

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ

MR. JUSTICE IJAZ UL AHSAN

AFR

Civil Appeal No.2056 of 2019

Against the order dated 23.01.2019, passed
by the Lahore High Court, Lahore in
W.P.No.184204 of 2018

**Government of the Punjab through Secretary
Special Education Department, Lahore etc.**

...Appellant (s)

Versus

Abdul Jabbar.

...Respondent(s)

For the Appellant (s) : Syed Wajid Ali Gillani, Addl.AG. Pb.
Mian M. Iqbal, Law Officer, PPSC

For the Respondent(s) : Syed Razaqat Hussain Shah, AOR

Date of Hearing : 09.04.2020

ORDER

IJAZ UL AHSAN, J.- This appeal with leave of the Court is directed against an order of the Lahore High Court, Lahore dated 23.01.2019 ("**impugned order**"). Through the impugned order, while allowing a constitutional petition (W.P.No.184204/2018) filed by the Respondent, the Appellants were directed to issue appointment letter to him as Junior Special Educator subject to the availability of the post.

2. In this matter, leave to appeal was granted by this Court on 09.12.2019 in the following terms:

"Learned Additional Advocate General, Punjab contends that the learned High Court has omitted to consider the principle laid down by this Court in the case of Musa Wazir and 2 others v. NWFP Public Service Commission through its Chairman and others (1993 SCMR 1124) and the

judgment of this Court dated 09.05.2016 delivered in the case of Muhammad Kashif and another vs. Province of Punjab through Chief Secretary, Lahore, etc. in Civil Petition No.1187/2016 wherein the principle laid down in Musa Wazir's case (Supra) was reiterated and the respondents who have not obtained merit position were directed to sit in the fresh examination to be held by the Commission and could not take benefit because of creation of a vacancy on account of non joining of any of the selected employees.

2. Contentions raised by the learned Additional Advocate General, 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, the office is directed to fix the same expeditiously preferably after three months."

3. Briefly stating the facts necessary for disposal of this appeal are that the Appellants advertised some posts of Junior Special Education Teachers (Deaf). The Respondent submitted an application for appointment against one of the said posts. After going through the process of written test and interview he was placed at Sr.No.108 on the merit list and was not recommended for appointment.

4. It appears that two female candidates who stood at Sr.Nos.20 and 44 on the merit list and were recommended for appointment against the said posts did not join. As such, the Respondent who stood at Sr.No.108 on the merit list claimed a right to be appointed. This claim of the Respondent was denied by the Appellants. It also appears that the Appellants re-advertised the posts of Junior Special Education Teachers (Deaf) on 24.12.2017. However, the Respondent did not participate in the fresh recruitment

process and insisted that a right had already accrued in his favour by reason of two vacancies having become available as the recommended candidates appearing at Sr.Nos.20 and 44 on the merit list did not join. He relied upon Regulations No.59 and 62 of the Punjab Public Service Commission Regulations, 2016 ("**the Regulations**"). The learned High Court while relying on the said Regulations allowed the writ petition of the Respondent and issued requisite directions to the Appellants as noted above.

5. The learned Additional Advocate General, Punjab appearing for the Appellants has submitted that the High Court has misinterpreted the provisions of the Regulations and has fallen in error in coming to the conclusion that case of the Respondent is supported by the said Regulations. He further maintains that the law settled by this Court in the judgment reported as Musa Wazir v. NWFP Public Service Commission (1993 SCMR 1124) and reiterated in the case of Muhammad Kashif and another vs. Province of Punjab through Chief Secretary, Lahore, etc (Civil Petition No.1187/2016) has escaped the notice of the High Court.

6. The learned counsel for the Respondent on the other hand has supported the impugned judgment and submitted that a right had come to vest in the Respondent when two of the recommended candidates failed to join service. As such, the candidates appearing at Sr.Nos.107 and 108 who had earlier not been recommended by the

Commission became entitled to appointment. He has also relied upon Regulations No.59 & 62 of the Regulations.

7. Heard. Record perused. The pivotal point requiring interpretation is the true purport and meaning of Regulations No.59 and 62 of the Regulations. For ease of reference, the same are reproduced below:

"59. A substitute can be provided from the merit list during its validity period if so requested by the department concerned, in case a candidate:

- a) Fails to join the post.*
- b) Tenders his/her resignation after joining.*
- c) Is declared unfit on medical or other grounds.*
- d) Requisitioned post has become vacant for any other reason.*

62. For recommending substitutes, the Merit List remains valid for twelve months from the date of issuance of first recommendation or till the date of receipt of next requisition in the Commission for the same post, whichever is earlier, provided that where request for substitute is received within the validity period, the Chairman in his discretion may extend the validity period for the disposal of such request."

A plain reading of Regulation No.59 of the Regulations leaves us in no manner of doubt that a substitute can indeed be provided by the PPSC from the merit list during its validity period if so requested by the department concerned. We have specifically asked the learned ASC for the Respondent if any such request was made by the department. He has frankly stated that there is no such request available on the record. We have also asked the learned Law Officer if any such request was made by the department. He has categorically stated that no such request was ever made.

8. A combined reading of Regulations No.59 and 62 of the Regulations shows that an obligation to recommend a substitute candidate is conditional upon a request being

made by the concerned department. The said condition having not been met, an automatic right did not and could not come to have vest in the Respondent for his appointment. Further, it is also apparent from the record that pursuant to the fresh advertisement, the process of recruitment had already been completed and as such an order to appoint the Respondent against a post for which he had not been recommended could not have been passed.

9. The learned High Court fell in error in misinterpreting the provisions of the aforesaid Regulations and also ignored a material fact that the Respondent had not participated in the fresh recruitment process despite having knowledge of the same. Further, it is also unclear from the judgment of the High Court if it satisfied itself that the Respondent met the eligibility criteria and merit requirements. Finally, Regulation No.59 left the decision on the hiring Department to ask for substitute recommendation or re-advertise to attract better qualified and accomplished candidates. In the absence of demonstrated *mala fides* on the part of the hiring department, which has not even been alleged let alone proved the High Court could not have arrogated to itself the powers which have been conferred on the department by the Regulations. No valid reasons are available in the impugned judgment for interference in executive functions by the High Court specially so where the executive functions *prima facie* appear to have been exercised legally and validly. Besides, the High Court has not

considered the principle of law laid down in case of Musa Wazir (*ibid*).

10. Such being the case, the order of the High Court is not based upon correct interpretation of the Regulations and sound reasoning and is thus not sustainable. Accordingly while allowing this appeal, we set aside the impugned order of the High Court dated 23.01.2019 with the result that Writ Petition No.184204 of 2018 filed by the Respondent stands dismissed. No order as to costs.

ISLAMABAD, THE

09.04.2020

ZR/*

Not Approved For Reporting

18/4/20

