

# IN THE HIGH COURT OF SINDH AT KARACHI

**Before:**

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No.D-4597 of 2019**

*(Rizwan Tahir and 03 others v. Province of Sindh and 07 others)*

Mr. Asim Iqbal advocate alongwith Mr. Farmanullah Khan,  
advocate for petitioners

Mr. Moin Azhar Siddiqui, advocate assisted by Mr. Ali Ahmed  
Turabi, advocate for respondents No.2, 4, 5, 7 and 8

Mr. Ali Safdar Depar, AAG

Date of hearing: **09.05.2022**

Date of order : **13.05.2022**

## **ORDER**

**Adnan-ul-Karim Memon, J.** Through the captioned Constitution Petition, the petitioners are seeking appointment for the post of Lecturer (BPS-18) in the Mass Communication Department, University of Karachi, *inter alia*, on the ground that despite clearance of written test and interview no appointment letters are being issued to them by the respondent University. It is contended by Mr. Asim Iqbal, learned counsel for the petitioners that the petitioners had applied for the post of Lecturer (BPS-18) in the department of Mass Communication through a competitive process vide advertisement published on 26.12.2014 in the daily Dawn newspaper. He next contended that they appeared in the NTS test conducted in the year 2018; and, based on the result, they were declared successful candidates and were shortlisted for the interview. Per learned counsel, their interview was conducted by the Selection Board on 02.5.2019 and they were duly recommended for the post of Lecturer in Mass Communication Department vide minutes of the meeting of the Selection Board dated 02.05.2019. Learned counsel contended that despite the lapse of a considerable period, the respondents have not issued appointment letters to the petitioners on the plea that one Additional Secretary from the Education Department, who was a stranger, participated in the proceedings, thus the entire proceedings were annulled by the Syndicate without lawful justification. Learned counsel next contended that on the contrary, the same selection Board approved the appointments of other candidates in which the Secretary, Board, and Universities failed to participate, even the syndicate approved the minutes as such discriminatory attitude has been meted out with the petitioners. He prayed for allowing the instant petition in the light of the majority view of the Selection Board in terms of clause 6 of the University of Karachi Code. He also relied upon the cases of the Government of Punjab through Chief Secretary, Lahore, and others v. Ch.

Abdul Sattar Hans and 29 others, 2015 SCMR 915, Secretary Economic Affairs Division, Islamabad and others v. Anwarul Haq Ahmed and others, 2013 SCMR 1687, N.W.F.P Public Service Commission and others v. Muhammad Arif and others, 2011 SCMR 848, Shirin Munir and others v. Government of Punjab through Secretary Health, Lahore and another, PLD 1990 Supreme Court 295, Pakcom Limited and others v. Federation Of Pakistan and others, PLD 2011 SC 44, Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and 16 others, PLD 1993 SC 341, Munawar Hassan v. Chief Secretary, Government of Balochistan and 3 others, 2017 PLC (CS) 81, Usman Ali and 17 others v. The Secretary, Religious Affairs and Inter-Faith Harmony Department, Government of Balochistan and another, 2020 PLC (CS) 242, and Asif Ali v. Secretary Board of Revenue, Government of Sindh and 4 others, 2020 PLC (CS) 1553.

