

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

W.P.No.5407-P/2019

Safdar Khan
Versus
Govt: of KPK through Chief Secretary and others.

Date of hearing 16.12.2021

Petitioner (s) by: Mr. Kashif Jan, advocate.

**Respdt (s) by: Mr. Khalid Rehman, AAG,
Malik Ahmad Javed, Advocate for Dr.
Fayaz, Ex. DHO,
Mr. Shah Nawaz, Superintendent , Health
Department, Dr. Farhad Khan ,M.S
W&C Hospital, Dr. Aftab Ahmad,
Litigation Officer, Dr. Ali Shah, Acting
Litigation Officer**

JUDGEMENT

IJAZ ANWAR. J:- The instant writ petition has been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:

**“It is, therefore most humbly
prayed that on acceptance of
the instant writ petition, the
appointment of private
Respondents No.07 to 30
made by Respondent No.4 may
kindly be declared as illegal,
without jurisdiction, unlawful**

without lawful authority, unconstitutional. Consequently the Respondent No.4 may please be directed to issue appointment order of the Petitioner any of the Class-IV post in Women and Children Hospital Rajjar District Charsadda.

Any other ancillary and necessary relief not specifically asked for may also be granted in favour of petitioner.

The connected Writ Petitions No.

5406-P/2019“ Muhamamd Irshad Vs

Government of Khyber Pakhtunkhwa through

Chief Secretary and others”, No. 7498-P of

2019 “Shakeel Ahmad and another Vs Medical

Superintendent Woman and Children

Hospital, Charsadda and others, No. 1290-

P/2020 “ Janas Khan and others Vs Medical

Superintendent Woman and Children

Hospital, Charsadda and others, No.1717-

P/2020 “Dilawar Khan Vs Medical

Superintendent Woman and Children

Hospital, Charsadda and others” and No.

2705-P/2020 “Amjad Khan Vs Director

General , Health, Khyber Pakhtunkhwa and

others” involve similar controversy, therefore, we propose to decide all these petitions through this single judgement.

2. In essence, the grievance of the petitioners in all the writ petitions are that despite being eligible for the posts in question and registered with the District Employment Exchange, they were not considered and instead, the private respondents were issued appointments in the respondent departments in violation of provisions of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

3. Comments were called from the respondents which were submitted accordingly wherein they have opposed issuance of the desired writ (s).

4. Arguments heard and record perused.

5. Petitioners has called in question the appointment of respondent No.7 to 30 made against different posts pursuant to advertisement published in daily news papers. Petitioner alleges that the appointments were made in violation of the provisions of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and that the selection process was a mere eyewash and only favorites of the political figures or the Appointing Authority were issued appointments.

6. During the course of hearing, when we found that the respondents remained unable to satisfy this Court regarding the transparency and observance of merit in the appointment process, this Court vide order dated 18.11.2021 passed the following observation:

**“Learned counsel for petitioner
and Addl: AG apprised the**

court that on previous date, respondents have promised to adjust the petitioner of the instant petition as well as of the connected petitions against the vacant posts without disturbing the private respondents, but today, the moment the case was taken up for hearing, learned AAG when confronted with the situation, he stated that the officials of the department have not informed him about any progress. He admitted the fact that proper procedure for appointment of private respondents have not been adopted rather the provision of Rule 10 (2) and (4) have been violated in the appointment of the class-IV employees. Hence, the worthy Special Secretary alongwith members of the Selection Committee, involved in the recruitment process of private respondents were summoned, who appeared respectively. When confronted with the situation, the Worthy Special Secretary assured the court that he will look into the matter and will take disciplinary action against the delinquent officers if found guilty in violation of the rules in appointment process. It is expected that he will summon record and will also check the appointment one by one qua the alleged violation of the

rules. The Special Secretary shall submit his report within three weeks. After necessary inquiry, the record of the employment of the respondents shall also be produced before the court.”

7. The Special Secretary so directed by this Court got conducted the inquiry through Deputy Secretary (Drugs), Health Department, Khyber Pakhtunkhwa who scrutinized all the appointments and submitted his findings which prima facie support the version of the petitioner that the whole appointment process was a mere eyewash. The findings so given being relevant to the present controversy are reproduced as under:-

Findings:

- 1. The posts of technical cadre were advertised in the advertisement and it does not include the posts of Class-IV.**
- 2. The cutoff date for submission of application as mentioned in the advertisement is 21.06.2019.**
- 3. The dates indicated for scheduled interviews were 27th and 28th June, 2019.**

- 4. No scrutiny committee for evaluation of applications/ documents was constituted.**
- 5. It was told that besides the advertised post, 85 applicants for Class IV were also received till last date of submission of applications.**
- 6. 136 applications for technical posts were shown received.**
- 7. Prima-facie, 291 (136+85) applications were likely to be scrutinized in 5 days for its submission before the interview panel scheduled on 27th & 28th June, 2019 (Two days).**
- 8. Statements of the establishment Superintendent and dealing Clerks in their statements, declared that no candidate for the class IV interview appeared on the scheduled date rather the candidates of the technical cadres were appeared in the specified dates.**
- 9. As per record the interview panel had to interview 291 candidates in two days which is apparently not possible for the panel.**
- 10. The question of registration with Employment and Exchange Commission has also been examined in line with Rule 10(2) and (4) of the APT Rules, 1989. In accordance with rules *ibid*, the appointment of Class IV can be made as per registrations of the applicants with Employment & Exchange commission and in**

case, the said Commission does not exist in the district then the posts shall be filled through advertisement. For the purpose of transparency, the panel or the hospital administration should have obtained the list from the Employment & Exchange Commission to tally the registration certificate duly submitted by the applicants.

