

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-1360 of 2015

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

Adil Rashid, Petitioner

through:

Mr. Jaffer Raza, Advocate

Federation of Pakistan

Respondent No.1through:

Mr. Muhammad Nishat Warsi, DAG

Port Qasim Authority/

Respondent No.2 and 3 through:

M/s. Muhammad Arshad Khan Tanoli &
Danish Rashid Khan, Advocates

Dates of hearing:

24.05.2019 & 28.05.2019

Date of announcement:

31.05.2019

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. The pivotal question before us, is whether the Petitioner, whose services were terminated by the Port Qasim Authority (PQA) vide letter dated 18.06.2014, pursuant to the direction of the Honorable Supreme Court vide order dated 19.12.2013 passed in Constitution Petition No.04 of 2013, can be reinstated?

2. Firstly, Mr. Jaffer Raza, learned Counsel for the Petitioner briefed us about the factual position of the case that the Petitioner is an ex-service man, who after his retirement from Pakistan Navy in the year 2012, applied for the post of Director (Environment and Safety) BPS-20 in respect of an advertisement issued by the Respondent No. 02/PQA published in daily Dawn Karachi on 29.9.2012. The Respondent No. 2/PQA after receiving applications started recruitment process and conducted interview of the petitioner on 12.11.2012; who qualified in the interview and was recommended for Medical Fitness. He appeared for his Medical Fitness Examination and was declared fit for the appointment and was appointed as the Director (Environment and Safety) BPS-20 vide appointment order dated 18.7.2012 issued by the Respondent No. 2/PQA. Subsequently, the

Respondent No. 2/PQA served him show cause notice dated 14.5.2014 alleging that his appointment was illegal and against the directives issued by the Honorable Supreme Court of Pakistan vide its orders dated 31.1.2011 and 19.12.2013 passed in Civil Petition No.735-K of 2010 and finally his services were terminated vide impugned order dated 18.6.2014. The Petitioner being aggrieved by and dissatisfied with the impugned order, filed Civil Suit bearing No. 1100 of 2014 before the learned Single Judge (Original Side) of this Court, **(Re-Adil Rashid vs. The Federation of Pakistan and others)**, for Declaration and Injunction. The prayer is reproduced below:

“a) Declare that the letter dated 14.05.2014 to the Plaintiff is illegal, mala fide without jurisdiction, arbitrary has been issued to cause prejudice to the Plaintiff, is discriminate and of no legal effect and set aside the same.”

The learned Single Judge (Original Side) passed the following order dated 30.1.2015 in the Civil Suit, referred herein below:-

“1) Both the learned counsels submit that the defendant No.2 has statutory rules of service and as such both the employees and employer are bound by these rules. Hence, in view of recent pronouncement of the Hon’ble Supreme Court in Civil Review Petition No.159 of 2013 whereby the suits of the employees of statutory body having statutory rules are to be referred to the learned Division Bench for adjudication, this suit is also to be referred accordingly. Accordingly, learned counsel for the plaintiff is directed to file another set of the suit/pleadings along with annexures in the office. Once such are filed office is directed to send this matter to the concerned writ branch for its presentation before learned Division Bench for appropriate orders.”

This Court vide common Judgment dated 11.12.2017 passed in C.P No.D-846 of 2015 **(Re-Cdr (R) Mansoob Ali Khan vs. Federation of Pakistan and other connected matters)**, converted the aforesaid Civil Suit into Constitution Petition for decision on merits.

3. The Petitioner impugns validity of Show Cause Notice dated 14.5.2014 and the termination letter dated 18.6.2014, on the ground that the same were issued by the incompetent person not authorized under the Port Qasim Authority Act, 1973. Petitioner heavily relied upon Section 50 of the Port Qasim Authority Act, 1973 and submitted that PQA Board was competent to make appointments of such officers and servants as it may consider necessary for performance of its

functions, on such terms and conditions as it may deem fit. He further relied upon Section 4 of the Port Qasim Authority Employees Services Regulations, 2011 as amended up to 2013 and submitted that he was appointed by the Port Qasim Authority Board as Director (Environment and Safety) BPS-20 vide letter dated 18.7.2012; therefore the Respondent No.3 was not competent authority to issue him Show Cause Notice and Termination Notice. Therefore, he contended that the said impugned notices are ab-initio void and liable to be set aside by this Court.

4. Upon notice, the Respondents No.2 and 3 filed comments by way of `counter affidavit` and raised preliminary legal objections about the maintainability of the instant Petition.

5. We enquired from the learned Counsel for the Petitioner that how he would justify appointment of the Petitioner against the post of Director (Environment and Safety) BPS-20 in PQA in disregard of the order dated 31.1.2011 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No. 735-K of 2010 directing the Respondents that "no more appointment/promotion/transfers irrespective of the fact whether the employees are on contract basis or otherwise, shall be made by the Chairman/Board of Governors of the Port Qasim Authority till furnishing of a comprehensive report as mentioned hereinabove".