2. Mr. Moin Azhar Siddiqui, learned counsel representing the respondent university, has contended that the instant Petition is not maintainable on the premise that respondent-university has no statutory rules of service; besides that the issues raised by the learned counsel for the Petitioners involve factual controversy, which requires evidence; therefore, the Constitution Jurisdiction of this Court cannot be invoked. He emphasized that a writ of mandamus is not available to the petitioners against the decision of the Chairman of the Selection Board and Syndicate of the respondent university. He stressed the invalidity of the proceedings of the Selection Board due to the participation of strangers in the Board proceedings; therefore such illegality cannot be condoned by this Court under Article 199 of the Constitution. He further contended that the Selection Board interviewed 24 candidates, however, during the interview of the 06<sup>th</sup> candidate, Additional Secretary Education Department, participated in the proceedings on behalf of Secretary Boards and Universities, thus the recommendations for appointment of the petitioners made by the Selection Board were not approved by the Chairman/Vice-Chancellor of the respondent-university, and he refused to sign the minutes, vide his separate note dated 03.05.2019 with the further assertion that the inclusion of the representative of the Secretary Boards and Universities, instead of Secretary himself, was against the Sindh University Amended Ordinance 2018. He further submitted that the minutes of the Board was referred to the Syndicate, and the syndicate in its meeting held on 29.6.2019 annulled the recommendations of the Selection Board on the aforesaid analogy. Learned counsel relied upon section 6 of the First Statute and amendment brought in the aforesaid clause in the year 2018 and submitted that since the Secretary himself had not participated in the Selection process, therefore, the recommendations had been declared a nullity, and fresh direction was issued for the composition of the Selection Board under the law, thus no illegality has been committed. Learned counsel further pointed out that the Hon'ble Supreme Court of Pakistan has already held in its various pronouncements

that inference in the internal governance and affairs of the educational institutions are not called for by this Court under Article 199 of the Constitution on the premise that university authorities possess technical expertise and experience of the educational institutions. In support of his contentions, he relied upon the cases of Amir Jamil v. University of Karachi through Registrar and 2 others, **2018 PLC (S) 542**, Muhammad Zahid Maqsood v. University of Karachi through Vice-Chancellor and 4 others, **2013 MLD 9**, Selling of National Assets Including PIA at a throwaway price, **2019 SCMR 1952**, Capt. (Retd.) Muhammad Naseem Hijazi v. Province of Punjab through Secretary, Housing and Physical Planning and 2 others, **2000 SCMR 1720**, Khyber Medical University and others v. Aimal Khan and others, **PLD 2022 Supreme Court 92**, Chief Executive, Multan Electric Power Company Ltd, Khanewal Road, Multan v. Muhammad Ilyas and others, **2021 SCMR 775**, and unreported **order dated 26.06.2018** passed in **C.P No.663-K of 2017** by the Hon'ble Supreme Court of Pakistan. He lastly prayed that since the administrative and policy matters of the universities are under attack, therefore, until and unless there is any violation of any fundamental right or any law, the indulgence of this Court is not required.

3. We have considered the respective submissions made hereinabove, and the case law referred to by both sides.

4. To address the question of maintainability of the instant petition in the light of the ratio of the judgment of the Honorable Supreme Court in the case of Khyber Medical University and others v. Aimal Khan and others, **PLD 2022 Supreme Court 92**. There is no cavil to the proposition as set forth by the Honorable Supreme Court 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. Primarily, everyone is to be treated under the law under the constitutional command of Article 4 of the Constitution, and under Article 199 (1) (a) (ii) of the Constitution, the High Court can declare such act or proceeding of a public functionary to have no legal effect, which has been done or taken without lawful authority. In principle, the issue of the initial appointment, absorption, repatriation, up-gradation, regularization of service, re-employment, and deputation could be looked into by this Court under Article 199 of the Constitution as such the issue of terms and conditions of service of the petitioners is not involved in the present matter to attract the bar of jurisdiction about non-statutory rules of service of the respondent-university.

5. Much has been said about the crucial issue of statutory and non-statutory rules of service of the organizations/institutions/public sector universities/authorities and Government-owned and controlled entities, established under the Act of Parliament. In our understanding, briefly, the term, statutory refers to organizations and bodies that are defined by a formal law or a statute and these bodies derive

their power from a 'Law' or 'Statute', which is called a statutory body or statutory authority. Statutory regulation is a law passed by a legislature. A non-statutory regulation is not based on legislative action but instead is derived from the interpretation of the federal or provincial law. In this context, the Parliament is the law-making authority. It passes the Acts and empowers the Government under the relevant Act to make Rules for carrying on the business. A statute is the formal "expression" in writing of the will of the legislative organ in a State. A 'Statute' is a declaration of the law, as it exists or as shall be from the time at which such statute is, to take effect. It is usually called an Act of the Legislature. It expresses the collective will of that body. A Statute is the highest constitutional formulation of the law after the fullest deliberation expresses its final will. "Statutory law" is defined as the will of the nation, expressed by the Legislature, and expounded by the Courts of Justice. If the Parliament is not in session then the laws are enforced through Ordinances promulgated by the President or Governor expressing as the case may be in view of the exigencies mentioned therein. So, the Act and the Ordinance would be called the "Statutory Law". The Rules framed under the powers conferred by an Act are an integral part of the Act and these Rules are called Statutory Rules and are held to be part of the parent Act. It can do anything if within its scope. The Rules or the Bye-Laws made under the Statutes or Act cannot override the provisions of other Statutes. Neither the Rules control the construction to be placed on the provisions of the Act nor can they enlarge the meaning of the section. The Rules are framed under the Act in aid to the construction of ambiguous Statutes. The Rules under the Act shall be made by the Authority, empowered under the Act to frame the Rules or Bye-Laws. No other authority who is not empowered under the Act makes the Rules. A Rule Making Body also cannot frame the Rules in conflict with or derogating from the substantive provisions of law or Statute under which the Rules are framed. On the aforesaid proposition, we are guided by the decisions of the Honorable Supreme Court in the cases of Salahuddin and 2 others v. Frontier Sugar Mills, **PLD 1975 SC 244**, Muhammad Yousuf Shah v. PIA, **PLD 1981 SC 224**, Principal Cadet College Kohat v. Muhammad Shoaib Qureshi, **PLD 1984 SC 170**, Anwar Hussain v. Agricultural Development Bank of Pakistan, **PLD 1984 SC 194**, Raziuddin v. Chairman Pakistan International Airlines Corporation and 2 others, **PLD 1992 SC 531**, Muhammad Tariq Badr and another. v. National Bank of Pakistan and others, **2013 SCMR 314**, Zarai Taraqati Bank Limited v. Said Rehman and others, **2013 SCMR 642**, Muhammad Ashraf Tiwana v. Pakistan and others, **2013 SCMR 1159**; Abdul Wahab and others v. HBL and others, **2013 SCMR 1383**, Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed, **2013 SCMR 1707**, Syed Nazir Gillani v. Pakistan Red Crescent Society and another, **2014 SCMR 982**, Warid Telecom (Pvt.) Limited and 4 others v. Pakistan Telecommunication Authority through Chairman, **2015 SCMR 338**, Shafique Ahmed Khan and others. v. NESCOM through Chairman, Islamabad, and others, **PLD 2016 SC 377** and Muhammad Zaman and others. v. Government of

Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad, and others, 2017 SCMR 571. In principle, we are under command of Article 189 of the Constitution to follow the "ratio decidendi" of the judgments rendered by the Honorable Supreme Court in the cases discussed supra.

6. On reviewing the aforesaid judgments pronounced by the Hon'ble Supreme Court of Pakistan, it is obvious that Karachi University is a statutory body, having no statutory rules of service, but at the same time we cannot lose the sight of the effect that Karachi University is also performing the functions, in line with the Provincial Government's command, and exercising public power by creating public employment. Karachi University is, therefore "person" within the meaning of Article 199(1) (a) (ii) read with Article 199(5) of the Constitution. We are also cognizant of the fact that the invocation of the writ of Mandamus under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been restricted to enforce the terms and conditions of non-statutory rules of service of government-owned and controlled organizations. However, the case of petitioners does not attract the enforcement of rules of service of the respondent university. Thus this petition can be heard and decided on merits.

7. Having dealt with the issue of maintainability, the questions involved in the present petition for our determination are as follows:-

- i) Whether the petitioners qualified for the post of Lecturer (BPS-18) in the Mass Communication Department, University of Karachi ? ;
- ii) Whether the recommendation of the Selection Board vide minutes of meetings held on 02.5.2019 was/is valid under the law ? ; and
- iii) Whether the decision of the syndicate vide minutes of the meeting held on 29.6.2019 was/is valid under the law ?

8. In the present case, the petitioners had applied for the post of Lecturer (BPS-18) in the department of Mass Communication through a competitive process vides an advertisement published on 26.12.2017 in the daily Dawn newspaper. They appeared in the NTS test conducted in the year 2018 and based on the result they qualified and were shortlisted for an interview, their interview was conducted by the Selection Board on 02.5.2019 and they were duly recommended for the post of Lecturer in the Mass Communication Department vide minutes of the meeting of the Selection Board dated 02.05.2019. However, the respondents have not issued appointment letters to the petitioners on the analogy that the quorum of the Selection Board of the respondent university was not complete. The facts and circumstances of the instant case reveal that Selection Board was comprised of Five Members but nowhere had it been provided in law that any decision of the Board shall be taken by all of its Five Members. Contrary to the same, in the law and order passed by the Board less than its total strength had been protected by specifically providing that no action was taken or thing was done by the Board shall

be invalid or called in question only on the ground of the existence of a vacancy therein or the absence of any member from any meeting thereof.

9. According to the minutes of the Selection Board held on 02.05.2019, a representative of the Secretary Board & Universities, Asadullah Abro, Additional Secretary, Education joined the board. The Board recommended the following five candidates in the order of merit:

1. Mr. Rizwan Tahir	(44.0)	(petitioner)
2. Ms Habiba Chishti	(44.0)	(petitioner)
3. Mr M. Ibtesam Mazahir	(38.5)	(petitioner)
4. Ms Qurrat ul Ain	(37.0)	
5. Ms Sadia Baqar	(36.5)	(petitioner)

10. At this stage, learned counsel for the petitioner referred to the statement dated 27.11.2019 and submitted that the respondent University appointed five candidates as Associate Professors in pursuance of the interview conducted on 03.05.2019 in the Physics Department wherein the Additional Secretary was a part of the Committee, however, the contrary view was taken when the case of petitioners was taken up on the plea that Additional Secretary was/is not competent to sit in the interview, therefore, this is a discriminatory attitude on their part. Be that as it may, as per First Statute Section 6(1) of the University of Karachi Act, 1972, the Selection Board is comprised of the following members:

- i. Vice-Chancellor (Chairman),
  - ii. The Chairman or a member of the Sindh Public Service Commission to be nominated by the Chairman,
  - iii. the Dean of the Faculty concerned,
  - iv. the Chairman of the Teaching Department concerned; and,
  - v. one member of the Syndicate and two other men of eminence, to be appointed by the Syndicate, provided that none of the three are employees of the University;
- (2) The members mentioned in sub clause (v) of clause 1 shall hold office for two years
- (3)(a) Four members shall form the quorum for the selection of a Professor or an Associate Professor, and three members for the selection of other teachers.
- (b) in case of officers other than teachers, the selection board shall consist only of members at sub clauses (i),(ii) and (iv) of clause (1).
- (4) no member who is candidate for the post to which appointment is to be made shall take a part in the proceedings of the Board
- (5) in selecting candidates for the post of Professor and Associate Professors, the selection board shall coopt or consult three experts in the subject concerned, and in selecting candidates for other teaching posts, two experts in the subject concerned to be nominated by the Vice-Chancellor, from standing list of experts for such subject approved by the Syndicate on the recommendation of the Selection Board and revised from time to time.

11. Learned counsel for the respondent University has referred to the Sindh Universities and Institutes Laws (Amendment) Act, 2018, and submitted that the following amendment was made in section 6 of the University of Karachi Act, 1972 “(i-a) Secretary Universities and Boards”. As such the Secretary Boards and Universities was the member who was required to participate in the Selection Board meeting and none else as per the aforesaid amendment brought in the Statute, therefore, either the Selection Board is required to be constituted or fresh interview of the petitioners could be conducted by the competent Selection Board in terms of the amendment discussed supra.

