

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.3490-P/2018

JUDGMENT

Date of hearing.....18.10.2018.....

Petitioners: (Ms. Kalsoom Begum and others) By Qazi Muhammad Anwar, Mr. Khalid Rehman and Mr. Muhammad Asif Yousfzai, Advocates.

Respondents: (The Abdul Wali Khan University, Mardan through its Vice Chancellor and others) By M/s. Mansoor Tariq, Zartaj Anwar and Ali Gohar, Advocates.

QALANDAR ALI KHAN, J.- Since identical questions

have been raised in all these 21 connected writ petitions

relating to appointments on various posts in the Abdul

Wali Khan University Mardan (AWKUM), this single

judgment in the instant writ petition shall dispose of all

the connected writ petitions, listed herein-below:-

1. Writ petitions of petitioners not appointed as demonstrators.

S.No.	Writ Petition No.	Name of the petitioner.
i	W.P No.619-P/2017	Taj Nabi
ii	W.P No.652-P/2018	Khadim Hussain
iii	W.P No.4794/2017	Ms. Sadaf Bibi
iv	W.P No.620/2017	Sikandar Khan
v	W.P No.4795-P/2017	Ms. Rani Begum
vi	W.P No.1517-P/2017	Mehwish Imtiaz

2. Writ petitions of the terminated demonstrators.

S.No.	Writ Petition No.	Name of the petitioner.
i	W.P No.3495-P/2018	Ms. Afshan and 47 others
ii	W.P No.3653-P/2018	Ms. Jawaria
iii	W.P No.3537-P/2018	Shahzad Jamil
iv	W.P No.3536-P/2018	Dr. Nizam-ud-Din
v	W.P No.3535-P/2018	Zia-ul-Islam and 03 others

3. Writ petitions of terminated computer operators.

S.No.	Writ Petition No.	Name of the petitioner.
i	W.P No.3916-P/2018	Abdul Wajid
ii	W.P No.3494-P/2018	Muhammad Abbas and 36 others

4. Writ petitions of terminated Office Assistants.

S.No.	Writ Petition No.	Name of the petitioner.
i	W.P No.3917-P/2018	Hassan Rehman
ii	W.P No.3492-P/2018	Ms. Naila Anjum and 50 others.

5. Writ petitions of terminated KPO.

S.No.	Writ Petition No.	Name of the petitioner.
i	W.P No.3919-P/2018	Zahoor Rehman

6. Writ petitions of terminated Upper Division Clerks.

S.No.	Writ Petition No.	Name of the petitioner.
i	W.P No.3490-P/2018	Ms. Kalsoom Begum and 35 others

ii	W.P No.3687-P/2018	Muhammad Arshad
----	--------------------	-----------------

7. Writ petition of terminated Lab Assistant.

S.No.	Writ Petition No.	Name of the petitioner.
i	W.P No.3489-P/2018	Ms. Sana Muqadar and 24 others.

8. Writ petitions of terminated Lower Division Clerks.

S.No.	Writ Petition No.	Name of the petitioner.
i	W.P No.3493-P/2018	Ms. Rani Gul and 23 others
ii	W.P No.3922-P/2018	Jasim Sher

9. The erstwhile administration of Abdul Wali Khan University, Mardan (AWKUM) invited applications through advertisement No (48) 2015, for the following posts.

- a. Demonstrator (BPS-16).
- b. Office Assistant (BPS-16)
- c. UDC (BPS-14)
- d. KPO (BPS-11)
- e. LDC (BPS-11)
- f. Lab Assistant (BPS-7)

The petitioners in the aforementioned writ petitions applied for the advertised posts; and the Register AWKUM notified constitution of scrutiny committees for all the advertised posts vide notification dated October 22, 2015, and also constituted an appellate committee vide notification dated April 28, 2016. Another scrutiny committee was also notified to examine and scrutinize the academic scores of each of the

eligible short listed candidate vide notification dated May 5, 2016. The letter of the Registrar to the Controller of Examination AWKUM dated June 16, 2016 notified schedule for test at Garden Campus AWKUM on June 25, 2016. Schedule of interview for short listed candidates for various positions (**for Garden Campus**) was communicated on June 30, 2016. It may be added here that the selection and promotion committee was constituted comprising as under:-

- | | | |
|-------|---|-------------------|
| i. | Mr. Sher Alam Khan, Registrar | Convener. |
| ii. | Prof. Dr. Jehanzeb, Faculty of Arts | Member. |
| iii. | Prof. Dr. Salimullah Khan, Director
Academics. | Member. |
| iv. | Mr. Shafiqullah, Ex-Treasurer | Member. |
| v. | Mr. Pir Asfandyar, Director
Administration. | Member. |
| vi. | Mr. Ibrar Hussain, Provost | Member. |
| vii. | Engr. Pervez Khan, Director
P & D/Works. | Member. |
| Viii. | Mr. Arshur Rehman, Additional
Registrar. | Member/Secretary. |

10. The selection and promotion committee, in its meeting held on February 16, 2017, recommended appointment of the petitioners, except petitioners in the writ petitions at serial No.1, on regular basis. The appointment orders were, accordingly, issued, containing condition No.1 to the effect that the “appointment shall be *initially* on

probation for a period of one year, *extendable* to further one year”; hence all these connected writ petitions.

11. The perusal of record, particularly comments of the respondents, would show that in a meeting regarding issues of AWKUM held in the Chief Minister’s House, Peshawar, on 27th November, 2017, the issue of recruitment of large number of support staff was highlighted, where-upon it was decided that the Vice Chancellor and Higher Education Department shall probe the appointments and conduct a detailed review of the over employment. Later-on, in the 25th Emergency meeting of the Syndicate, AWKUM, held on February 26, 2018, in the light of report of the committee constituted to probe the appointments made under advertisement No.48, the Syndicate unanimously decided to constitute the inquiry committee to probe appointments made as mentioned hereinabove. The inquiry committee so constituted conducted probe into appointments made on regular basis under advertisement No.48, alongwith appointments made on contract basis, and made recommendation for termination of services of the employees in pursuance of advertisement No.48. Consequent upon the recommendations of the inquiry committee constituted by the syndicate in its 25th (emergency meeting) held on February

26, 2018, notified vide notification dated March 09, 2018, and subsequent approval by the syndicate in its 26th meeting held on June 28, 2018, it was unanimously decided that since there were no sanctioned budgeted post available at that time, hence all the appointments made in pursuance of advertisement No.48 were declared illegal, without lawful authority and of no legal effect as cited in judgment of Hon'ble Supreme Court of Pakistan in W.P No.06 of 2011, C.M.A. No.5216 of 2011 and HRC No.48012-F of 2010 dated March 17, 2014 regarding "illegal appointments and corruption in EOBI". The services of the appointed petitioners were, accordingly, terminated 'during probationary period' as per AWKUM statutes.

12. Arguments of learned counsel for the parties were heard in great detail; and record of the cases also perused with their valuable assistance.

13. It may be pointed out, at the very outset, that number of posts were not specified in the advertisement No.(48) 2015. The petitioners also failed to place on record an authentic list of vacant posts in support of their plea that appointments were made against available vacancies. The respondents, on the other hand, made available a table showing appointments made under advertisement No.48; and

sanctioned posts as well as filled positions during the financial year, 2015/2016, showing a large number of surplus appointments made, like 65 Demonstrators (BPS-16) and 63 Office Assistants (BPS-16) made under advertisement No.48 when 42 surplus appointments were already made, meaning thereby that no vacant post was available, rather surplus appointments were already made by the university administration. Likewise, 33 surplus appointments against the posts of UDC (BPS-14), 41 KPO (BPS-11) and 35 LDC (BPS-11) were also made although 24 surplus appointments of KPO/LDC were already made prior to the said advertisement. Even against the post of Lab Assistant (BPS-7), 18 surplus appointments were made. The list of surplus appointments already made and also made under advertisement No.48 was not seriously questioned by the petitioners, who all along stressed on availability of financial resources for payment of salaries to such employees. Obviously, all the surplus appointments were not only illegal as sanctioned vacant posts were not available for such appointments but also created an extra burden on the financial resources of the University. Since services of the aforementioned petitioners were terminated on the ground of their illegal regular appointment against posts which were not

