

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4202/2018
Muhammad Shafeeq

Versus

Federation of Pakistan through the Secretary, Ministry of
Petroleum and Natural Resources and others

Date of Hearing:	01.03.2019.
Petitioner by:	Ms. Zainab Samantash, Advocate.
Respondents by:	Mr. Rehan-ud-Din Khan Golra, Advocate for the H.D.I.P. Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General. Mr. Ahmed Ali, Law Officer, H.D.I.P. Mr. Maqsood Ahmed, Deputy Secretary, Ministry of Petroleum.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Shafeeq, who is serving as General Manager, Hydrocarbon Development Institute of Pakistan (“H.D.I.P.”), impugns the notification dated 30.11.2017, issued by the Establishment Division, whereby respondent No.4 (Muhammad Azam) was appointed as Director General, H.D.I.P. for a period of three years. The petitioner prays for the said appointment to be declared unlawful and for the salary and other benefits received by respondent No.4 to be recovered.

2. Learned counsel for the petitioner submitted that respondent No.4’s appointment as Director General, H.D.I.P. is without lawful authority; that as per the advertisement dated 05.06.2016, the appointment of Director General, H.D.I.P. was to be for a period of two years, whereas respondent No.4 was appointed for three years; that respondent No.4 was instrumental in procuring an attractive salary package for himself; that respondent No.4’s salary package has not been approved by the Federal Government in terms of Section 8 of the Hydrocarbon Development Institute of Pakistan Act, 2006 (“H.D.I.P. Act”); that before determining the pay package for respondent No.4, the Board of Governors of the H.D.I.P. did not

seek approval of the Federal Government as required by Section 8(1) of the H.D.I.P. Act; that the exorbitant pay package determined by the Board of Governors of the H.D.I.P. for respondent No.4 is wholly unlawful; that the Director Generals of the H.D.I.P. appointed earlier were not paid any salary unless an approval was granted by the Federal Government; that the Finance Division, vide letter dated 21.06.2018, has also pointed out the illegality in the salary and other benefits drawn by respondent No.4; that respondent No.4 is a retired officer and could not have been re-employed on contract basis; that under Regulation No.4.1 of the Hydrocarbon Development Institute of Pakistan Service Regulations, 2017, the Director General of the H.D.I.P. must be a regular employee; and that regular employees of the H.D.I.P. had legitimate expectation to be appointed as Director General, H.D.I.P. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondents No.2, 4 and 5 submitted that respondent No.4 was appointed as Director General, H.D.I.P. as a result of a competitive process; that the petitioner had also participated in the competitive process for the appointment of Director General, H.D.I.P.; that the petitioner was not one of the three candidates recommended by the Evaluation Committee for appointment as Director General, H.D.I.P.; that respondent No.4 was more qualified than the petitioner; that respondent No.4 has done his M.S. in Geology, whereas the petitioner has done his M.Sc. in Chemistry; that relations between the petitioner and respondent No.4 were strained; that the instant petition had been filed by the petitioner only as a pressure tactic; that the petitioner was annoyed with respondent No.4 because he had been transferred to Karachi; that the writ petition filed by the petitioner against his transfer had been dismissed by this Court; that respondent No.4's pay and benefits had been determined by the Board of Governors of the H.D.I.P. strictly in accordance with the applicable law; and

that since respondent No.4's qualifications were not deficient and since there had been no procedural impropriety in his appointment process, the instant petition is liable to be dismissed. In making his submissions, learned counsel for respondents No.2, 4 and 5 placed reliance on the cases of PLD 2018 Supreme Court 114, 2008 SCMR 960, 2005 SCMR 1829, 2018 CLC 1910, 2017 PLC (C.S.) 1327, 2015 PLC (C.S.) 793, 2014 PLC (C.S.) 853, 2014 CLC 639 and PLD 2011 Peshawar 164.

4. The learned Assistant Attorney-General's sole submission was that since the salary package determined by the Board of Governors of the H.D.I.P. for respondent No.4 had not been approved by the Federal Government, the same shall be subject to such an approval and if the Federal Government determines a salary package less beneficial than the one approved by the Board of Governors of the H.D.I.P., adjustments/recoveries shall be made from respondent No.4.

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

6. The record shows that on 05.06.2016, the H.D.I.P. published an advertisement inviting applications from candidates for appointment against the post of Director General/Chief Executive Officer in the H.D.I.P. The applicants were required to have twenty five years' experience in a public sector organization or in the oil and gas sector companies or in a senior management position in the private sector. It was explicitly stated in the said advertisement that the appointment was to be on contract basis for a period of two years.

