

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NOS.2913, 3224 & 3628 OF 2021

(Against the judgment dated 30.03.2021 Peshawar High Court, Bannu Bench, in W.P.No.709-B/2020)

Uzma Manzoor (In CP.2913/2021)
Hameed-ur-Rehman (In CP.3224/2021)
Vice Chancellor Khushal Khan Khattak (In CP.3628/2021)
University, Karak and another

.....Petitioners

VERSUS

Vice Chancellor Khushal Khan Khattak (In CP.2913/2021)
University, Karak and others (In CP.3224 & 2836/21)
Uzma Manzoor and others

...Respondents

For the Petitioner: (In CP.2913/2021)	Raja Muhammad Farooq, ASC
For the Petitioner: (In CP.3224/2021)	Mr. Muhammad Shoaib Shaheen, ASC
For the Petitioner: (In CP.3628/2021)	Mr. Ghulam Mohyuddin Malik, ASC
For the Respondents: (In CP.2913/2021)	N.R
For the Respondent No.1 (In CP.3224 & 3628/2021)	Raja Muhammad Farooq, ASC
Date of Hearing:	29.11.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J.- The aforesaid Civil Petitions are directed against a common judgment dated 30.03.2021, passed by learned Peshawar High Court, Bannu Bench in W.P.No.709-B/2020, whereby the recruitment process to the extent of interview was set aside with the directions to Khushal Khan Khattak University, Karak, to conduct de novo interviews by the Selection Board within sixty days.

2. The transient facts of the case are as under:-

The Registrar Khushal Khan Khattak University Karak invited applications for appointment on various posts including Resident Warden (BPS-17) on regular basis vide advertisement No.01/2019. In response, the petitioner, Uzma Manzoor (CP.2913/2021) and Hameed-ur-Rahman (CP.3224/2021) with some other candidates applied for the post of Resident Warden

and participated in the process. The merit list of shortlisted candidates vide proforma for Evaluation Marking System for Selection of University Officers in BPS-17 was issued prior interviews in which Uzma Manzoor was allotted 43 marks without experience marks while Hameed-ur-Rahman was allotted 45 marks with the experience marks. The petitioner Uzma Manzoor challenged the recruitment process vide Writ Petition No.709-B/2020 in the Peshawar High Court on the plea that the candidate Hameed-ur-Rahman was unlawfully allotted experience marks because no experience was required in the advertisement. The aforesaid petition vide judgment dated 28.9.2020 was allowed by the High Court and selection of Hameed-ur-Rahman was declared null and void. Being aggrieved, he challenged the judgment in this Court vide CP-No.2698/2020 and the University had also challenged the same judgment vide separate CP.No.2985/2020 and pleaded that Khushal Khan Khattak University Statutes 2016 were not considered by the High Court. On 23.12.2020, both the petitions were converted into appeal and the judgment passed by High Court in WP No.709-P/2020 was set aside and matter was remanded for deciding afresh in accordance with law. On remand, the learned High Court has again decided the matter which judgment is impugned in all aforesaid petitions.

3. The learned counsel for the petitioner, "Uzma Manzoor" in CP.2913/2021 argued that the learned High Court failed to appreciate that the sole question was relating to the Khushal Khan Khattak University, Karak's own statutes which was to be taken into consideration in which nothing is mentioned in the context of experience. The main issue was with regard to the marks of experience, whether it could be given or not in light of the Statute.

4. The learned counsel for the petitioner, "Hameed-ur-Rehman" in CP.3224/2021, argued that the learned High Court committed a factual error that no marks of interview were given to any of the candidate but actually it was done as per rules and every Member of the Selection Board had given his marks as per interview. He further argued that the eligibility criteria were mentioned in the advertisement and the process of selection was rightly completed by the Selection Board.

