

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

2 APP

Civil Appeals No.433 to 438 & 596 of 2020

(Against the judgment dated 03.01.2020 passed by the High Court of Balochistan, Quetta in C. P. Nos.48, 363, 401, 656, 678, 1173 of 2019).

Government of Balochistan through Secretary Services and General Administration Department and others.
(in all cases)

Secretary, Religious Affairs and Inter-Faith Harmony Department, Government of Balochistan, Quetta and another.
(in CA.596/2020)

...Appellant(s)

Versus

Abdul Rauf.
(in CA.433/2020)

Muhammad Tariq and others.
(in CA.434/2020)

Rasheed Muhammad.
(in CA.435/2020)

Qambar Ali.
(in CA.436/2020)

Muhammad Yasir.
(in CA.437/2020)

Masood Ahmed.
(in CA.438/2020)

Usman Ali and others.
(in CA.596/2020)

...Respondent(s)

For the Appellant(s):

Mr. Arbab M. Tahir,
A. G. Balochistan.
Mr. Ayaz Khan Swati,
Addl. A. G. Balochistan.
(in all cases)

For the Respondent(s):

Sardar Ahmed Haleemi, ASC.
(in CA.433/2020)

Mr. Amanullah Kanrani, ASC.
(in CAs.435-438/2020)
(via video-link from Quetta).

Mr. Kamran Murtaza, Sr. ASC.
(in CA.596/2020)
(via video-link from Quetta).

Syed Rifaqat H. Shah, AOR.
(in CAs.433, 435-438 & 596/2020)

N.R. (in CA.434/2020)

Date of Hearing: 25.09.2020. (J.R.)

JUDGMENT

IJAZ UL AHSAN, J.- Through this common judgment, we intend to decide Civil Appeals No.433, 434, 435, 436, 437, 438 and 596 of 2020 as they arise out of a single consolidated judgment of the High Court of Balochistan, Quetta dated 03.01.2020.

2. Briefly stated the facts necessary for disposal of these appeal are that in response to advertisements published in daily newspapers "*Daily Mashriq dated 17.05.2017*" and "*Daily Express Century dated 18.02.2018*" inviting applications for different posts on divisional quota basis, the Respondents filed applications. They alleged that tests and interviews were conducted by a Selection/Recruitment Committee which had been constituted by the Government of Balochistan under the Chairmanship of Director General Mines and Minerals Department, Government of Balochistan. After the applications had been processed the Committee through minutes of meetings held on 11.07.2018 and 12.07.2018 made recommendations for appointment of the Respondents against the respective posts for which they had filed applications. However, the department neither

announced the results on the recommendations of the Committee nor published the merit list as required by the Recruitment Policy, 2009. Instead the entire process was scrapped and the posts were re-advertized. The Respondents were aggrieved of the inaction of the department and approached the Balochistan High Court through the constitutional petition. They sought relief to the effect that the department may be directed to produce the merit list and issue appointment letters accordingly. It was also prayed that the department may be restrained from undertaking the recruitment process afresh. The constitutional petition was allowed and the Appellants were directed to issue appointment letters to the Respondents after due verification of the credentials. The Government of Balochistan was aggrieved of such order and approached this Court by way of a civil petition for leave to appeal.

3. Leave to appeal was granted vide order dated 01.04.2020 which is reproduced below:

"Learned Additional Advocate General, Balochistan contends that advertisements were published on 17.05.2017 and 18.02.2018 for different posts by the Director General Mines and Minerals Department, Government of Balochistan. He contends that though the Departmental Recruitment Committee was constituted but actually, no transparent process whatsoever for making appointments was undertaken by the said Committee and even the minutes of the meeting dated 11 and 12.07.2018 are not in accordance with law, for that, no test and interview of any of the candidate was undertaken, as there is no record of such test and interview. He contends that no merit list was prepared and there is no existence of merit list on the record. He contends