7. The petitioner and respondent No.4 were amongst the nine candidates who were shortlisted for appointment against the said post. The Evaluation Committee comprising of (i) the Federal Minister for Petroleum and Natural Resources (Chairman), (ii) the Secretary, Ministry of Petroleum and Natural Resources (Member), and (iii) Additional Secretary, Establishment Division (Member) awarded 58 marks to

respondent No.4 and 39 marks to the petitioner. As per the notification dated 30.11.2017 issued by the Establishment Division, respondent No.4 was appointed by the Federal Government as Director General, H.D.I.P. for a period of three years. On 05.11.2018 (i.e. eleven months after respondent No.4's appointment as Director General, H.D.I.P.), the petitioner filed the instant writ petition to challenge the said notification dated 30.11.2017.

8. It is not disputed that the office of the Director General, H.D.I.P. is a public office since it is the creature of a statute i.e. the H.D.I.P. Act. Offices created by statutes are deemed to be public offices. Section 8(1) of the H.D.I.P. Act requires the Director General, H.D.I.P. to be a highly qualified scientist with experience in the relevant fields. Furthermore, it is provided that he shall be appointed to work on full time basis by the Federal Government on such terms and conditions as it may deem appropriate. Section 8(2) of the H.D.I.P. Act provides that the Director General shall be the Chief Executive Officer of the H.D.I.P. and shall, subject to such directions as the Board of Governors may give from time to time, exercise all such financial and administrative powers as are necessary to direct, manage and control the affairs of the H.D.I.P. in accordance with the provisions of the said Act. The functions which the Director General, H.D.I.P. has been empowered to exercise under Section 8(2) of the H.D.I.P. Act are in the nature of public functions.

9. Learned counsel for the petitioner tried to question the pay package given to respondent No.4 by the Board of Governors of the H.D.I.P. on the ground that Finance Division's office memorandum No.F.4(4)-Reg.7/78, dated 20.03.1980, provided *inter-alia* that when a retired civil servant is re-employed under the government owned/controlled autonomous/semi-autonomous bodies and corporations after superannuation or after completion of thirty years pensionable service, the initial pay of such a government servant shall be fixed at the minimum of the scale of the pay of the post in which he was re-employed. This

ground for questioning respondent No.4's pay package does not appeal to me for the simple reason that although respondent No.4 had retired before he was appointed as Director General, H.D.I.P., but was so appointed after a competitive process and after being evaluated as the most qualified candidate amongst the contestants for the said post. The said embargo on a pay package of a re-employed retired civil servant, in my view, applies only to those civil servants who are re-employed under the government owned/controlled autonomous/semi-autonomous bodies and corporations without any competitive process. In the case at hand, respondent No.4 was appointed after competing with eight other candidates and after satisfying the criteria (i.e. qualifications and experience) set out in the advertisement dated 05.06.2016 issued by the H.D.I.P.

10. Section 14(1) of the Civil Servants Act, 1973, provides *inter-alia* that a retired civil servant shall not be re-employed under the Federal Government, unless such re-employment is necessary in the public interest and made with the prior approval of the authority next above the appointing authority. This restriction does not apply to a retired civil servant applying for employment in a statutory body or a public sector organization for employment through a competitive process. No embargo can be placed on a retired civil servant from gaining employment in a statutory body or a public sector organization if such employment is being offered to him not as largess but after being evaluated as the most suitable candidate in a competitive process.

11. In exercise of the powers conferred under Section 22 of the H.D.I.P. Act, the Federal Government made the Hydrocarbon Development Institute of Pakistan Service and Financial Rules, 2009 ("H.D.I.P. Rules"). Rule 5.1 of the said Rules provides that the pay scales, allowances and benefits admissible to the employees shall be determined from time to time by the Board of Governors of the H.D.I.P. as provided for Section 6(f) of the H.D.I.P. Act. Section 6(f) of the H.D.I.P. Act provides that the

Board of Governors shall have the power to prescribe the terms and conditions of service of the employees of the H.D.I.P. provided that the pecuniary impact of the terms and conditions so prescribed shall not in any case be less beneficial than that of the civil servants of similar category and grade.

