

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3485/2018

Abdul Shakoor

Versus

Allama Iqbal Open University through its Vice Chancellor

Date of Hearing: 25.06.2019

Petitioner by: Mr. Muhammad Yaqoob Javaid, Advocate.

Respondent by: Hafiz Arfat Ahmad Ch. and Ms. Kashifa Niaz Awan, Advocates.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, Abdul Shakoor (petitioner), who is presently serving as Additional Controller (BS-19) in the Allama Iqbal Open University, Islamabad, (respondent), impugns advertisement dated 04.09.2018, published by the respondent/University inviting applications for appointment against the post of Registrar (BS-20). Furthermore, the petitioner seeks a direction to the respondent/University to call a meeting of the selection board in order to consider him for promotion to the post of Registrar (BS-20) with effect from 28.05.2018 when the said post fell vacant.

2. Learned counsel for the petitioner submitted that there were three category of posts in the respondent/University i.e., (i) academic department, (ii) administrative department, and (iii) servicing department; that in the administrative department, there are two posts in BS-20, i.e. (i) Registrar and (ii) Controller of Examinations; that the proviso to Rule 5(i) of the Allama Iqbal Open University (General Conditions of Service) Statutes, 1978 (“A.I.O.U. (General Conditions of Service) Statutes, 1978”) provides that all non-teaching posts falling in category-A shall be filled on the basis of 50:50, i.e. 50% by promotion and 50% by direct recruitment; that Rule 5(I)(ii) of the said Statutes provides that all posts in BS-17 and above are in category-A; that the said Statutes were amended, vide notification dated 19.12.2016; that as a result of the said amendment, the criteria for promotion to all posts in BS-20 in the General Administrative Cadre was five years of service in BS-19 or

twelve years of service in BS-18 or seventeen years of service in BS-17 and above; and that the petitioner meets the said eligibility criteria for promotion to the post of Registrar (BS-20).

3. Learned counsel for the petitioner further submitted that on 05.01.2015, Mr. Sohail Nazir Rana was promoted to the post of Controller of Exams (BS-20); that on 29.05.2015, Dr. Muhammad Naeem Qureshi was directly appointed as Registrar (BS-20); that on 28.05.2018, the post of Registrar was vacated by Dr. Muhammad Naeem Qureshi due to his illness; that on 08.05.2018, the petitioner submitted a representation seeking his consideration for promotion as Registrar on account of being the senior most BS-19 officer in the respondent/University; that the provisional seniority list dated 19.07.2016 shows the petitioner as the senior most BS-19 officer in the respondent/University; that vide notification dated 28.05.2018, current charge for the post of Registrar has been given to Dr. Muhammad Zaigham Qadeer, who is an Associate Professor in the academic cadre; that instead of considering the petitioner for promotion to the post of Registrar, the respondent/University has issued the impugned advertisement reflecting the respondent/University's intention to fill the post of Registrar through direct recruitment; that proviso to Rule 5(I) of the said Statutes provides that appointment through direct recruitment could be made only if the Vice Chancellor determines that a suitable officer for promotion is not available; that the final seniority list dated 07.03.2018 which shows Mr. Abid Hussain Satti to be senior to the petitioner was not circulated at any material stage; that it is the selection board of the respondent/University which is to assess the suitability of the person to be appointed as the Registrar; and that the issuance of the impugned advertisement dated 04.09.2018 is a transgression of the petitioner's legal rights. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for the respondent/University submitted that the petitioner is not the senior most officer in BS-19; that the petitioner cannot claim to be

the senior most BS-19 officer on the basis of the provisional seniority list dated 19.07.2016; that the respondent/University had invited objections with respect to the said provisional seniority list; that on 07.03.2018, the respondent/University had issued a final seniority list which showed Mr. Abid Hussain Satti to be senior to the petitioner; that even though the said final seniority list was annexed to the written comments filed by the respondent/University a few months ago, till date the petitioner has not assailed the said final seniority list; that the senior most BS-19 officer of the respondent/University has not assailed the impugned advertisement dated 04.09.2018; that the post of the Registrar (BS-20) is the creature of Section 13 of the Allama Iqbal Open University Act, 1974 ("A.I.O.U. Act"); that Section 13(I) of the said Act provides that the Registrar shall be a whole- time officer of the university and shall be appointed by the Executive Council on such terms and conditions as it may determine; that the Executive Council of the respondent/University comprises of eminent educationists as well as the Chief Justice of Pakistan or his nominee; that it is the Executive Council which decided to issue the impugned advertisement for the post of the Registrar (BS-20) to be filled through direct recruitment; that Section 31 of the A.I.O.U. Act provides a remedy of an appeal against the decision of the Executive Council to the Pro-Chancellor; and that in view of the alternative remedy of an appeal provided by law, the instant petition is not maintainable. Learned counsel for the respondent/University prayed for the writ petition to be dismissed.

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 minutes of the 110th meeting of the A.I.O.U. selection board held on 12th and 13th December, 2012 show that four persons, including Mr. Abid Hussain Satti and the petitioner were recommended to be appointed as Deputy Controller of Examinations (BS-18) in the respondent/University. In the order of merit, Mr. Abid Hussain Satti had ranked senior to the petitioner.

