

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

(PJ)

CIVIL PETITION NO. 2982 OF 2016
*(On appeal against the Order dt. 01.06.2016
passed by the Islamabad High Court,
Islamabad in FAO No. 94 of 2015).*

Yaqub Ali Khan.

...**Petitioner(s)**

VERSUS

Federal Public Service Commission
through its Chairman and another.

...**Respondent(s)**

For the Petitioner(s): Sardar Muhammad Aslam, ASC.

For Respondent No. 1: Nemo.

For Respondent No. 2: Mr. M. Shoaib Shaheen, ASC.

Date of Hearing: 19.12.2018.

ORDER

IJAZ UL AHSAN, J.- The petitioner seeks leave to appeal against the judgment of the Islamabad High Court, Islamabad dated 01.06.2016 passed in FAO No. 94 of 2015.

2. Brief facts of the case are that the appellant (Yaqoob Ali Khan) had applied to the post of Divisional Forest Officer (DFO) in BS-18 in response to the advertisement dated 13.09.2007 published by the Federal Public Service Commission (FPSC). Respondent No. 2 (Zakir Hussain) had also applied for the same post and along with the appellant was short listed pursuant to the written test held by the FPSC. Both short listed candidates were called for an interview. Respondent No. 2 was declared the successful

candidate following the interview and was offered the post of DFO.

3. The petitioner was aggrieved of such decision and challenged the qualification of respondent No. 2 on the ground that he did not possess the requisite experience in the relevant field. He accordingly filed a representation before the FPSC which was not decided. He therefore filed a writ petition. The learned High Court vide order dated 05.05.2011 issued a direction to the FPSC to pass an order on the representation made by the appellant.

4. On receipt of a direction from the High Court, FPSC decided the representation of the petitioner vide order dated 11.08.2011. Being dissatisfied, the petitioner filed a review petition before FPSC which was dismissed vide order dated 29.09.2011.

5. The petitioner thereafter filed an appeal in the High Court under Section 7(3)(d) of the Federal Public Service Commission (Amendment) Ordinance, 2001. Such appeal was decided vide order dated 07.02.2015. The High Court while accepting the appeal set aside the order of FPSC and while directing that the representations of the petitioner will be deemed to be pending before FPSC, a direction was issued to afford an opportunity of hearing to the Petitioner and Respondent No. 2 and to inquire from the relevant authority such as Chief Secretary, Northern Areas, regarding the existence of the office of the Conservator of Forests, Northern

Areas and thereafter determine the experience of respondent No. 2 in accordance with law.

6. It appears that FPSC made the necessary inquiry from Secretary of Forests Wildlife and Environment Department, Gilgit Baltistan vide letter dated 15.05.2015. Further, Secretary Local Government Gilgit Baltistan vide letter dated 05.05.2015 confirmed the experience of Respondent No. 2. The Conservator of Forests, Baltistan Forests, Circle Areas, Northern Areas vide letter dated 29.05.2015 also confirmed the experience of Respondent No. 2.

7. The Petitioner was not satisfied with the order passed by FPSC and challenged the same before the High Court. Such challenge did not succeed. Hence this petition.

8. The learned counsel for the Petitioner has vehemently argued that the Chief Secretary Gilgit Baltistan had not submitted a proper report in verifying the experience of the Respondent No. 2. Therefore, FPSC erred in law in placing reliance in the same. He maintained that even otherwise, neither the Chief Secretary nor other authorities were empowered or authorized to issue certificates of this nature. He further submits that even if the experience claimed by Respondent No. 2 is taken on its face value, such experience is deficient in so far as it aggregates approximately four years while the advertised requirement for the position in question was a minimum experience of five years in the

relevant field. He has also argued that the experience of Respondent No. 2 was not in the relevant field.

9. The learned counsel for the Respondent on the other hand has defended the impugned judgment. He maintains that the relevant field in respect of Respondent No. 2 has been confirmed by the Commission on the basis of the report submitted by the relevant authority. He has pointed out that FPSC had taken pains in writing to all concerned departments and agencies where the petitioner claims to have worked to ensure that the experience of Respondent No. 2 was not only in the relevant field but also aggregated a period of more than five years.

10. We have heard the learned counsels for the parties and have examined the record with their assistance.

11. The only question requiring determination is whether Respondent No. 2 had the requisite experience of five years in the relevant field. The High Court had directed to the FPSC to make the requisite inquiry from the Chief Secretary, Gilgit Baltistan about the length of the experience claimed by Respondent No. 2. It is clear and obvious from the record that the Chief Secretary Gilgit Baltistan, after having made all requisite inquiries, confirmed to the FPSC that Respondent No. 2 indeed had the requisite experience in the relevant field and thereby validated the experience certificate of Respondent No. 2. It is also apparent from the record that Respondent No. 2 in addition to experience gained while working in Gilgit Baltistan in various capacities had also worked in a joint

venture entity formed on the basis of an agreement between the Gilgit Baltistan Forest Department and the Himalayan Green Club, Japan (HGC). Such association also fell within the definition of the experience in the relevant field.

12. The learned counsel for the Respondent also drew our attention to the fact that at the time that Respondent No. 2 applied for the position in question, he possessed an MPhil degree. According to the rules of FPSC, a candidate possessing an MPhil degree is entitled to claim two years experience in the relevant field on the basis of such degree. The said claim has not seriously been contested by the learned counsel for the Petitioner. This essentially means that Respondent No. 2 had two years experience working with the Himalayan Green Club, Japan (HGC), two years experience by virtue of having an MPhil degree at the time of his application and about four years experience in Gilgit Baltistan which was verified by the Chief Secretary Gilgit Baltistan. The aggregate of such years of experience came to about eight years which was much in excess of what was required for selection of the post in question. Further, there is no serious issue about the fact that his experience was in the relevant field. We have also satisfied ourselves in this regard from the documents and certificates available on record. Further, there is no denial of the fact that Respondent No. 2 has held the post in question for more than 10 years and now also holds a PhD degree in the relevant field. We are, therefore in no manner of doubt that Respondent No. 2 amply fulfilled the requirement for the post for which he was selected and the learned High Court

was quite justified in coming to the conclusion that the appeal of the Petitioner was without any merit. After hearing the counsel for the parties and scrutinizing the record ourselves, we have arrived at the same conclusion. The learned counsel for the Petitioner has been unable to show any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment that may require interference by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution.

13. For the reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.