

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmad Khan

C.P. No.D-2082 of 2015

[Brigadier (Retd) Kamran Jalil v. Federation of Pakistan and others]

Petitioner : Through Mr. Moin Azhar Siddiqui, Advocate
alongwith Mr. Ali Ahmed Turabi, Advocate

Federation of Pakistan : Through Mr. Muhammad Aminullah
Siddiqui, Assistant Attorney General

Respondent Nos.2 & 3 : Through Mr. Muhammad Arshad Khan
Tanoli, Advocate

Date of Hearing : 23-11-2020

Date of Judgment : 26-02-2021

JUDGMENT

Zulfiqar Ahmad Khan, J. The Petitioner, who was to retire from Pakistan Army as a Brigadier on 17.07.2013, upon seeing an advertisement in the daily Dawn of 29.09.2012 applied for the post of Director (Human Resource) BPS-20 in Port Qasim Authority (respondent No. 2). PQA upon receipt of such applications formed a selection committee, which through its letter dated 25.10.2012 issued an interview call to the Petitioner and having found him eligible, offer letter dated 10.01.2013 was issued to him for the post of Director (Human Resources) on temporary basis, liable to be terminated with a 30 days' notice. The Petitioner was also required to go through probation period of one year extendable for further period of one year, provided however if no such extension of probation order was passed, then upon the expiry of the initial period, the appointment was deemed to have been regularized. Petitioner through his joining report dated 10.01.2013 (Annexure E) reported for

duty, however since he was still in the service of Pakistan Army and was to retire after six months, immediately upon joining the duty on 11.01.2013 through office order dated 23.01.2013 thirty days extra ordinary leave without pay was granted to him. At the expiry of which period he resumed his duties notwithstanding he was still in the service of Pakistan Army.

2. In Constitutional Petition No.4 of 2013, the Hon'ble Supreme Court of Pakistan in a matter concerning legality and *vires* of all the appointments and promotions made during the last five years in Port Qasim Authority issued order dated 19.12.2013 while disposing of the said petition. Full text of the aforementioned order is reproduced as under:-

“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 with 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.”

3. Based on these orders of the Hon'ble Supreme Court action was instituted in respect of all the appointments and promotions made in the last five years within PQA. The Petitioner was also served with a notice in April 2014 (Annexure G1) wherein, while giving reference to the abovementioned order of the Hon'ble Supreme Court, it was alleged that the Petitioner at the time of appointment was not fully qualified for the subject post. Relevant portion of the said notice is reproduced hereunder:

“2. The post of Director (HRM) BS-20 was advertised in the local / national newspapers on 29-09-2012 (Annex-A). in this advertisement it was mentioned that the required qualification is:

“At least 2nd Class Master's Degree in Administrative / