

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 1038-P/2018

Sareer Ahmad and others

Vs

**The Secretary, Govt. of KPK Health Department, Peshawar
and others.**

JUDGMENT.

Date of hearing: **03.10.2018**

Petitioner (s): *G:- Mr. Khushdel Khan Mohmand - Deceased.*

Respondent (s): *G:- Muhammad Asif Jan Okanda. G- Rab
Nowshera Dist.*

WAQAR AHMAD SETH, CJ:- Through the *Atiqul Hurrain
Shahzad Reproduced
et al.*

instant Writ Petition, petitioners have prayed for issuance of

an appropriate writ with the following prayer:-

*“It is therefore, humbly prayed that this Hon’ble
Court may be pleased to:-*

- (i) Declare the impugned orders of any appointment order made by Respondent No.4 (DHO Nowshera) and Respondent No.3 (Director General) against the above mentioned newly created posts as illegal, unlawful, coram non judice, without lawful authority, malafide, of no legal effect void ab initio and liable to be set aside.*
- (ii) Prevent the political entities concerned from any interference in the appointment process against such posts to ensure transparency, fairness and merit policy.*
- (iii) Direct the Respondents concerned to act in accordance with law and fill in the posts in fair manner, on merit as per law, rules, policy and procedure and provide a fair opportunity to petitioners to compete against such newly created posts as per their qualification and eligibility”.*

2. It is alleged in the petition that petitioners having

h high qualifications i.e. BA, BSc, FSc & SSC and permanent

resident of District Nowshera and have registered themselves with the District Employment Exchange Nowshera for suitable jobs in the Government Departments from respective dates of registration; that respondent No.2 (Finance Department) has accorded sanction of 127 number of posts of different categories under DDO Code NR4304 District Headquarter Hospital Nowshera with immediate effect during current financial year 2017-18 in pursuance of approval of Chief Minister Khyber Pakhtunkhwa on a summary moved by respondent No.1 vide letter No. BOVI/FD/4-27/2016 dated 19.01.2018. Similarly, through separate letter of even number and bearing the same date 19.01.2018, respondent No.2 in the same manner accorded sanction to create 212 posts of different categories under DDO Code NR6195 Mian Rashid Hussain Shaheed Memorial Hospital Pabbi District Nowshera with immediate effect during current financial year 2017-18; that petitioners have come to know that respondent No.4 (DHO Nowshera) has filled in the posts from BPS-3 to BPS-7 at the instance of Chief Minister and District Nazim, in violation of law, rules, policy and procedure; thus, petitioners being aggrieved and finding no adequate and efficacious remedy have filed the instant Writ Petition.

3. Respondents No. 1, 3 & 4 have furnished their comments and opposed the writ of petitioners.

4. Arguments heard and record perused.

5. For appointment of Class-IV employees, in the Province under the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 have provided two modes. The reading of the Rule-10 relevant for the purpose would be imperative in the given circumstances which read as under:-

10. Appointment by initial recruitment. -- (1) Initial appointment to posts in various pay scales shall be made—

(a) If the posts falls within the purview of the Commission, on the basis of Examination or test to be conducted by the Commission; or

(b) If the post does not fall within the purview of the commission, in the manner as may be determined by Government.

(2) Initial recruitment to posts which does not fall within the purview of the Commission, shall be made on the recommendation of the Departmental Selection Committee, after vacancies have been advertised in newspapers;

Provided that nothing contained in this sub-rule shall apply to the household staff of the Chief Minister's House Peshawar, Frontier House Islamabad, Frontier Rest House Bannu, Swat and Abbottabad, Frontier House Nathiagali and Shahi Mehman Khana, Peshawar and any other House to be established by the Government.

Provided further that the appointment in Basic Pay Scale 3 to 5 shall be made on the recommendations of the Departmental Selection Committee through the District Employment Exchange concerned, or, where in a district the office of the Employment Exchange does not exist, after advertising the posts in the leading newspapers.

6. The above, quoted rule clearly reflects that firstly,

if the post falls within the purview of the commission, is to be

filled in through the commission i.e. Public Service Commission and secondly if the post does not fall within the purview of the commission in the manner as may be determined by Government. According to the second proviso of the above quoted rules, the initial appointment in the pay scales 3 to 5 (amended vide notification No SO (R-VI) E&AD / 1-3 / 2015 dated 19.4.2016) previously it was BPS 1 to 4, was to be made on the recommendations of the Departmental Selection Committee through the District Employment Exchange concerned, or when in a district the office of the Employment Exchange does not exist, after advertising the post in the leading newspaper.

7. Admittedly, there is no advertisement in the instant case, and appointments have been made in the 'Mian Rasheed Hussain Shaheed, Memorial Hospital, Pabbi, District Nowshera' which are about 122 in number. Vide CM No. 1139-P of 2018, the selectees 98 in number have approached this Court for impleadment, duly represented by counsel namely Mr. Muhammad Arif Jan, advocate. The said application is allowed and the matter has been argued by their counsel at length.

8. Alongwith the comments of respondents No.1, 3 & 4 nothing has been enclosed to show that when there was no advertisement and no letter was issued requisitioning the registered persons from the Employment Exchange, how come the selectees / added respondents came to know that posts are lying vacant. Respondents also failed to produce on record any list issued by the concerned Employment Exchange showing that any list was provided upon requisitioning, by the Employment Exchange concerned. AAG alongwith departmental representative present in the Court informed at the bar that selectees / added respondents provided photocopies of registration card issued by the Employment Exchange alongwith their applications and thus they were selected, clearly reflecting that selectees are the near and dear ones of the personalities involved in the selection process. How come a registered person other than the selected one came to know that posts are lying vacant. The date of selection and clouds of election, the caretaker setup are important.

9. For future purposes, this judgment be circulated in every department of the KP Government including the Employment Exchange etc that each and every time vacant posts in BPS-3 to 5 be advertised and if the vacant posts are to

be filled in through Employment Exchange then the letter in writing from the requisitioning department shall be addressed to the Manager, Employment Exchange containing the number of post in each specified category and the employment exchange shall provide the list based on the date of registration by excluding the expired registration, as per eligibility criteria for the post.

10. The case in hand is the classic example of nepotism and favouritism of the then Political Government, therefore, the matter is referred to National Accountability Bureau for proper investigation and fixation responsibility in this respect, as it would be the law of jungle, if registered person are permitted to apply themselves, directly for a post in particular department, upon information provided by the department itself. Advertisements are always for the information to public at large then that option is the perfect one. Furthermore, Manager, Employment Exchange of each district where the office do exist are directed to create their respective Website on the address of their respective Districts, with immediate effect, if not created, and quarterly upload updated list of the candidates, so registered with them, so as to

streamline the method of appointment / recruitment and to avoid the grievance of candidates, in future.

11. Learned counsel for selectees / added respondents failed to produce any document showing that they are the reasonable candidates and were selected out of the lot rather its on record that they were the only applicants and were selected.

12. In view of the above this writ petition is allowed, all the selections, so made in 'Mian Rasheed Hassain Shaheed, Memorial, Hospital, Pubbi, District Nowshera' are set aside and the posts are deemed to be lying vacant. The competent authority is directed to re-initiate the selection process in the prescribed manner. Additional Registrar (Judicial) of this Court is directed to circulate the judgment for strict compliance, in future. Copy of this judgment be sent to NAB as indicated in para-10, above.

ANNOUNCED.
Dated: 03.10.2018



Chief Justice



Judge