

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.575 of 2019  
Dr. Tahir Kaleem Siddiqui

**Versus**

Federation of Pakistan and others

**Dates of Hearing:** 14.01.2021, 29.03.2021, 03.03.2022,  
11.03.2022, 10.05.2022 and 03.11.2022

**Petitioner by:** Hafiz Arfat Ahmad Ch., Mr. Tariq Zaman Ch.  
and Mr. Izrar Ali, Advocates

**Respondents by:** Mian Faisal Irfan, learned Deputy Attorney-  
General and Ch. Muhammad Tahir Mehmood,  
learned Assistant Attorney-General.  
M/s Tahir Mehmood Abbasi and Qassim  
Duggal, Advocates for W.W.F. and Faisal  
Tariq, Director, W.W.F.  
M/s Rai Akbar, Deputy Director, Muhammad  
Bashir, Assistant Director, D.W.E., and  
Muhammad Arfan, Section Officer (Lit-V),  
Establishment Division.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition the petitioner, Dr. Tahir Kaleem Siddiqui, impugns the order dated 13.11.2017 passed by the Secretary, Workers Welfare Fund (“W.W.F.”) whereby his appointment as Assistant Director (BPS-17) in the W.W.F. made through letter dated 31.10.1998 was declared to be illegal and void *ab-initio*. Furthermore, the petitioner was repatriated to his parent department *i.e.*, Directorate of Workers Education (“D.W.E.”), Islamabad.

2. The record shows that on 28.04.1993, the petitioner was offered appointment as Assistant Director (BPS-17) in D.W.E. on contract basis for a period of two years. The petitioner accepted this offer on 02.05.1993 and assumed the charge of his duties. The petitioner continued serving despite the expiry of the two-year contract period. Vide notification dated 14.03.1996 issued by D.W.E., the period of the petitioner’s employment contract was extended up to 30.06.1996. Notification dated 29.09.1996 issued by the erstwhile Labour, Manpower and Overseas Pakistanis Division shows that pursuant to a decision taken by the F.P.S.C., the

petitioner's contract appointment was extended with effect from 01.07.1996.

3. Apparently, the Establishment Division vide Office Memorandum ("O.M.") dated 09.06.1997 had sought information regarding the petitioner from the Labour, Manpower and Overseas Pakistanis Division for the purposes of sending him on deputation to the W.W.F. Vide letter dated 11.06.1997, the said Division provided the required information to the Establishment Division. On 10.06.1997, D.W.E. as well as the W.W.F. issued no-objection certificates for the transfer of the petitioner's services to the W.W.F. Vide notification dated 18.06.1997 issued by the Establishment Division, the petitioner's services were transferred and placed at the disposal of the Ministry of Labour, Manpower and Overseas Pakistanis for posting as Assistant Director (BPS-17) in W.W.F. on deputation basis for a period of three years. On 23.06.1997, the petitioner was relieved of his duties in D.W.E. and on the same day he assumed the charge of the post of Assistant Director (BPS-17) in W.W.F.

4. On 04.03.1998, D.W.E. issued a no objection certificate for the petitioner's absorption in W.W.F. Pursuant to the decision taken by W.W.F.'s Governing Body, in its 46<sup>th</sup> meeting held on 19.10.1998, the petitioner was absorbed against the vacancy of Assistant Director (BPS-17) in W.W.F. with effect from 27.10.1998.

5. On 17.02.2003, the petitioner was promoted to the post of Deputy Director (BPS-18), and on 26.07.2008 he was promoted to the post of Director (BPS-19) with his name placed at serial No.2 in the seniority list of the Directors in W.W.F. The petitioner was promoted to the post of Director General (BPS-20) in W.W.F. with effect from 13.06.2012.

6. On 26.10.2017, a notice was issued to the petitioner by the Ministry of Overseas Pakistanis and Human Resource Development calling upon him to show cause as to why his absorption as Assistant Director (BPS-17) in W.W.F. should not be withdrawn on the grounds that (i) his absorption had been made without the recommendation of the Selection Committee as required by Rule 25(1)(iv) of the W.W.F. (Employees Service) Rules, 1997 ("the 1997 Rules"), (ii) he was not a regular employee in his parent department, (iii) there was no record to show whether a vacancy for initial