5. The learned counsel for the petitioner "Khushal Khan Khattak University, Karak" (CP.3628 of 2021) argued that the criteria for selection mentioned in the relevant Rules relating to Evaluation/Marking for Selection of University Officers 1999 of the University of Peshawar was followed and adopted by the Khushal Khan Khattak University, which was not considered by the High Court. He further argued that every Member of the

Selection Board accorded marks individually to each candidate and the marks were accumulated in the main score of each candidate. The experience marks were also awarded without any discrimination to all candidates, who had claimed the past experience and produced evidence. He further averred that the merit list was prepared on the basis of performance in Academics, Screening test, Experience, Negative marking and interviews and appointment of Hameed-ur-Rahman was recommended for the post of Resident Warden who scored highest cumulative marks.

6. Heard the arguments. The chronological order depicts that in the first round, the writ petition filed by Uzma Manzoor was allowed and selection of Hameed-ur-Rehman was declared null and void, however this Court set aside the order of High Court and remanded the matter to decide afresh in accordance with the law. The main grievance lodged by Uzma Manzoor in the High Court was that Hameed-ur-Rehman was given 10 additional marks on account of some experience unlawfully whereas in the advertisement no such condition was mentioned to divulge the past experience. After remand, the learned High Court has decided the writ petition and set aside the recruitment process with the directions to the University to conduct fresh interview of the candidates who qualified in the written test. Being aggrieved of this direction not only Uzma Manzoor but also Hameed-ur-Rehman as well as Kushal Khan Khattak University, Karak all have impugned the judgment of the Peshawar High Court through aforementioned Civil Petitions.

7. According to Section 2 (v) of the Khyber Pakhtunkhwa Universities Act 2012, "Statutes", "Regulations" & "Rules" means respectively the Statutes, Regulations and Rules made under this Act. Under Section 28 of the same Act of 2012, Statutes may be proposed by the Syndicate to the Senate of the University for approval and pursuant to exercise of such powers by the Syndicate and Senate, the "Khushal Khan Khattak University Karak Service Statutes", 2016 were codified to regulate and systematize its functions. In the Code, different volumes of Statutes are integrated for dealing different subjects and traits including the appointment of administrative officers and their pay scales with nomenclature of posts and for this reason "Khushal

Khan Khattak University Karak Administrative Officers Appointment & Service of Pay Statues 2016 were formulated, wherein under Sub-Section (2) of Section 4, it is stipulated that all appointments to the posts in the University shall be made in accordance with the Appointment and Scales of Pay Statutes of the respective cadres. According to Section 3 of Khushal Khan Khattak University Karak Administrative Officers Appointment & Scales of Pay Statutes, 2016, the composition of the Administrative Officers shall consist of the employees holding the posts specified in Schedule-I of these Statutes, whereas Section 4, elucidates that the appointment by initial recruitment or promotion of Administrative Officer shall be made by the Syndicate on the recommendation of Selection Board in the prescribed manner. In unison, Section 5, exemplifies the eligibility criteria for appointment of Administrative Officers as prescribed in Schedule-I. (appended to the Statutes) In so far as the method of appointment is concerned, Section 6 accentuates that the appointment to the Posts in BPS-17 and above shall be such as prescribed in Schedule-I and Annexures A-C of the Statutes. However, under Section 7, it is mandatory that initial recruitment shall be made through open competition after due publicity through advertisement of the vacancies in at least three national daily newspapers as well as on University's website with further rider in Sub-Section (2) of Section 7 that no person shall be appointed by initial recruitment unless he fulfills the prescribed qualification, eligibility criteria and experience as laid down in Schedule-I and Sub-Section (3) also refers to evaluation as prescribed in quantification criteria.

