

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.3894-P/2018

Junaid Ahmad son of Javed Akhtar,
 Baildar BPS.1, Office of TMO, Mardan.

Petitioner (s)

VERSUS

Secretary Local Council Board,
 Govt of KP, Peshawar and others.

Respondent (s)

For Petitioner (s) :-

Mr. Muhammad Ijaz Sabi, Advocate.

For respondents :-

M/S Sardar Ali Raza, AAG and Badshah Rehman,
Advocate.

Date of hearing:

16.06.2021

JUDGMENT

ROOH-UL-AMIN KHAN, J:-By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Junaid Ahmad, the petitioner, seeks issuance of the following writ:-

- (i) *To declare the act of the respondents to change the nomenclature of the employees from one post to another, as illegal, unlawful and against the directions of this Court vide judgment dated 22.02.2017, rendered in Writ Petition No.2422-P/2016, consequently, all such changes in the nomenclature made in the cases of colleagues of the petitioner be reverted; or*
- (ii) *In alternative the respondents may be directed also to change the nomenclature of the petitioner*

from Baildar BPS.1 to Computer Operator BPS.1

in his own pay and scale; and

(iii) Any other relief deemed appropriate in the

circumstances not specifically asked for may also

be granted in favour of the petitioner.”

2. It is averred in the writ petition that petitioner having the qualification of Bachelor of Arts (BA) and Diploma in Information Technology (DIT), was initially appointed as Baildar BPS.1, vide order dated 14.01.2011 in Tehsil Municipal Administration, Mardan. Since he was also assigned the duties of Computer Operator in the office, therefore, he applied through proper channel to the Secretary Local Council Board for change of nomenclature of his post from Baildar to Computer Operator BPS.1, but the same was not respondent, therefore, he submitted an another application on which his case was proceeded and the Town Municipal Officer (TMO) Mardan recommended for change of nomenclature of his post, however, with no final result, therefore, the petitioner filed Writ Petition No.2422-P/.2016, before this court but the same was dismissed with the observations that all the posts in the respondents' department being sanctioned and budgetary, the appointing authority of its own cannot change their nomenclature without adopting the procedure prescribed under the law. Contention of learned counsel for the petitioner to the effect that certain employees were favoured when the nomenclature of their posts was converted to higher posts whereas such benefit was not

extended to the petitioner as it was held against the principle that two wrongs cannot be quoted as basis to make the others as correct. Petitioner alleged that despite judgment (supra) of this court the respondents did not stop the illegal act of changing nomenclature of the employees of their choice. One Muhammad Ismail appointed as Baildar BPS.1 vide order dated 29.02.2016 was first transferred from TMA Nowshera to Mardan; then his nomenclature was changed to Naib Qasid followed by his appointment as KPO BPS.5 and then up-gradation to BPS.16 vide order dated 04.05.2018 i.e. after the judgment of this court. Similarly, nomenclature of other employees was also changed in utter violation of judgment of this court dated 22.05.2017, against which the petitioner filed COC No.497/2018 before this court, but the same was withdrawn with the request to file a fresh writ petition, hence, this petition.

3. The respondents have filed para-wise comments wherein the stance of the petitioner has been refuted on various legal and factual grounds.

4. We have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

5. It appears from record that initially the petitioner was appointed as Baildar BPS.1 vide office order dated 14.01.2011. Allegedly, he was also assigned the duties of Computer Operator, therefore, he requested for change of nomenclature of his post Baildar to Computer Operator. As the Post of Baildar

was in BPS.1 while the post of Computer Operator was either in BPS.12 or BPS.16, therefore, his request was turned down by the respondents. Feeling aggrieved, he filed Writ Petition No.2422-P/2016, before this Court which was dismissed vide order dated 22.05.2017, with the following observations:-

“All the posts in the respondents/department are sanctioned and budgetary posts, therefore, the appointing authority of its own cannot change their nomenclature without the procedure prescribed under the law. The learned counsel for the petitioner has placed much stress on the question of discrimination and argued that certain employees were favoured when the nomenclature of their posts were converted to higher posts. The petitioner cannot be given the benefit of such orders which has no support in law and on the principle that two wrongs cannot be quoted as basis to make the others as correct, nor we would like to perpetuate the illegalities if committed by the department.