appointment was available for the post against which the petitioner was absorbed, and (iv) the petitioner's promotions had also been made in violation of the rules. The petitioner was called for a personal hearing on 30.10.2017 by the Secretary, W.W.F. On 30.10.2017, the petitioner filed a detailed reply to the show cause notice. The proceedings pursuant to the said show cause notice culminated in the impugned order dated 13.11.2017 whereby the petitioner's absorption in W.W.F. was declared by the Secretary, W.W.F. to be illegal and void *ab-initio* and he was repatriated to D.W.E. The said order has been assailed by the petitioner in the instant writ petition.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that while serving as Director General (BPS-20), the petitioner was given the charge of human resource and administration; that the petitioner had initiated disciplinary proceedings against two employees namely Zahid Ali and Muhammad Waseem Afzal; that after the initiation of the disciplinary proceedings, these employees had filed a contempt petition (criminal original No.153/2016) against the petitioner before the Hon'ble Supreme Court alleging that the petitioner's absorption in W.W.F. was not lawful and contrary to the law laid down in the judgments reported as 2013 SCMR 1752 and 2015 SCMR 456; that the said petition is still pending before the Hon'ble Supreme Court; that as a consequence of the Constitution (Eighteenth Amendment) Act, 2010, D.W.E. devolved to the Provinces; that after the issuance of the impugned repatriation order dated 13.11.2017, the petitioner approached the Establishment Division which refused to take the petitioner in employment on the ground that he was not a civil servant; and that ever since 13.11.2017, the petitioner has been jobless and is not receiving any salary.

8. Furthermore, it was submitted that for all intents and purposes, the petitioner was treated as a permanent employee while in service at D.W.E.; that the petitioner's services in D.W.E. had been regularized since he had started making pension contributions and had also made contributions to the general provident fund; that a Selection Committee had not been constituted to consider the petitioner for absorption since

there was no permanent employee in W.W.F. of the required seniority who could have been made a part of the Selection Committee; that it is for this reason that the petitioner's case for absorption was placed before the highest body in W.W.F. i.e., the Governing Body; that the Governing Body, in its 46<sup>th</sup> meeting held on 19.10.1998, had considered a working paper in which a proposal was made for the absorption of three deputationists including the petitioner in W.W.F.; that the Governing Body, on 19.10.1998 accorded approval for the absorption of two deputationists including the petitioner but not the third deputationist namely Mahmood Khan since he was a contractual employee in his parent department; that since the petitioner was treated as a regular employee in his parent department that is why he was absorbed in W.W.F. with the approval of the Governing Body; and that it was most unfair for the petitioner to be repatriated to his parent department after he had served in W.W.F. as a duly absorbed employee for a period of nineteen years during which he was promoted up to the post of Director General (BPS-20). Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

9. On the other hand, learned counsel for W.W.F. submitted that the petitioner's repatriation to his parent department was strictly in accordance with the law laid down by the Hon'ble Supreme Court in the judgments reported as 2013 SCMR 1752 and 2015 SCMR 456; that prior to the petitioner's appointment as a deputationist in the W.W.F., he was a contract employee in D.W.E.; that there is nothing on the record to show that the petitioner's services had been regularized while serving at D.W.E.; that a deputationist, whose services in his parent department are contractual in nature, cannot be absorbed as a permanent employee in the borrowing department; that Rule 25(1)(iv) of the 1997 Rules clearly provides that a deputationist in the W.W.F. can be appointed on regular basis provided he is recommended by the Selection Board or the appropriate Selection Committee; that there was nothing on the record to show that a Selection Committee had recommended that the petitioner be appointed on a regular basis in W.W.F.; that since the essential condition for appointment in W.W.F. in accordance with the 1997 Rules had not been

fulfilled before the petitioner was appointed as Assistant Director (BPS-17) in W.W.F., the appointment is void *ab-initio*; that even though at the time of the petitioner's absorption in W.W.F. there was no permanent employee in W.W.F. who could have been made a part of the Selection Committee, this does not mean that the absorption of a deputationist without the recommendation of a Selection Committee would be valid; that there is no record as to the petitioner's contributions towards pension in his parent department; and that the impugned order dated 13.11.2017 passed by the Secretary, W.W.F., whereby the petitioner's absorption as Assistant Director (BPS-17) in W.W.F. was declared illegal and he was repatriated to his parent department does not suffer from any legal infirmity. Learned counsel for W.W.F. prayed for the writ petition to be dismissed.

