

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O. No. 59 of 2014

Saeed Ahmed

Vs

Federal Public Service Commission

DATE OF HEARING: 22-10-2014.

APPELLANT BY: Mr. Muhammad Umair Baloch, Advocate for the appellant.

RESPONDENT BY: Mr. Haroon Rashid, Advocate for the respondent
Malik Faisal Rafique, DAG.

ATHAR MINALLAH, J.- This is a appeal under section 7(3)(d) of Federal Public Service Commission of Pakistan Ordinance, 1977 (hereinafter referred to as “Ordinance”). The appellant has impugned office order dated 14-07-2014 passed by the Federal Public Service Commission (hereinafter referred to as “Commission”) whereby the review petition of the appellant was dismissed.

2. Briefly stated, facts of the case are that the Commission, through an advertisement, invited applications for the post of Director-General (BS-20) (hereinafter referred to as the “Advertised Post”) in Permanent Institute of Optronics, Ministry of Defence and Production. The advertisement was published on 03-10-2013 in the daily newspapers and specified the minimum qualifications required for the Advertised Post. The appellant, in response of the advertisement, applied for the Advertised Post. His application was considered but not entertained on the ground that he did not possess the minimum requirements as specified for the Advertised Post. The appellant

preferred a review and the same was dismissed vide the impugned order dated 14-07-2014.

3. The learned counsel for the appellant contends that the appellant holds a Masters degree in Mathematics as well as M.Phil Mathematics. It is further contended that he has submitted his thesis as a student pursuing Ph.D in Electronics. It is stated that the appellant has to his credit more than 10 international publications. The learned counsel has drawn the attention of this Court to the letter dated 19-05-2014, addressed to the Department of Electronics, Quaid-e-Azam University, Islamabad, by the Higher Education Commission of Pakistan (hereinafter referred to as the “HEC”). On the basis of the said letter the learned counsel contends that the degree held by the appellant and those specified in the advertisement have some common courses, therefore, the appellant could be treated as having equivalent qualification. The learned counsel further contends that the appellant has been treated differently from other similarly placed applicants. In support he states that two other applicants who did not possess the minimum qualifications were allowed to be interviewed.

4. Conversely, the learned Deputy Attorney General contends that the appellant did not possess the minimum required qualifications as advertised for the post. It is further contended that the letter of the HEC relied upon by the appellant affirms that the degree held by the appellant is not equivalent to the required qualifications. The learned Deputy Attorney General states that there has been no discrimination as the applicants who were interviewed possessed the advertised qualifications and, therefore, their case is distinguishable from that of the appellant. It has further been stated that after completion of the process none of the candidates were found eligible and, therefore, no appointment could be made against the Advertised Post. The Commission has, therefore, informed the concerned department and suggested that the post may be re-advertised.

5. After hearing the learned counsels and perusing the record with their able assistance, this Court is of the following opinion.

6. The Commission through a consolidated advertisement No.10/2011, inter-alia, invited applications for the Advertised Post. The minimum qualifications and experience were specified in the advertisement which are as follows:

- (i). *Second Class or Grade 'C' Master's Degree in Physics/Applied Optics/Applied Physics/Laser Physics/Electronics or equivalent qualification from a University recognized by HEC. OR Second Class or Grade 'C' Bachelor's Degree in Electrical/Electronics Engineering or equivalent qualification from a University recognized by the HEC.*
- (ii). *Specialization in the fields of Optronics/Laser Quantum/Electronics/Infrared Image Intensifiers/Allied subject.*
- (iii). *Seventeen (17) years post qualification experience in Research and Development/Production/Project Planning and Management/Optronics in BS-17 and above or equivalent in Govt/Semi Govt/reputable private firm. AGE LIMIT: 37-45 **plus five (05) years general relaxation.** DOMICILE: **Punjab** (Both male and female candidates are eligible)”*

7. The closing date for receiving applications was on 21-10-2013. It is an admitted fact that the appellant does not possess the qualifications as mentioned in the advertisement. He also does not possess the specialization in any of the fields as advertised. The reliance of the learned counsel for the appellant on the letter dated 19-06-2014, addressed by the Higher Education

Commission of Pakistan to the Department of Electronics, Quaid-e-Azam University, Islamabad is misconceived. The letter relied upon affirms that the degree held by the appellant is not equivalent to the required qualifications for the Advertised Post. This Court is also not impressed with the contention of the learned counsel for appellant that there has been discrimination. It is admitted that the appellant does not possess the qualifications for the post as mentioned in the advertisement and, therefore, he was not eligible to be considered against that post. Nothing has been brought on record to show that the impugned order requires interference by this Court.

8. The impugned order does not suffer from any illegality or infirmity. The appeal is without any merit and, therefore, dismissed.

(ATHAR MINALLAH)
JUDGE

Announced in open Court on _____

JUDGE

*Asif M**

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2. Briefly stated, facts of the case are that the Commission through an advertisement invited applications for the post of Director-General (BPS-20) in Permanent Institute of Optronics, Ministry of Defence and Production. The advertisement has been published on 03-10-2013 in the daily newspaper specified the minimum qualification required for the said post. The appellant response of the advertisement applied for the post and his application was considered but no entertained on the grounds that he did not possess the minimum requirements as specified for the advertised post. The appellant preferred a review and the same was dismissed vide the impugned order dated 14-07-2014.

3. The learned counsel for the appellant contends that the appellant holds the degree of MSC Mathematics as well M.Phil Mathematics. It is further contended that he has completed and submitted his thesis as a student pursuing Ph.D in electronics. It is stated that the appellant has to his credited more than 10 international publications. The learned counsel has drawn the attention of this Court towards letter dated 19-05-2014, addressed to the department of electronics Quaid-e-Azam university, Islamabad by the Higher Education Commission of Pakistan. On the basis of said letter the learned counsel contends that the degree held by the appellant and those specified in the advertisement have some common courses, therefore, they could be treated as equivalent. The learned counsel further contends that the appellant has been treated differently from other similar placed applicants. In support he states that two other applicants who did not possess the minimum qualification were allowed to be interviewed.

4. Conversely, the learned Deputy Attorney General contends that the appellant did not possess the minimum required qualification as advertised for the post. It is further contended that the letter of the Higher Education Commission relied upon by the appellant affirms that the degree held by the appellant is not equivalent to the required qualification. The learned Deputy Attorney General states that there has been no discrimination as the applicants who interviewed possessed the advertised qualification. disputes arose between the parties regarding a property named “Tarnol Filling Station” situated on Peshawar Road, Islamabad (hereinafter referred to as the “Property”). The petitioner claims to have entered into various agreements dated 11-03-2009, 09-09-2011 and 20-10-2011 respectively (hereinafter referred to as the “Agreements”), for the purchase of the Property, owned by the respondent No.1. The petitioner was given possession of the property following the Agreements. Respondents No.3 & 4 sell and supply fuel and oil

products under a separate and distinct agreement for the running business of a fuel/gas filling station at the Property.

3. The Petitioner instituted suit for specific performance of the Agreements, titled as “Ansar Mehmood vs Jamshed Ahmed Mustafa Zuberi and others” (hereinafter referred to as the “Petitioners Suit”). On the other hand, the respondent No.1 filed a suit for cancellation of the Agreements (hereinafter referred to as the “Respondents Suit”). A third suit relating to the Property was also instituted by sisters of the respondent No.1, claiming their respective shares. The suit is titled “Maryam Zubairi vs Jamshed Ahmed Mustafa Zubairi” (hereinafter referred to as the “Sisters Suit”).

4. In all three suits, separate applications were filed under Order 39, Rule 1 & 2 CPC. Except for one prayer, other prayers sought were common i.e. restraining the parties from alienating the Property, changing its status of lease hold rights and status of dealership regarding the business. However, the petitioner, as a distinct prayer, sought a restraining order against respondents No.3 & 4, not to discontinue the supply of fuel and oil products. On the other hand respondent No.1, through his application, prayed that the respondents No.3 & 4, be restrained from supplying fuel and oil products for the business carried out at the Property, which admittedly is in possession of the petitioner.

