

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Writ Petition No. 1213/2013

Sajid Mehmood Raja & another

Versus

Federation of Pakistan etc.

Petitioners by: -

Barrister Zafar Ullah
Barrister Afzal Hussain

Respondents by: -

Tariq Mahmood Jhangiri, D.A.G.
Mr Abdul Kabir Qazi, Joint Secretary, M/o
Commerce
Mr Abdul Aziz and Ms Azra Jamali respondents in
person.

Date of decision: -

25-03-2013

Riaz Ahmad Khan J: - This judgment is directed to dispose of above titled writ petition as well as writ petition No. 1021/2013, as common questions of law and facts are involved in these writ petitions.

2. Brief facts of the case are that there are 63 posts of trade officers in foreign countries with whom Pakistan has commerce and trade relations as well as those countries with whom relations in respect of commerce and trade are to be developed. For posting the officers abroad, the Ministry of Commerce decided to select officers through competitive examination and interview. These competitive examinations were to be held through Lahore University of Management Sciences (LUMS) and the process of competitive examination started in the year 2005. On 5th of September 2012, the Ministry of Commerce

through advertisement published in the newspaper announced the selection of trade officers position in Pakistan missions abroad. Written examination was held through LUMS. 276 candidates appeared in the written examination and out of them 206 were declared as successful. These officers were called for interview. The respondents in all the cases were selected for posting abroad, whereas the petitioners were ignored. The petitioners having no other alternate remedy, filed the present petitions with the prayer that the process of selection be declared as illegal and unlawful and posting abroad of all private respondents be declared as illegal. It was further prayed that a direction be issued to the Ministry of Commerce to reselect officers in Grade 18, 19 and 20 for position as Trade Officers in Pakistani Missions Abroad.

3. Learned counsel for the petitioners submitted that the Government in the recent examinations adopted a strange formula for selection of Trade Officers. The said formula was to the following effect:-

The score of candidates for the competitive examinations held by LUMS including I.T. skills	20%
Performance Evaluation Report	10%
Interview	70%

According to learned counsel for the petitioners, 70% weightage was left for interview for the only reason that the Government wanted to select officers on the basis of pick and choose by ignoring the actual merit. The process of selection was based on nepotism and favouritism. In most of the cases, the officers

were not even qualified for test, but in interview were given maximum marks in order to enable them to get posting abroad. It was because of this that the result of candidates was never declared and even LUMS was asked to keep the result secret. Learned counsel submitted that it is the right of each and every participant in the examination to know about the result and the respondents had no right to keep the same secret. The allocation of 70% weightage to the interview was thus illegal. It was further submitted that the candidates could not be left to the subjective assessment of the officers conducting interview or the Federal Government rather there should be an objective criteria for the assessment of candidates and the marks must be awarded in a transparent manner. Even in the present case, it is not known as to how the marks were awarded in interview. Learned counsel submitted that there was lack of transparency and fairness and this policy adopted by the Government was illegal and liable to be set aside.

4. On the other hand, Deputy Attorney General assisted by learned counsel for the respondents submitted that the policy adopted by the Government was approved by the Prime Minister on 01-06-2012. Earlier written test was only eligibility test and 100% weightage was given to interview by SSB and for the first time written test is given weightage alongwith performance evaluation reports. The final assessment is based on giving 20% weightage to written test by LUMS, 10% to

performance evaluation reports and remaining 70% to the following seven attributes:-

- i) Interpersonal Skills
- ii) Communication Skills
- iii) Market Intelligence and Research
- iv) IT skills
- v) Brand Advocacy
- vi) Conflict Resolution
- vii) Management Skills

On the basis of above said criteria, the officers are selected. It was further submitted that the petitioners have not come to the Court with clean hands. The competitive examination was held on the basis of Government Policy and Policy cannot be challenged through writ petition. In addition to that the Policy is always given by the Government and the Court cannot substitute the Policy given by the Government. It was also submitted that the transfer and posting falls within the terms and conditions of service and the petitioners being civil servants had alternate remedy to approach F.S.T. Since there is a bar under Article 212(2) of the Constitution of Islamic Republic of Pakistan, therefore, no writ can be issued.

5. It was submitted that petitioners claim is self-contradictory, because if they had been selected, they would have had no objection to the policy, but since they could not be selected, so they raised objection regarding policy and now they want that the policy should be changed. It was further added that some of the petitioners have been selected, but they filed the writ petition and challenged the policy simply because they

want posting at the place of their choice, which is neither a right nor can be considered as justified. In addition to that, all the petitioners had participated in the exam as well as interview, so they are estopped to invoke the constitutional jurisdiction of this Court.

6. Mr Abdul Aziz Uqaili, respondent in W.P. No.1213 appeared in person and adopted the arguments of learned counsel for respondents, however, added that he himself belonged to District Management Group and had a wonderful academic record, he was not involved in any malpractice and got the position on merit. He had packed up everything for Sydney, but because of writ petition, had to stay back in Pakistan.

7. Ms Azra Jamali appeared in person. She submitted that she belonged to Secretariat Group and was posted at Montreal. She also adopted the arguments of learned counsel for respondents.