10. On behalf of respondent No.1 / Ministry of Overseas Pakistanis and Human Resource Development, it was submitted that the petitioner had admitted that his appointment as Assistant Director (BS-17) in D.W.E. was on contract basis; that the contractual nature of the petitioner's employment with D.W.E. came to an end when he proceeded on deputation to W.W.F.; that the tenure of the petitioner's employment contract along with three other similarly placed employees, namely Zakir Khan (Assistant Director), Abdul Rehman (Assistant Director) and Dr. Muhammad Nawaz Qaisarani (Deputy Director), was extended vide notifications dated 14.03.1996 and 29.09.1996; that since the petitioner's employment with D.W.E. was contractual in nature, he was not a civil servant; and that the Establishment Division, vide office memorandum dated 17.01.2018, had clarified that the petitioner was not a civil servant and therefore not entitled for enlistment in the surplus pool of the Establishment Division after having been relieved by W.W.F. The learned Deputy Attorney-General as well as the learned Assistant Attorney-General prayed for the writ petition to be dismissed.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant writ petition have

been set out in sufficient detail in paragraphs 2 to 6 above and need not be recapitulated.

12. W.W.F. was established on 09.12.1971 pursuant to the provisions of the Workers Welfare Fund Ordinance, 1971 (**“the 1971 Ordinance”**) for providing residential accommodation and other facilities for workers and for matters connected therewith or incidental thereto. Section 8(3) of the 1971 Ordinance provides that the Governing Body of W.W.F. shall determine the terms and conditions of service of the Secretary and the employees of W.W.F. with the previous sanction of the Federal Government. The Governing Body with the approval of the Federal Government made the Workers’ Welfare Fund (Employees Service) Rules, 1997 (**“the 1997 Rules”**).

13. Rule 23(1) of the 1997 Rules permits appointment on deputation to posts in W.W.F. to be made by the appointing authority in the interests of W.W.F. *“Appointing Authority”* is defined in Rule 2(1)(i) as *“the governing body or an officer or authority, authorized by the governing body in this behalf and specified in these rules regarding appointment in Workers’ Welfare Fund.”* Rule 11(2) provides that the authority competent to make appointments to posts in BS-19 shall be the Chairman, W.W.F. and to posts in BS-18 and below, the Secretary, W.W.F.

14. Rule 23(2) of the 1997 Rules sets out the procedure for appointment by deputation to W.W.F. For the purposes of clarity, Rule 23(2) is reproduced herein below:-

*“2. Civil servants, Federal or Provincial, and employees of the corporations or other autonomous bodies set up, managed or controlled by the Federal Government or, as the case may be, any Provincial Government, holding appointment on regular basis may, with the consent of the Federal Government or, as the case may be, of the Provincial Government or other authority concerned, hereinafter called the lending authority, be appointed by the appointing authority concerned on deputation to appropriate posts in the Fund for such periods and on such terms and conditions, as may be determined by appointing authority in consultation with the concurrence of the lending authority.”*

15. Perusal of Rule 23(2) shows that Federal or Provincial civil servants and employees of corporations and other autonomous bodies set up, managed or controlled by the Federal Government or the Provincial Government holding appointment on regular basis could be appointed on deputation in W.W.F.

16. The petitioner was appointed as Assistant Director (BS-17) in D.W.E. on contract basis after he accepted the offer of appointment dated 28.04.1993. The petitioner had been appointed for a period of two years, but subsequently, his contract period was extended from time to time. Clause 3 of the petitioner's employment contract provided *inter alia* that the period of contract could be extended with the approval of the Federal Public Service Commission ("F.P.S.C."). Clause 4 provided that the service rendered under the contract shall not qualify the petitioner for pension or gratuity whereas clause 11 provided that the petitioner would not be required to contribute to the general provident fund.

17. On 10.06.1997, D.W.E. as well as the W.W.F. issued no-objection certificates for the transfer of the petitioner's services to the W.W.F. Vide notification dated 18.06.1997 issued by the Establishment Division, the petitioner's services were transferred and placed at the disposal of the Ministry of Labour, Manpower and Overseas Pakistanis for posting as Assistant Director (BPS-17) in W.W.F. on deputation basis for a period of three years. On 23.06.1997, the petitioner assumed the charge of the post of Assistant Director (BPS-17) in W.W.F.

18. The 1997 Rules are set out in the notification (SRO 1193(I)/97) dated 15.11.1997 issued by the Labour, Manpower and Overseas Pakistanis Division. These rules were published in the official Gazette on 26.11.1997. By this time, the petitioner had already been appointed to the post of Assistant Director (BS-17) in W.W.F. on deputation basis. Had W.W.F. bothered to act in accordance with the 1997 Rules it would have, upon the said Rules having been notified, repatriated the petitioner to his parent department. I say so since the petitioner was not "*holding an appointment on regular basis*" in his parent department, he could not have continued to serve as a deputationist in W.W.F. in violation of the said Rule 23(2). It is indeed the officials in W.W.F. who violated the 1997 Rules by not repatriating the petitioner to his parent department when the said Rules were made. On his own, the petitioner could not have stopped working at W.W.F. and report back to D.W.E.