8. The nomenclature of posts of Administrative Officers of the University is provided in Schedule-I, (appended to the Statute) in which at least sixty different posts/designations are reckoned from BPS-17 to BPS-20 and as against, the nomenclature of forty one posts/designations, besides required qualifications, past experience of certain period is also necessary. Whereas in 19 posts/designations in BPS-17 including the post of Resident Warden, nothing mentioned in Schedule-I for the past experience which unequivocally demonstrates that even a person having no past experience for the said posts may also apply as fresh entrant in the field. Since under Section 6, the method of appointment is

prescribed with reference to Schedule-I and Annexures A-C to the Statutes therefore, we have also examined Annexure-A which is in fact related to Evaluation Criteria for Selection of "Faculty Positions" in BPS-18 to BPS-21; Annexure-B is the Selection Board Evaluation Proforma for Appointment of Faculty (Lecturers-BPS-18); Annexure-C is Selection Board Evaluation Proforma for Appointment of Faculty (Assistant Professors, BPS-19); while Annexure-D is again Selection Board Evaluation Proforma for Appointment of Faculty (Associate Professor and Professor, BPS-20 & 21), finally, Annexure-E, lays down the Procedure/Policy Guidelines for Quantification for various posts of faculty positions (BPS-18-21) but no post of BPS-17 is mentioned in this Quantification guidelines, hence recourse was to be made for initial appointment in accordance with Schedule-I in which no past experience was required for the post of Resident Warden.

9. The Notification dated 31st October, 2018, depicts that Senate of Khushal Khan Khattak University, Karak in its 6th meeting convene on 31.07.2018, accorded approval for Composition of Selection Board of University whereas through another Notification dated 3.07.2019, the Competent Authority of the University had also constituted Scrutiny & Qualification Committee under the powers delegated by the Syndicate in its 3rd meeting to scrutinize and quantify the application received for various positions in BPS-01 to BPS-17 in response to Advertisement No.1/2019. The Notification dated 10.09.2014 indicates that the Syndicate in its 2nd meeting held on 09.08.2014 advised the University Administration to adopt University of Peshawar Rules & Regulations if provision does not exist in its own Rules & Regulations. The Agenda and Working Paper for the meeting of Selection Board dated 22nd & 23rd April, 2015 was prepared to observe evaluation criteria. The Rules relating to the Evaluation/Marking for Selection of University Officers-1999, put heads together the Evaluation/Marking System according to which total marks for evaluation in case of appointment of University Officers in BPS-17 and above shall be 100 with the break up that 30 marks for Academic Record, 30 marks for Screening Test, 10 marks for Experience and 30 marks against the performance in the Interview. The University pleaded that interview marks were to be kept confidential and so far as the

experience marks are concerned, Hameed-ur-Rehman was awarded 10 marks for experience whereas Uzma Manzoor did not place anything on record to show her past experience. An undated Proforma for Evaluation/Marking System for Selection of University Officers BPS-17 for the post of Resident Warden BPS-17, duly signed by members of Scrutiny and Qualification Committee is attached at page 47 of the University's petition which reflects that without awarding any experience marks, petitioner Uzma Manzoor secured 43 marks whereas Hameed-ur-Rehman secured 45 marks including 10 marks on account of previous experience. The cumulative effect of granting marks by each member of the Interview Committee shows the average marks secured by each candidate and according to this proforma Hameed-ur-Rehman secured 26 marks whereas Uzma Manzoor got 20.2 marks. In the Minutes of 5th Selection Board Meeting of Khushal Khan Khattak University, Karak held on 3rd December, 2019, Item No.4 was related to the post of Resident Warden in Provost Section, which divulges that nine candidates appeared before the Selection Board and according to consolidated score, (including interview marks) Hameed-ur-Rehman secured 71 marks with 10 marks of experience and Uzma Manzoor, secured 63.2 marks without any experience marks therefore, the Selection Board recommended the candidature of Hameed-ur-Rehman for appointment as Resident Warden on regular basis.