sanctioned, their writ petitions on the ground of their appointments against the “sanctioned posts”, which they could not prove, are liable to be dismissed on this score alone. Moreover, their regular appointments were also subject to the condition of probation for initial one year, extendable to further one year; therefore, their service could be terminated during the probationary period without serving them with show cause notice. **{(2003 PLC (C.S) 1421 (Supreme Court of Pakistan) and 2003 PLC (C.S) 285 (Supreme Court of Pakistan))}**.

14. Apart from the above, the learned counsel for the respondents pointed out other illegalities/irregularities in the appointments made in pursuance of advertisement No.48, making all the appointments illegal, and rendering services of the appointed petitioners liable to termination in the light of **judgment of Hon’ble Supreme Court of Pakistan in W.P No.06 of 2011, C.M.A. No.5216 of 2012 and HRC No.48012-F of 2010 dated March 17, 2014 regarding “illegal appointments and corruption in EOBI”**. In order to further augment his arguments with regard to illegalities committed by the university administrations in making surplus appointments, the leaned counsel for the respondents pointed out that the surplus appointments were made on

hypothetical basis in anticipation of up-gradation of Buner, Chitral and Timergara Campuses of AWKUM and establishment of independent universities; but even contrary to the said 'justification' for creation of supporting/administrative and ministerial staff for at least four academic departments in each campus as per HEC criteria, the appointments were made for **Garden Campus of the University**. The learned counsel also pointed out constitution of selection and promotion committee in violation of the AWKUM Support Staff Appointment and Scales of Pay Statute-2013; no proof of marks earned by the selected candidates in the written test; even selection of those candidates who did not participate in the written test; appointment of employees of the university on regular basis who were already employed in the university on contract basis; and constitution of sub-committees for scrutiny, selection and appeals, in violation of the relevant rules of the university. The learned counsel also raised objection to the maintainability of the writ petitions on the ground of availability of the appellate forum of Chancellor against the decision of the syndicate in the rules, which was already availed by the petitioners; but without waiting for decision of the appellate authority on their appeals, their invoking the

extra-ordinary constitutional jurisdiction of this Court in haste. To a quarry by the Court, the learned counsel for the respondents referred to the record available on the case file, showing disciplinary proceedings against all members of the erstwhile administration deemed responsible for 'illegal appointments'. The learned counsel also referred to the illegalities pointed out by the NAB in the appointments in question in their report made available by the respondents alongwith their comments. It was also pointed out on behalf of the respondents that no detail of candidates who applied for the posts was available, despite the fact that all available vacancies were filled in the same month of September, 2015, in pursuance of advertisement No.44, that too, after NTS test, which was not followed in the appointments in question. The respondents vehemently challenged the required qualification and eligibility of appointed employees/petitioners.

15. Be that as it may, it is clearly established on the record that all the regular appointments in question were made against the non sanctioned and non vacant posts through a questionable process and in colorful exercise of authority/powers by the then administration; which could not be sustained on any ground, whatever. Therefore, the impugned orders whereby services of the appointed

petitioners were terminated do not call for interference by this Court in its constitutional jurisdiction. Since the entire process of appointments made in the AWKUM has been declared tainted with gross illegalities/irregularities and extraneous considerations; and appointments made in pursuance thereof nullified by the authorities concerned, and also being upheld by this Court through the instant judgment, the writ petitions by the petitioners in the writ petitions, at serial No.1 hereinabove, who were not appointed against the posts, become infructuous.

16. Consequently, all the writ petitions, under consideration, are dismissed for want of merit and substance.

Announced
18.10.2018

J U D G E

J U D G E

(D.B) *Hon'ble Mr. Justice Rooh-ul-Amin Khan.*
Hon'ble Mr. Justice Qalandar Ali Khan.

M.Iqbal