19. Let alone repatriating the petitioner to his parent department, the Governing Body approved the petitioner's absorption in W.W.F. and

thereby gave him the status of a regular employee of W.W.F. The mode and method for absorbing a deputationist in W.W.F. on permanent basis is provided in Rule 25 of the 1997 Rules, which reads thus:-

***“25. Conditions for absorption of deputationist to the Fund.—(1) A person serving on deputation to the Fund may be appointed to an equivalent post or above, if competent authority so desires, on regular basis subject to the following conditions, namely:--***

- (i) the person, serving on deputation, applies in writing for or gives his consent to such absorption;*
- (ii) his parent office agrees to such absorption;*
- (iii) he possesses the qualifications laid down for initial appointment to the post in Part-II of Appendix 2 of these rules;*
- (vi) he, in the opinion of the appointing authority, is suitable for such absorption and is recommended by the Selection Board or, as the case may be, by the appropriate Selection Committee constituted in accordance with rule 12;*
- (v) for the purpose of absorption, he seeks retirement from his parent office, if he has completed the required service for retirement benefits, or, otherwise, fulfills such conditions as the competent authority may require to join the Fund; and*
- (vi) save as may otherwise be provided by rules, no benefit of his previous service shall be admissible for any purpose in the Fund as a right.*
- (2) The appointment made in accordance with sub-rule(1) shall be treated as initial appointment and shall be made against a post reserved for initial appointment.*
- (3) Nothing contained in this rule shall be construed to confer any right on such a person on deputation to the Fund to claim absorption in the Fund.”*

**(Emphasis added)**

20. D.W.E. had, on 04.03.1998, issued a no objection certificate for the petitioner's absorption in W.W.F. on regular basis. The Governing Body of W.W.F. in its 46<sup>th</sup> meeting held on 19.10.1998, decided to absorb the petitioner as Assistant Director (BPS-17). Over a period of 19 years the petitioner was promoted as Director General (BPS-20) in W.W.F.

21. Zahid Ali and Waseem Afzal Warraich, who were employees of W.W.F., had filed contempt petition No.153/2016 and Crl. Review Petition No.171/2016 before the Hon'ble Supreme Court alleging *inter alia* that the petitioner's appointment in W.W.F. was in violation of the 1997 Rules as well as the judgment passed by the Hon'ble Supreme Court in criminal petition No.89/2011. On 24.01.2017, the following order was passed by the Hon'ble Supreme Court:-

***“During the hearing we have noticed that some of the officers who are continuing in office, prima facie are neither eligible nor qualified to the posts against which they have been posted in Worker Welfare Board***



*(WWF) after absorption. We are also shocked to notice that the Secretary, WWF, namely, Saeed Ahmad Khan is on Ex-Pakistan Leave for the last several years. Let the original summary granting him Ex-Pakistan Leave be placed before us. The Chairman / Competent Authority shall be in attendance with justification as to how a leave of indefinite period can be granted to an officer. We have put to notice the Addl. Attorney General to procure the attendance of the Secretary, Overseas Pakistanis & Human Resource Development and the Secretary, Establishment Division in Court on the next date who shall appear after examining the record of the officers working in the WWF and justify their continuance in job after the judgment of this Court reported as Contempt Proceedings Against Chief Secretary, Sindh and others (2013 SCMR 1752) and Ali Azhar Khan Baloch and others Vs. Province of Sindh and others (2015 SCMR 456). Adjourned to come up on 8.02.2017.”*

**(Emphasis added)**

22. After the said order was passed, the Secretary, Ministry of Overseas Pakistanis and Human Resource Development and the Secretary, Establishment Division submitted a joint report dated 24.02.2017 before the Hon'ble Supreme Court. This report shows that the record pertaining to appointment / absorption of eight employees of W.W.F., including the petitioner, had been examined. About the petitioner, the following observations were made in the said report:-