6. Mr. Jaffer Raza, learned Counsel for the Petitioner, in reply to the query, argued that the Petitioner was ex-service man of Pakistan Navy and after rendering more than 20 years of active service in Pakistan Navy, he joined the Port Qasim Authority ("PQA") in the year 2012; that the Petitioner has been prejudiced by the action of the Respondents, especially the Respondent No.3, who in order to show purported compliance of the Hon'ble Supreme Court of Pakistan order dated 19.12. 2013 passed in C.P. No. 04/2013 [*Abdul Jabbar Memon V. PQA and others*] has victimized the Petitioner. As per the learned Counsel, the Petitioner was served with a Show Cause Notice dated 14.5.2014, whereby he was asked to furnish explanation with regard to his appointment in PQA. The Petitioner in his reply denied the allegations leveled against him with the assertion that contents of the show cause notice issued to him were based on mala fide and

were without jurisdiction, discriminatory and based on pick and choose policy. He added that the Respondent No.2 being an autonomous body has the right and power to employ people and deal with all incidental matters pertaining to their employment and not Respondent No.1. According to the learned Counsel, the Respondent No.3 has no jurisdiction in the matter as Chairman of the PQA was the Competent Authority for all issues relating to appointments against BPS-19 and 20 posts. Thus, according to him the impugned order is without jurisdiction and beyond the authority of the Respondents No.1 and 3, who victimized him during pendency of the aforesaid C.P. No.04/2013 before the Honourable Supreme Court and that the statement filed by PQA before the Honourable Supreme Court did not reflect the correct position of the case of the petitioner. He further contended that the Respondent No.3 without giving the Petitioner any right of hearing decided that his appointment was illegal. He continued that the impugned letters were predetermined and outcome of malice and the actions of the Respondents were malafide and may be declared to be of no effect. He stated that the actions of the Respondents were contrary to the fundamental rights of the Petitioner guaranteed under Article 9, 10-A and 25 of the Constitution of Islamic Republic of Pakistan. According to him, it is a settled principle of law that whenever someone acts in excess of his authority or in a manner which is mala fide or arbitrary and in the instant case the Respondents has exceeded their authority by issuing the impugned order; hence their action is illegal; that the Federal Government has discretion to issue directions to the Board of the Authority in policy matters, but it is in respect of "Acts and Proceedings of the Board". These powers cannot be interpreted to mean that the Federal Government have powers to manage affairs of PQA Board; if the Government assumes powers of micro managing each and every aspect of the organization then the Board and all paraphernalia settled by the law is reduced to a mere a trapping on a piece of paper and not even worth the paper on which it is written. In support of his contention, he relied upon Section 5 subsection (2) of the Port Qasim Act, 1973 provides as under: ---

(5) Management (1)

(2) The Board in discharging its function shall act on sound principles of port planning and development and port management and shall be guided on questions of policy by such direction as the Federal Government may, from time to time, give.

He next relied upon sections 50 and 51 of the Port Qasim Act, 1973, reproduced below:

50. Appointment of Officers, Servants, etc. The Authority may, from time to time, appoint such officers and servants as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit.”

51. Recruitment Conditions of Service, etc. The Authority shall lay regulations made with the prior approval of the Federal Government, lay down the procedure for the appointment of its officers and servants, and the terms and conditions of their service including the constitution and management of provident fund for them, and shall be competent to take disciplinary action against them.”

He heavily relied upon the judgment rendered by this Court in the case of ABDUL JABBAR MEMON Versus FEDERATION OF PAKISTAN through Secretary Ports and Shipping Government of Pakistan and 6 others [2011 P L C (C.S.) 513] and stressed that the PQA Board was competent to make appointments and there was no illegality in the basic appointment of the Petitioner. He further argued that the Respondent No.3 was not the appointing authority of the Petitioner; therefore, he was not competent to issue charge sheet and terminate him from service; therefore, the order of termination/removal from the service passed by an incompetent authority was held to be illegal; therefore, the entire disciplinary proceedings initiated against the petitioner are nullity in eyes of law and liable to be set-aside; that the Respondent No.2/PQA, after complying with the codal formalities appointed the Petitioner, who joined the service accordingly; where-after the process of appointment of the petitioner was wrongly declared illegal on the purported ground that it was not transparent. He added that the Respondent No. 02-PQA had taken no action against those persons, who had initiated allegedly non-transparent recruitment process for appointment of the Petitioner, if any; therefore the action of the Respondent-Authority/PQA to annul the appointment of the Petitioner is contrary to the basic spirit of the PQA Act,

1973 and PQAES-Regulations-2011, amended up to 2013. In support of his contention, he further relied upon the cases of PAKISTAN INTERNATIONAL AIRLINES CORPORATION through Chairman and others---Petitioners v. SHAHZAD FAROOQ MALIK and another---Respondents [2004 SCMR 158], SHAKEEL AHMED SHAIKH and 2 others v. PROVINCE OF SINDH through Chief Secretary, Sindh and 3 others [2012 P L C (C.S.) 657], BEHRAM KHAN v. CHAIRMAN STRATEGIC PLANNING DIVISION, CHAKLALA CANTT., ISLAMABAD and 2 others [2014 P L C (C.S.) 418], Lt. Commander (Retired) NAEEM JAVED v. UNIVERSITY OF THE PUNJAB through Vice-Chancellor, Lahore and another [2014 P L C (C.S.) 29], Brig. Retd. SAFDAR HUSSAIN AWAN v. GOVERNMENT OF PAKISTAN through Principal Secretary to the Prime Minister and others [2008 P L C (C.S.) 949], ABDUL JABBAR MEMON v. FEDERATION OF PAKISTAN through Secretary Ports and Shipping Government of Pakistan and 6 others [2011 P L C (C.S.) 513], MUHAMMAD SHAHNAWAZ and 44 others v. KARACHI ELECTRIC SUPPLY COMPANY through Company Secretary and 2 others [2011 P L C (C.S.) 1579], ASIA PETROLEUM LIMITED through Kh. Izz Hamid, Managing Director v. Federation, Ministry of Finance, Government of Pakistan, Pak Secretariat, Islamabad and 3 others [1999 P T D 1313] & DISTRICT COORDINATION OFFICER, DISTRICT DIR LOWER and others v. ROZI KHAN and others [2011 P L C (C.S.) 942].

7. We posted another question to the learned Counsel whether there was any approval of the competent authority i.e. Federal Government/Prime Minister as provided under Regulation No.4 of Port Qasim Authority Employees Service Regulations-2011, for appointment of the Petitioner? The learned Counsel, in reply, stated that neither there was requirement of law to seek approval of Federal Government/Prime Minister nor of the Establishment Division as the PQA Board was competent to appoint him against the post of Director (Environment & Safety) in BPS-20 and if there was any procedural irregularity, the appointees could not be condemned subsequently with change of the Head of the Department

or any other change. He added that such an act of the departmental authority was unjustified as the petitioner otherwise was fully eligible and qualified for the post. He emphasized that this court has to take into the account the powers of PQA/Board under the Act, 1973 and powers of Respondent No.1 in PQAES Regulations, in the affairs of PQA. He lastly prayed for allowing the instant petition.

8. We confronted the Counsel for the petitioner with the latest decision dated 26.4.2019 rendered by this Court in the case of Cdr (R) Mansoob Ali Khan Vs. Federation of Pakistan and others in C.P No.D-846 of 2015 having similar facts and circumstance, whereby the petition was dismissed. For sake of convenience an excerpt of the same is reproduced:-

“17. From what has been discussed above, we are of the considered view that the Port Qasim Authority (PQA) vide Board Resolution No.10/2014 dated 16.9.2014 ratified the action of the previous management of PQA and that be discretionary powers to do so duly vested in the Respondents No.2. The Hon’ble Apex Court took cognizance of the matter about the affairs of Port Qasim Authority in respect of appointments, promotions and other ancillary appointments in *suo motu* proceedings and the Chairman Port Qasim Authority duly admitted in the proceedings that the appointments were irregular and that those persons had to be terminated. Hence in our view, the Petitioner did not have any vested right for reinstatement on the said contractual post. Besides, the issue of re-employment after retirement from the disciplinary force has been discouraged by the Honorable Supreme Court in SUO MOTU CASE NO. 24 of 2010 [Regarding Corruption in Hajj Arrangements in 2010] and held at paragraph No.38 as under:-

“38. The matter of re-employment of police officers after their retirement also came under consideration by this Court in the case of In Re: Suo Motu Case No.16 of 2011 (PLD 2013 SC 443) wherein on 22.03.2013 it was held that re-employment in disciplinary force like Police or for that matter in any other department has to be made subject to section 14 of the Civil Servants Act, 1973 read with instructions contained in Esta Code under the heading “Reemployment”. It was further observed that undoubtedly, it is the Government, which has to perform its function strictly in accordance with law but, prima facie, re-employment of police officers (noted SMC 24/10 34 therein) was not in conformity with the law and the judgment of this Court. Consequently, with the approval of the Competent Authority i.e. Chief Minister Sindh, the contract appointments of 8 police officers were terminated, whereas, one of the re-employed employee, namely, Mr. Waseem Ahmed, Additional Chief Secretary, Home Department (BS-21), who was also a former Police Officer and on retirement has been appointed by the Government of Sindh, tendered his resignation, which was accepted by the competent authority”

18. To elaborate further on the issue of re-employment of the Petitioner in PQA after his retirement from Pakistan Navy, we have to see whether his re-employment in PQA was in accordance with law and the dicta laid down in the cases decided by the Honorable Supreme Court or otherwise?

19. In this regard, we refer to paragraph 2, No.4/85 of the JSI and Serial No.214, Part V, Chapter 2 of Volume I of the Estacode, reproduced herein below for better understanding the issue under discussion. It may be noted that both these provisions are identical.

No.4/85 of the JSI / Sl. No.214 of the Estacode

"It has been decided that Armed Forces Officers seconded to civil ministries (other than Defence), departments of the Central/Provincial Governments, autonomous/semiautonomous bodies and corporations etc.,

will be governed by the following terms and conditions:-
"2. Tenure" of the JSI / "1. Tenure" of the Estacode:

(a) Officers will normally be seconded for a period up to three years extendable, in exceptional circumstances, by one year by the Government, after which the officer will normally either be recalled to the parent service or released. No extension in service will be allowed to officers who complete age/service limits for retirement during secondment.

(b) If the deputation of an officer tends to become indefinitely prolonged, permanent absorption of the officer concerned in the civil cadre by retiring him from the parent service, would be considered.

(c) In case of an emergency, the parent service will have the option of withdrawing a deputed officer without notice, if necessary.

(d) An officer will have the option to request for return to his parent service if he feels that his service career is adversely affected by continued deputation."

20. The petitioner was seconded for appointment in PQA as Director (Private Sector Projects) BPS-20 on contract basis vide Appointment Order dated 10th January, 2013. The main question for our consideration is the scope of the JSI/the Estacode and in particular whether permanent re-employment/absorption in such cases is permissible or not? The afore cited provisions of JSI/Estacode clearly stipulates that officers may be seconded for a period of up to three years and only in exceptional circumstances such period can be extended by another year. We are cognizant of the fact that the petitioner was "re-employed on contract basis".

21. How officers of the armed forces are to be inducted in the civil cadre has been dealt with in the Estacode. In this regard serial 231, Part V, Chapter 2 of Volume I of the Estacode is referred, which provides for the "Induction/Re-employment of Officers of Armed Forces of Pakistan in Civil Posts". Relevant paragraphs are reproduced hereunder for the sake of brevity:-

"Sl. No. 231

Induction/Re-employment of Officers of Armed Forces of Pakistan in Civil Posts

The question of institutionalizing the induction and re-employment of officers of the armed forces of Pakistan in civil posts has been under consideration for some time past. The President has now been pleased to decide that induction of officers of the armed forces of Pakistan and their re-employment, as the case may be, shall be regulated by the following instructions:-"

The particular provision which would be applicable to the petitioner, is of "officers of a rank of Lieutenant Colonel and above", and is attended to in the following paragraphs of Sl. No.231:

"18. Officers of the rank of Major/equivalent who retire or may have retired before completion of the prescribed age or service limit and officers of the rank of Lieutenant Colonel and above and equivalent who may retire or may have retired either after completion of prescribed service or age limit or before such completion will be eligible for re-employment on contract for 3 to 5 years, renewable upto the age of 60, upto the maximum of 10% of annual vacancies in various groups and cadres, as may be specified, on the terms and conditions mentioned hereinafter."

