

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.132-P OF 2021

(Against the judgment dated
23.12.2020 Peshawar High Court,
Peshawar, in W.P.No.3990-P/2020)

Government of Khyber Pakhtunkhwa through
Secretary Communication & Works Department,
Peshawar and another.

...Petitioners

VERSUS

Bacha Alam Khan and another

...Respondents

For the Petitioners: Mr. Shumail Aziz, Addl. A.G. KPK
Along with Malik Muhammad Ali,
S.O.(PW.KP)

For Respondents: N.R

Date of Hearing: 16.12.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition is directed against the judgment dated 23.12.2020, passed by learned Peshawar High Court, Peshawar in W.P.No.3990-P/2020, whereby Writ Petition filed by the respondent No.1 was allowed with the directions to consider his appointment on vacant post.

2. The brief facts of the case are that petitioners advertised 10 posts of Draftsman BPS-11 in C&W Department of Khyber Pakhtunkhwa through Public Service Commission vide Advertisement No.9/2017 whereby applications were invited from eligible candidates who possessed at least 2nd Division Secondary School Certificate from a recognized Board as well as 02, years Certificate Course in Civil Draftsmanship from a recognized Institute or Board of Technical Education, including 06 months Course in AutoCAD (2-D & 3D) with drawing and Computer Knowledge of MS Office from a recognized Trade Testing Board (TTB). The respondent No.1 applied for the post though he

possessed 3rd Division in Matric but he was recommended by KPK Public Service Commission on the basis of higher qualification of DAE (Civil) for appointment. Since the recommendations of Public Service Commission were not implemented, hence the respondent No.1 moved a Writ Petition in the High Court for compliance which was allowed.

3. The learned Additional A.G., KPK argued that the respondent No.1 was not qualified and eligible for appointment who secured 3rd Division in SSC. The lack of 2nd Division in SSC disentitled him for the appointment to the post of Draftsman BPS-11 which was basic qualification for the post advertised, no matter the respondent No.1 possessed higher qualification of DAE (Civil). It was further argued that the respondent No.1 has no vested right to be appointed merely on the recommendation of Public Service Commission but it is the competent authority which may select and appoint the candidates on merits but this crucial aspect escaped the attention of learned High Court while rendering impugned judgment.

4. Heard the arguments. The record reflects that a provisional merit list of qualified candidates was sent with the recommendations by Khyber Pakhtunkhwa Public Service Commission for recruitment on 10 posts of Draftsman BPS-11 in the Communication and Works Department in response to the recruitment process initiated on account of Advertisement No.9/2017. In the first block of recommendations, the name of respondent No.1 is appearing in Merit Order No.9 on the domicile of Dir Lower/3. The recommendations were sent with the disclaimer that the provisional recommendations do not confer any right of appointment. In receipt of above recommendations, the Section Officer, Communication and Works Department, KPK, dispatched a letter on 30.7.2019 to the Director Recruitment, Public Service Commission in which he sought clarification that the minimum qualification to the post of Draftsman was at least 2nd Division S.S.C from the recognized Board while the Bacha Alam Khan (Respondent No.1) obtained 438 marks out of 1050 which came to 41.71%, 3rd Division. In response to this letter, the Assistant Director-I, PSC, KPK vide letter dated 02.09.2019, clarified to the Secretary that the candidate Bacha Alam Khan

was found eligible on the basis of his higher qualification of DAE (Civil). The learned Additional Advocate General made much emphasis that PSC, KPK could not recommend the name of respondent No.1 for consideration beyond the scope and qualifications mentioned in the advertisement and admittedly the respondent No.1 did not possess 2nd Division in the SSC, therefore, he was not qualified to be recommended for the post applied.