2	<i>Tahir Kaleem Siddiqui</i>	<p><i>The officer was an employee of Directorate of Workers Education in BS-17 on “temporary basis” (Page-51). He was appointed on deputation basis in WWF on 23-06-97. Later, he was absorbed against the post of Assistant Director (BS-17) in WWF on 27-10-98. His absorption was made with the approval of Governing Body in its 46<sup>th</sup> meeting held on 19-10-98 (Page-53). Following observations are submitted:-</i></p> <p><i>In terms of Rule 25 his appointment / absorption has been made without recommendation of Selection Committee [Rule 25(1)(iv)].</i></p> <p><i>The officer was not a regular employee in his parent department as he was appointed there on temporary basis.</i></p> <p><i>No certificate / record of the fact, whether vacancy for initial appointment was available against which he was absorbed, is available [Rule 25(2)].</i></p> <p><i>His subsequent promotions to Deputy Director, Director and Director General (Acting Charge) have been made while he did not fulfill the required length(s) of</i></p>
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		<i>service [Rule 20]. He had less than 5 years, 12 years and 17 years' service when he was promoted to Deputy Director / BS-18, Director / BS-19 and Director General / BS-20 on 17.02.2003, 26.07.2008 and 13.06.2012 respectively. Moreover, no post of Director General existed / exists in the Rules thus no procedure has been prescribed for appointment against the same.</i>
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23. I am told that the proceedings before the Hon'ble Supreme Court are still pending. Be that as it may, on the very same grounds as the ones mentioned about the petitioner in the said report dated 24.02.2017, a notice dated 26.10.2017 was issued by W.W.F. to the petitioner requiring him to show cause as to why his absorption as Assistant Director (BPS-17) in W.W.F. should not be withdrawn, and why he should not be repatriated to his parent department. The proceedings pursuant to the said show cause notice culminated in the order dated 13.11.2017 passed by the Secretary, W.W.F., whereby his appointment / absorption in W.W.F. was declared as illegal and void *ab-initio* and he was repatriated to his parent department.

24. One of the grounds on which the petitioner's absorption in W.W.F. was declared unlawful was that he was not a regular employee in his parent department, i.e., D.W.E. Indeed there is nothing on the record to show that the contractual nature of the petitioner's employment in D.W.E. was converted to regular employment at any stage. Now, before the petitioner was sent to serve as a deputationist in W.W.F., the Establishment Division vide O.M dated 09.06.1997 had sought information about the petitioner from the Ministry of Labour, Manpower and Overseas Pakistanis. Vide letter dated 11.06.1997, the said Ministry provided the required information to the Establishment Division. Although the information sent about the petitioner is not on the record but it must have included information that in D.W.E. the petitioner had been serving as a contract employee. I say so because in the working paper prepared for the Governing Body of W.W.F. for considering the petitioner for absorption in its 46<sup>th</sup> meeting, it was explicitly mentioned that the petitioner was a contract employee in D.W.E. Therefore, it is to be

presumed that the Establishment Division, D.W.E. and W.W.F. were all well aware that the petitioner was a contract employee in D.W.E. when he was sent on deputation basis to W.W.F. and when he was considered for absorption by the Governing Body of W.W.F. It is not the petitioner, who in 1998 was merely a BPS-17 officer, that imposed himself on the Governing Body for getting absorbed in W.W.F.

25. The letter dated 31.10.1998 from W.W.F. shows that the petitioner's absorption against the vacancy of Assistant Director (BS-17) in W.W.F. was pursuant to the Governing Body's decision taken in its 46<sup>th</sup> meeting held on 19.10.1998. The said letter also shows that the petitioner had been appointed against the vacant post of Assistant Director (BS-17). Under Section 7(1) of the 1971 Ordinance, the management and administration of W.W.F. is entrusted to the Governing Body which is constituted by the Federal Government. Section 7(2) provides that the Chairman of the Governing Body shall be the Secretary of the Government of Pakistan in the Ministry dealing with matters relating to labour welfare, and that the eighteen other members of the Governing Body are to be appointed by the Federal Government. The members of the Governing Body of W.W.F., who were appointed by the Federal Government, took a collective decision in their 46<sup>th</sup> meeting dated 19.10.1998 to absorb the petitioner in W.W.F. This body could not have been ignorant of the requirements of Rule 25 of the 1997 Rules or the contents of the working paper which clearly mentioned that the petitioner was a contract employee in his parent department. In these circumstances, the question that crops up in the mind is whether the petitioner alone is to suffer for the decision taken by the Governing Body almost two decades ago. 'Yes' as an answer would be nothing less than a travesty of justice. If the requirements of Rule 25 were violated in the decision-making process to absorb the petitioner in W.W.F., the responsibility for the same would lie on each of the members of the Governing Body who took that decision. The record does not indicate even a whimper against the members of the Governing Body who took the decision to absorb the petitioner in W.W.F. To repatriate the petitioner by setting aside his absorption after nineteen years suffers from irrationality

and therefore is not sustainable. In holding so, reliance is placed on the following case law:-