"19. Re-employment will be made in grades equivalent to their substantive rank, or temporary rank, if held for one year, in accordance with the army rank-civil grade equivalence formula already approved by the President. However, the officers will be eligible for being considered for a subsequent contract in higher grade. Re-employment of officers may be considered for a higher grade either at the time of subsequent contract or after completing service of three years in the existing contract whichever is earlier."

"20. Re-employment on contract basis will be made through the High Powered Selection Board which will also determine the group or cadre in which re-employment is to be made. The procedure for selection will be the same as prescribed in para 6."

"21. In selecting officers for re-employment, provincial quotas will be kept in view."

"22. Re-employment on contract in various grades shall be made by the authorities competent to make appointment to these grades in accordance with rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973."

22. The afore quoted paragraph 20 refers to paragraph 6 of Sl.231, which is reproduced hereunder:

"6. Induction will be made through the High Powered Selection Board constituted by the President for the purpose. The High Powered Selection Board will also determine the Occupational Groups to which the officers are allocated. For this purpose, each Service Chief may be asked to recommend by the 30th June every year names of officers for induction in grade 17 in various groups, keeping in view their educational qualifications and experience. For each vacancy, a panel of preferably 3 officers may be recommended. The recommendations will be scrutinized by the Ministry of Defence before they are placed before the Board."

23. Admittedly, the foregoing paragraphs of Sl.231 with regard to the re-employment of the petitioner have not been complied with. The petitioner has also failed to show that the competent authority had accorded approval to his appointment. Therefore, the petitioner's contention that he was properly appointed in PQA as regular employee has not been established.

24. Furthermore, the case law relied upon by the learned Counsel for the Petitioner, are quite distinguishable from the facts and circumstances of the present case.

25. The impugned order issued on the directions of the Honorable Supreme Court appears to be lawful as these were correctly concluded by the PQA that the petitioner was appointed in PQA in violation of the Judgment of the Honorable Supreme Court and the law. We are thus in total agreement with the impugned order issued by the PQA Authority, whereby service of the petitioner was rightly terminated. Consequently, this petition is dismissed along with the pending Application[s] with no order as to cost."

The Counsel for the petitioner in his abortive attempt, tried to distinguish the aforesaid case with the instant petition and reiterated his earlier submissions, with further assertion that the PQAESR-2011 are ultra vires to the Port Qasim Authority Act, 1973; that the petitioner is an expert in port management, having Master of Science degree in Maritime Affairs from the prestigious World Maritime University of Sweden; that the Petitioner was a commissioned officer in Pakistan Navy. As part of his duties with Pakistan Navy, the Petitioner served as Commanding Officer of Seagoing Vessels. He also served as Assistant Naval Harbor Master and Assistant Commander Dockyard. In these capacities, the Petitioner was responsible for safety and environment protector in the Pakistan Navy Dockyard and Harbor; that the appointment of the Petitioner took place in due compliance of all relevant rules and regulations. The position was advertised and it is through the advertisement that the petitioner came to know of this position; that the Petitioner was appointed after detailed interview and assessment carried out by a Selection Committee; that the Petitioner is/was one of the most qualified and well suited person for the advertised position; that the Respondent

No.2 since his appointment in the year 2012 did not raise any objection *viz a viz* his performance or competence for the aforesaid job; that the impugned letter has been issued on an erroneous assumption of facts and the credentials, and experience of the Petitioner has not been taken into account; that malafide on part of the Respondent No.3 is apparent on the face of record.

9. Conversely, Mr. Muhammad Arshad Khan Tanoli, the learned Counsel appearing for the Respondents No.02 and 03, argued that the Petition is not maintainable in the light of the Order dated 31.1.2011 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No. 735 –K of 2010 with direction to the Respondents that “no more appointment/promotion/transfer irrespective of the fact whether the employees are on contract basis or otherwise, shall be made by the Chairman/Board of Governor of the Port Qasim Authority till furnishing of a comprehensive report as mentioned hereinabove”. The learned Counsel contended that the Respondents, in compliance with the order submitted “Concise Statement/ Report” before the Honorable Supreme Court and the name of the Petitioner was duly listed at Sr. No.63 in the said report available at page No.31 to the Memo of Petition. He further contended that the Petitioner cannot seek relief from this Court and if he is aggrieved, he should approach the Hon'ble Supreme Court in the same matter. For convenience of reference, the relevant portions of the said Annexure “B page 31 of Court file” are reproduced as under:

IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD

(Original Jurisdiction)

CMA No.7099/2013

In

Constitution No.04/2013

In re:

ACTION TAKEN AGAINST APPOINTMENT IN THE PORT QASIM AUTHORITY MADE IN VIOLATION OF JUDGMENT IN THE CASE OF ABDUL JABBAR MEMON AND OTHERS (1996-SCMR-1349).

APPLICATION FOR SUBMISSION OF REPORT ON BEHALF OF PORT QASIM AUTHORITY.

