

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -5776 of 2018

Dr. Imran Ali Hashmi

Versus

The University of Karachi and others

Constitutional Petition No. D -5777 of 2018

Dr. Shaista Parveen

Versus

The University of Karachi and others

Constitutional Petition No. D -3001 of 2019

Dr. Zahid Hussain and another

Versus

The University of Karachi and others

Dates of hearings : 22.02.2021 and 01.03.2021

Date of hearing : 10.03.2021.

Mr. Tariq Manzoor, advocate for the petitioner in C.P No.D-5776/2018.

Mr. Nehal Hashmi, advocate for the petitioner in C.P No.D-5777/2018.

M/s. Shoaib Mohiuddin Ashraf and Ameer-Uddin advocates for respondents No.1, 3 & 4 in C.P No.D-5776/2018 & 5777/2018 and respondent No. 1 to 3 in C.P No.D-3001/2019.

Syed Mehmood Alam Rizvi along with Jazib Aftab advocates for the respondent No.6 to 9 and 11 and 12 in C.P No.D-5776/2019.

Mr. Asif Mukhtar, Director Legal Karachi University.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through the instant Petitions, the Petitioners in C.P No.D-5776/2018 and C.P No.D-5777/2018 have asked for issuance of Writ of quo-warranto and/or mandamus under Article 199 of the Constitution against the private Respondents by calling in question their recommendation for the posts of Associate Professor in BPS-20 and the Professor in BPS-21, Department of Chemistry, University of Karachi, on the ground that they are not qualified and entitled to be appointed and subsequently hold the public office as an Associate Professor in BPS-20 and the post of the Professor in BPS-21, hence their appointments on the aforesaid posts violate the dicta laid down by the Honorable Supreme Court of Pakistan in various pronouncements. Petitioners have submitted that the private Respondents do not meet the criteria to hold

the public office either as an Associate Professor in BPS-20 or as Professor in BPS-21 in respondent-University of Karachi, having no qualification and experience as required under the advertisement dated 26.12.2014 and subsequent addendum dated 30.01.2015 thus are not qualified to hold both the offices as discussed supra, which is without lawful authority. Petitioners have submitted that the private Respondents do not have teaching/research experience to hold the aforesaid posts. Thus, impugned the meeting of Selection Board dated 28.06.2018 and subsequent steps, issued by the Respondent University as illegal, abinitio-void, and of no legal effect.

2. Mr. Shoaib Mohiuddin Ashraf, learned counsel representing the private respondents contended that the instant Petitions are not maintainable in law; that the issues raised by the learned counsel for the Petitioners involve factual controversy, which requires evidence; therefore, Constitutional Jurisdiction of this Court cannot be invoked. He invited the attention of this Court's order dated 20.08.2018, whereby the petitioner did not press the aforesaid petition against respondents 2 and 5 to 16; and, the same was dismissed accordingly as not pressed. He emphasized that writ of mandamus is not available to them against the decision of the Selection Board. He stressed the ineligibility and the suitability of the petitioners for the posts applied for. In support of these contentions, he relied upon the cases of Dr. MIR ALAM JAN VS Dr. MUHAMMAD SHAHZAD, 2008 SCMR 960, ARSHAD ALI TABASSUM VS The REGISTRAR, LAHORE HIGH COURT, LAHORE, 2015 SCMR 112, ASIF HASSAN VS SABIR HUSSAIN, 2019 SCMR 1720 and an unreported judgment passed in CP No.D-5616/ 2014, Dr. AKHTAR HASSAN KHAN VS FEDERATION OF PAKISTAN, 2012 SCMR 455 and SAID ZAMAN KHAN VS FEDERATION OF PAKISTAN through Secretary Ministry of Defence, 2017 SCMR 1249.

3. Per learned counsel for respondent-university since the petitioners in C.P. Nos. D-5776 of 2018 and 5777 of 2018 did not press the petitions against respondents 2 and 5 to 16, as such the writ of quo-warranto became redundant and the only matter that remains to be decided is to the extent of the writ of mandamus i.e. non-selection of petitioners against the subject posts. Learned counsel referred to the orders dated 24.06.2019 and 23.09.2020 whereby review application i.e. CMA No.23463/2019 was not pressed, which amount to the acceptance of the original order dated 24.09.2019; that the writ of mandamus is not maintainable while the writ of quo-warranto has already been dismissed vide order dated 20.08.2018. Learned counsel has relied upon

the cases of Jahanzaib Malik V/s Baluchistan Public Procurement Regulatory Authority through Chairman Board of Directors and others, (2018 PLC (C.S) 718). He further relied upon the statement dated 01.03.2021 filed on behalf of respondents 6-9 and 11-12 and argued that respondents are/were eligible for the post of Professor (BS-21) (organic). He lastly prayed for dismissal of the captioned petitions.

4. The learned counsel for the Petitioners, in exercising of their right of rebuttal has argued that favoritism / nepotism is quite apparent by selecting respondents 6, 7, 8 and 9 despite none of these respondents fulfill the criteria or eligibility for the subject posts as they were lacking 15 Research Publications as mentioned in the Advertisement; that only 12 publications out of 18 are recognized by HEC or BASR University of Karachi, whereas Research Publication listed at Serial nos. 12, 13, 14, 15, 16 and 18 are not recognized by HEC or BASR University of Karachi and are based on forged misstatement, which makes respondent No.6 ineligible for the post of Professor and also liable for serious punishment under University of Karachi Code; that these Publications also do not have impact factor, which clearly shows these Publications were never published; that respondent No.7 did not fulfill the criteria of 15 Research Publications in journals recognized by the HEC or BASR University of Karachi; that respondent No.7 only recognized Publications in Journals are 9, whereas Research Publication 2 claimed to be accepted by the respondent-university along with her application is not published in any journal recognized by the HEC or BASR University of Karachi approved, the Research Publication was not accepted before the cutoff date which was deadline to submit the application for the post of the Professor (BPS-21), Research Publications 7, 8, 11 and 14 are not published in HEC/BASR approved; that the respondent No.7 is not fulfilling the 15 years Teaching / Research Experience in an HEC recognized University or a Post-Graduate Institution or a Professional Experience in a National or International Organization. Therefore, 15 years' experience provided by respondent No.7 in her submitted application for the post of Professor (BPS-21) is based on misstatement and lie; that the Malpractices committed by the respondent-university in selecting/recommending ineligible respondents 6 and 7 are produced in a table chart as under:

Summarized Malpractices

Respondent No.6	Respondent No.7
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<p>1) 12 publications out of 18 are recognized by HEC or BASR University of Karachi. Whereas, Research Publication 12,13,14,15,16 & 18 are not recognized and are considered by the respondent No.5 on misstatement. Therefore, not fulfilling the eligibility criteria for the post of Professor. Furthermore, these publications and don't have an Impact factor, which shows that these Publications were never published and recognized.</p>	<p>2) 9 publications out of 15 are recognized by HEC or BASR University of Karachi. Whereas Publication No.2 in her Application is falsely claimed as accepted in the Journal of Basic and Applied Sciences in 2015 as which is not available on the website of the journal so far. Similarly, Publication No.4 in her Application is also falsely claimed as accepted although it was accepted in August 2015, 4 months 11 days after the deadline of the application. Whereas, Publications 7,8,11, and 14 are not published in HEC/BASR approved journals.</p> <p>3) She falsely claimed to work as a Research and Development Officer at 'Exide Battery' which clearly shows the vague list of Experiences and therefore not fulfilling the eligibility experience criteria for the Post of Professor.</p> <p>4) Duration of Ph.D. is considered equivalent to four years irrespective of time spent, date of enrollment to date of degree awarded not mentioned purposely in her Application.</p>
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That respondent No.8 was also recommended for the post of Associate Professor (BS-20); that he is short of experience for the post of Associate Professor, having teaching/research experience of 8 years and 11 months, whereas the post of Associate Professor requires the experience of 10 years; that respondent No.8 only has seven Published Publications in Research journals, whereas giving false statement for other three Research Publication in Journals, thereby going against the compulsory requirement to have ten Research Publication in Journals in his credit; that respondent No.9 is also not fulfilling the criteria for the post of Associate Professor (BPS-20), having nine Research Publication in recognized Journals out of ten and giving a false statement in her application submitted for the post of Associate Professor

