

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, C.J.

Justice Amin-ud-Din Khan

Justice Athar Minallah

Civil Petition No.268 of 2019 and 583 of 2021

(Against the judgments dated 12.11.2018 the High Court of Balochistan Quetta, passed in CP No.121/2017 & dated 24.12.2020 of the Balochistan Service Tribunal, Quetta passed in Appeal No.322 of 2017)

Farooq Ahmed

... Petitioner *(in both cases)*

Versus

*Secretary Balochistan Provincial
Assembly, Quetta, etc.*

... *(in CP-268/2019)*

*Speaker Balochistan Provincial
Assembly, Quetta, etc.*

... *(in CP-583/2019)*
Respondents.

For the petitioner:

Mr. Ahsan Rafiq Rana, ASC
Hafiz Hifz-ur-Rehman, ASC

For the respondents:

Mr. M. Ayaz Swati, Addl. Advocate General,
Balochistan.

Date of hearing:

06.12.2023

ORDER

Athar Minallah, J. Farooq Ahmed, son of Muhammad Azam (**'the petitioner'**), has filed a petition and an appeal seeking leave against judgments dated 12.11.2018 and 24.12.2020 passed by the High Court and the Baluchistan Service Tribunal (**'the Tribunal'**) respectively. The petitioner had challenged the order dated 06.1.2017 before both the forums.

2. The petitioner was employed and serving as a Lecturer of English (BPS-17) at the Government Science College, Quetta. His father, Muhammad Azam Davi (**'the petitioner's father'**) was, at the relevant time, serving as Secretary of the Baluchistan Provincial Assembly Secretariat (**'Assembly Secretariat'**). The latter, after reaching the age of superannuation, was re-employed on contract basis for a period of six months w.e.f. 15.6.2014. However, on expiry the term of contract was extended till 31.12.2016. While the petitioner's father was serving as

Secretary of the Assembly Secretariat, an advertisement was published in one of the daily newspapers on 09.3.2014 seeking applications to fill the post of Deputy Secretary, Legislative Drafting (BPS-18). The qualifications and conditions regarding eligibility were described in the advertisement. The advertisement had explicitly stated that only those candidates were eligible to apply who had passed the Public Service Commission and were serving as Government officers/employees in B-17/18. The other qualifications included post graduation in English literature from a recognized university, degree of LLB and at least four years service. The terms and conditions regarding the appointment of officers and employees employed in the Assembly Secretariat are contained in the Baluchistan Provincial Assembly Secretariat (Recruitment) Rules, 2009 (**'Rules of 2009'**) which were notified in the official gazette on 8.06.2009. Schedule A of the Rules of 2009, inter alia, expressly describes the mode and conditions for the purposes of appointment against the post of Deputy Secretary (B-18). It explicitly provides that the appointment against the aforementioned post shall be made through promotion from amongst the Assistant Secretaries (B-17) possessing five years service on seniority cum fitness basis. The record placed before us shows that after the advertisement was published, a note was sent on 12.05.2014 by an officer of the rank of Deputy Secretary for approval of the petitioner's father. It was proposed to fill the post through initial recruitment pursuant to the advertisement instead of the mode prescribed under the Rules of 2009. The note had purportedly determined the eligibility and fitness of the serving Assistant Secretaries without placing their cases before the promotion committee as provided under rule 6 of the Rules of 2009. The father of the petitioner approved the proposal but recused himself from chairing the selection committee. Moreover, in violation of rule 8(a) of the Rules of 2009, he appointed one of his subordinates to chair the selection committee. There is nothing on record to show that the selection committee was constituted by the Speaker as