- (i) In the case of District Coordination Officer Vs. Rozi Khan (2009 SCMR 663), it was held *inter alia* that where any irregularity in making an appointment is committed by the department itself, the appointee cannot be harmed, damaged or condemned subsequently when it occurs to the department that it had itself committed an irregularity in making the appointment.
- (ii) In the case of Muhammad Shoaib Vs. Government of N.-W.F.P. (2005 PLC (C.S.) 1056), the appointment of a Field Assistant in the Agricultural Department of the Government of N.-W.F.P. was terminated on the ground that the appointment had been made in violation of the prescribed rules. The Hon'ble Supreme Court declared that the petitioner's termination from service was void and violative of the principles of *locus poenitentiae* and *estoppel*. The majority opinion of the Hon'ble Supreme Court was as follows:-

*"7. Coming to the merits of the grounds of dismissal, it was deprecated by this Court in Secretary to Government of N.-W.F.P. Zakat/Social Welfare Department, Peshawar v. Sadullah Khan 1996 SCMR 413 where a Full Bench cognizant of similar circumstances has observed that the department having itself appointed civil servant in violation of rules could not be allowed subsequently to turn around and take benefit of its own lapses in order to terminate the services of a civil servant. The department having itself committed irregularity and having itself violated the prescribed procedure cannot punish the civil servants for its own misdeeds and after the lapse of a considerable time during which the civil servant has satisfactorily performed his duties."*

- (iii) In the case of Muhammad Akhtar Sherani Vs. Punjab Textbook Board (2004 SCMR 1077), several persons were appointed in the Punjab Textbook Board without a competitive process and in violation of the requirements in Punjab Textbook Board Employees Service Regulations, 1980. The show cause notices issued to such employees culminated in orders holding that their appointments were illegal. After their departmental appeals were dismissed, the employees filed writ petitions before the Hon'ble Lahore High Court which were allowed. The Hon'ble Supreme Court set-aside the judgment of the Hon'ble Lahore High Court but the review petition

filed by the employees was allowed by the Hon'ble Supreme Court and it was directed that the employees be reinstated in service without financial back benefits. It was also directed that the Chairman of the Punjab Textbook Board shall be free to examine the cases of the employees, if need be, to ascertain whether they were eligible to hold the posts and to dispose of the cases after affording them an opportunity of a hearing. Paragraph 8 of the said report is reproduced herein below:-

*"It may be observed that for such reason beneficiary cannot be blamed alone because primarily the authority who had actually mis-exercised his powers, for the reasons known to it, is bound to be held responsible for the same, instead of penalizing the petty employees like Chowkidar, Naib-Qasid, junior clerks etc. who have to earn livelihood to support their families and if after having served for a long period they are removed from service discriminately, such action would not promote the cause of action and it would give rise to a number of problems to them. In this regard at a number of occasions, it has been held by this Court that instead of removing the employees from service, action should have been taken against the authority who had mis-exercised its powers. Reliance in this behalf can be made to the judgment reported as Managing Director, SSGC Ltd. v. Ghulam Abbas PLD 2003 SC 724. Relevant paras therefrom are reproduced herein below:-*

*"As far as second argument is concerned, same is also- not acceptable because a perusal of appointment letter reproduced herein above indicates that the appointment was given to them with reference to their applications and subsequent tests/interviews which would mean that they were also recruited on merits. In view of such position statement of the learned counsel that respondents got their appointment due to political influence does not seem to be correct. Assuming that appointments of some of the respondents were contrary to Rules/Regulations then the authority who was in the helm of the affairs may have declined to honour the directions of political personalities. However, for any flaw or defect in the appointment as far as respondents are concerned, they cannot be blamed as it has been held in the case of Secretary to Government of N.-W.F.P. Zakat/Social Welfare Department, Peshawar and another v. Sadullah Khan 1996 SCMR 413. Relevant para therefrom reads as under thus:-*

*"6. It is disturbing to note that in this case petitioner No.2 had himself been guilty of making irregular appointment on what has been described 'purely temporary basis'. The petitioners have now turned around and terminated their services due to irregularity and violation of rule 10(2) ibid. The premise, to say the least, is utterly untenable. The case of the petitioner was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate the services of the respondent merely because they have themselves committed irregularity in violating the procedure governing the appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality irregularity in reinstating the respondent. ""*

