

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-4479 of 2017

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

Muhammad Imran Khan Chishti.....Petitioner

Versus

Province of Sindh & others.....Respondents

Mr. M. M. Aqil Awan along with Mr. Malik Naeem Iqbal,
Advocate for Petitioner.

Mr. Abdul Jalil Zubedi, AAG.

Mr. Anwar Hussain, Advocate for Respondents No. 2 & 3.

Date of hearing: 09.08.2017

JUDGMENT

ADNAN-UL-KARIM MEMON,J:- Through instant Petition, the Petitioner is seeking declaration that he is lawfully appointed as Controller of Examinations Board of Intermediate Education, Karachi and cannot be relieved from his post without due process of law. Petitioner has further impugned Notification dated 10-03-2017, whereby he was transferred and directed to report to Chairman, Board of Intermediate Education, Karachi.

2. Brief facts of the case are that petitioner was initially appointed as Junior Clerk in the Directorate of School Education, Karachi Region vide Appointment Letter dated 12.08.1987 on purely temporary basis and subsequently he was selected as High School Teacher vide Letter dated 17.10.1993. It is further asserted

by the petitioner that he was transferred and posted as Education Program Officer/BPS-17 (Own Pay Scale) in the Middle School Project, Provincial Implementation Unit, Government of Sindh vide letter dated 15.12.1997. Petitioner has added that his services were requisitioned by the Board of Intermediate and Secondary Education; Mirpurkhas vide letter dated 19 .04.2005. That during service with Board of Intermediate and Secondary Education, Mirpurkhas, petitioner applied for the post of Deputy Secretary (BPS-18) in response to an advertisement and after succeeding in interview and written test, petitioner was appointed vide letter dated 20.02.2006. He further added that on 27.07.2007 he was transferred from Board of Intermediate and Secondary Education, Mirpurkhas to Board of Intermediate and Secondary Education, Karachi vide letter dated 27.7.2007, on deputation for a period of three years issued by the governor's Secretariat. Per petitioner, on 07.11.2007 his services were absorbed by the Appointment Committee of the Board of Governors on non-promotional post of Deputy Secretary in the Board of Intermediate and Secondary Education, Karachi vide Notification dated 21.11.2007. That on 09.05.2011 petitioner was promoted in BPS-19 by the Appointment Committee and Board of Governors on seniority cum fitness basis vide Office Order dated 16.05.2011. He further added that Competent Authority was pleased to appoint him as regular Controller of Examinations in BPS-19 against the existing vacancy vide Notification dated 19.05.2011. Petitioner emphatically asserted that his appointment as Controller, Board of Intermediate Education, Karachi is a fresh appointment having no nexus with his previous appointment/absorption as Deputy Secretary in

Board of Intermediate Education, Karachi; that a complaint was lodged against Petitioner which was dismissed by the learned Provincial Ombudsman (Mohtasib, Sindh), Regional Office, Karachi, Central vide decision dated 13.08.2012. That subsequently said decision was upheld by Governor, Sindh vide Order dated 15.04.2013. That on 07.10.2015 Petitioner was repatriated to his parent department that is, Board of Intermediate and Secondary Education, Mirpurkhas in the light of judgment dated 12.06.2013 passed by Hon'ble Supreme Court of Pakistan in Criminal Original Petition No. 89/2013; that on 09.10.2015 Petitioner approached this Court in C.P. No. D-6293/2015 and obtained interim order dated 09.10.2015 against Notification of Petitioner's repatriation; that in view of interim order passed by this Court Secretary, Boards and Universities withdrew the said Notification vide letter dated 17.12.2015.; that in the meanwhile Respondent No.1 filed Civil Petition for Leave to Appeal No. 671-K/2015 against the interim order passed by this Court before Hon'ble Supreme Court and succeeded in obtaining stay Order dated 23.12.2015. Per Petitioner said interim order was merged in final Order dated 04.07.2016 whereby Petition of Respondent No.1 having become in- fructuous was dismissed by Honorable Supreme Court that after dismissal of Civil Petition for Leave to Appeal, Petitioner was allowed to resume his duties as Controller, Examination Board of Intermediate Education, Karachi vide Letter dated 02.08.2016; that on 04.01.2017 Provincial Anti-Corruption Department lodged FIR against Petitioner & others; that Petitioner obtained pre-arrest bail in the alleged crime; that through impugned Notification dated 10th March 2017, the Chairman,

Board of Intermediate Education, Karachi transferred Petitioner and directed him to report. Per Petitioner he approached competent authority for posting but, nothing was done. Hence, Petitioner feeling aggrieved by and dissatisfied with the impugned transfer order approached this Court on 04.07.2017.

3. Upon notice, Respondent Nos. 1 filed para-wise comments and Respondent 2 & 3 filed counter affidavit denying therein adverse allegation leveled against them, copies whereof were supplied.

4. Mr. M.M.Aqil Awan, learned counsel for the Petitioner has argued that impugned Notification dated 10th March 2017 is illegal, unlawful, malafide, arbitrary, discriminatory, without jurisdiction and in violation of principles of natural justice; that Petitioner was lawfully appointed as Controller, Board of Intermediate Education, Karachi(BIEK); that Petitioner cannot be removed/relieved from the post held by him unceremoniously; that even in Anti-Corruption case there was no allegation of corruption and mismanagement against the Petitioner rather he has been implicated for alleged illegal appointments which allegation is contrary to record and cannot be made a reason to remove/relieve the Petitioner from the post of Controller of Examination BIEK; that under the garb of purported removal/relieving of Petitioner a junior officer of BS-18/Respondent No.3 had been assigned charge of the post of Controller of Examination, BIEK on his Own Pay Scale basis which is in sheer defiance and disregard of the directions of Hon'ble Supreme Court in the case of Province of Sind Vs. Ghulam Fareed and others (2014 SCMR 1189); that impugned Notification is discriminatory, arbitrary and in violation of Article 4 and 25 of the

Constitution as well as Section 24-A of General Clauses Act, that no reason whatsoever has been assigned to justify issuance of Impugned Notification that Respondent No.2 was exercising authority in colorful manner without any justification; that impugned Notification is violative of fundamental rights of the Petitioner and the principles laid down by the Hon'ble Supreme Court with regard to transfers and postings of employees in the case of Aneeta Turab; that Petitioner and Respondent No.3 are not Civil Servants therefore, bar of Article 212 of Constitution is not attracted in the present case; he lastly prayed that impugned Notification may be declared illegal, unlawful, malafide, arbitrary, discriminatory and in violation of principles of natural justice and same be set aside. Learned counsel in support of his contentions has relied upon the case of Province of Sind and others Vs. Ghulam Fareed and others (2014 SCMR 1189), Mehmood Akhtar Naqvi Vs. Federation of Pakistan and others (PLD 2013 SC 195), Lt. Col. (R) Abdul Wajid Malik Vs. Government of the Punjab & others (2006 SCMR 1360) Iffat Jabeen Vs. District Education Officer Lahore & others (2011 SCMR 437) and Director Social Welfare NWFP Peshawar Vs. Saadullah Khan (1996 SCMR 1350).

5. The contention of the learned Counsel for the petitioner is against the recognized principle of law, in service matters that none has vested right to a particular post at a particular place. This view is supported by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch Vs. Province of Sindh & others (2015 SCMR 456), Peer Muhammad Vs. Government of Baluchistan & others (2007 SCMR 54),

Secretary, Govt. of Punjab and other Vs. Dr. Abida Iqbal and others (2009 PLC C.S. 431).