that as per guidelines issued under para-5 of letter dated 15.03.2016, captioned, "the Observance of the Recruitment Policy, 1991 (appointment, Promotion and Transfer) Rules, 2009 and Specific Quotas Fixed for Appointment Against Initial Recruitment". If a merit list is prepared, the same is required to be published but there is no publication of such merit list. He contends that as there was no transparent recruitment process and there was even no conclusion of the recruitment process, thus, no right accrued to the respondents for being appointed and in this manner, the petitioners were justified to re-advertise the posts. He contends that the recruitment process was to be completed within 120 days, with extension of 60 days, but the recruitment process was never completed even though 420 days had expired and thus, the whole process of recruitment itself had become infructuous, as per the policy.

2. The contentions raised by the learned AAG require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously, preferably, after three months".

4. The learned Advocate General Balochistan has argued that the alleged process of test and interview was purportedly conducted during the period when a Caretaker Government was in place. There was a bar on fresh recruitments imposed by the Election Commission of Pakistan and the recruitment exercise was altogether illegal. He maintains that the constitution of the Committee and the alleged process was in itself illegal in so far as a Caretaker Government is not empowered to undertake any permanent steps other than day to day running of the Government. In

this context he had relied upon Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205) where this Court has categorically held that the mandate of a Caretaker Government does not go beyond running day to day affairs till such time that duly elected Government takes charge. He has vehemently argued that no process either of testing or interview took place. There is neither record of testing or interview and the nominations were made without a transparent process on the whims of the Committee. He maintains that the alleged minutes of meetings of the illegally constituted Recruitment Committee dated 11 and 12.07.2018 are a sham as the recommendations made were neither based upon ability nor merit. Even otherwise, the recommendations of the Committee carry no legal validity or value. He finally submits that the Balochistan High Court fell in grave error in holding that the Committee held tests and interviews in a fair and transparent manner and prepared a merit list on the basis of marks obtaining by the candidates in test and interview. He points out that the said finding is clearly and patently contrary to the record as there is no material anywhere in the record that may even remotely support such finding.

5. The learned counsel for the Respondents on the other hands submits that initially there may have been a ban but the same was lifted by the Election Commission of Pakistan. The tests and interviews were conducted by a duly constituted Committee which recommended appointments

and the new Government which came into place scrapped the process to accommodate their own cronies which action was ex facie illegal and unsupported by law. He further points out that by reason of completion of the process and recommendations made by the Committee a vested right had accrued in favour of the Respondents which cannot be taken away without lawful reason. The impugned judgment of the Balochistan High Court proceeds on correct appreciation of the legal principles on the subject in view of the fact that there was no justified or plausible reason for cancellation of recommendations of the Committee and re-advertisement of the same posts.

6. We have heard the learned Advocate General Balochistan as well as the learned counsel for the Respondents at considerable length. With their assistance we also scanned the record.

7. There is no denial of the fact that the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government is to hold the mantle in the interregnum when the term of the sitting Government has expired and the new Government is yet to take charge. A

caretaker Government is empowered only to carry out day to day affairs of the State with the help of available machinery / resources / manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected Government which takes charge as a result of elections. It was in this context that in a case reported as Khawaja Muhammad Asif v. Federation of Pakistan and others (*supra*) held that a Caretaker Government/Cabinet has to confine itself to running day to day administration of the State and to take decisions required for orderly running the affairs of the State. However, decisions having far reaching consequences should only taken by the elected government having the mandate to perform such functions as are required of it in exercise of powers conferred by the Constitution. The above principle was reiterated in a later judgment of this Court reported in the case Nemat Ullah and others v. Chairman, Governing Body, Worker Welfare Board/Secretary to Government of KPK, Labour Department and others (2016 SCMR 1299).

