

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

MR. JUSTICE YAHYA AFRIDI  
MR. JUSTICE SYED HASAN AZHAR RIZVI  
MR. JUSTICE IRFAN SAADAT KHAN

**Civil Appeal No. 84-K of 2023**

(Against the order dated 28.01.2021 passed by the Sindh Service Tribunal, at Karachi in Appeals No. 19 & 20 of 2020)

Ghulam Abbas Soomro

**...Appellant**

**Versus**

The Province of Sindh, etc.

**...Respondents**

For the Appellant:

Mr. Abdul Salam Memon, ASC  
Mr. Ghulam Rasool Mangi, AOR

For the Respondents:

Mr. Sibtain Mehmood, Addl. A.G.  
Ms. Abida Parveen Channar, AOR  
Mr. M. Nawaz, Secretary, Works.  
Mr. Altaf Hussain Memon, D.S.

Date of hearing:

07.02.2024

**ORDER**

**Yahya Afridi, J.-** Ghulam Abbas Soomro challenged the judgment of the Sindh Service Tribunal, at Karachi dated 28.01.2021. The matter came up for hearing on 22.06.2022 wherein this Court ordered that:

**“Civil Petition No. 632-K/2021:** Mr. Abdul Salam Memon, learned ASC appearing for the petitioner contends that a larger Bench of this Court in the case of Fida Hussain vs. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another (PLD 1995 SC 701) had held that *“the provisions of Pakistan Engineering Council Act, 1975 (Act V of 1976) are applicable only to professional engineers and consulting engineers who are in practice and not to the persons working in the Government departments, autonomous bodies, local authorities and private firms or companies”* but this judgment was not considered by this Court while rendering judgment in the case of Moula Bux Sheikh (2019 PLC (C.S.) 282), wherein it was directed that *“the Government shall not allow or permit any person to*

*perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.”* Per counsel the dicta in the case of Moula Bux Sheikh is in direct conflict with the judgment of the larger Bench. The contention requires consideration, let notice be issued to the respondents.

2. Civil Petition No. 633-K/2021: Learned counsel contends that since the question involved in this petition is exactly the same as in above referred connected petition which is not barred by time and notice has been directed, therefore, the delay in filing the instant petition be condoned. Subject to limitation, let notice be also issued to the respondent in the instant petition as well.”

Whereafter leave was granted by this Court *vide* order dated 16.08.2023 in terms that:

“These are two leave petitions, arising out of the impugned dated 28.01.2021 of the Sindh Service Tribunal at Karachi, passed in Appeals No. 19 and 20 of 2020. One of these leave petitions, CPLA No. 632-K/2021 is barred by 54 days and the other leave petition is within time. Since the question involved in both the petitions arising out of the same impugned order is the same, therefore, we are inclined to condone the delay in CPLA No. 632-K/2021. Accordingly, the delay is condoned.

2. Learned counsel for the petitioners points out the order dated 22.06.2022 of this Court in which the entire controversy has been crystalized. The whole issue relates to a question of law and also requires resolution between two judgments of this Court, which are mentioned in the aforesaid order and one of which is rendered by a larger Bench of this Court.

3. In the circumstances, we are inclined to grant leave in both these petitions to, *inter alia*, consider the question raised in the order dated 22.06.2022. The appeals arising out of these petitions may be listed for hearing in the next session, subject to compliance of all codal formalities.”

2. The clubbed petition granted leave with the instant petition was filed by Muhammad Azam Memon, who having retired did not pursue the *lis*, and thus his petition was accordingly disposed of *vide* order dated 07.02.2024. As for the facts leading to the present appeal, we note that Ghulam Abbas Soomro, who was holding a decree of B-Tech (Hons.) Civil was employed as an Executive Engineer (BS-18) in the Civil Works & Services Department, Government of Sindh. The grievance of the appellant, in essence,

relates to his frequent postings and transfers by the respondents,<sup>1</sup> particularly the cancellation of his transfer order dated 14.11.2019 *via* another transfer order dated 08.01.2020, whereby his posting at the disposal of the Chief Executive (Buildings), Hyderabad was also cancelled without any complaint in respect of performance of the appellant.