12. We have noticed that for the subject posts the following members of the Selection Board attended the meeting on 02.05.2019:

- i. Prof. Dr. Muhammad Ajmal Khan (Chair)
- ii. Mr. Ghulam Shabbir Member
- iii. Mr. Khawaja Razi Haider (Member)
- iv. Prof. Dr. Nasreen Aslam Shah Dean Arts & Sciences
- v. Prof. Dr. Seemi Nahmana Chairperson, Mass Communication
- vi. Prof. Dr. Shah Jahan (Expert) Director, Media House, Islamabad
- vii. Dr. Muhammad Shahzad (Expert) Islamia University, Bhawalpur
- viii. Asadullah Abro Additional Secretary Universities and Boards

13. It appears from the record that the respondent University has admitted in paragraph 5 that Board interviewed 24 candidates however, during the interview of 6<sup>th</sup> candidate representative of Secretary Boards and Universities joined the Board and participated in the proceedings. They further admitted that the recommendation of the Board was signed by the Members of the Selection Board on 02.05.2019, however, on next day i.e. 03.05.2019, Chairman of the Selection Board signed the note on the aforesaid analogy. Record further reflects that on 03.05.2019 the Selection Board recommended the appointment of Professor (BPS-21) and Associate Professor (BPS-20), however, the petitioners were ignored; and as per petitioners on the next day i.e. 04.05.2019 Vice-Chancellor Prof. Dr. Muhammad Ajmal Khan passed away and respondent No.4 became the acting Vice Chancellor.

14. In view of the above facts and circumstances of the case, prima facie, the petitioners cannot be held responsible for the purported mishap happened on the day when the recommendations of five candidates/petitioners were made by the Selection Board and on account of interview of 06<sup>th</sup> candidate due to participation of nominee of the Secretary Boards and Universities Government of Sindh the respondent University raised hue and cry and succeeded in nullifying the

recommendations of the majority of the members of the Selection Board through Syndicate of respondent University vide minutes of the meeting held on 29.06.2019.

15. Basically, selection process for making appointments to the important posts is aimed at the evaluation of the merits of candidates on an objective basis. This is the most important role of the Selection Board/Committee of the highest Educational Institution in the country and therefore the function of the Selection Board/Committee is to select the most eligible and suitable candidates from among the available candidates based on merits adjudged by adopting fairly laid down criteria. The object of selection, therefore, can be achieved or would fail if the Selection Board/Committee succeeds or fails to discharge this task. In the present case, the same Selection Board approved the candidature for the posts of Professor and Associate Professor vide Selection Board meeting held on 03.05.2019 and the petitioners' recommendation was ignored on technical grounds, which triggered the cause to the petitioners to approach this Court. It is also a well-established principle of law that if initial action, order, or decision is without jurisdiction being contrary to law then based on such illegal action, order, or decision, all subsequent actions, orders, and decisions together with the superstructure and obligations built upon them fall to the ground because such actions, orders, and decisions have little foundation as the void order on which they are founded.

16. It is well-settled law that appointments in public institutions have to be made strictly under applicable law, without any discrimination, and transparently and all such appointments must be based on a process that was palpably and tangibly fair, honest, and within the parameters of statutory law, rules, and regulations of the University. It is a settled principle of law that recommendations of the Selection Board are not binding upon the Syndicate. However, the Syndicate in the present case just acted upon the advice of the respondent No.4 / Acting Vice-Chancellor without any application of mind and without appreciating that the petitioners had been selected by majority members of the Selection Board. It is significant to note that if the disputed vote of the Additional Secretary was excluded / discarded, even then the petitioners stood selected by majority. Therefore, there was no justification for the Syndicate to annul the majority decision of the Selection Board.

17. In principle, this Court cannot perform the functions of a recommending / selection authority in service matters to substitute its opinion for that of the competent authority. On the issue, we are fortified with the decision of the Honorable Supreme Court in the case of Sh. Muhammad Sadiq vs. Federal Public Service Commission and others, 2013 SCMR 264, Dr. Mir Alam Jan vs. Dr. Muhammad Shahzad and others, 2008 SCMR 960, and Dr. Shamim Tariq Vs. International Islamic, University Islamabad through President and others 2020 SCMR 568.

18. In view of the foregoing, the impugned decision of the Syndicate is hereby declared to be without lawful authority and of no legal effect. The Syndicate is directed to take a fresh decision in respect of the majority decision of the Selection Board within fifteen (15) days strictly in accordance with law. The petition and applications pending therein stand disposed of in the above terms with no order as to costs.

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