11. No call letter to any candidate from the hospital was issued for appearance before the panel hence no one appeared as substantiated from the statements of the officials involved in the process.
12. The probe revealed that despite non-appearing of candidates for interview in the category of class IV, the list of selected class IV issued on the date of interview duly signed by the panel.
13. The Selection Committee/panel did not fulfill the requisite steps required in the selection process together with a deviation from their administrative and moral responsibility. They could have rendered their responsibility in an efficient way in total adherence to the merit and policy.
14. There seemed a dependency of the administrators on the officials of account section even in the matter of placing irrational supply orders.

15. The spirit of the current Medical Superintendent was high and he had taken some steps for bringing reforms to reduce the agonies of the ailing one which were noticed during the course of visit.

Conclusion

Based on the above, it is concluded that the recruitments have been made without inviting the applicants for appearing before the panel for interview thus caused a distrust and a deviation from the set standards to be taken care of by the panel of interview as a matter of transparency, fairness and merit before selecting any individual.”

8. It is very unfortunate state of affairs that we have noted and observed in many cases that the appointments to public posts are not made in a transparent manner. Such practice has eroded the public confidence on the selection process and it has become a general perception that the appointments in the departments are not made on merit but either on the direction of the political figures or some influential in the department. The august Supreme Court of Pakistan in the case of

“Zahid Akhtar Vs Govt: of Punjab through Secretary, Local Government and Rural Development, Lahore and 2 others” reported as (PLD 1995 SC 530) while commenting upon the conduct and attitude of the Government servants observed:

“Government servant should comply wily with those orders/directions of his superior which were legal and within his competence---Compliance of illegal or an incompetent direction/order could neither be justified on the plea of same having been issued from superior authority nor same could be defended on Uri; ground that non-compliance thereof, could have exposed concerned Government servant to the risk of disciplinary action---Role of bureaucracy in the administrative set-up highlighted.

Tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed as incharge

of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is to apprise these elected representatives the nicety of administration and. provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order of direction of such elected functionaries without bringing to their notice, the legal infirmities in such order's/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. A Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action.”

The august Supreme Court of Pakistan in the case of “Roshan Khan, Vs Director Schools and Literacy NWFP,

Peshawar and 4 others” reported as 2007

SCMR 599 reiterated the same view and added

that:

“It is for quite a long time, that some of the peoples representatives, whose sacred and scholarly job it was to legislate while honourably confining themselves to the dignified mansions of the assemblies, have started undesirable, dishonest and corrupt interference into the purely Executive/Administrative domain of appointments, promotions and transfers of civil servants. By now it has turned into a mafia that does not care about Law, Rules, Regulations, Rules of Business and repeated deprecations by the Supreme Court of Pakistan and High Courts. All forces seem to have whittled down before the exploitation and blackmail by some people whose weight, and not legislation, matters. This is bound to destroy the institutions, if not already destroyed.”

9. We understand that there is no law in the country giving authority to the public representatives to interfere into the executive and administrative domain even to the extent of

recommendation and proposal, albeit the appointments so made is classic example of such interference.

10. The superior courts of this country has time and again stressed upon the Executives not to accept any kind of pressure in the matter of appointments and postings and to go by the book what come may, however, it seems that either they are adamant enough not to follow the law or they are so insecure that they always succumb to the extraneous interference. What would be the state of other affairs while running this country when they cannot stand guard while making appointments, postings and transfers. In exactly similar matter, the august Supreme Court of Pakistan in case titled **“Chief Secretary Punjab and others Vs Abdul Raof Dasti”** **reported as (2006 SCMR 1876)** while striking

down the illegal appointments and promotions

observed as under:-

“It is our misfortune that when we are looking for individuals to serve our own-selves, we search for the best of doctors, the best of architects, the best of lawyers, the best of engineers, the best of cooks, the best of butlers and so on but when it comes to selecting similar individuals to serve the public, we get swayed by nepotism, by petty personal interests and by other similar ulterior and extraneous considerations and settle for the ones not worthy of serving the public in the requisite manner. We need to remind ourselves 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. Therefore, we must keep it in mind that not selecting the best as public servants was a gross breach of the public trust and was an offence against the public who had right to be served by the best. It is also blatant violation of the rights of

those who may be available and whose rights to the said posts are denied to them by appointing unqualified or even less qualified persons to such posts. Such a practice and conduct is highly unjust and spreads a message from ones in authority that might was right and not vice versa which message gets gradually permeated to the very gross root level leading ultimately to a society having no respect for law, justice and fair play. And it is the said evil norms which ultimately lead to anarchic and chaotic situations in the society. It is about time we suppressed such-like evils tendencies and eliminated them before the same eliminated us all.”

11. We have now before us the Inquiry report submitted by the Health Department through Additional Advocate General wherein illegality and irregularity is pointed out in the process of appointments. As we such we feel that it would be appropriate to refer the matter to the Special Secretary, Health Department to form a committee and after giving personal hearing to each of the appointee, decide their fate in light of

their inquiry. The committee so constituted shall also give hearing to all the officers involved in the impugned appointments and after fixing responsibility, shall forward their case to the Special Secretary Health Department for onward submission to the Competent Authority for initiation of departmental proceedings against them. The Special Secretary shall undertake the whole exercise within a period of two months positively and the outcome shall be conveyed to the Registrar of this Court for perusal of the Judges in Chamber.

12. This and the connected Writ Petitions are disposed of in the above terms.

Senior Puisne Judge

Judge

**Announced on;
Dated. 16.12.2021**

(D.B) Hon'ble Mr. Justice Rooh-ul-Amin Khan and Hon'ble Mr. Justice Ijaz Anwar

Amir