

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.1124/2019

Ikram Ullah Khan

versus

Allama Iqbal Open University through its Vice Chancellor, Islamabad.

Petitioner by: Mr. Muhammad Yaqoob Javed, Advocate.

Respondent by: Hafiz S.A. Rehman, Advocate.

Date of Decision: 10.02.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has called in question the advertisement dated 07.03.2019 got published by the Allama Iqbal Open University to the extent of direct recruitment for the post of Assistant Engineer (BPS-16).

2. Brief facts referred in the instant writ petition are that initially the petitioner joined the respondent University on daily wages as Motor-Mate, followed by as an Overseer (Civil), whereafter he was regularized on the latter post on 15.09.2007. In the year 2017 and 2018, the respondent University in terms of statutory terms and conditions of service of the employees of respondent University filled two vacant posts by observing the ratio of 50:50 i.e. 50% by way of promotion and 50% by way of direct recruitment, however the respondent University got published an advertisement on 07.03.2019 inviting applications for two vacant posts of Assistant Engineer (BPS-16) to be filled through direct recruitment in violation of statutory provision and past practice, which deprived the petitioner of his legal right of expectancy for consideration for promotion on seniority cum-fitness basis being the senior most eligible employee of the respondent University. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that as per statutory provision of Rule 5(1) proviso read with Rule 17 in conjunction with provisions of

ESTACODE, two posts are required to be divided by the ratio of 01:01 amongst promotion and direct recruitment and as such promotion post is to be filled prior to the direct recruitment as per dictates of law, therefore, publishing the advertisement for filling two posts through direct recruitment is in sheer violation of statutory provisions; that depriving the petitioner from his promotion is in direct conflict with the provision of Section 12 of the Allama Iqbal Open University Act, 1974, whereby Vice Chancellor will abide by the service statute and regulations in order to create healthy atmosphere which may not cause dismay amongst the employees of the University.

4. Conversely, learned counsel for respondent University contended that the instant writ petition is not maintainable as the rules relating to terms and conditions of service are non-statutory in nature; that constitutional petition could only be filed for the enforcement of right and not for the creation of right, therefore, the instant writ petition is not maintainable on this score too; that the respondent University got published the advertisement to fill up the vacant of Assistant Engineer (Electrical), while the petitioner while holding the post of Overseer (Civil) could not be considered for promotion as only the employee holding the post of Overseer (Electrical) would be eligible for such promotion, therefore, the respondent University got published the advertisement in accordance with provision of its statutes, hence, the instant writ petition may be dismissed having no merits and not maintainable.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner while working as Overseer (Civil) in the respondent University is mainly aggrieved with the advertisement dated 07.03.2019, whereby the respondent University has advertised different posts including the post of Assistant Engineer (Civil) [BPS-16] Post/01, at Serial No.41, with the contention that the post at Serial No.41 advertised by the respondent

University is a promotion post and same could not be advertised to be filled through initial recruitment. The petitioner has mainly relied upon the AIOU Statute of 2008, amended up to 2017, which provides the method of appointment against each and every post, wherein the post of Assistant Engineer (BPS-16) has to be regulated in the following manner:

S#	Nomenclature of post with BPS	By promotion	By initial appointment
4	Assistant Engineer (BPS-16)	50%	50%

The above referred ratio in terms of Statute No.6 requires the respondent University to maintain the roster for filling of the posts.

7. Keeping in view the above background, the respondent University has confirmed that petitioner was initially appointed as Motor-Mate on daily wages on 01.12.2000, who was later on appointed as Overseer on Daily Wages Basis w.e.f. 13.12.2001 and he was appointed as regular employee on 15.09.2007 along with one Ehsan Ullah and seniority of both the officials is maintained w.e.f. the date of appointment in BPS-16 i.e. on 15.09.2007 in accordance with merit determined by the Selection Committee. The respondent University has also circulated provisional seniority list on 02.09.2015 with direction to send any queries within 15 days, however no objection or appeal was filed by the petitioner for correction of his seniority. The final seniority list was notified on 23.09.2016, whereafter the petitioner approached the concerned authority by filing an application for correction of seniority, which was turned down in accordance with Rules contained in Clause 12(4) of the AIOU Statute mainly on the ground that *“an employee assigned high merit by the appointing authority at the time of recruitment shall rank senior to employee placed in lower merit in same batch of selectees.”*

8. The post of Assistant Engineer (BPS-16) it to be filled by the ratio of 50:50 i.e. 50% by promotion and 50% by direct recruitment. The respondent University

has provided details in their para-wise comments against each position in the following manner.