12. It is not disputed that the pay scale, allowances and benefits payable to respondent No.4 were determined by the Board of Governors of the H.D.I.P. in terms of Rule 5.1 of the H.D.I.P. Rules. Now, Rule 3.8 of the H.D.I.P. Rules defines an *“employee”* to mean a *“whole time employee appointed or deemed to be appointed under the rules and regulations against a sanctioned post including the Director-General”*. As mentioned above, Section 8(1) of the H.D.I.P. Act provides *inter-alia* that the Director General shall be appointed on such terms and conditions as the Federal Government may deem appropriate. It is an admitted position that the pay package approved by the Board of Governors of the H.D.I.P. for respondent No.4 has till date not been approved by the Federal Government. I would tend to agree with the learned counsel for respondent No.2, 4 and 5 that the Board of Governors of the H.D.I.P. is empowered under Rule 5.1 of the H.D.I.P. Rules to determine the pay package of the Director General, H.D.I.P. but I also agree with the learned counsel for the petitioner that such a pay package has to be approved by the Federal Government. Since Section 8(1) of the H.D.I.P. Act mandates that the Director General, H.D.I.P. shall be appointed on such terms and conditions (which include the pay package) as the Federal Government may deem appropriate, the said requirement of the statute cannot be overridden by Rule 5.1 of the H.D.I.P. Rules. Rule 5.1 of the H.D.I.P. Rules has to be interpreted harmoniously with Section 8(1) of the H.D.I.P. Act. Therefore, I am of the view that the pay package for the Director General of the H.D.I.P. determined by the Board of Governors of the H.D.I.P. will be subject to the approval of the Federal Government.

13. The Ministry of Petroleum and Natural Resources, in its letter dated 05.06.2015 to the Director General, H.D.I.P., has made an observation to the effect that although the rules allow the Board of Governors to prescribe the terms and conditions for the appointment, but the statute clearly provides that the same will need the approval of the Federal Government.

14. As mentioned above, till date the pay package determined by the Board of Governors of the H.D.I.P. for respondent No.4 has not been approved by the Federal Government. The H.D.I.P. shall expeditiously seek an approval for respondent No.4's pay package from the Federal Government in terms of Section 8(1) of the H.D.I.P. Act, if not sought earlier. In the event the Federal Government does not approve the pay package determined by the Board of Governors of the H.D.I.P. and makes it less beneficial for respondent No.4, the resultant adjustment or recoveries could be effected from respondent No.4.

15. There is considerable force in the contention of the learned counsel for the petitioner that respondent No.4 could not have been appointed as Director General for the H.D.I.P. for a period of three years when in the advertisement dated 05.06.2016, it was clearly mentioned that the appointment was to be on contract basis for a period of two years. Although neither the H.D.I.P. Act nor the H.D.I.P. Rules provide for the period for which the appointment of the Director General, H.D.I.P. could be made, an appointment for a period more than the one explicitly mentioned in the said advertisement is *ipso facto* unlawful. If the H.D.I.P. wanted to make the appointment of the Director General, H.D.I.P. for a period of three years and not two, it should have issued a corrigendum to the said advertisement. It cannot be presumed that the number of candidates for appointment for a period of two years would have been the same had it been known before hand that the appointment would be for a period of three years. It is well settled that the conditions of employment set out in the advertisement inviting applications cannot be altered after the last date fixed for the submission of applications. Therefore,

the impugned notification dated 30.11.2017, to the extent of appointing respondent No.4 as Director General, H.D.I.P. for a period of three years, is declared unlawful. Respondent No.4's said appointment shall be deemed to be for a period of two years as mentioned in the advertisement dated 05.06.2016. In the case of Usmat Batool Vs. Bahauddin Zakariya University, Multan (2013 PLC (C.S.) 484), it was held as follows:-

"It is now a settled principle of law that an advertisement, inter alia, in relation to filling up of vacancies is a promise stating all the rules which the authority undertakes to observe in consideration for giving employment to the most suitable candidate and there should not be any deviation from the said advertisement and if at all any deviation was necessary in order to overcome some shortfall/legal lacunas then such changes should be advertised in the same manner as the original advertisement and also to be notified to each and every applicant if the process of filling up the posts commenced in the meanwhile."

(Emphasis added)

16. The impugned notification whereby respondent No.4 was appointed as Director General of the H.D.I.P. was issued by the Establishment Division on 30.11.2017. This notification was issued seventeen months after the advertisement dated 05.06.2016 inviting applications for appointment against the post of Director General, H.D.I.P. Office memorandum No.F.53/1/2008-SP, dated 22.10.2014, issued by the Establishment Division sets out the recruitment policy for the federal services/autonomous bodies/corporations, 2014. Paragraph xviii of the said policy provides that Ministries / Divisions / Departments / Attached Departments / Subordinate Offices / Autonomous Bodies / Semi-Autonomous Bodies / Corporate Corporations / Authorities, etc are required to finalize the recruitment procedure within sixty days from the date of the advertisement. The said paragraph xviii of the said policy was amended, vide Establishment Division's office memorandum dated 21.09.2017, so as to require the recruitment to be finalized within a period of ninety days from the date of the advertisement. It is an admitted position that in the case at hand, respondent No.4's appointment as Director General, H.D.I.P. was made far in