5. The three applications were heard and decided by learned Nasrum-Minallah, Civil Judge, 1st Class-West, Islamabad vide separate Orders dated 06-07-2013. In case of the petitioner, the application was allowed by accepting “as per prayer”. It is, therefore, clear that the respondents No.3 & 4 were restrained from discontinuing the sale and supply of fuel and other oil products. In case of the application filed by respondents No.1, it was accepted to the extent that the petitioner was restrained from alienating the business, changing its status or status of the business. There was obviously no need to

mention the prayer which sought relief against respondents No.3 & 4 as the same was granted in favour of the petitioner.

6. A belated application was filed by the respondent No.1, under Section 152 of CPC, seeking 'clarification' of order dated 06-07-2013, passed on the application filed under Order 39, Rule 1 & 2 of CPC. Application was moved in the Respondents suit, praying that the order be rectified by including the prayer seeking restraining order against respondents No.3 & 4.

7. The application under Section 152 of CPC, was heard by learned Civil Judge 1st Class, Islamabad, namely Ayesha Shabbir, as the three consolidated suits had been transferred to her Court. The learned Judge came to the conclusion that since it is not mentioned in the order dated 06-07-2013, that the application under Order 39, Rule 1 & 2, CPC, was "partially" accepted, therefore, she assumed that, inadvertently, the predecessor Judge had omitted the prayer to the extent of restraining the respondents No.3 & 4, from supplying fuel and other oil products. Consequently, the application was accepted, and order dated 06-07-2013, passed in respondent No.1's suit, was rectified by restraining respondents No.3 & 4, from supply of fuel and oil products. Hence, the petitioner filed the present revision petition being aggrieved by order dated 22-05-2014.

8. Malik Asif Taufiq Awan, Advocate High Court, contended that the predecessor Judge had passed respective orders in the three consolidated suits after application of mind; the order was deliberate; the learned Judge erred by failing to take into consideration the order passed on the application filed in the petitioners suit, whereby, inter-alia, respondents No.3 & 4, were restrained from discontinuing the supply; the said order has not been challenged by the respondent No.1; since three separate applications in the respective consolidated suits were heard and decided, therefore, for the purposes of the

effect the orders have to be read together; the learned Court could not have assumed that the predecessor Judge had inadvertently omitted the prayer sought against respondents No.3 & 4, as the same was granted in favour of the petitioner vide order dated 06-07-2014; the learned Civil Judge has erred in entertaining the application under Section 152, as it involved contentious issues.

9. On the other hand Riaz Ahmed Mohal, Advocate High Court, contested the revision petition on behalf of the respondent No.1. He argued that the predecessor Judge had accepted the application in the respondent suit and as an accidental slip or error, the prayer against respondents No.3 & 4, was omitted. He cited judgments reported as “*Bank of Credit and Commerce International vs Messrs Ali Asbestos Industries Ltd and 5 others*”, 1990 MLD 130, “*Mst. Rabia Bibi and others vs Ghulam Ahmed and others*”, 1979 CLC 715, “*Pakistan Day memorial Committee and other vs Mian Abdul Khaliq & Co*”, 1987 CLC 1169, “*Shaukat Ismail Charania vs Mrs. Shakeela Hayat Khan and others*”, 2006 CLC 1126 and “*Syed Saadi Jafri Zainabi vs Land Acquisition Collector and Assistant Commissioner*” PLD 1992 SC 472, in support of his contention that section 152 CPC vests power in a Court to correct the mistake, omission or error which has crept in an order inadvertently or unintentionally.

