

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT ISLAMABAD

JUDICIAL DEPARTMENT.

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Writ Petition No. 675 of 2011

Ms. Farah Naz

..Versus..

Quaid-i-Azam University Etc.

Date of hearing: **11.03.2011.**

Petitioner by: **Sheikh Riaz-ul-Haq, Advocate.**

Respondents by: **Mr. Muhammad Munir Preacha, Advocate alongwith Mr. Samiullah Khan and Mr. Humayun Khan, Assistant Registrars, Quaid-i-Azam University, Islamabad.**

MUHAMMAD ANWAR KHAN KASI. J: Through

this writ petition, the petitioner challenges her supersession by the respondent Nos.1 & 2 as she being the senior most Assistant Registrar has been ignored for selection against the post of Deputy Registrar in BPS-18.

2. It is her case that in response to an advertisement by the Quaid-i-Azam University, she applied for the post of Assistant Registrar as she had the required qualification of master's degree and four years teaching / administrative experience of the education department. Her qualification and experience was considered and she was selected on merit vide order dated 28.08.2006, while she joined the university on 04.09.2006. Since then her performance had been up to the mark and there had never been any complaint or inquiry against her and, therefore, she is entitled for the promotion against the vacant post of Deputy Registrar as she fulfils the qualification of master's degree and eight years experience.

3. Her grievance is that the respondent No.3, being junior to her is being considered for the post of Deputy



Registrar and the management has decided to place his name in the forthcoming meeting of syndicate. She has, therefore, prayed for the issuance of a writ against the selection of respondent No.3 for appointment as Deputy Registrar and an action in accordance with law with respect to appointment of Deputy Registrar.

4. The respondent Nos.1 and 2 contested the petition by filing parawise comments, wherein maintainability of the petition was challenged on the point of jurisdiction and being pre-mature as no decision has yet been taken about the appointment of respondent No.3 as Deputy Registrar.

5. On merits, it is stated that the respondent No.3 and the petitioner both were selected in the same Selection Board and the requisite qualification for promotion is master's degree with at least eight years teaching or administrative experience in responsible position at a university or education department. According to the respondents, she lacks eight years experience and her period of posting in a school cannot be taken into consideration for counting the requisite experience.

6. The respondent No.3, despite service, neither submitted any counter affidavit nor appeared before the court.

7. Since the parties have addressed their arguments at full length and also submitted their respective documents, which were perused with the assistance of learned counsels. Therefore, the petition in hand is being decided as Admitted Case.

8. The admitted fact of the case is that the petitioner applied for the post of Assistant Registrar which requires master's degree and four years teaching or administrative experience. Her degree and experience

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were considered as fulfilling the requirement and, therefore, she was appointed by the Selection Board. It is also admitted position that she joined the university on 04.09.2006 and has got $4\frac{1}{2}$ year experience at her credit as Assistant Registrar, while there is no document on record to show the joining report of the respondent No.3.

9. The respondent Nos.1 and 2 seem to have concealed the facts by not producing any document in this regard. It is obvious from the conduct of the respondents that they are not contesting the petition with clean hands and somewhere at some place there seems to be some pick and choose policy to benefit some favourite person instead of making the promotion on the basis of merit and seniority. The university cannot take a stand by stating that the lady lacks eight years experience because the university had accepted her previous four years teaching / administrative experience by appointing her as Assistant Registrar and now they can not take a hot and cold breath at the same time. The law of estoppel is fully attracted in the present case and after considering her previous four years experience with that of present $4\frac{1}{2}$ year experience, she becomes entitled for appointment against the post of Deputy Registrar in PBS-18.

10. Article 27 of the Constitution very specifically states that there shall be no discrimination in service on the basis of sex alone, while Article 25 also states that all the citizens are equal in the eyes of law and there shall be no discrimination on the basis of sex, creed or religion.

11. The respondent Nos. 1 and 2 in their parawise comments have not questioned the performance of



petitioner and have not made any allegation about the quality of her work.

12. According to the university service statute, the seniority in each cadre shall be determined on the basis of date of joining in each cadre. The respondents have failed to show the joining date of respondent No.3 and, therefore, by no stretch of imagination he can be considered senior to the petitioner.

13. The policy of a statutory body should not be in conflict with fundamental rights or ulterior motives or malafide. The competent authority is under obligation to determine eligibility of the employees for grant of higher grade. It is also the prime obligation of the functionaries to redress grievances of their subordinates and the efforts should be made to bring out an egalitarian society based on Islamic concept of fair-play and social justice and the authorities should never be a reason to create unnecessary hardships or unrest among the employees.

14. The said post is to be filled on promotion basis out of the present employees and, therefore, the selection of respondent No.3 seems to be arbitrary. The stand taken by the university about the pre-maturity of the petition is not accepted because, the factual position is that the name of respondent No.3 is going to be placed before the syndicate while the name of petitioner has been ignored. The petition, therefore, cannot be considered as premature.

15. As far as the point of jurisdiction is concerned, it is suffice to say that whenever there is a malafide or discriminatory action leading to the violation of constitutional guarantees, the constitutional courts have ample authority to interfere for the redressal of grievances. The law in any case has to be geared properly and the injustice in the form of super-session has to be

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curbed, so that people may not have a general sense of deprivation or discomfort otherwise there will be a chaos in the society and people would lose confidence in all the institutions.

16. The constitution of Pakistan like all other modern constitutions emphasis upon fundamental rights and such rights in any case has to be provided by the courts as guardians of the citizens and Article 199 of the Constitution empowers the court to exercise jurisdiction in matters where merit is being ignored. In any case merit-cum-seniority has to be recognized.

17. In view of the above, the petition is accepted. The placing of respondent No. 3's name for promotion against the post of Deputy Registrar in super-session of petitioner is declared illegal, un-jurisdictional and against the principles of promotion policy. There shall be no order as to costs.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

Amer Baig.

Announced in Open Court on 14.03.2011.

JUDGE

Approved for reporting.

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P. Hameed
Assured
Off. Dated - 22-3-11