<i>Sr. No.</i>	<i>Name of Official</i>	<i>Appointment/ Promotion</i>	<i>Date</i>	<i>Remarks</i>
01.	Mr. Zahoor Ahmad	Appointed	20.11.1980	Photocopies attached
02.	Mr. M. Farooq	Promoted	18.10.1989	
03.	Mr. M. Ashraf	Appointed	05.03.1990	
04.	Mr. Khawar Mahsud	Promoted	29.10.2003	
05.	Syed Javed Ali Shah	Appointed	17.03.2004	
06.	Mr. Amjad Ali	Promoted	20.02.2010	
07.	Mr. Faisal Nadeem	Appointed	01.01.2018	
08.	Mr. Ihsan Ullah	Promoted	30.05.2018	

9. It is evident from the above record submitted by the respondent University that the posts of Assistant Engineer are being filled consecutively by way of 50% promotion and 50% by direct recruitment and as such, the respondent University has now advertised the post of Assistant Engineer (Civil), meaning thereby that they the next post would be filled by way of promotion.
10. Similarly, one post of Assistant Engineer (Electrical) has also been advertised by the respondent University. The Statute of the respondent University provides that promotion to the post shall be made on seniority-cum-fitness from amongst such employees of the University as per percentage given against each position under prescribed qualification, however if qualified candidates are not available from within the University the post may be filled by direct recruitment.
11. As per record of the respondent University, two Overseers i.e. Ikram Ullah, present petitioner and Mr. Farrukh Manzoor have been working as Overseer (Civil), whereas no Overseer in the field of Electrical is presently working in the respondent University, which is lying vacant. It is also settled in the Statute that in case of promotion the post of Assistant Engineer (Civil) will only be filled by Overseer (Civil) with requisite experience as prescribed in the Statute and as such, the Overseer (Civil) could not be considered against the post

of Assistant Engineer (Electrical) being not relevant. As per record of the respondent University, no Overseer (Electrical) of BPS-14 is available in cadre for promotion, due to which the post of Assistant Engineer (Electrical) has been advertised.

12. Besides the above referred position, Ehsan Ullah, Overseer (BPS-14) was promoted against the post of Assistant Engineer on seniority-cum-fitness vide office order dated 29.06.2018 and as such, the promotion post has also been filled and now it is the turn of the post for initial recruitment, as such no violation has been committed by the respondent University.

13. Learned counsel for the respondent University has also argued that the statutes of AIOU are non-statutory in nature and as such, the constitutional jurisdiction of this Court could not be invoked. Reliance is placed upon 2010 SCMR 1484 (Executive Council Allama Iqbal Open University vs. Muhammad Tufail Hashmi), wherein it has been held as under:

“10. Now coming towards the definition of a person in 'corporation service' or a person in 'government service', as defined in section 2(c) and (d) of the RSO, 2000. Such persons can be subjected to the RSO, 2000 but keeping in view the definition of the 'civil servant' under the Civil Servant Act, 1973 as well as the dictum laid down in Muhammad Mubeen-us-Salam's case (ibid), only those employees can approach the Service Tribunal, who fall within the definition of civil servant', holding posts in connection with the affairs of the Federation. As far as the remaining categories of employees, including the contractual ones; are concerned, if they are aggrieved of any adverse action, the Service Tribunal is not the appropriate forum for redressal of their grievance, in view of above conclusion, because it is a forum constituted under Article 212 of the Constitution for the redressal of grievance of those employees, whose terms and conditions are settled under Article 212(1)(a) of the Constitution. Similarly, any action taken against such persons shall not be questionable before the Service Tribunal as it is not meant to provide a forum to the employees, who services are governed by non-statutory rules or who do not fall within the definition of a person in 'government service' as defined in section 2(d) of the RSO, 2000. Admittedly, in the present case the employees of AIOU, SME Bank and Pakistan Steel Mill, who approached the Service Tribunal for redressal of their grievance, were not enjoying the protection of statutory rules, therefore, the Service Tribunal had no jurisdiction to adjudicate upon

such matters and they will be governed by the principle of Master and Servant."

(Underlining is provided for emphasis)

14. The above referred wisdom laid down by the apex Court clearly spells out that the employees of the respondent University are governed under the relationship of master and servant and as such, they are not permitted to invoke the jurisdiction of this Court.

15. In view of above, the instant writ petition is misconceived and the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.

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