11. **That according to instructions contained in Estacode regarding appointments in BPS-20 and above in the statutory bodies, the competent authority is the Prime Minister. Appointments in POA in BPS-20 and above were not submitted for approval to the competent authority through Establishment Division as per instructions as well as POA Service Regulations. Thus, such appointments are also violative of Rules and non-transparent. Details of such appointments are also on record.**

13. That on the basis of 2003 regulations during the period of 2008 to March 2011, details of recruitment / appointments of various categories are as under:-

a)	Appointment of Officers BPS-17 and above	38
b)	Appointment made on the directive of Federal Govt.	03
c)	Appointment made in the year 2008 in staff category	190
d)	Appointment made during the year 2009	140

Summary of appointment of Officers made during the 2011 to 2013

a)	Appointment of Officers as BPS-17 and above.	25
b)	Appointment during the year 2011	79
i)	Staff appointed against advertisement dated 22/10/2010	13
ii)	Security staff appointed against advertisement dated 22/10/2011.	66
C)	Appointment made during the year 2012	07
i)	Staff appointed through advertisement dated 10.12.2011, 15.2.2012 & 9.8.2012	06
ii)	Staff appointed on Daily Wages (Now Regularized)	01
D.	Appointment made during the year 2013	272
i)	Appointments of Security Staff on Daily Wages through Advertisement 19 & 21 May 2012 (Now regularized)	200
ii)	Appointments of Daily Wages other staff (subsequently regularized)	70
iii)	Appointments of daily wages staff (Naib Qasid) (subsequently regularized)	02
E.	Appointment of Dependents of deceased employees	27
	Total	410
	Total recruited from 2008-2013 staff & officers (410+481) =	891

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may graciously declare, after examining the case and after hearing the parties, the aforesaid appointments as being illegal, without lawful authority and of no legal effect, non transparent and in abuse of authority.

Sr. No.	Name of Appointee	Domicile	Advertisement Date	Meeting date of DPC/Selection Board	Appointment/Regularization Date	Initial or Contract/Regularization	Appointment Post /BPS	In Accordance with Advertisement initial officer (Yes/No)	Then No. of Cadre Recruittee available as per recruittee/promotee ratio	Then available Merit/Provincial Quota (Yes/No)	Remarks and/or Braches/Relaxation in Laws/Rules in appointment (if any)
63.	Cdr. @ Adil Rashid	Sindh (Rural)	16.5.2012	27.06.2012	18.7.2012	Initial	Director (E&S) BPS-20	Yes	Not considered	No	Appointment against quota non-availability

vii. **Ex-Army and Naval officers (Pensioner) were appointed without having requisite qualification and relevant experience required for such posts, and appointed on regular basis. In addition their pay was fixed at a higher stage against the BPS mentioned in the advertisement.** (Emphasis Added).

He further submitted that appointment of the Petitioner was not made as per PQA Regulations-2011; that the Petitioner did not meet the criteria, which could not be circumvented. He further pointed out that appointment of the Petitioner was made during the operation of stay order of the Hon'ble Supreme Court of Pakistan; therefore, he was rightly dismissed from the service. Learned Counsel further submitted that the Director (HRM) vide letter dated 30th October, 2014 informed that Port Qasim Authority (PQA) Board vide Board Resolution No.10/2014 inter alia approved /ratified the orders of the Chairman PQA in respect of the Petitioner. He relied upon his statement dated 28.5.2019 filed on behalf of the

Respondents No.2 & 3 and referred detailed report/statement filed by Chairman, Port Qasim Authority in the Hon'ble Supreme Court, whereby he has disclosed in paragraph-12 of the Statement that in pursuance to the orders of the Hon'ble Supreme Court the services of the Petitioner were terminated, but he has filed Civil Suit before this Court and succeeded to obtain stay order from this Court and the action will be taken after finalization of the *lis*. Lastly, the Counsel for the Respondents No. 02 and 03 prayed for the dismissal of the instant petition in the line with the orders passed by the Honorable Supreme Court and decision given by this court in the case of Cdr. (R) Mansoob Ali Khan *supra*.

10. Mr. Muhammad Nishat Warsi, learned DAG representing Respondent No.1 adopted the arguments of the learned Counsel for the Respondent No. 2 and 3.

11. We have heard learned Counsel for the parties at length, perused the material available on record and the case law cited at the bar.

12. In our view, the Petitioner's case is similar to the case of Cdr. (R) Mansoob Ali Khan as discussed in the preceding paragraphs. Thus, in our view, the basic appointment of the petitioner as Director (Environment and Safety) in BPS-20 was not in accordance with the law as he had no requisite qualifications and experience of the post of Director (Environment and Safety) in BPS-20. Besides, appointment of the petitioner against the post of the Director (Environment and Safety) in BPS-20 was ratified through Board Resolution No. 10/2014 dated 16.9.2014 pursuant to the statement made by the Chairman, Port Qasim Authority before the Hon'ble Supreme Court as illegal and irregular appointment of the Petitioner.