(BPS-20). The Malpractices committed by the respondents in selecting/recommending ineligible respondents 8 and 9 are produced in a table chart as under:

Summarized Malpractices

Respondent No.8	Respondent No.9
<p>The requirement for Associate Professor is 10 accepted Published Research Journals, whereas, respondent No.8 only has 7 accepted publications. It is pertinent to mention Publication No.8 was not even submitted at/before the deadline of Application and Publication No.10 was claimed to be accepted in J.of Chem. Soc of Pakistan but published in sensor letters.</p> <p>Respondent No.8 claimed experience of working at school of pharmacy at University of Karachi but during his time he was working as a research scholar of HEJ doing his Ph.D. and withdrawing stipend. Thereby, respondent No.8 is short of 10 years of experience and not eligible for the post of Professor.</p>	<p>9 out of 10 research Publications, not fulfilling the eligibility criteria for the post of Associate Professor.</p> <p>Publication No.4 & 5 in the application not fulfilling the criteria mentioned in the advertisement.</p>

On merits they have pleaded that the respondents have failed to follow due process by Selecting suitable candidates for the post of Professor (BPS-21) and Associate Professor (BPS-20); that the respondent-University has exercised its powers illegally, malafidely with malicious intent to sabotage legal rights of the Petitioners in C.P. Nos. D-5776/2018 and 5777/2018 by selecting their blue-eyed individuals i.e. private respondents in both the aforesaid petitions, who even do not fulfill eligibility criteria for the respective post; that respondents have violated Section 7(1) of the First Statute, the University of Karachi Code by not considering the eligibility of Professors and Associate Professors in terms of published publications and experience as provided in advertisement dated 26th December, 2014; that the petitioner's competency and eligibility can be supervised through various grants awarded to him by the

University of Karachi. Furthermore, the petitioners have also participated in various workshops and are also HEC approved supervisors for Ph.D. level students funded under various HEC in-Country Scholarship Programs. Therefore, respondent-University's conduct and attitude towards the petitioners is malafide and with ulterior motives, going to every extent to degrade and sabotage the career of the petitioners; that the respondents have violated the legal rights of the petitioners in the process of recruitment and selection process thereby intentionally denying their lawful rights based on personal grudge whereby despite being eligible under the advertisement they were not recommended for the post of Professor (BPS-21). That the petitioners' seniority is being jeopardized as this process of selection took 29 months, thereby illegality committed by respondent-University will affect petitioners professional career and will also result in monetary loss which will include pension and other service-related benefits; that it is very obvious that the University of Karachi has shown their malafide intentions by violating the rules, regulations, practices, and norms in the process of selection, by not recommending the petitioners for the post of the Professor (BS-21). That respondent-University has committed illegality through final Syndicate meeting dated 11.08.2018 whereby confirming the illegal minutes dated 28.06.2018 of respondent No.5 (the Selection Board), which will appoint ineligible candidates for the post of Professor and Associate Professor. Furthermore, respondent No.5 is chaired by respondent No.3 and the same is also the Chairman of respondent No.10, which suffocates the rules of separation of powers and natural justice and further clarifies and manifests illegality to be concurred. They prayed for allowing C.P Nos. D-5776 / 2018 and D-5777 / 2018 and prayed for dismissal of petition **No. D-3001 of 2019**.

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

6. First and foremost, advertng to the question of maintainability of the instant petitions, since the Offices of an Associate Professor and Professor of the Respondent-University are Public Offices and for that reason, they are amenable to the writ jurisdiction of this Court under Article 199 of the Constitution. On the aforesaid proposition, we seek guidance from the decision rendered by the Honorable Supreme Court of Pakistan in the case of Salahuddin and 2 others V/s Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others (PLD 1975 SC 244). It is well-settled law that the person invoking the