The respondent/department is bound to conduct itself in accordance with the recruitment rules and not otherwise. The petitioner has not no right whatsoever, to ask for change of nomenclature of his post.”

This writ petition being devoid of any merit is hereby dismissed.”

6. Despite the above quoted observations, the respondents persistently continued the illegal practice i.e. change of nomenclature merely to provide a back door to the blue eyed

for promotion or posting them on higher and lucrative posts. Nomenclature in general means *“the body of system of names used in a particular specialist field”* whereas according to Merriam Webster dictionary, it means *“the name and designation in a discipline or art.”* The word nomenclature comes from the latin word *“nomenclatera”* which uses for *“the assigning of names”* In service matters, it is the name or designation of a post hold by an employee during service. Nomenclature is always used in the departments for pulling apart one post from another, like the post of Baildar in the Tehsil Municipal Administration is designated in BPS.1, while Naib Qasid has been placed in BPS.3. In case of change of nomenclature and designation of a post the status of pay of employee in terms of nomenclature of a post always remain the same as with the change of the name of the post no substantial difference in the nature of duty performed by the employees may be brought. In case in hand, some of the employees being posted as Baildars have brought into the array of Naib Qasids. Similarly the Nabi Qasids and Fireman (BPS-3) were converted into the Recovery Helpers. There are two types of employees working in Tehsil Municipal Administration i.e. Provincial Unified Group of Functionaries (PUGF) and Non-Provincial unified Group of Functionaries (NON-PUGF). The former is governed and controlled by the Provincial Government through the Chairman Local Council Board and their appointing authority is the Secretary Khyber Pakhtunkhwa Local

Government Election and Rural Development Department, whereas the non-PUGF staff relate to the concerned Local Council TMA and the Tehsil Municipal Officer is their appointing authority. In the Non-PUGF staff, Baildar and Sanitary Workers are engaged for carrying out sanitation activities in jurisdiction of their respective TMAs, while the Naib Qasids performs only duties of office attendants. The post having nomenclature of Fireman is meant for a person responsible for fire extinguishing in the area. All these posts have been placed in PBS-3, whereas Computer Operator is a person to be appointed through initial recruitment with a standard nomenclature and scale duly sanctioned by the Tehsil Municipal Administration. In case in hand all cadres and designated posts still exists. Neither the post of Baildar, Sanitary worker, Naib Qasid has been put or placed in dying cadre nor abolished by the TMO however in the garb of change of nomenclature some blue eyed, without any specific qualification, have been provided career ladder for climbing in upper cadre i.e. Naib Qasid, Fireman and even to higher post like Computer Operator. As observed above the Non-PUGF staff in town and Tehsil Municipal Administration are governed under a policy guideline of 2019, according to which every appointment or recruitment order of staff in the TMA entity shall mention proper reference to the relevant rules/law, vested in the appointing authority or departmental selection committee empowering them for making or recommending

such appointments. The post sanctioned for direct quota must be filled through open competition by observing the standard procedure, whereas for any violation of rules and policy the concerned committee shall be held responsible. According to the above-mentioned policy complete ban has been imposed on the change of cadre and nomenclature of the post except in case of any departmental structuring and change of duties or creation of new branches and sections in a TMA, the Secretary Local Government upon specific recommendations of the Secretary Local Council Board may consider such case strictly on merit and without violating the inherited right of the other employees. The policy guidelines further provide that all the previous cases of change of cadre and nomenclature of the post undertaken in different TMA/ entities in the Province shall be objectively reviewed by the committee headed by respective Municipal officers with representative of the Local Council Board. From the above it is quite obvious that under no provisions the TMO is vested with the power to change the nomenclature of any post nor is authorities to create or abolished or upgrade a post in the TMA without sanction and prior approval of the Secretary Local Council Board. The change of nomenclature of some post without any law and procedure is not only nullity but also discriminatory on the part of Tehsil Municipal.