13. Our attention was invited to the advertisement dated 10.5.2012. The learned Counsel for the Respondents argued that the Petitioner did not possess the requisite qualification in the discipline of Environmental Sciences in Maritime Safety. At this stage, he called in question the basic Degree of the petitioner on the premise that the same is not recognized by HEC and referred paragraph 27 of

the Counter Affidavit filed on behalf of the Respondents. He next submitted that the petitioner also lacked 14 years' experience, including at least 04 years' experience in related field for the advertised post. The advertisement is reproduced below:

PORT QASIM AUTHORITY

Bin Qasim, Karachi-75020

JOB OPPORTUNITIES

PORT QASIM AUTHORITY INVITES APPLICATIONS FROM SUITABLE CANDIDATES FOR APPOINTMENT TO THE FOLLOWING POSTS ON TEMPORARY BASIS LIKELY TO BE REGULARIZED IN FUTURE

S#	Name and Scale of the Post	No. of Posts	Prescribed Education Qualification and Experience	Domicile	Age Limit
1	Director(Environment and Safety) BPS-20	01	Master in Environmental Sciences/M.Sc. in Maritime Safety Administrator/Environment of Master Mariner (FG)/Chief Engineer Class-I Certificate. 14 years' experience at least 04 years' experience in related field.	Merit	Up to 50 years
2	Secretary PQA BPS-19	01	At least 2 nd Class Master's Degree in Administrative / Social Sciences/MBA 12 years' experience in Secretariat Function:	Merit	Up to 45 years
3					
SUBMISSION OF APPLICATIONS					
<ul style="list-style-type: none"> • Applications along with attested copies of all relevant documents/testimonials concerning age, qualifications experience and CNIC etc. alongwith 02 passport size photographs should reach to P.O. Box No.792 C/o The News, Karachi within 15 days from the date of publication of this advertisement. • Only short listed candidates will be called for test/interview. • No TA/DA will be allowed for test /interview. • The Authority reserves the right to reject any or all applications. • Relaxation in age will be considered as admissible under the rules. <p style="text-align: right;">(MUHAMMAD SAQIB) SECRETARY</p>					

14. We have noticed that the post advertised in the Newspapers (Daily), required Master's degree in Environmental Sciences/M.Sc. in Maritime Safety Administrator, whereas the Petitioner possess degree in the discipline of M.Sc. in Maritime Affairs, as such, bare qualification in aforesaid discipline was not required for the post applied for. Therefore, apparently, in absence of the requisite qualification and experience in the related field, the Petitioner is not eligible for the post of Director (Environment and Safety) BPS-20 in PQA on contract or on regular basis. Additionally, as elucidated herein above, the Petitioner was appointed in complete disregard of the Regulations No. 4 as discussed supra, having no requisite experience of 14 years in the relevant field. Therefore, he

cannot make a case for reinstatement in service under the law. The relevant portion of the Termination Order is reproduced as under:-

**NO.1(9)/2008-P&S-II
GOVERNMENT OF PAKISTAN
MINISTRY OF PORTS & SHIPPING

Islamabad, the 18th June, 2014

To: The Chairman
Port Qasim Authority
Karachi

Subject: **HONOURABLE SUPREME COURT ORDER DATD 19-12-2013.**

This order will dispose of the case of Mr. Adil Rashid, Director (E&S).

In the Constitution Petition No.4 of 2013 and others filed by Mr. Abdul Jabbar Memon Vs. PQA and others, the Honorable Supreme Court of Pakistan passed an order on 19-12-2013, the relevant portion is reproduced here:-

Order Dated 19-12-2013

Learned counsel for the Port Qasim Authority submits that he has instructions to make a statement before this court that the Competent Authority shall examine the legality and vires of all the appointments and promotions made during the last five years within the Port Qasim Authority and shall pass appropriate orders within four weeks from today. Petitioner Mr. Abdul Jabbar Memon is satisfied with the statement made. That being so, all these cases are disposed of accordingly. However, it would be open for the petitioner to have the main case resurrected, if there is a live issue.

2. Two other relevant extracts from the orders of the Honorable Supreme Court of Pakistan are reproduced here:-

- i. Civil Petition No.735-K of 2012 & CMA No.486-K of 2012, Abdul Jabbar Memon Vs. Federation of Pakistan and others dated 31-01-2011.

“In view of the sensitivity and importance of the matter, this petition filed under Article 185(3) of Islamic Republic of Pakistan, 1973 is converted into petition under Article 184(3) of the Constitution to examine as to how and under what circumstances more than 400 employees in Grade-I to Grade-20 have been appointed without observing any codal formalities and by ignoring the merit. In such view of the matter, it is hereby directed that no more appointment/promotion/transfer irrespective of the fact whether the employees are on contract basis or otherwise, shall be made by the Chairman/Board of Governor of the Port Qasim Authority till furnishing of a comprehensive report as mentioned hereinabove.

- ii. Civil Petition No. 7/2011 out of CP No.735-K-2010 and CMA 486-K/2010 dated 14-02-2011, Abdul Jabbar Memon versus Federation of Pakistan and others.

“It has been observed that no rule/regulation has been framed which is sine qua non before making such appointment as provided under Section 50 and 51 of Port Qasim Authority Act 1973. It is quite amazing that no rule/regulation qua appointments could have been framed so far but he appointments, numerous in numbers, have been made by exercising the discretion which was never conferred upon either on Chairman or the Minister concerned. Be as it may, it is further directed that the mandatory requirements as envisaged under Section 50 and 51 or the PQA Act, 1973, be completed within a period of 30 days. We have made it clear in order dated 31-01-2011 that no more appointment/promotion/transfer irrespective of the fact whether the employees are on contract basis or otherwise shall be made by the Chairman/Board of Governors of the PQA till further order. The Chairman PQA may make appointments strictly on merits, which are necessary and for running day to day affairs of the PQA, subject to the information of this Court”

3. The post of Director (Environment & Safety BS-20) was advertised in the local /national newspapers on 16-05-2012. In this advertisement it was mentioned that the required qualification is:

“Master in Environmental Sciences/M.Sc. in Maritime Safety Administrator/Environment of Master Mariner (FG)/Chief Engineer Class-I

Certificate. 14 years' experience and at least 04 years' experience in related field".

Mr. Adil Rashid, was appointed against this post.