jurisdiction under Article 199 of the Constitution of Pakistan is not required to fulfill the stringent conditions required for bringing himself/herself within the meaning of an aggrieved person. But, any person can move to a Court and challenge the usurpation or unauthorized occupation of a Public Office by an incumbent of that office and he/she is not required to undergo the stringent criteria to establish his/her locus-standi. To strengthen our view, reliance is further placed upon the cases of Muhammad Rafi & other V/s Federation of Pakistan & others (2016 SCMR 2146) and Pakistan Defence Housing Authority & others V/s Lt. Col. Syed Jawed Ahmed (2013 SCMR 1707) that an aggrieved person can invoke the constitutional jurisdiction of this court against the public authority if the act of the public authority is violative of service regulations even if they are non-statutory. Besides that, the Respondent-University is a Public sector university; as such writ petition either under the writ of quowarranto and/or mandamus is maintainable. We have also noticed that through the instant petitions, both the petitioners are seeking appointment for the post of Professor in BPS-21 as such the same does not fall within the ambit of terms and conditions of service of respondent-University. Besides that respondent-university during the pendency of *lis* finalized the names of candidates despite restraining order dated 09.08.2018 passed by this Court. So far as eligibility of the petitioners for the post of Professor and ineligibility of the private respondents for the subject posts is concerned, the same can be looked into if we thrash out the record of the case, therefore, on both counts as discussed supra, these petitions could be heard and decided on merit.

7. We have gone through the contents of the Public Notice / Advertisement, published on 28.12.2014 and addendum issued on 30.01.2015, which *prima-facie* show that respondent-University invited applications on the prescribed application form for the posts of Associate Professor in B-20, and Professor in BPS-21 on the following terms and conditions:

“Applications are invited for the following posts in the respective Departments/Institutes of the University of Karachi as per Terms and Conditions are given below:

PROFESSOR (B-21)

Bengali, Chemistry (Inorganic & Organic), Environmental Studies, General History, Islamic History, Microbiology, Persian, Pharmaceutical, Chemistry, Philosophy, Physics, Public Administration, Petroleum Technology, Sindhi, Social Work, Space & Planetary Astrophysics, Urdu Zoology (Limnology & Fresh Water Fishery Biology & Marine).

REQUIREMENTS**PROFESSOR**

- i) Ph.D. from an HEC recognized institution in the relevant field.
- ii) 15 Years teaching/Research Exp. in HEC recognized University or a Post-Graduate Institution or Professional Experience in a National or International Organization.
- iii) The Applicant must have 15 Research Publications in Journals recognized by the HEC or BASR University of Karachi.”

ADDENDUM

In continuation with our earlier advertisement for teaching positions, published in this Newspaper on 28th December 2014, following Positions/Departments should be considered as added in the same advertisement.

PROFESSOR

Chemistry (Physical, Analytical), Zoology (Wild Life), Geography.

IMPORTANT NOTES

For eligibility Criteria and other Terms and Conditions for different Posts, please see the advertisement of 28th December 2014 in this Newspaper.

8. We have noticed that on 28.12.2014, respondent-University invited applications for the posts of Associate professor (BPS-20) and Professor (BS-21), and through subsequent addendum dated 30.01.2015, two sections of Chemistry (Analytical and Physical) were added in the utter surprise of the contesting candidates. Per petitioners, in pursuance thereof, they applied for the subject post, however, they were nonsuited by the Selection Board vide minutes of the Selection Board's meeting held on 28.06.2018 and the following candidates / private respondents were purportedly selected. The petitioners have now called in question the legality of the impugned recommendation of the following candidates by the Selection Board of the University of Karachi.

S.#	FACULTY MEMBER	DESIGNATION/ SCALE	DEPARTMENT/ SECTION
1	Dr. Erum Zahir	Professor (BPS-21)	Chemistry (Physical)
2	Dr. Shaikh Mohiuddin,	Professor (BPS-21)	Chemistry (Analytical)

3	Dr. Masooda Qadri	Professor (BPS-21)	Chemistry (Physical)
4	Dr. Uzma Ashiq	Professor (BPS-21)	Chemistry (Inorganic)
5	Dr. Zahid Hussain	Associate Professor (BPS-20)	Chemistry (Organic)
6	Dr. Raheela Naz	Associate Professor (BPS-20)	Chemistry (Inorganic)
7	Dr. Rifat Ara Jamal	Associate Professor (BPS-20)	Chemistry (Inorganic)
8	Dr. Syed Tufail Hussain Shah	Professor (BPS-21)	Chemistry (Organic)
9	Dr. Munwar Rasheed	Professor (BPS-21)	Chemistry (Organic)
10	Dr. Itrar Anis	Professor (BPS-21)	Chemistry (Organic)
11	Dr. Firdous	Professor (BPS-21)	Chemistry (Organic)
12	Dr. Syed Kashif Ali	Associate Professor (BPS-20)	Chemistry (Organic)
13	Dr. Syed Tariq Ali	Associate Professor (BPS-20)	Chemistry (Organic)
14	Dr. Nawazish Ali	Associate Professor (BPS-20)	Chemistry (Organic)