8. Learned counsel for the petitioners raised the objection that result was not disclosed, therefore, the respondents were directed to produce the result in the Court. Accordingly, the result was produced and copy of the same was provided to the petitioners. Learned counsel for the petitioners after going through the result raised some technical objections that each page of the result was not signed by all the members; in some cases, full marks were given to select persons and the object

was to increase their marks in order to bring them at par with those who had obtained marks on merit.

9. I have heard learned counsel for the parties and have also perused the record.

10. The first question which requires consideration is that whether posting abroad is a right or not? Ordinarily, the transfer and posting cannot be claimed as a matter of right. A civil servant being aggrieved of his transfer can agitate his question of transfer before the competent forum, however, the authority to transfer lies with the competent authority and a civil servant cannot claim transfer or posting as a matter of right. The situation in the present case however, is different. The officials in the present case were required to qualify test and interview for posting abroad. As such, fitness for posting abroad was to be determined through test and interview, therefore, in the present case, posting abroad is to be considered as a right. Any eligible officer if qualifies the required test and interview and gets a position on merit, he would become entitled, to be posted abroad. However, it is to be kept in view that appointment at a particular place, is not a matter of right. Only the Government can determine as to which officer is suitable for which place. The government for that matter has to keep in view the conditions, requirements, and importance of the post and on the other hand, suitability and competence of the officers to be posted on the said post. The Court cannot step into the shoes

of the Government and determine suitability and competence of an officer for a particular post. As such, the officials who qualified the test and interview, got the right to be posted abroad, but had no right to be posted against a particular post at a particular place. In this respect, I have sought guidance from 1994 PLC (C.S) 643, 1991 PLC (C.S) 374 and 1999 PLC (C.S.) 201.

11. The next question is regarding policy for posting officers abroad. Contention of the petitioners is that though apparently the Government adopted a policy regarding posting officers abroad, yet the fact is that the policy is based on malice, nepotism and favouritism. It is an established principle of law that the Court has the power to interpret the law, but has no jurisdiction to take the role of policy maker. Reference in this respect may be made to 2006 SCMR 1427 and PLD 2006 SC 697.

12. The government has every right to introduce its policy and the Court cannot substitute the policy decision with its own opinion. The policy can be questioned at the touchstone of provisions of Constitution and if it is found that the policy itself is violative of any article of the Constitution or law, the same can be struck down. Even in that case, the Court would not give its own policy by substituting the one introduced by the Government.

13. In the present case, only contention of the petitioner is that since 70% weightage is given to the interview, therefore, the officials are left at the mercy of the officers conducting interview. It has further been submitted that since the interview is based on the subjective assessment of the persons conducting interview, therefore, discretion is usually used in an arbitrary manner.

14. There is no doubt that discretion must not be used in arbitrary manner. It is also correct that in interview, there is usually the subjective assessment, made by the officers conducting the interview, but now it is well settled that the subjective assessment must be based on some objective criteria, so that the element of arbitrariness and uncontrolled discretion is avoided. In the judgment reported as "**2003 SCMR 291**" the Hon'ble Supreme Court of Pakistan held that "*The appointment is a trust in the hands of public authorities and it is their legal and moral duty to discharge their functions as trustee with complete transparency as per requirement of law, so that no person who is eligible to, hold such post is excluded from the process of selection and is deprived of his right of appointment in service.*"

15. In the present case, the marks in interview were given on the basis of following 7 attributes:-

- i) Interpersonal Skills
- ii) Communication Skills
- iii) Market Intelligence and Research
- iv) IT skills
- v) Brand Advocacy

- vi) Conflict Resolution
- vii) Management Skills

The result produced before the Court shows that the marks were given on the basis of these attributes. Contention of learned counsel for the petitioners in this respect is that marks are given with malafide intention and in order to bring the officers, who had obtained lesser marks, at par with those who had obtained higher marks in the written test. This contention cannot be accepted as the same is based on the personal assessment of the learned counsel. Somebody has to be given the authority to conduct interview and award marks.

16. The authority cannot be substituted by the Court as long as assessment made by the officer conducting interview is not against the policy or rules. In the present case, officers conducting the interview made the assessment according to the objective criteria given in the policy, so the same cannot be questioned. It was the exclusive prerogative of the officers conducting interview to assess the candidates and award marks. In addition to that, the officers conducting interview belonged to different ministries and on the basis of presumptions, it cannot be said that all of them were involved in malpractice.

17. It was also contended that the petitions are not maintainable due to bar provided by Article 212 of the Constitution. This contention is not correct for the reason that the petitioners had prayed for posting abroad on the basis of

policy, which does not form terms and conditions of service.

Since the writ petitions were not for the implementation of terms and conditions, therefore, the bar provided under Article 212 of the Constitution had no application in the present case. The writ petitions on that score were maintainable.

18. The petitioners however had themselves, appeared in the written test and also in the interview, so after appearing in the interview, they had no right to challenge the same before the Court. By their own conduct they were estopped, to challenge the process in which they had themselves participated.

19. It has also been submitted that the result was not made public, which shows that there was malice on the part of respondents. Since the result has already been declared and the same has already been provided to the petitioners, therefore, the objection is no more relevant.

20. In the above said circumstances, the writ petitions are devoid of merits and are accordingly, dismissed.

(RIAZ AHMAD KHAN)
Judge

Approved for reporting.

*Wajid**