4. Mr. Adil Rashid, was given notice vide letter No.1(9)/2008-P&S-I dated 16th April, 2014 that:-
 - i. "Your recruitment was carried out after the order of Honorable Supreme Court (as mentioned above para 2-(i) and at the same time there is nothing on record to show that the Honorable Supreme Court was informed about it. You were offered the appointment vide Letter No.PQA/HRM/82/2012 dated 18-07-2012 and you joined duty on the same date."
 - ii. The offer of appointment contains a Clause that your appointment will be on probation for a period of 01 years extendable by order for further period not exceeding on year provided that if no order has been made by the day following the expiry of the extended period, the appointment shall be deemed to have been regularized. There is nothing on the file that shows that your probation period was terminated. As such it is considered that you are still under the extended period of probation. During this period your appointment is liable for termination at 30 days' notice or pay in lieu thereof at any time without assigning any reason thereof.
 - iii. You are hereby called to explain that:-
 - a) You initial recruitment being against the directives of the Honorable Supreme Court (para-22(i) as explained above and you are still being in the probation period , why you should not be terminated forthwith?
 - b) Your initial recruitment being illegal and in clear violation of law/rules, you are not entitled for 30 days advance notice or salary in lieu as per original offer letter, and why you are not terminated forthwith without 30 days' notice or salary thereof?

5. Through another notice given vide letter No.1(9)/2008-P&S-II dated 14 May, 2014 he was informed that:-

"In pursuance of the directives of the apex court vide order dated 19-12-2013, the competent authority has examined your service record and credentials in order to examine the illegality of vires of your appointment as Director (Environment & Safety BPS-20, in PQA, whereupon following irregularities / illegalities were observed:

"That at the time of appointment you did no fulfill the required experience for the post of Director (Environment & Safety BPS-20 as per the advertisement.

Without going into further details or additional grounds, your appointment as Director (Environment & Safety) BPS-20, appears to be illegal and in total violation of law/rules.

6. He submitted written response (Annexure I & II) and also explained his position in the personal hearing given to him today i.e. 18th June, 2014 in my office at Islamabad.

7. From the perusal of record, his written response and personal explanation, it is clear that he did his M.Sc. (Maritime Affairs) in 2009; even if it is agreed that this degree and University is acceptable to HEC in Pakistan; whereas he was appointed and offer issued on 18th July, 2012. His C.V. (copy enclosed) submitted to PQA shows his postings from September 2010-till date, as Director/Senior Research Associate / Vocational Instructor for MBA (Maritime)

and

From May, 2008 till September 2010, no posting. Thus to the best of imagination, he had no relevant post qualification experience at all.

8. Moreover, his probation was not terminated, so his period of probation will go upto 17th July, 2014.

9. In light of the aforesaid discussion, Mr. Adil Rashid's appointment is totally illegal and in utter violation of merit. His services are terminated forthwith.

10. All the emoluments (salary, allowances and other financial benefits) that he received from PQA are to be recovered from him; and it would be deemed that he was neither appointed nor he joined PQA. This order will not place any bar on the PQA/Government to initiate any other action against him permissible under law of the land.

11. Copy of this order be given to Mr. Adil Rashid duly acknowledged, and concerned officer/registrars of the Honourable Supreme Court for information please.

Sd/-
(Habibullah Khan Khattak)
Secretary (Ports & Shipping)

15. We have noticed that complete procedure for appointment of servicemen and ex-serviceman has been prescribed in the Regulations No.36 & 58 of PQA Employees Service Regulations-2011. The relevant portion of these regulations is reproduced below:-

“36. Joining PQA on Deputation/Secondment from Other Organization

Criteria/procedure and the terms and conditions of the employees joining PQA on deputation/secondment shall be regulated under the laid down procedure in the Estacode and JSI-4/85 respectively, as amended from time to time.

58. Re-employment after the age of superannuation

(1) On reemployment after retirement the employee shall be regarded as contractual employee on special conditions, who will have no claim for inter-se-seniority or any other claim due to his previous service.

2) The reemployment shall not be made in contravention of the policy and procedures issued by Federal Government from time to time.” (Emphasis Added).

16. We have noted that method of appointment for the post of Director (Environment and Safety) BPS-20 is provided under Schedule-II of PQAES-Regulations 2011 i.e. 60% by promotion and 40% by initial appointment, which is subject to approval by the Federal Government on the recommendations of PQA Board under Regulation-4, as mentioned above. We do not see any of the conditions, as discussed supra having being fulfilled in the appointment of the Petitioner against the aforesaid post.

17. It pertinent to state that the Petitioner has no vested right for reinstatement in service and his service was terminated in the light of the orders dated 31.1.2011, 14.12.2011, 26.04.2011, 02.6.2011, 18.11.2011, 09.01.2013, 07.5.2013, 04.12.2013, 19.12.2013 & 25.6.2014 of the Honourable Supreme Court in the aforesaid proceedings.

18. It is also an admitted fact that the Respondents, in compliance with the order dated 31.1.2011, had submitted a concise statement/report before the Honourable

Supreme Court and the name of the Petitioner was very much listed at Sr. No. 63 in the said report filed by the Respondents No.2 and 3. The Chairman, Port Qasim Authority submitted before the Hon'ble Supreme Court that all illegal appointments would be scrutinized and those found to be irregular would be undone. Pursuant to this statement, which was recorded in the Order dated 25.06.2014, the Port Qasim Authority (PQA) passed Board Resolution No.10/2014 dated 16.9.2014, relevant portion of which is reproduced as under:

Board Resolution No.10/2014 dated 16.09.2014

21. After necessary discussions, the Board resolved to agree with the recommendations of Administration Division and ratified the following action taken by the Chairman, PQA/Secretary (P&S)

- a. Issuance of Show cause Notices and termination orders dated 18.06.2014, in respect of following three (03) BPS-20 officers of PQA, being Competent Authority in terms of Regulation No.4 of PQA Employees Service Regulations-2011, amended 2013 read with Section-50 of PQA Act-1973.
 - i. Brig. (R) Kamran Jalil
 - ii. Lt. Cdr ® Adil Rashid
 - iii. Cdr. (R) Mansoob Ali Khan
- b. Issuance of Show Cause Notice to Mr. Muhammad Nauman Khan an officer of BPS-20, and subsequent proceedings pursuant to such show cause Notice in compliance of Supreme Court Order dated 19.12.2013, as and when interim order is vacated by the Hon'ble High Court of Sindh.

