order dated 02.01.2019, the learned Full Bench, N.I.R.C. dismissed the petitioner's appeal.

6. The said concurrent orders dated 12.02.2018 and 02.01.2019 passed by the learned Member and the learned Full Bench, N.I.R.C., respectively were assailed by the petitioner in the instant writ petition, which was filed on 19.01.2019.

7. During the pendency of the instant petition, P.I.A.C., on 13.03.2019 issued a notice of inquiry to the petitioner. The petitioner was required to appear before the Inquiry Officer on 20.03.2019. The petitioner appeared before the Inquiry Officer on 20.03.2019. The petitioner recorded his statement and opted not to cross examine the prosecution's witnesses that had appeared against him. The petitioner took the position that when he was employed in P.I.A.C. in the year 1999, he had submitted F.A. degree, and that he did his B.A. in the year 2007. The Inquiry Officer, in his report, found that the allegations against the petitioner in the show cause notice had been proved, and that he had been found guilty of the charge against him. Presently, the petitioner is working.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-**

8. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that at no material stage did the petitioner submit any bogus B.A. degree either to gain employment in P.I.A.C. or to gain any service benefit; that since P.I.A.C. did not have any statutory rules, the petitioner could not have filed a writ petition before the High Court against his dismissal from service; that since the petitioner was a workman, the only remedy available to him was to have invoked the jurisdiction of N.I.R.C.; that since the petitioner was alleged to have secured appointment in P.I.A.C. on the basis of a bogus B.A. degree, it was essential for P.I.A.C. to have conducted a regular inquiry against the petitioner in accordance with the provisions of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("the 1968 Ordinance"); that the petitioner could not have been proceeded against under the non-statutory 1985 Regulations; that in the order dated 21.08.2015 passed in the case titled "*Tanveer Riaz Abbasi etc. Vs. Pakistan International Airlines Corporation, etc.,*" the learned Member, N.I.R.C. had held that a regular inquiry under the provisions of the 1968 Ordinance cannot be dispensed with where the allegation against the employee is that he had submitted a bogus degree in order to secure employment; and that the learned Member, N.I.R.C. did not take the import of the said order dated

21.08.2015 into account while dismissing the petitioner's petition under Section 33 of the I.R.A.

9. Furthermore, it was submitted that the learned Member and the learned Full Bench of N.I.R.C. erred by not appreciating that the petitioner's services were regularized after the verification of his educational testimonials; that the petitioner had done his B.A. from Al-Khair University in the year 2007 i.e. prior to the regularization of his services; that the petitioner was victimized by the management of P.I.A.C. on account of being an active member of a trade union; that in the order dated 04.12.2015 passed by this Court in writ petition No.3258/2015, it was observed that P.I.A.C. could re-employ the employees who had submitted bogus educational certificates if their services were beneficial to P.I.A.C.; and that the petitioner had not submitted any bogus educational certificate in order to gain employment in P.I.A.C. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C. to be set-aside.

**CONTENTIONS OF THE LEARNED COUNSEL FOR P.I.A.C.:-**

10. On the other hand, learned counsel for P.I.A.C. submitted that since the petitioner had been found to have committed misconduct by submitting a bogus B.A. degree in order to gain employment in P.I.A.C., he does not deserve any indulgence in the Constitutional jurisdiction of this Court; that P.I.A.C. has not violated any law by conducting an inquiry against the petitioner; and that the concurrent orders passed by the learned Member and the learned Full Bench of N.I.R.C. do not suffer from any illegality or jurisdictional error.

11. Furthermore, he submitted that the University of the Punjab had confirmed, vide letter dated 12.02.2014 that the petitioner's B.A. degree bearing Roll No.061181 was bogus; that the said letter has neither been challenged by the petitioner nor has the same been recalled at any stage; that without the qualification of B.A., the petitioner's appointment as Passenger Service Assistant was wholly unlawful; that the petitioner has abused the process of the Court in an attempt to perpetuate an illegality; that a notice of inquiry under the provisions of the 1968 Ordinance was issued to the petitioner on

13.03.2019; that the petitioner participated in the inquiry and recorded his statement; that the inquiry officer, in his report, had found the petitioner guilty of committing misconduct; and that the petitioner is still in service and a final order in the inquiry would be passed after the disposal of this petition. Learned counsel for P.I.A.C. prayed for the writ petition to be dismissed.

12. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

13. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 above, and need not be recapitulated.

14. There is no denying the fact that in his application dated 31.03.2003 for appointment as Passenger Service Assistant, the petitioner had written that he had passed his B.A. in the second division in the year 1994. Vide letter dated 12.02.2014, University of the Punjab informed P.I.A.C. that the petitioner's B.A. degree, bearing Roll No.061181 was bogus. The petitioner has neither challenged the said letter nor has the said letter been withdrawn at any stage. The petitioner had knowledge of the said letter since 2014 when the show cause notice was issued to him. Instead of submitting a reply to the said notice, the petitioner embroiled P.I.A.C. in lengthy litigation.

15. Even though the petitioner was dismissed from service on 26.06.2015, he continued serving P.I.A.C. due to the injunctive orders passed by the learned Member and the learned Full Bench, N.I.R.C. Learned counsel for P.I.A.C. confirmed that the petitioner is still in service.

16. The petitioner's primary grievance was that he could not have been dismissed from service without a regular inquiry having been conducted against him. As mentioned above, after the petitioner was dismissed from service, and after he had rejoined his duties due to the injunctive orders passed in his favour, a notice of inquiry had been issued to the petitioner on 13.03.2019. The petitioner has participated in the said inquiry but did not cross examine the witnesses that had appeared against him. The petitioner's stance in

his statement before the Inquiry Officer was that he had never submitted a bogus educational certificate in order to gain employment in P.I.A.C. Furthermore, his position was that he had been given employment on the basis of his F.A. degree, and that he had done his B.A. in the year 2007. Along with the writ petition, the petitioner has filed a copy of a B.A. degree issued by Al-Khair University on 23.06.2014 and is with respect to an examination held in November, 2007.