6. Mr. Anwar Hussain, learned counsel for Respondent Nos. 2 & 3 has argued that instant petition is not maintainable; that the impugned Notification dated 10.03.2017 is proper and in accordance with law; that one Syed Suleman Shah lodged complaint against Petitioner before Hon'ble Supreme Court in Cr. Org. Petition No.89/2011 & Civil Review Petition. No. 193/2013 Ali Azhar Khan Baloch v. Province of Sind and others (2015 SCMR 456). That Hon'ble Supreme Court was pleased to issue notice to Chief Secretary, Sind, that Petitioner's regular appointment as Controller of Examinations BIEK was not correct as demonstrated by the Petitioner; that codal formalities were not followed in respect of appointment of the Petitioner who was originally recommended for promotion by the Board of Governors in its 165th Meeting and Controlling Authority issued Letter accordingly which was modified later on 19.05.2011; that the said Letter is not produced by Petitioner with malafide intention; that Competent Authority has issued the impugned Order as stop gap arrangement till further orders; that Respondent No.3 is given additional charge of Controller of Examinations, BIEK till further order through impugned Notification dated 10.03.2017; that by the operation of judgment of Hon'ble Supreme Court the Petitioner's absorption is also nullified; that per 165th Meeting of Board of Intermediate Education, Karachi, promotion of Petitioner as Controller of Examinations has been approved vide Letter dated 16.05.2011; that no advertisement was issued or published for the post of Controller of Examinations, BIEK and other codal

formalities were not adhered to as per law; that at the time of said promotion & appointment of Petitioner there was no vacancy, besides this the post of Controller of Examinations BIEK is to be filled through initial recruitment and not by promotion, therefore all has been done in violation of law; that recruitment rules & procedures of Boards were to be followed which has not been done therefore, Petitioner has not come to this court with clean hands; that this Court has laid down the criteria for the appointment of Chairman of Boards, the Secretary & Controller of Examinations vide common judgment dated 04.03.2016 passed in C.P. No. D-6723/2015 and other connected Petitions. That the said decision was maintained by Honorable Supreme Court which has to be followed; that respective orders of Ombudsman, Sind and Appellate Authority/Governor of Sind are not denied but the same have no any legal effect in view of Hon'ble Supreme Court orders; that Petitioner impugned the said Repatriation Order and obtained interim Order dated 09.10.2015 in C.P. No. D-6293/2015 from this Court; that the said interim order was impugned by Government of Sind in C.P. No.D-671-K/2015 before Hon'ble Supreme Court, wherein the said interim order was suspended and Petitioner was directed to report to his parent department vide Order dated 23.12.2015. Thereafter, Petitioner withdrew C.P. No.D-6293/2015 from this Court and Hon'ble Supreme Court dismissed above specified C.P vide Order dated 04.07.2016 as in-fructuous; that Notification dated 02.08.2016 which allowed Petitioner to join as Controller of Examinations is not in accordance with the judgment (Supra) and the Controlling Authority rightly issued such administrative orders therefore, the impugned Notification is

legal, proper and issued in accordance with law; that Anti-Corruption Department has initiated inquiry against some employees of Board of Intermediate Education, Karachi (BIEK) including the Petitioner; that as per meeting of the Board of Intermediate Education Karachi, the Board has written a Letter dated 03.07.2017 to Secretary to the Chief Minister, Sind/Respondent No.1 for issuing Corrigendum/fresh Notification for posting of Petitioner to his parent department to avoid any adverse situation after the judgment of Hon'ble Supreme Court supra; that present position of Petitioner has been impugned in C.P. No. D-4971/2016 filed by one Aamir Saeed which is pending before this Court. He lastly prayed that the instant Petition is not maintainable under the law the same may be dismissed.

7. Mr. Abdul Jalil Zubaidi learned Assistant Advocate General Sind representing Respondents No.1 supported the contentions of Respondent Nos.2 and 3.

8. We have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

9. Points involved in the instant Petition are as to whether Petitioner is lawfully appointed as Controller of Examinations, Board of Intermediate Education, Karachi? Secondly as to whether Petitioner cannot be relieved from the said post?

10. Petitioner asserts that his appointment as Controller of Examinations, BIEK (BS-19) is a fresh and regular under Notification dated 19.05.2011 available at page No. 65 (Annexure-H) of the file; that the said fresh appointment has no

nexus with his previous appointment / absorption as Deputy Secretary, Board of Intermediate Education Karachi.