19. Even otherwise, the Petitioner's claim of his reinstatement is not sustainable in view of Regulation No.44 of PQAESR-2011, for the simple reason that Petitioner's probation was not completed in terms of his appointment letter. The record also does not reflect that the service of the Petitioner was regularized or confirmed. Therefore, the Respondent-PQA was well within its right to terminate service of the probationer before its completion. It appears from the record that the Petitioner had filed a Civil Suit bearing No. 1100 of 2014 before the learned Single Judge (O.S) of this Court, whereby he sought a declaration to the effect that the letter dated 14.5.2014 was without jurisdiction and liable to be set aside. The suit bearing No. 1100 of 2014 vide order 30.1.2015 was referred to the

Division Bench of this court and converted into a constitutional petition numbered as C. P. No. D-1360 of 2015.

20. From what has been discussed above, we are of the considered view that the Port Qasim Authority (PQA) vide Board Resolution No.10/2014 dated 16.9.2014 ratified the action of the previous management of PQA and that be discretionary powers to do so duly vested in the Respondents No.2. The Hon'ble Apex Court took cognizance of the matter about the affairs of Port Qasim Authority in respect of appointments, promotions and other ancillary appointments in *suo motu* proceedings and the Chairman Port Qasim Authority duly admitted in the proceedings that the appointments were irregular and that those persons had to be terminated. Hence in our view, the Petitioner did not have any vested right for reinstatement against the said post held by the petitioner on the contract.

21. To elaborate further on the issue of re-employment of the Petitioner in PQA after his retirement from Pakistan Navy, we have to see whether his re-employment in PQA was in accordance with law and the dicta laid down in the cases decided by the Honorable Supreme Court or otherwise?

22. In this regard, we refer to paragraph 2, No.4/85 of the JSI and Serial No.214, Part V, Chapter 2 of Volume I of the Estacode.

23. The main question for our consideration is the scope of the JSI/the Estacode and in particular whether permanent re-employment/absorption in such cases is permissible or not? The afore cited provisions of JSI/Estacode clearly stipulate that officers may be seconded for a period of up to three years and only in exceptional circumstances such period can be extended by another year. We are cognizant of the fact that the Petitioner was "re-employed on contract basis".

24. The procedure for appointment/induction of officers of armed forces in civil cadre has been prescribed in the Estacode, serial No. 231, Part V; Chapter 2 of Volume I of the Estacode is referred.

25. Admittedly, the foregoing paragraphs of Sl.231 with regard to the re-employment of the Petitioner have not been complied with. The Petitioner has also failed to show that the competent authority had accorded approval to his appointment. Therefore, the Petitioner's contention that he was properly appointed in PQA as a regular employee could not be established.

26. Adverting to the main ground taken by the petitioner that PQA Board was competent to make appointment in PBS-20 without approval of the Federal Government. We, with respect do not agree with the aforesaid assertion, for the simple reason that, basically the appointment of the petitioner in BPS-20 in PQA was after his retirement from Pakistan Navy, and this was his reemployment in PQA, that's why section 58(2) of PQAES Regulation-2011 was attracted, which provides that the reemployment in PQA shall not be made in contravention of the policy and procedures issued by Federal Government from time to time.

27. The second contention of the petitioner that the appointment authority of the petitioner in BPS-20 was PQA Board, on the recommendation of Selection Board and not Federal Government, this assertion is also misconceived, in view of Section 4(a) of PQAES Regulation-2011, which explicitly provides that appointments in BPS-20 shall be made, subject to approval of Federal Government, prima-facie, the amendment brought in Section 4 of PESR-2011 on 30.05.2013 has no retrospective effect, on the premise that the Petitioner was appointed in the month of July 2012. In our view, the Port Qasim Authority Employees Service Regulations, 2011 as amended up-to-date, which are statutory Rules of Service and the same, were framed by the Board of Directors of Port Qasim Authority with the prior approval of the Federal Government, pursuant to Section 51 of the Port Qasim Authority Act No XLIII of 1973. Prima-facie there was no approval of the Federal Government in reemployment of the petitioner on the aforesaid post in PQA.

28. Third contention of the petitioner that Respondent No. 3 was not competent to issue such orders assailed by the petitioner. This logic of the petitioner is also against the law, for the simple reason that, he just forwarded the direction of the competent authority as depicted in the impugned letters.in our view when the

basic appointment of the petitioner was against the law, the justification put forwarded by the petitioner is not sustainable under the law.

29. Furthermore, the case law relied upon by the learned Counsel for the Petitioner is distinguishable from the facts and circumstances of the present case.

30. The impugned order issued on the directions of the Honorable Supreme Court is lawful as it was correctly concluded by the PQA that the Petitioner was appointed in PQA in violation of the Judgment of the Honorable Supreme Court and the law. We are thus in complete agreement with the impugned order issued by the PQA/the Respondent No. 2, whereby service of the Petitioner was terminated. Consequently, this petition is dismissed along with the pending Application[s] with no order as to cost.

JUDGE

JUDGE

Nadir/*