17. I find the petitioner's complaints with respect to the inquiry proceedings conducted against him to be premature at this stage. Till date, the inquiry proceedings against the petitioner have not culminated in a final order. Once the final order is passed, the petitioner would be at liberty to assail the same in accordance with the law before the appropriate forum. In the case of Saeed Ahmad Vs. Chairman O.G.D.C.L. (2020 PLC 27), this Court has held as follows:-

*"19. Framing of charges, conducting enquiry, issuing show-cause notice and taking action after enquiry are the various stages of continuous process of disciplinary proceedings. Disciplinary proceedings once initiated must reach the finality, culminating in imposing punishment or exonerating the delinquent. Testing each stage of the proceeding as to whether they are in conformity with the norms as laid down would be an unwarranted judicial interference in the domain of disciplinary authority by the N.I.R.C. Compliance of the norms laid down under the disciplinary rules can be examined when the process culminates in a penal action causing injury to the delinquent. Non-observance of norms at various stages may vitiate the ultimate action of imposition of a penalty or exoneration, as the case may be."*

18. Additionally, in the case of Muhammad Aslam Khan Vs. International Industries Limited (2007 PLC 350), it was held by the Hon'ble High Court of Sindh that it could be said with certainty that initiating disciplinary proceedings against a worker on account of misconduct is a legal right of the employer, and that the employer cannot be restrained from exercising his right unless extraordinary exceptional circumstances are placed before the Court. Furthermore, it was held that the labour laws provide an adequately efficacious remedy to a worker against wrongful, illegal and arbitrary dismissal, and after adjudication he can be reinstated and/or compensated.

19. As for the contention of the learned counsel for the petitioner that in the order dated 04.12.2015 passed by this Court in writ petition No.3258/2015, it was observed that P.I.A.C. could re-employ the employees who had submitted bogus educational certificates if their services were beneficial to P.I.A.C., suffice it to say that said contention is based on a selective reading of the said order. In the said order, this Court had held in no uncertain terms that the services of the employees whose educational certificates had been found to be fake could neither be continued nor could their services be regularized. Furthermore, it was held that such employees could not have been given an opportunity to rectify the illegality of submitting fake educational certificates in order to gain employment in P.I.A.C. It was also directed that the salaries of the employees who were appointed on the basis of fake educational certificates should be recovered from them. For the purposes of clarity, paragraphs 10 to 12 of the said order are reproduced herein below:-

*“10. However, the authority may by exercising its discretionary powers, if vested in it, under the rules or any other law may re-employ those persons whose certificates were found fake on scrutiny and verification but neither services of those employees can be regularized or continued nor the authority has power to provide them opportunity to rectify such illegality existing in the field. Providing such opportunity to any of the employees is beyond the powers of such authority, hence, not exercisable and cannot be covered as legal under the garb of any stretch of imagination.*

*11. In view of above discussion, this petition is disposed of with the directions to the authorities to review all those cases and same be treated in accordance with law. The authorities may re-employ them if their services are beneficial to the department but such practice of regularizing services based upon illegal foundation cannot be continued.*

*12. On the contrary, the authorities or members of the Board who initiated such decision, have committed serious criminal misconduct which should be dealt in accordance with law. The salaries drawn by the employees, appointed on the basis of fake certificates should be recovered from them. The officers who are involved in granting such relaxation by taking a lenient view are clearly liable for such act which is deemed to be an offence provided under the law.”*

20. The fact that the petitioner obtained the prescribed qualification of graduation for appointment as Passenger Service Assistant several years after his appointment does not improve his case in any way. The vital question that needs to be determined is whether the petitioner had the prescribed qualification of graduation at the time when he was appointed as a Passenger Service Assistant

on 11.06.2003. If he did not have the said prescribed qualification, his appointment would be rendered *non-est*. The unlawful nature of such appointments cannot be rectified or cured by obtaining the required qualifications after the appointment. Reference in this regard may be made to the following case law:-

- (i) The Hon'ble Supreme Court in the judgment passed in *Suo Motu 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 *International Islamic University Vs. Dr. Shamim Tariq (2018 PLC (C.S.) Note 201)*, I had the occasion to hold as follows:-

*"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."*

- (iii) 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."*

- (iv) 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 the 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.

- (v) In the case of Mst. Shugafra 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'.
- (vi) 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.
- (vii) In the case of Abdul Latif Vs. Government of Punjab (2003 PLC (C.S.) 975), writ petitions filed by the petitioners who admittedly lacked the required qualifications for the advertised posts were dismissed by the Hon'ble Lahore High Court. In paragraphs 9 and 10 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 possess 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."*

(viii) In the case of District Collector Vs. M. Tripura Sundari Devi, (1990 (3) SCC 655), the Indian Supreme Court held that when the advertisement mentions a particular qualification and an appointment is made in disregard thereof, it is not a matter only between the appointing authority and the appointee concerned but the aggrieved are those who had similar or even better qualifications than the appointee.

21. For what has been said above, I find no substance in this petition, which is hereby dismissed. Having regard to the factual circumstances of this case, I am of the opinion that imposition of costs on the petitioner would sub-serve the interests of justice. Accordingly, it is ordered that the petitioner shall bear P.I.A.C.'s costs throughout. Should the petitioner be aggrieved by the final order that may be passed in the inquiry proceedings, he may avail the remedies provided by law against such an order.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON 27-8- /2020

(JUDGE)