9. It is a well-settled principle of law that merit includes qualification for certain posts in Statutory / Public Sector universities. The power to prescribe or modify the said criteria vests in the Selection Board of the Respondent-University according to Sections 6 & 7 of the Code of the University of Karachi. The aforesaid code vests exclusive power to make an appointment on merits under the Acts / Ordinances and Rules framed thereunder. The Competent Authority of the Respondent University is well within its right to prescribe criteria under the Code. Responsibility of fixing criteria for appointment of Associate Professor \ Professor of Public Sector University primarily falls on the Competent Authority/Syndicate/Chancellor of the respondent-University, subject to the law. It is also settled law that Courts ordinarily refrain from interfering in the policymaking domain of the Executive of the Public Sector Universities, until and unless the same offends the fundamental rights of the parties.

10. Under the law, it is the prerogative of the respondent-University to appoint a person of Public Sector University according to fitness and capability required for the post. However, in the present case, the petitioners have leveled serious allegations against the recommendation of the private respondents by the Selection Board of the respondent-university in its meeting held on 28.06.2018 and their subsequent appointments on the post of Associate Professor (BPS-20) and Professor (BPS-21) in the respondent-University.

11. In the light of facts and circumstances of the case, we hereby observe that this Court cannot determine the veracity of the documents of eligibility placed on record by the petitioners as well as by the private respondents for the subject posts as well as credentials/publications. Secondly, claims and counter-claims raised in the present proceedings are disputed questions of facts between the parties, which cannot be adjudicated upon by this Court while exercising Constitutional Jurisdiction. At the same time, we are conscious of the fact that the respondent-University convened the Selection Board Meeting after the delay of around four years in pursuance of Public Notice dated 28.12.2014 to determine the academic pre-requisites of the candidates as well as their eligibility for the subject posts. Initially, the public notice dated 28.12.2014 was issued for the appointment of Professor and Associate Professor in Chemistry (Organic and Inorganic). However, an addendum was issued vide which section of Physical and Analytical was added for the appointment of Professor and another Inorganic section was added for the appointment of Associate Professor (BPS-20). The aforesaid addition of two sections virtually changed the nature of the earlier publication dated 28.12.2014.

12. In the light of the foregoing, we hereby conclude that the period consumed in deliberation by the Selection Board with effect from 28.12.2014 till 28.6.2018 has seriously prejudiced the case of the petitioners which needs to be looked into afresh after proper scrutiny under the law. Therefore, we deem it appropriate to set aside the findings of the Selection Board dated 28.06.2018 to the extent of petitioners and private respondents. Consequently, the matter is remanded to the competent authority of respondent-University to determine afresh as to whether the candidates i.e. petitioners and private respondents were having requisite academic qualifications duly recognized under the law for the subject posts in respondent-University, at the time of the cutoff date provided in the public notice dated 26.12.2014.

13. The competent authority is further directed to immediately send the copies of the said original academic certificates/degrees/publications of the petitioners and the private respondents to the Higher Education Commission of Pakistan for verification.
14. The Higher Education Commission of Pakistan is directed to look into the academic qualification certificates/publications of the petitioners and the private respondents and after ascertaining genuineness or otherwise submit the report to the Syndicate of the respondent-University in a sealed envelope within one month.
15. Thereafter, the competent authority of respondent-university shall issue the recommendations for the subject appointments with reasoning as provided under the law within one week from the date of receipt of the report from the Higher Education Commission of Pakistan.
16. The caption petitions are disposed of in the above terms along with the pending application(s) with no order as to costs.

Let a copy of this order be transmitted to the Higher Education Commission of Pakistan and the respondent-University for compliance.

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