7. Perusal of record would reveal that after decision of this court dated 22.05.2017, one Muhammad Ismail who was appointed as Baildar BPS.1 in TMA Nowshera vide order dated

29.12.2016 was first transferred to TMA Mardan by changing his nomenclature from Baildar to Naib Qasid and thereafter vide order dated 04.04.2017, was appointed as KPO BPS.5 and finally vide order dated 04.05.2018 he was upgraded to BPS.16 (*after decision of this court*). Similarly, in utter violation of judgment (*supra*) of this court not only the nomenclature of respondents No.6 to 11 has been changed from Baildar, Naib Qasid, Fireman, Electrician, to Recovery helper, Assistant light Inspector and Naib Qasid vide order dated 24.11.2017, 04.01.2018, 09.01.2018, 19.01.2018, 02.02.2018 and 25.04.2018, respectively, but Muhammad Ismail appointed as Baildar BPS.1 in the year 2016, by providing illegal ladder in the shape of change of nomenclature, has been upgraded upto BPS.16. As stated earlier all the posts above BPS.4 are to be filled after inviting applications from the general public through advertisement in press and after proper selection process but the respondents have adopted a unique practice of changing the nomenclature of different employees for onward promotion and up-gradation by pick and choose which exercise being against the law and procedure is highly deplorable and is the worst example of nepotism and favoritism.

8. During arguments learned counsel for respondents was confronted with the proposition as to how change in the nomenclature of different employees can be made when the original post of the incumbent with its nomenclature still exist, neither learned counsel for the respondents nor departmental

representative could explain or show the compelling circumstances which necessitated the change in the nomenclature. They could not point out any law or rules to empower the Tehsil Municipal Officer to make and allow changes in the nomenclature of post through an office order. Even in case such structural changes were necessary for running the affairs of the TMA, then at least it would have been made on the basis of seniority cum fitness and considering the relevant qualification, but this factor was not considered by the respondents for reasons best known to them. It is necessary to mention here that whenever there is a change of grade or post for better, there is an element of selection involved that is promotion and it is not earned automatically or on the sweet will of the employer but under an order of the competent authority to be passed after the consideration on the comparative suitability and the entitlement of those incumbents. In case in hand, the responsible authorities of the respondents while giving undue benefit and advantage to blue eyed, have violated all norms, principles and standard of good conduct and good governance. The respondents instead of taking care of the low-scale employees, adopted an unprecedented and uncalled for methodology for promotion in terms of "Change in nomenclature".

9. The upshot of the above discussion is that the impugned orders in term of change of nomenclature of different employees are void *ab-initio* being issued without lawful

authority; therefore, the respondents are directed to rectify the wrong and remove the inequities amongst the employees and treat them strictly in accordance with the policy of 2019.

This writ petition is disposed off accordingly.

10. Before parting with the judgment we have noted with great concern that Tehsil Municipal Officer Mardan despite court orders and directions has changed the nomenclature of different employees working against sanctioned and budgetary posts without prior approval and necessary change in the Rules which exercise is not only alien to the provisions of the law but a worst example of nepotism and favouritism in government service as well as detrimental to the good governance. An unlawful and illegal ladder has been provided to the blue eyed employees by pick and choose to the different posts or even to the higher rank (BPS-16). The secretary Local council Board may be informed by providing copy of this judgment to look into the matter and take disciplinary action against the delinquent officer(s) under intimation to the Additional Registrar (Judicial) of this court.

Announced:

16.06.2021

M.Siraj Afridi PS

Senior Puisne Judge

JUDGE

**DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge; and
Hon'ble Mr. Justice S.M. Attique Shah**