5. In exercise of the powers conferred under Section 10(A) of the Khyber Pakhtunkhwa Public Service Commission (Amendment) Ordinance, 2002, the KPK Public Service Commission Regulations 2017 were framed. Part III of Regulations is germane to the "Submission of Applications by the Candidates and Admission of Applications". In Regulations 11 of this Part, it is stipulated that eligibility of candidates shall be determined in accordance with the advertisement of the post, service rules governing appointments to the relevant post and such other ancillary instructions issued by the Government and or the Commission from time to time. It is further provided that for this purpose, for of all candidates, the age, qualifications and experience etc. as on the closing date will be taken into account. Part-IV of these Regulations relates to "Academic Qualifications" in which under Regulation 19 (a), it is clarified that only the qualification possessed on the closing date of the advertisement shall be taken into consideration. In order to settle down the controversy cropped up in the case in hand, Regulation 19 Clause (f) is somewhat significant. For the ease of reference, it is reproduced as under:-

(f) (i) **Candidate who possess qualification equivalent to the prescribed qualification may be considered eligible.**

(ii) **Candidates who possess qualification higher than the prescribed qualification in the relevant field of studies shall also be considered eligible.**

6. We have also delved into the dictum laid down in the case of Government of Punjab through Secretary (S&GAD) Lahore and another vs. Zafar Maqbool Khan and others (2012 SCMR 686) which was related to the Punjab Provincial Management Service Rules 2004 and this Court held that the eligibility of a candidate

had to be determined in accordance with the advertisement for the post, service rules governing the appointment and any amendment or instruction backed by the law. While holding this, the Court also relied on Regulation 22 of the Punjab Public Service Commission Regulations 2000, which is reproduced as under:-

“22. Eligibility of a candidate shall be determined in accordance with the advertisement for the post, service rules governing appointments to the relevant post and such other ancillary instructions issued by the Government and/or the Commission from time to time. For this purpose, the age, qualification, experience and other credentials etc., of the candidates existing on or up to the closing date fixed for such posts as advertised, shall be taken into account. No relaxation in this regard shall be allowed”.

7. Though the eligibility criteria mentioned in Regulation 22 of the Punjab Public Service Commission Regulations 2000 is *pari materia* to some extent with Regulation 11 of KPK, Public Service Commission Regulations 2017 but the condition “No relaxation in this regard shall be allowed” is nonexistent and lacking in the KPK Regulations 2017. Further in the Punjab Public Service Regulation, there is also no provision that candidates who possessed qualification higher than the prescribed qualification in the relevant field of studies shall also be considered eligible. In view of clear provision incorporated in Regulations 19 (f) (ii), it is within the dominion of KPK Public Service Commission to forward the recommendations of candidate who possessed qualification higher than the prescribed qualification and in exercise of such powers, the name of respondent No. 1 was rightly recommended for consideration.

8. The purpose of establishing Public Service Commission is to ensure that the recruitment process should be see-through and transparent and only competent persons ought to give way to serve rather than incompetent and unskillful persons. No doubt the recommendations forwarded do not infer the appointment automatically unless approved by the competent authority but at the same time this cannot be inferred that the recommendations of Public Service Commission should be divested without any justifiable or justiciable reasons. If the recommendations of Public Service Commission are taken in a cavalier or perfunctory manner, then the entire purpose of constituting the Commission

and its infrastructure under the law to regulate recruitment process and undertake burdensome and time-consuming exercise of scrutinizing the applications, conducting tests and interviews then forwarding recommendations to the competent authority which requisitioned the recruitment process would be a futile and worthless exercise. Here not only the application and all relevant testimonials of the respondent No.1 were scrutinized by the Commission, thereafter he was allowed to participate in the recruitment process without any objection and ultimately he was declared successful and his name was recommended on the basis of higher qualification and by doing this, neither the Commission has committed any illegality nor exercised any unbridled discretion but recommendations were made compliant with Regulation 19 Clause (f) of KPK Public Service Commission Regulations 2017 in which the case of respondent No.1 could be recommended on the basis of higher qualification which is far better than mere matriculation and this aspect has been properly dealt with by learned High Court in Paragraph 5 and 6 of the impugned judgment.

9. In the wake of above discussion, this civil petition is dismissed and leave is refused.

Chief Justice

Judge

Judge

ISLAMABAD
16th, December, 2021
Approved for reporting