- (iv) Observations to the said effect were also made in the case of Collector of Customs and Central Excise, Peshawar Vs. Abdul Waheed (2004 SCMR 303), wherein the services of the employees appointed in the Central Board of Revenue were terminated on the ground that the appointments had been made in violation of the prescribed procedure. The Hon'ble Supreme Court upheld the judgment of the Federal Service Tribunal whereby the termination orders passed by the Central Board of Revenue were set-aside with the direction that the employees would be deemed to have continued in service with effect from the date of the termination of their employment. In paragraph 6 of the said report, the following observations were made:-

*“The petitioners cannot penalize the persons/respondents, who had put in more than ten years' service with them considering that there was no allegation of misconduct against them and were only to be removed on account of change in Government on the ground that they were no more required and were not appointed after observance of due process of law. The petitioners/authorities competent should be held responsible and liable for the said lapse on their part. It could not be forgotten the persons/respondents who have put in more than ten years of their service and thereby have lost all their chances to get fresh appointment elsewhere as they stood disqualified being overage and in case they are to be removed now the same would amount to hitting them hard creating problems for the Society at large considering each of the respondent being a bread earner for his family.”*

- (v) In the case of Aziz-ur-Rehman Akbar Vs. Secretary, Health Department, Government of the Punjab (2013 PLC (C.S.) 289), the Division Bench of the Hon'ble Lahore High Court held as follows:-

*“9. Beneficiary of illegal appointment cannot be blamed alone because primarily the authority, who had actually wrongfully exercised its powers, was bound to be held responsible for the same. Instead of penalizing the employees who had to earn livelihood to support their families and if after having served for a long period they were removed from service discriminately, such action would not set good example rather it would give rise to a number of problems. Instead of removing the employees from service, action should have been taken against the authority who wrongly exercised its powers. Admittedly, no solid action has yet been taken by the government against the authority who employed the appellant against a vacancy which does not even exist and action has only been taken by the department against the appellant resulting into removal of his service which is against the principles of natural justice. Once an appointee is qualified to be appointed,*

*his service could not subsequently be terminated on the basis of lapses and irregularities committed by the department itself. Such irregularities committed by the department could be ignored only when the appointee lacks basic eligibilities.”*

- (vi) In the case of Muhammad Sajjad Vs. Chief Secretary, Government of Punjab (2013 PLC (C.S.) 200), the Hon'ble Lahore High Court held that *“it is the appointing authority who in case of an illegal appointment is to be punished and not the petitioners who if punish will be deprived of their right to earn livelihood and will be disabled to perform their duties towards their dependents.”*
- (vii) In the case of Muhammad Zahid Iqbal Vs. DEO Mardan (2006 PLC (C.S.) 1216), it was held as follows:-

*“5. The factum of illegal appointments allegedly obtained through illegal means of using political pressure etc. and the terminations based thereon, has remained a subject of close discussion by this Court which, for the first time, in Secretary to Government of N.-W.F.P. Zakat Social Welfare Department, Peshawar and another v. Sadullah Khan 1996' SCMR 413 held the view that the Government cannot be allowed to take advantage of its own lapses and illegalities in terminating the service of the Civil Servants provided they were otherwise qualified to hold such posts. This view of the Full Bench of this Court was subsequently followed by numerous Full Benches of this Court. First in series was a Full Bench judgment in Syed Sikandar Ali Shah's case 2002 SCMR 1124 where, otherwise, qualified civil servants, were reinstated despite irregularities and lapses, because, those were committed by the department itself.*

*6. ...*

*7. Such principle, in nutshell and consistently declared by this Court is that once the appointees are qualified to be appointed, their services cannot subsequently be terminated on the basis of lapses and irregularities committed by the department itself. Such laxities and irregularities committed by the Government can be ignored by the Courts only when the appointees lacked the basic eligibilities, otherwise not.*

*8. The aforesaid view if applied to the present cases, the petitioners, we are afraid, cannot draw any benefit therefrom because at the time of their initial appointments, they lacked basic qualifications, requirements and eligibilities. They were appointed as PTC, CT, PET and TT Teachers in the department but they lacked the pre-qualifications and training courses, CT certificates and junior diploma in physical education as pre-requisites for the posts aforesaid. It is obvious that in the circumstances, they could not take advantage of the conditional view taken by this Court.”*

26. Another ground on which the petitioner's absorption in W.W.F. has been declared illegal was that there were no recommendations of the Selection Committee for the petitioner's absorption before the Governing