10. The main controversy is in fact roaming around the Advertisement No.1/2019, whereby the University invited applications for recruitment on regular basis for 18 vacant positions out of which at least for nine positions, no past or previous experience was required including the post of Resident Warden in BPS-17 for which only qualification was first Division Degree (16 years education) from HEC recognized University/DAI's, and this prescribed qualification in the advertisement is fully commensurate to the qualification to apply for the post of "Warden" as prescribed in Schedule-I (mentioned in Section 3 & 5 of the Statues). Though under the marking formula, the benchmark of 10 marks were dedicated to consider against the past experience of candidate which is not an offence but it would obviously apply only for those positions for which the experience was required as condition precedent to apply

therefore, for all intent and purpose, the threshold of 10 marks for experience of the applied post was to be considered against the position in which previous experience was earmarked but not for the posts/positions for which no past experience was mandatory. The position of Resident Warden was left open without any condition of experience which was not only in the case of Resident Warden but eight other positions also reflect in the advertisement wherein also no past experience was required.

11. We are sanguine that mere submitting an application for joining recruitment process in response to an advertisement does not create any vested right to claim the job come what may. Obviously before finalizing a fit candidate by the competent authority or Selection Board, the testimonials and antecedents of each candidate shall be considered in accordance with the prescribed benchmarks but in order to maintain level playing field and evenhanded competition amongst all candidates, the qualification and competency in all fairness should have been considered and adjudged in accordance with the qualification notified to apply in the advertisement and to extend any preference or favourable treatment, the settled terms and conditions cannot be disregarded. On the contrary, the selection process should be within the specified spectrum and attributes and due to breach of this protocol, the doctrine of legitimate expectation will come into sight for rescuing and ventilating the sufferings of the candidates who were under the bona fide belief that their applications for appointment will be considered without experience marks being not the precondition and if any additional marks are added or considered beyond the conditions to apply or contrary to the aforesaid Schedule that would be highly discriminatory to those candidates who applied as fresh candidates after completing their required education with the hope of securing jobs.

12. The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or

on behalf of government or a public authority. When such a legitimate expectation is obliterated, it affords locus standi to challenge the administrative action and even in the absenteeism of a substantive right, a legitimate expectation may allow an individual to seek judicial review of a wrongdoing and in deciding whether the expectation was legitimate or not, the courts may consider that the decision of public authority has breached a legitimate expectation and if its proved then the court may annul the decision and direct the concerned authority/person to live up to the legitimate expectation. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation. This Court expatiated the doctrine of legitimate expectation in the **"Judges Pension case"** reported in **PLD 2013 SC 829** with the observation that the rule of legitimate expectation is not a part of any codified law, rather the doctrine has been coined and designed by the Courts primarily for the exercise of their power of judicial review of the administrative actions. As per Halsbury's Laws of England, Volume 1(1), 4th Edition, paragraph 81, at pages 151-152, it is prescribed that "A person may have a legitimate expectation of being treated in certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice." In the case of R. v. Secretary of State of Transport Exporte Greater London Council (1985) 3 ALL.ER 300, it is propounded that "Legitimate, or reasonable, expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. The expectation may be based on some statement or undertaking by or on behalf of the public authority which has the duty of taking decision." Whereas in the judgment reported as Union of India v. Hindustan Development Corporation (1993) 3 SCC 499, it was held that "The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or established procedure followed in regular and natural sequence. It is also

distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

13. In the wake of above discussion, we do not find any justification to interfere in the impugned judgment of the High Court. The Civil Petitions are, therefore, dismissed and leave refused. Since we are mindful that every petitioner before us is impleaded vice versa one of the respondents in the aforesaid petitions which are fixed together, therefore, we feel it expedient to make it clear that while conducting fresh interviews by the Selection Board as directed by the learned High Court, the candidatures for the post in question shall be considered in accordance with the qualification mentioned in the Advertisement No.1/2019 and Schedule-I, appended to the Khushal Khan Khattak University Karak Administrative Officers Appointment & Service of Pay Statues 2016 and the marks shall be calculated accordingly for the appointment of suitable person by the Syndicate on the recommendation of Selection Board.

Chief Justice

Judge

ISLAMABAD
29th November, 2021
Approved for reporting