3. Learned counsel for the appellant, at the first instance, drew our attention to the repeated transfer and posting orders of the appellant, and asserted that the same were not only against the enabling rules but also the dictates of good governance. He further argued that once the appellant was promoted to the post of Executive Engineer (BS-18) in the Civil Works & Services Department, Government of Sindh, then, he could not be denied postings solely on the ground that he was not registered as a professional engineer with the Pakistan Engineering Council (“PEC”). In support of his contention, the learned counsel highlighted that the judgment rendered by a five-Member Bench of this Court, in the case of Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad (PLD 1995 SC 701) wherein, according to the learned counsel, this Court settled the matter that the registration as per mandate of the Pakistan Engineering Council Act, 1976 (“PEC Act”) is applicable only to professional engineers and consulting engineers, who are in practice and not to persons working in Government Departments, Autonomous Bodies, legal authorities and private firms or companies. This principle, the learned counsel for the appellant emphasized, was not adhered to by a three-Member Bench of this Court in the case of Maula Bux Shaikh v. Chief Minister Sindh and others (2018 SCMR 2098),

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<sup>1</sup> Orders dated 19.02.2019, 14.11.2019, 19.11.2019 and 08.01.2020.

wherein the findings of the **Fida Hussain's case** (*supra*) were not attended to and hence, the judgment to that extent was *per incurium*.

4. In response to the first issue of repeated transfers and postings of the petitioner, the learned Additional Advocate-General, Sindh was unable to justify or reasonably explain the reasons for such frequent transfers and postings. Accordingly, we directed the Secretary, Works and Services Department, Government of Sindh, to appear and explain the reasons for the same. Mr. Muhammad Nawaz Sohoo, Secretary, Works and Services Department, Government of Sindh, who appeared in person, was very forthright in his response and openly admitted that the transfers and postings of the appellant were not administratively correct. He further assured that the appellant, who is presently holding the post of Executive Engineer and assigned the Health Works of Upper Sindh would hold the post in accord with the settled policy of the provincial Government. When further confronted on the second issue, the learned Additional Advocate-General, Sindh intervened, and pointed out that the two judgments cited by the learned counsel for the appellant were inconsonance with each other, and there were no contradictory findings recorded in **Maula Bux Shaikh's case** (*supra*) as far as the principle so laid down in **Fida Hussain's case** (*supra*) is concerned. He further explained that, in fact, both cases dealt with the prospect of promotion, while the present case related to postings and transfers and, thus, should not be made basis for any findings in the instant case. As for the postings of officers not registered with the PEC, who were holding position of Executive Engineers supervising professional engineering works, the worthy Secretary, Works and Services Department, Government of Sindh, informed that such postings were not in his knowledge but

assured the Court that the matter would be reviewed and corrected administratively, and that too, expeditiously.

5. We have carefully considered the submissions of the learned counsel for the parties, and with their able assistance, gone through the record and the judgments cited at the bar.

6. As far as the postings and transfers of the appellant are concerned, in view of the candid admission of wrongful postings and transfers of the appellant and the reassuring undertaking rendered by the worthy Secretary, Works and Services Department, Government of Sindh, we would not proceed further in the matter. However, we direct that the matter be brought to the attention of the Chief Secretary, Government of Sindh, who is to ensure that, the appellant along with others similarly placed, who are not registered as professional engineers and consulting engineers with the PEC are dealt with in accordance with the law, so as to avoid any discrimination amongst them, thus preserving the cherished goal of good governance.