Body of W.W.F. decided to absorb him. One of the conditions enumerated in Rule 25(1)(iv) of the 1997 Rules for the absorption of a deputationist in W.W.F. is that *“he, in the opinion of the appointing authority, is suitable for such absorption and is recommended by the Selection Board or, as the case may be, by the appropriate Selection Committee constituted in accordance with Rule 12.”* Rule 12(2) provides that there shall be constituted one or more Selection Committees, with the approval of the Secretary, for the purpose of selection of persons for appointment to posts in pay scale-18 and below. Under Rule 11(2), the authority competent to make appointment to posts in pay scale-18 and below is the Secretary of W.W.F. There is nothing on the record to show that at the time when the Governing Body decided to absorb the petitioner a Selection Committee had been constituted or that such committee was bypassed when the petitioner was absorbed.

27. In the case at hand, it is an admitted position that there was no permanent employee in W.W.F. in 1998 who could have been made a member of the Selection Committee to consider the petitioner for absorption. This would be ample justification to the petitioner's case for absorption to be placed before the Governing Body of W.W.F., which is superior to the Selection Committee.

28. Section 8(2) of the 1971 Ordinance provides that the Governing Body may appoint such employees as it may consider necessary for the efficient performance of the functions of W.W.F. However, under Rule 25(1) of the 1997 Rules the absorption of a deputationist in W.W.F. is to be made if the competent authority so desires whereas under Rule 11(2), the authority competent to make appointment to the post of Assistant Director (BS-17) is the Secretary of W.W.F. In the case at hand, the petitioner's case for absorption was considered and decided by the Governing Body which is superior to the Secretary, W.W.F. in the hierarchy. Is the petitioner to be shown the door after nineteen long years of service in W.W.F. because the Governing Body considered and approved the petitioner's absorption in W.W.F., and not the Secretary on the recommendation of a non-existent Selection Committee? As mentioned above, Section 8(2) of the 1971 Ordinance empowers the Governing Body



to appoint such employees as it may consider necessary for the efficient performance of the functions of W.W.F. It is well settled that in the event of an inconsistency between a provision of a statute and rules, which is subordinate legislation, the provision of the statute is to prevail. This Court is not declaring Rules 25 and 11 to be inconsistent with or *ultra vires* Section 8. But in cases where the Governing Body makes an appointment in W.W.F., which it is empowered to make under Section 8, the same cannot be declared unlawful simply because the authority competent to make the appointment under the Rules did not make the appointment.

29. I am of the view that the petitioner's absorption as Assistant Director (BS-17) in W.W.F. without the recommendation of any Selection Committee is no fault of the petitioner. It was not for the petitioner to have constituted the Selection Committee but the senior management of W.W.F. Without the constitution of a Selection Committee, the petitioner's case for absorption should not have been placed before the Governing Body. But it was. And this was done by the management of W.W.F. The omission to comply with the requirement of Rule 25(1)(iv) in the process for the petitioner's absorption is entirely attributable to the management of W.W.F. and not the petitioner.

30. Another reason why the petitioner's absorption in W.W.F. was declared unlawful is that there was no vacancy when the absorption took place. This ground is belied by W.W.F.'s very own letter dated 31.10.1998 clearly stating that the petitioner's absorption was against the vacancy of Assistant Director (BS-17) in W.W.F. In the working paper prepared by the management of W.W.F. for the Governing Body's 46<sup>th</sup> meeting, it was mentioned that there was a vacancy. As regards the W.W.F.'s stance that the petitioner's promotions in W.W.F. had also been made in violation of the Rules, this matter is of no relevance in deciding whether the petitioner's absorption was liable to be recalled. The question regarding the petitioner's promotions in W.W.F. may be decided in accordance with the applicable Rules, if need be.

31. It is pertinent to bear in mind that after W.W.F. passed orders for the petitioner's repatriation, D.W.E. was not willing to take him back for the

reason that the period for which the petitioner was employed in D.W.E. on contract basis had expired. Hence, the decision taken by the Secretary, W.W.F. to declare the petitioner's absorption unlawful and to repatriate him to D.W.E. in effect amounts to making him jobless after nineteen years of regular service in W.W.F.

32. In view of the above, the instant petition is allowed; the impugned order dated 13.11.2017 is set-aside; and the Secretary, W.W.F. shall afford another opportunity of hearing to the petitioner and thereafter decide the matter through a reasoned order bearing in mind the observations made herein above. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON 05/12/2022

(JUDGE)

Qamar Khan\*

**APPROVED FOR REPORTING**