mandated under rule 8(a). The selection committee recommended the petitioner for appointment against the post and the appointment letter dated 15.05.2015 was issued by the Assembly Secretariat. Some of the officers who were serving as Assistant Secretaries in the Assembly Secretariat challenged the mode of appointment adopted by the Assembly Secretariat in violation of the Rules of 2009 by invoking the jurisdiction of the High Court vested under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**'the Constitution'**). The High Court, vide interim order dated 27.5.2014, had restrained the Assembly Secretariat from proceeding with the appointment process. The petitioner challenged the said interim order before this Court and CP No.401-Q of 2014 was disposed of vide order dated 19.11.2014. The interim order was not interfered with. The appointment of the petitioner was also challenged by invoking the constitutional jurisdiction of the High Court through CP No.834 of 2015. The High Court, vide order dated 15.9.2015, suspended the operation of the notification dated 15.5.2015. The petitioner challenged the interim order before this Court and CP No.242-Q of 2015 was disposed of vide order dated 11.12.2015 without interfering with the impugned order. The services of the petitioner's father were suspended vide order dated 23.5.2016 because disciplinary proceedings were initiated against him and he was subsequently relieved vide notification dated 30.12.2016 w.e.f. 31.12.2016. The Assembly Secretariat, vide order dated 06.1.2017, withdrew the appointment order of the petitioner. The petitioner challenged the order before the High Court by filing CP No.121 of 2017 which was dismissed vide judgment dated 12.11.2018 and the same has been assailed in the petition before us. The petitioner had also assailed the same order, i.e 06.1.2017, before the Tribunal and it was dismissed vide judgment dated 24.12.2020 which has been impugned in CP No.583 of 2021.

3. The learned counsel for the petitioner has contended that since the status of the petitioner was that of a civil servant, therefore, the Tribunal had the exclusive jurisdiction. However, he could not give a plausible explanation for invoking the jurisdiction of the High Court and simultaneously that of the Tribunal. He has argued that the petitioner was not treated fairly and in accordance with law and that the impugned judgments were passed in violation of procedural propriety. He has further contended that the appointment order dated 15.5.2015 was withdrawn vide order dated 06.1.2017 on the ground that an order of the High Court had to be complied with. The learned Additional Advocate General, on the other hand, has argued that the mode adopted for appointment was in violation of the Rules of 2009 and that the appointment order was illegal, void and based on arbitrary misuse of authority by the petitioner's father who was serving as the Secretary of the Assembly Secretariat.

4. We have heard the learned counsel for the petitioner and the learned Additional Advocate General, Baluchistan.

5. The argument raised by the counsel for the petitioner that the Tribunal had the exclusive jurisdiction is misconceived in the circumstances. The petitioner himself had invoked the jurisdiction of the Tribunal, besides challenging the same order before the High Court. The Tribunal had dismissed the appeal on merits and the judgment has been assailed before us. It is the stance of the petitioner that the jurisdiction under Article 199 was invoked because the impugned order was passed since reliance was placed on an order of the High Court. Both the jurisdictions were invoked by the petitioner himself. However, the Tribunal as well as the High Court had decided the petitioner's petition and appeal on merits and the respective judgments have been challenged before us, therefore, the argument to the extent of the jurisdiction of the High Court is of no consequence. It also raises questions regarding the conduct of the

petitioner because, as noted by the Tribunal in its judgment, the latter had concealed material facts. The petitioner was not appointed on the basis of transfer nor deputation. His appointment was made by the Assembly Secretariat, purportedly in the mode of initial recruitment and, therefore, it was a fresh appointment. The appointment and terms and conditions of officers and employees of the Assembly Secretariat are governed under the Rules of 2009. They do not enjoy the status of civil servants. The Baluchistan Civil Servants Act 1974 (Act of 1974) explicitly provides that it applies to all civil servants wherever they may be. Admittedly, the officers and employees of the Assembly Secretariat are not civil servants within the meaning of the Act of 1974. Moreover, the Baluchistan Service Tribunal Act 1974 also unambiguously provides that it applies to all civil servants wherever they may be. The officers and employees of the Assembly Secretariat belong to the Baluchistan Provincial Assembly Secretariat Service as defined under rule 1(n) of the Rules of 2009 and they do not enjoy the status of a civil servant. In the circumstances, the argument that the High Court was not vested with jurisdiction is misconceived, The High Court judgment was passed pursuant to the constitutional petition filed by the petitioner himself. He has assailed it before us but in his petition he has not raised any objection to the jurisdiction of the High Court. Nonetheless, as already noted above, the petitioner had himself chosen to invoke the jurisdiction of both the forums simultaneously. The respective judgments have now been assailed before us. The objection raised by the learned counsel, therefore, is of no help to the petitioner.