7. Moving on to the second issue raised by the learned counsel for the appellant regarding the contended contradiction in the judgments of this Court. Before we pass any opinion on the said assertion, we must review the cited judgments:

7.1. **Fida Hussain's case** (*supra*) related to Fida Hussain, who was appointed as an Overseer/Sub-Engineer in Northern Area P.W.D. in the year 1971. The Federal Government, in order to encourage the diploma holders to improve their academic qualification, resolved to initiate courses, namely, B. Tech. (Pass) and B. Tech. (Hons.); the latter was treated equivalent to B.Sc. (Engineering) and Bachelor of Engineering, for the purpose of promotion. Fida Hussain passed his

B. Tech (Hons.) from N.E.D. University, Karachi. Despite the said improvement of his academic qualifications, Fida Hussain was not promoted. The reason for him being denied this promotion was essentially that the PEC did not recognize B. Tech. (Hons.) at par with B.Sc. (Engineering) degree. Thus, on the one hand, there was a government policy considering B. Tech. (Hons.) equivalent to B.Sc. (Engineering) for the purpose of promotion, while on the other hand, the PEC refused to recognize the said degree as B.Sc. (Engineering) degree. The matter was challenged before the Service Tribunal, and finally before this Court. A five-Member Bench of this Court, sitting in review jurisdiction, after going through relevant provisions of the PEC Act held,

**"9. . . . A perusal of the above-quoted section shows that the Pakistan Engineering Council is vested with the functions to regulate the persons qualified to practise as professional engineers and consulting engineers and not persons who are employed in the Government or semi-Government organisations. If the Government employs a professional engineer as defined in the Act for performing professional engineering work as envisaged by the Act in above clause (k) of section 2, the provisions of the Act would be attracted and not otherwise."**

Following a threadbare discussion, it was finally concluded that:

**"13. We may again observe that it is exclusively within the domain of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. However, it cannot abdicate its power to decide the above question in favour of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 25 of the Constitution on account of being discriminatory. It is still open to the Government for future to provide that academic qualification of B. Tech. (Honours) will not be considered sufficient for promotion from BPS-16 to BPS-17 if the same does not violate the above principle."**

**14. The upshot of the above discussion is that the judgment under review is liable to be recalled as it proceeded on wrong premises. We would, therefore, allow the above Suo Motu Review Petition and recall the above judgment. In consequence thereof, petitioner's Civil Appeal No.216 of 1991 is allowed and the judgment of the Tribunal is set aside and the respondents are directed to consider the petitioner's case for promotion to BPS-17."**

7.2. Before parting with the discussion on **Fida Hussain's case** (*supra*), it would be important to note that the emphasis of the learned counsel for the appellant was not on the above recorded finding, but on certain observations made therein on the case of **Muhammad Siddique Nasim v. The Secretary, Government of the Punjab, Irrigation and Power Department, Lahore** (1987 SCMR 302), relied upon by the Service Tribunal in dismissing the claim of Fida Hussain.

7.3. **Muhammad Siddique Nasim's case** (*supra*), related to Muhammad Siddique Nasim, a Sub-Engineer serving in Irrigation Department, Government of Punjab, who challenged the notification dated 15.03.1985, whereby the Education Department withdrew its earlier notification dated 08.02.1981 whereby his degree of B. Tech. (Hons.) was made equivalent to the degree of B.Sc. Engineering. This challenge made before the Service Tribunal was not positively considered by the Tribunal and, hence, the matter was challenged before this Court. We have gone through the judgment and find that no findings regarding the applicability of the provisions of the PEC Act were rendered therein. However, the Court did not disturb the reliance of the Provincial Government on the advice of the PEC relating to qualifications for promotion of Engineers, in terms that:

**"5. It may be mentioned that the Pakistan Engineering Council is a statutory body having been constituted under the Pakistan Engineering Council Act, No.V of 1976 enacted by the Parliament. Some of its statutory functions relate to recognition of engineering qualifications for the purpose of registration of professional engineers and consulting engineers and promotion of engineering education and review of courses of studies in consultation with the Universities. It was, therefore, a proper body to advise the Provincial Government whether or not to treat the degree of B.Tech. (Honours) as equivalent to B.Sc. (Engineering). If, therefore, the Provincial Government accepted the advice of the Pakistan Engineering Council and withdrew the Notification of 8-2-1981 no fault can be found with its action in this regard. It is also to be noticed that it is essentially a question of policy whether a particular degree should be recognized as equivalent to another degree for the purpose of recruitment**

to a post within the sphere of the Provincial Government. The petitioner cannot claim a vested right in any policy, particularly in this case when he had not even passed the examination for B.Tech. (Honours) when the Government withdrew the Notification of 8-2-1981. The Tribunal was, therefore, right in dismissing the appeal of the petitioner. The petition for leave to appeal is dismissed."