excess of ninety days from the date of the advertisement. This aberration by itself would not, in my opinion, render respondent No.4's appointment to be unlawful. The petitioner did not make any grouse when a period of ninety days after the advertisement dated 05.06.2016 had lapsed and a Director General had not been appointed. Since the petitioner was also a contender for the said post, he let the process continue beyond the period of ninety days from the date of said advertisement. Now that the petitioner has not been successful in being appointed against the said post, he wants to challenge the recruitment process on the ground to which he had voluntarily shut his eyes. Once the ninety-day period from the date of the advertisement lapsed, that was the time when the petitioner should have questioned the recruitment process. In the Constitutional jurisdiction of this Court, the petitioner cannot be allowed to approbate and reprobate. Therefore, respondent No.4's appointment cannot be declared unlawful due to the recruitment process not having been completed within ninety days from the date of the advertisement. The said policy can, by no means, be termed as "*law*" the non-compliance whereof would render an appointment to a public office to be void. However, the H.D.I.P. as well as the Federal Government shall ensure that the provisions of the above-mentioned Recruitment Policy, 2014, are observed in letter and spirit.

17. Learned counsel for respondents No.2, 4 and 5 had contended that the petitioner's *bonafides* were suspected on account of the fact that he had also participated in the competitive process for appointment as Director General, H.D.I.P. I am of the view that this fact by itself does not render the instant petition to be not maintainable. Suffice it to say that in the case of Muhammad Yasin Vs. Federation of Pakistan (PLD 2012 SC 132), it was held as follows:-

"24. Before concluding our discussion on the issue of maintainability of this petition we need to address the respondent's submission that the petition has been filed mala fide. We have found no lawful basis for this submission. Simply because the petitioner may have been a contender for

the office of Chairman, OGRA, does not per se translate into mala fides. The petitioner can genuinely consider himself to be a suitable candidate for the position while simultaneously holding the view that the respondent does not meet the eligibility criteria set out in section 3(4) of the Ordinance.”

18. Additionally, in the case of Dr. Farzana Bari Vs. Ministry of Law, Justice and Human Rights (PLD 2018 Islamabad 127), I had the occasion to hold as follows:-

“Article 199(1)(b)(ii) of the Constitution provides that that a writ of quo warranto can be filed by “any person”. An “aggrieved person” cannot be excluded from the ambit or meaning of “any person”. If a writ petition filed by a contestant for a public office against the public office holder is held not to be maintainable, would such a contestant have to look for a person who is not personally aggrieved by the appointment under challenge and file a writ petition through such a surrogate or will he/she have to simply swallow the fact that there were violations in the appointment process? I have not found anything inequitable in the petitioner’s conduct and motive in filing the writ petition.”

19. As regards the contention of the learned counsel for the petitioner that the petitioner’s qualifications were superior to those of respondent No.4, it is well settled that this Court, in exercise of its powers of judicial review, cannot substitute its findings with those of a Tribunal or a selection authority that had carried out a comparative analysis of the credentials of the candidates for appointment against an advertised post. Reference in this regard may be made to the law laid down in the cases of Sardar Hussain Vs. Mst. Parveen Umer (PLD 2004 S.C. 357), General Manager, Pearl Continental Hotel, the Mall, Lahore/Rawalpindi Vs. Farhat Iqbal (PLD 2003 S.C. 952), Export Promotion Bureau Vs. Qaiser Shafiullah (1994 SCMR 859), Muhammad Younis Khan Vs. Government of N.W.F.P. (1993 SCMR 618), Umer Din Vs. Additional District Judge, Lahore (PLD 2005 Lahore 86) and Malik Jahangir Ahmed Vs. Judge Special Court No.I, Anti Terrorism, Rawalpindi (PLD 2005 Lahore 328). It may also be mentioned that the petitioner and respondent No.4 were not even in close contest. The Evaluation Committee had awarded 58 marks to respondent No.4, who was on top in the merit list, whereas the petitioner was awarded 39 marks, and was at serial No.8 in the merit list. The three candidates who had

fared the best out of the contestants were respondent No.4, Dr. Muhammad Iqbal (52 marks) and Dr. Shams-ud-Din (52 marks). Therefore, the petitioner's claim that he was the most suitable candidate for the post of Director General, H.D.I.P. is untenable.

20. In view of the above, the instant petition is partly allowed. Respondent No.4's appointment as Director General, H.D.I.P. shall be considered to be for a period of two years commencing from 30.11.2017. The salary package determined by the Board of Governors of the H.D.I.P. for respondent No.4 shall be subject to the approval of the Federal Government in terms of Section 8(1) of the H.D.I.P. Act. In the event the Federal Government does not approve respondent No.4's salary package determined by the Board of Governors of the H.D.I.P. or makes it less beneficial for respondent No.4, the salary and other privileges drawn by him till date shall be accordingly adjusted. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2019.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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