Although the petitioner was promoted to the post of Additional Controller of Examinations on 05.01.2015, Mr. Abid Hussain Satti's promotion was deferred on account of not having the required length of service. Consequently, the provisional seniority list dated 19.07.2016 had shown the petitioner to be senior to Mr. Abid Hussain Satti. The committee constituted by the Executive Council to consider Mr. Abid Hussain Satti's representation against non-consideration for promotion determined that he *"will be promoted as and when [he] complete[s] the required length of service and [his] seniority will be restored"*. Vide notification dated 10.01.2018, Mr. Abid Hussain Satti was promoted to the post of Deputy Controller of Examinations (BS-18) (General Administration Cadre). After this, a final seniority list dated 07.03.2018 was issued by the respondent/University showing Mr. Abid Hussain Satti to be senior to the petitioner.

7. The earlier provisional seniority list dated 19.07.2016, showing the petitioner to be senior to Mr. Abid Hussain Satti, was issued when Mr. Abid Hussain Satti was serving as Deputy Controller of Examinations (BS-18). After Mr. Abid Hussain Satti was promoted as Controller of Examinations (BS-19), he was shown as senior to the petitioner in the seniority list dated 07.03.2018. It may be mentioned that the word *"provisional"* also appears in the seniority list of 07.03.2018 for the BS-19 officers of the respondent/University. Since Mr. Abid Hussain Satti is not a party in this petition, I refrain to express my opinion on the legality of the said seniority list dated 07.03.2018. Be that as it may, it is an admitted position that till date, the seniority list dated 07.03.2018 has not been challenged by the petitioner. In such circumstances, a presumption of correctness would attach to the said seniority list dated 07.03.2018. Since the petitioner is not the senior most BS-19 officer in the General Administration Cadre, he cannot be termed as an *"aggrieved party"* within the meaning of Article 199(1)(a)(i) of the Constitution to seek his consideration for promotion against the post of Registrar (BS-20). Therefore, the petitioner was not competent to file the instant petition.

8. Even otherwise, Section 31 of the A.I.O.U. Act provides a remedy of an appeal to the petitioner against the decision to issue the impugned advertisement calling for applications for appointment against the post of Registrar (BS-20). The Allama Iqbal Open University was established under Section 3 of the A.I.O.U. Act. Section 31 of the said Act, is reproduced herein below:-

“31. Appeal to and review by the Executive Council. (1) Where an order is passed punishing any officer (other than the Vice-Chancellor), teacher or other employee of the University or altering or interpreting to his disadvantage the prescribed terms and conditions of his service, he shall, where the order is passed by the Vice-Chancellor or any other officer or teacher of the University, have the right to appeal to the Executive Council against the order, and where the order is made by the Executive Council, have the right to apply to that Authority for review of that order or appeal to the Pro-Chancellor.

(2) The appeal or application for review shall be submitted to the Vice-Chancellor who shall lay it before the Executive Council, as the case may be, the Pro-Chancellor with his comments.

(3) No order on an appeal or application for review shall be passed without affording to the appellant or applicant, as the case may be, an opportunity of being heard.”

9. If the petitioner feels that by virtue of proviso to Rule 5(i) of the A.I.O.U. (General Conditions of Service) Statutes, 1978, it was his right to be considered for promotion to the post of Registrar (BS-20) and that by issuing the impugned advertisement, the respondent/University had violated his rights under the said Statutes, he could have preferred an appeal against the decision to issue the impugned advertisement in terms of Section 31 of the A.I.O.U. Act. The petitioner was claiming his right to be considered for promotion against the said post on the basis of the prescribed terms and conditions of his service. If the decision to issue the impugned advertisement altered to his disadvantage, the terms and conditions of his service, a right of appeal under Section 31 of the A.I.O.U. Act was available to him. This is an added reason why this petition ought to be dismissed as not maintainable.

10. By filing the instant writ petition, the petitioner in effect seeking the enforcement of his right under the proviso to Rule 5(i) of the A.I.O.U. (General Conditions of Service) Statutes, 1978. These Statutes were made in exercise of the powers under Section

24 of the A.I.O.U. Act, which provides *inter-alia* that Statutes may be made to regulate or prescribe the matters including “*the scales of pay and other terms and conditions of service of officers, teachers and other employees of the University*”. It was in exercise of the powers conferred by Section 24 of the A.I.O.U. Act that A.I.O.U. (General Conditions of Service) Statutes, 1978 were made. Rule 5(1)(2) of the said Statutes provides that they shall come into force with immediate effect (12th of October, 1978) and as approved by the Pro- Chancellor from time to time. According to Section 9(I) of the A.I.O.U. Act, the Pro Chancellor of the University is the Federal Minister In-charge of the Ministry of Education. The A.I.O.U. (General Conditions of Service) Statutes, 1978, have neither been made by the Federal Government, nor are they required to be approved by the Federal Government. The Federal Minister In-charge of the Ministry of Education is not synonymous with the term “*Federal Government*” as held in the case of Mustafa Impex Vs. Government of Pakistan (PLD 2016 S.C. 808). Consequently, it is safe to hold that the A.I.O.U. (General Conditions of Service) Statutes, 1978, of the respondent/University are not statutory and therefore, a writ petition filed by an employee of the respondent/University seeking the enforcement of any of the provisions of the said Statutes, is not maintainable.

11. In view of the above, the instant petition is dismissed as not maintainable. The petitioner is at liberty to avail the remedies available to him under the law.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING

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