8. A perusal of the aforementioned judgments and the ratio of the same clearly settle the law that a Caretaker Government/Cabinet lacks the power to make appointments, transfers and postings during the limited period that it holds office. Therefore, we are in no manner of doubt that the refusal of the Appellants to implement the recommendations

of the Recruitment Committee constituted by the Caretaker Government had legal backing and lawful justification. Consequently, the finding of the Balochistan High Court that the recommendations of the Committee were legally sound and valid and should have been implemented is not based upon or supported by legal principles settled by this Court. Further, the learned High Court misdirected itself in holding that by reason of appearing in written tests and interviews a vested right had accrued in favour of the Respondents. In the first instance, we are not convinced that any tests or interviews were held and even if the same had been held, no vested right to appointment accrues unless a merit list is displayed and appointment letters are issued. The Government can always stop or abandon the process or initiate a fresh one if there are valid reasons or justification to support such action. In the instant case, such valid reasons and justification were amply available.

9. We have also noticed that there is no record whatsoever of any process of recruitment having been transparently conducted with a view to make merit based appointments. The recommendations made by the Committee had *ex facie* been made arbitrarily and were neither based upon any test results nor interviews. The learned Advocate General Balochistan has categorically stated that no test let alone an impartial and transparent test in the form of NTS was ever conducted and there is no record of any candidate appearing in such test or a merit list having been prepared in

order to test the ability of each candidate. Further, the entire process was completed with unholy haste in a matter of only ten days and vacancies in excess of about 600 posts were recommended to be filled without any process having been followed. This haste speaks volumes about the validity, credibility and genuineness of the process and its underlying intent, motive and purpose.

10. Despite the arguments of the learned counsel for the respondents that tests and interviews were conducted, there is not an iota of evidence available on the record that any test or interview was conducted or transparent and proper merit list was prepared showing marks obtained by each candidate in the NTS test or interview.

11. We further find that the recommendations made by the Committee are clearly and patently illegal as the Committee itself was illegally constituted for a purpose which was beyond the mandate of the Caretaker Government. We have asked the learned Advocate General Balochistan if tests and interviews are conducted for all grades. He has candidly conceded that tests and interviews are not conducted for employment against grades 1 to 6. However, all posts in grade 7 upwards are filled by the process of testing and interview in accordance with the Recruitment Policy of 2009. In this view of the matter, the learned Advocate General has conceded that he would not object if those already appointed to posts against grades 1 to 6 are not disturbed. However, he maintains that those who are required to undergo the process

of testing and interview must go through the same in order to ensure that the most competent, qualified and able candidates fill the available posts.

12. We notice that the Respondents had filed applications for appointments against posts advertised on 17.05.2017 and 18.02.2018 in daily 'Mashriq' and daily 'Express'. It also appears that pursuant to the advertisement published in daily Jang on 16.02.2019 a number of applications have been received against the advertised posts. However, the process was stopped pursuant to the judgment of the High Court. We are therefore of the opinion that in the interest of being just and fair it would be appropriate if all those candidates who filed applications pursuant to advertisements dated 17.05.2017, 18.02.2018 and 16.02.2019 are allowed to appear in fresh tests to be conducted by NTS. Further, interviews must be conducted by competent and impartial Committee(s) and on the basis of marks scored in NTS tests and interviews, merit list/lists must be prepared for appointments against various posts strictly and purely on merit. The process must be fair and transparent and provide a level playing field to all candidates with a view that the best amongst the lot are selected. The learned Advocate General Balochistan submits that an effort is being made to fill these posts through the Balochistan Public Service Commission ("**BPSC**"). In case, the BPSC undertakes the exercise the same shall also be conducted in the same manner of impartial testing and interviews and

preparation of a merit list which shall be displayed publicly as well as on the website of the Government of Balochistan as well as that of EPSC. On the basis of such merit list recommendations can be made to the Government for appointments against all available posts. We are sanguine that the aforesaid exercise shall be completed as expeditiously as possible and preferably within a period of three months. The merit lists prepared as a result of testing and interviews shall be placed before us for our examination in Chambers.

13. For the reasons recorded above, these appeals are accordingly allowed. The impugned judgment of the Balochistan High Court dated 03.01.2020 is set aside.

Announced in open Court at Islamabad on 14.10.2020

~~'Not Approved For Reporting'~~
Zubair/*

19/10/20