10. After hearing the learned counsels and perusing the record with their able assistance, this Court concludes as follows:-

11. Section 152 of CPC provides a speedy and inexpensive relief without resorting to other remedies that may be available under the law. However, Section 152 has limitations which have been provided therein. The scope is limited to ‘clerical’, ‘arithmetical’ mistakes or “errors” arising from any “accidental slip” or “omission”. Where the order or judgment is

deliberate, having been passed after application of mind, it will be outside the scope of Section 152, as an error or omission in such an order would not be construed as an accidental slip or omission. Not every mistake by a Court can be termed as an error resulting from an ‘accidental slip’ or ‘omission’. Questions involving contentious issues cannot be considered or corrected under Section 152 of CPC. The august Supreme Court in case titled “*Baqar vs Mohammad Rafique and others*”, 2003 SCMR 1401, while interpreting provision of Section 152 has held that an “omission made by a Court by positive application of mind cannot be termed as an accidental slip or omission. It must be an error apparent on the face of the record, or an “accidental slip or omission, and should be an error apparent at first sight, and its discovery should not depend on elaborate arguments on questions of facts or law”. The Court cannot rectify a decree, judgment or order on the grounds that it was wrong or unfair. The section does not authorize the Court to supplement its judgment, passed after application of mind and having effect of taking away rights accrued to any party. The errors as contemplated by Section 152 are those which may have crept into the order or decree inadvertently or unintentionally. Mistakes which do not go to the merits of the case and not substantially affecting rights of the parties can always be corrected by exercising jurisdiction under Section 152. Reliance is placed on “*Muhammad Shahzad vs Khairati Khan and others*”, 1989 SCMR 189, “*Haji Ishtiaq Ahmed and 2 others vs Bakhshaya and 7 others*”, 1976 SCMR 420, “*Syed Saadi Jafri Zainabi vs Land Acquisition Collector and Assistant Commissioner*”, PLD 1992 SC 472, “*Koka Adinarayana Rao Naidu vs Koka Kothandaramayya Naidu and others*”, AIR 1940 Madras 538 & “*Muhammad Aslam Lone vs Additional District Judge*”, PLD 2008 Lahore 373.

12. Applying the above principles of law, it becomes obvious that on the facts and circumstances of the present case, it was beyond the scope of jurisdiction of the Court to rectify the order under Section 152 of CPC. Firstly,

there was no error or mistake which may have crept in the order on account of an accidental slip or omission; secondly, the questions raised in the application were of a contentious nature, and thirdly, it was intended to take away the rights already accrued in favour of the petitioner through order dated 06-07-2013, passed on the application in the suit instituted by the petitioner.

13. As more fully explained, the three consolidated suits relate to the same Property. The petitioner is in possession of the property in pursuance of a sale Agreement, he has instituted a suit for specific performance of the Agreements qua the respondent No.1. The respondent No.1 has sought cancellation of the Agreements by filing a separate suit. The parties had applied for injunctive reliefs. The petitioner had, inter-alia, prayed that respondents No.3 & 4, may be restrained from discontinuing the sale and supply of fuel and oil products, while the respondent No.1, had prayed otherwise. The suits are pending and contested by the parties. The lis involves the same Property and Agreements. The Court, after taking into consideration the relevant factors, inter-alia, balance of convenience and irreparable loss, granted the interim relief against respondents no. 3 & 4. The omission in order dated 06-07-2014 passed in the respondents suit was, therefore, neither an error nor an accidental slip. How could the Court have allowed the relief to the respondent when the same had been decided in favour of the petitioner through a separate order in the suit instituted by him. The order passed on the application in the suit filed by the respondent No.1, was by positive application of mind and deliberate. Even otherwise, rights accrued in favour of the petitioner could not have been taken away and balance of convenience and irreparable loss were also in his favour. The injunctive order passed in the suit instituted by the petitioner was not challenged by the respondent No.1, which has the effect of, inter-alia, restraining respondents No.3 & 4 from discontinuing the supply of fuel and other oil products.

14. I have gone through the judgments cited by the learned counsel for the respondent No.1, and noted that they do not apply in the circumstances of the present case because the same are distinguishable on facts.

15. This petition is, therefore, accepted and the impugned judgment dated 22-05-2014, is set-aside.

(ATHAR MINALLAH)
JUDGE

Approved for reporting

JUDGE

*Asif M**

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