11. A perusal of annexure attached with the memo of Petition prima facie shows that post of Controller of Examinations (BS-19) is to be filled through initial recruitment as per prescribed qualifications as provided under section 14(2) Sind Boards of Intermediate and Secondary Education Ordinance 1972 by the Controlling Authority. Whereas, the notification dated 19.05.2011 reads as under:-

Secretariat of Governor Sindh
Governor's House
Karachi
Dated 19th May, 2011

NOTIFICATION

No.GS/10(2)14/2011(SO-III)/333 In partial medication of notification No.GS/10(2)14/2011(SO-III)/333 dated 19th May, 2011 and in exercise of the powers conferred upon him under Section 14(2) of the Board of Intermediate & Secondary Education Ordinance 1972 (as amended) and in view of Resolution No.8 of minutes of 165th meeting of Board of Governors held on 09.05.2011, Governor Sindh/Controlling Authority, Board of Intermediate Education Karachi has been pleased to appoint and post Mr. Muhammad Imran Khan Chishti as Controller of Examination, (BPS-19) Board of Intermediate Education, Karachi w.e.f. 09.05.2011, against the vacant post.

BY ORDER OF GOVERNOR SINDH/
CONTROLLING AUTHORITY, BIE KARACHI
MUMTAZ-UR-REHMAN KHAN
PRINCIPAL SECRETARY TO GOVERNOR SINDH

12. The entire case of the petitioner depends upon said Notification that his appointment is fresh, however, as per minutes of the meeting of the Appointment Committee of the Board held on

05.05.2011 (available at page 7 to 11) annexure R-2 attached with the Counter Affidavit of Respondent No.2, the position is altogether different. For ready reference the minutes of the said meetings are reproduced as under:-

“Item No.09: To consider for promotion of one Deputy Secretary/Deputy Controller of Examination (BPS-19) to the post of Controller of Examinations (BPS-19) on seniority-cum/fitness basis w.e.f 21.04.2011.

Reso No.09: **Resolved** that Mr. Muhammad Imran Khan Chishti, being the senior most qualified Deputy Secretary and qualifying the tenure of service alongwith the required *qualification be promoted to BPS-19* who is already holding the charge of the post of Controller of Examinations (Panel is annexed for perusal).” (Emphasis added)

13. From the perusal of said minutes of meeting, it is explicitly clear that petitioner was considered for promotion only and was promoted to the post of Controller of Examinations (BS-19). Therefore, his assertion that he was fresh appointee to the post of Controller Examinations is totally misconceived and not born out of the record. The learned Advocate General Sind vide his legal advice dated 02.08.2016 to the Government of Sind has endorsed the stance taken by the Petitioner, which is not sustainable in law.

14. Section 14(2) of the Sind Board of Intermediate and Secondary Education Ordinance, 1972 provides that the post of Controller of Examinations (BPS-19) can only be filled through initial appointment by effecting competition through a Public Notice published in news papers. It is a settled principle in Service Jurisprudence that the eligibility of a candidate has to be determined in accordance with advertisement for the post, Service Rules governing the appointment and any amendment or

instruction backed by law. Whereas , in the instant matter the Petitioner has failed to produce a copy of advertisement for the post of Controller of Examinations and subsequent processing of the matter. The issue of appointments of Chairman of Boards, Controller of Examinations has been set at naught by this Court in the case of Abdul Sami Soomro & others Vs. Province of Sind & others (2016 PLC CS 787). There is no material placed on record by the petitioner showing that any competition for the said post was effected. It is very much clear from the minutes of 165th meeting of Board of Intermediate Education, Karachi that the petitioner was promoted and not initially appointed. Merely use of the word “appointed” in the notification dated 19.5.2011, cannot be construed as fresh appointment.

15. The case law cited by the learned counsel for the petitioner is distinguishable from the facts and circumstances of the case.

16. In the light of above facts and circumstances of the case, we reach to the conclusion that there is no illegality, infirmity or material irregularity in the impugned letter dated 10th March 2017. Consequently, the instant Petition is dismissed along with listed application(s).

17. Foregoing are the reasons for our short order dated 9.8.2017.

Karachi
Dated: .08.2017.

JUDGE

JUDGE