(emphasis provided)

7.4. Having considered the *dicta* of this Court in **Muhammad Siddique Nasim's case** (*supra*) and **Fida Hussain's case** (*supra*), we must also consider another judgment, which was referred to in later, namely, **Pakistan Diploma Engineers Federation (Registered) through its Chairman v. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad** (1994 SCMR 1807). The issue raised therein has great relevancy to the controversy agitated in the present petition.

7.5. **Pakistan Diploma Engineers Federation's case** (*supra*) revolved around the essential issue of whether the diploma holder engineers employed in Pakistan Railways could be denied promotion, on the ground that they were not registered as professional engineers and consulting engineers with the PEC, even though they were otherwise by reasons of their seniority, eligible for their promotion to BS-18. The case had emanated from a conflicting judgment of the Sindh High Court, which was finally decided by a Referee Judge, who concluded that the expression "professional engineer" carries a specific connotation in the PEC Act which means a person who is in the profession of engineering and practice, as such for the purpose of tendering technical advice in respect of a work involving technical skill of engineering. Accordingly, a person who is not independently practicing in the profession of engineering and is in the employment of Government Department would not be covered in the definition of "professional engineers", so as to make him registerable under the



provisions of the PEC Act. In conclusion, the referee Judge opined that:

**“A careful reading of subsections (1) and (2) of section 27 of the Act will show that the penalties prescribed in the section are attracted only against those persons who are not registered under the Act but undertake any professional engineering work as defined in the Act. Similarly, the person who employs a person who is not registered under the Act, on a professional engineering work, is equally liable for punishment under the Act. The above provisions are wide enough to include the cases of those persons who may be employed in any private or Governmental organisation and are called upon to undertake any professional engineering work. The provisions of the Act, regarding registration of professional engineer and consulting engineer, therefore, in my view, would not be applicable to the persona serving as engineer with the Railways, as in course of their such employment they neither act as 'professional engineer' nor as 'consulting engineer'. However, if such persons undertake any professional engineering work as defined under the Act, then the provisions regarding registration under the Act will be attracted and they could also be punished in accordance with the provision of section 27 of the Act for violating the provision of the Act.”**

**(emphasis provided)**

The majority judgment of the Sindh High Court was challenged by the PEC, asserting that the High Court had not correctly interpreted the law and, according to the learned counsel, had laid down that the PEC Act applied to engineers engaged in professional engineering works in the private sector, whereas the application of the same could not be restricted to private practitioners alone. This Court, dispelling the contention of the PEC, came to the conclusion that the majority judgment, and in particular, the opinion of the referee judge of the High Court, as quoted above, has correctly stated that the provisions of the PEC Act were wide enough to include cases of those persons engaged in professional engineering works, whether employed in any private or Government organization and are called

upon to undertake any professional engineering work, as defined under the said enactment. This would bring us to the recent judgment of a three-Member Bench of this Court in **Maula Bux Shaikh's case** (*supra*).

7.6. **Maula Bux Shaikh's case** (*supra*) related to the challenge made to notification dated 19.03.2014 being *ultra vires* to the PEC Act as it allocated promotion quota of 13% to diploma holders and 7% to B. Tech. degree holders for the post of the next higher grade - Executive Engineer (BS-18). Maula Bux Shaikh made the initial challenge before the Sindh Service Tribunal, agitating that being employed as an Assistant Engineer (BS-17) in the year 1997, his prospects of promotion to the post of Executive Engineer (BS-18) have been prejudiced under the said notification. It was contended by Maula Bux Shaikh that a post of Executive Engineer (BS-18) includes purely professional engineering work, and therefore, should be solely allocated to registered engineers, and not diploma holders and B. Tech (Hons.) degree holders. In this regard, he emphasized that he, being a professional engineer, was holding accredited engineering qualification duly registered with the PEC under the PEC Act and therefore, he should be promoted to a post of Executive Engineer (BS-18) instead of diploma holders or B. Tech (Hons.) degree holders. This Court, after extensively reviewing the relevant provisions of the PEC Act and the rules made thereunder in *juxtaposition* with the Civil Servants Act, 1973 and the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and in the light of the judicial precedents, came to the following conclusion:

"20. Further, the main principle that is deductible from the above judgments of this Court is that it is the domain of the

Government to decide whether a particular academic qualification of a civil servant/ employee is sufficient for promotion from one grade to another higher grade and whereas it is in the domain of the Pakistan Engineering Council to decide whether a particular academic qualification can be equated with another academic qualification but it has no power to say that the civil servants/employees holding particular academic qualification cannot be promoted from a particular grade to a higher grade. Thus on the basis of above pronouncements of this Court, it is clear that the notification dated 19.03.2014 cannot be validly or justifiably challenged on the ground that it impinges or infringes upon any of the provisions of PEC Act, 1976 and thus would be ultra vires. ... ... In any case, we note that the provisions of PEC Act nor the rules and regulations made under it will operate as bar on government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to higher grade. ... ..

22. We may further observe that section 27 of the PEC Act provides for penalty for a person who undertakes any professional engineering work if his name is not borne on the Register but it also makes the employer who employs for any professional engineering work any person whose name is not, for the time being, borne on the Register to perform professional engineering work, shall also be liable for penalty as prescribed in the PEC Act itself. Thus both civil servant/employee and their employer would be liable to penalty as provided under section 27 if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act.

23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act."

(emphasis provided)

8. A careful reading of both **Fida Hussain's** case and **Maula Bux Shaikh's** case pertinently highlights that the decisions regarding the terms and conditions of service fall squarely within the purview of the respective Government. Additionally, while **Fida Hussain's** case provides that *if the Government employs a professional engineer as defined in the PEC Act for performing professional engineering work as envisaged by the PEC Act in clause (k) of section 2, the provisions of the PEC Act would be attracted and not otherwise*, **Maula Bux Shaikh's** case introduces a cautionary note and explicitly dictates the Government regarding postings and transfers of Executive Engineer (BS-18) and

directs that the Government *shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.* This cautionary note raises critical concerns about the permissibility of employing engineers not licensed by the PEC for professional engineering tasks, which, according to the PEC Act, should only be undertaken by licensed professionals. The effect of these cases creates a scenario: where a person, on the one hand, is eligible to be promoted to the post of Executive Engineer (BS-18), but on the other hand, is denied to perform professional engineering works entailed for an Executive Engineer (BS-18). This raises a very serious issue that may lead to creating different classes of employees within the same cadre, one who is eligible to perform professional engineering works, while the other is denied the same, and thus, exposing the current position to be against the principle of equality and non-discrimination provided under Article 25 of the Constitution.

9. Accordingly, it would be safe to hold that, while both cases, **Fida Hussain's case** and **Maula Bux Shaikh's case**, affirm that it is the domain of the Government concerned to decide, whether a particular academic qualification of a civil servant employee is sufficient for promotion from one Grade to another higher Grade. However, the questions which still alludes a definite determination are: whether any governmental policy regarding promotion can be given effect if the same can lead to the violation of the PEC Act or any other statute or expose the person who benefited from such policy to a criminal liability; and whether denying an Executive Engineer (BS-18) to

perform professional engineering works entailed for an Executive Engineer (BS-18) creates different classes of employees within the same cadre, thereby violating the principle of equality and non-discrimination provided under Article 25 of the Constitution.

10. In the circumstances, the present case warrants further consideration but before a larger bench of this Court. Office to place the present case before the Committee constituted under section 2 of the Supreme Court (Practice and Procedure) Act, 2023 for fixation of the case before an appropriate bench.

Judge

Judge

Judge

Karachi  
07.02.2024  
Approved for reporting.  
*Arif*