6. The petitioner was appointed as Deputy Secretary BS 18 (Legislative Drafting) in the Assembly Secretariat while his father was serving as its Secretary. The mode of appointment adopted by the Secretariat was through initial recruitment. The qualifications and conditions described in the advertisement appear to have been tailored to restrict the eligibility criteria

\to a limited number of candidates which included the petitioner. The High Court has rightly observed that there was no justifiable reason for such restriction and that it violated the principle of transparency. However, the petitioner was one of the very few candidates who met the restricted eligibility criteria described in the advertisement. The selection committee was reconstituted by the Secretary i.e the petitioner's father, while under the Rules of 2009 the Speaker was the competent authority and there is nothing on record to show that the latter's approval was sought. The entire recruitment process i.e approval for appointment through the mode of initial recruitment, setting out the qualifications and conditions regarding eligibility, reconstitution of the selection committee, failing to place the cases of Assistant Secretaries before the competent forum for assessing their eligibility and, subsequently, the petitioner's appointment were in clear breach of the Rules of 2009. It is not disputed that the method of recruitment explicitly prescribed to fill the post of Deputy Secretary B-18 under Schedule A of the Rules of 2009 was by promotion from amongst the Assistant Secretaries (BS-17) on seniority cum fitness basis and possessing five years service as such. No process was undertaken by the competent authority to assess whether Assistant Secretaries (B 17) were eligible to be considered for promotion in accordance with the qualifications and conditions prescribed under the Rules of 2009. The Rules of 2009 were binding and they were gravely violated while appointing the petitioner. An informed observer would have been justified in the circumstances to form an opinion that the entire process was adopted to benefit the petitioner who happened to be the son of the Secretary of the Assembly Secretariat. The latter had given approvals for undertaking the recruitment process and had only recused himself belatedly and that too to the extent of chairing the meeting of the selection committee. It thus raised profound questions in the context of conflict of interest. The Assembly Secretariat was in breach of the

principles of transparency and fairness by preventing eligible and competent persons from competing for appointment against the post.

6. This Court has consistently held that appointments against posts in the public sector are to be made strictly in accordance with applicable rules/regulations and without any discrimination and in a transparent manner. It is essential that all appointments in the public sector are based on the process that is palpably and tangibly fair and within the parameters of its applicable rules.¹ The appointment made in a nontransparent manner and in violation of the law offends the fundamental rights of the general public and the citizens under Articles 4, 9, 25 and 27 of the Constitution. This Court has emphasized that due diligence must be exercised while making appointments and that in doing so a fair and transparent selection process ought to be adhered to.² Adherence to a credible and transparent selection process with due diligence is the pre-requisite in order to ensure good governance. It is inevitable to observe highest standards of diligence, transparency and probity in selecting a person for a post.³ It has been held that a public authority possessed with powers under the relevant laws can only use them for and to advance the public good. This Court has further stressed that choosing persons for public service was not just providing a job and the consequent livelihood to the one in need but was a sacred trust to be discharged by the ones charged with it, honestly, fairly, in a just and transparent manner and in the best interest of the public. The individuals so selected are to be paid not out of the private pockets of the ones appointing them but by the people through the public exchequer and not selecting the best as public servants was a gross breach of the public trust and was an offence against the public who had the inherent right to be served by the best.⁴

¹ Syed Mubashir Raza Jafri and others v. Employees Old Age Benefit Institutions (EOBI) and others (2014 SCMR 949)

² Muhammad Ashraf Tiwana and others v. Pakistan and others (2013 SCMR 1159)

³ Muhammad Yasin v. Federation of Pakistan and others (PLD 2012 SC 132)

⁴ Chief Secretary Punjab and others v. Abdul Raoof Dast (2006 SCMR 1876)

8. The case before us is a classic example of abuse of public power in order to benefit a family member. It highlights that the principle of conflict of interest is being ignored by public entities. No rules have been explicitly set out to prevent and manage issues which are likely to arise due to conflict of interest. The principles of good governance require that each institution and organization sets out guidelines and rules for preventing and managing the issues which are likely to arise due to conflict of interest. The learned counsel for the petitioner has not been able to persuade us that any question of public importance requiring interference has arisen for our consideration.

9. The above are the reasons for dismissal of the petitions announced in the open Court.

Chief Justice

Judge

Judge

Islamabad the

6th December 2023

NOT APPROVED FOR REPORTING

M. Azhar Malik/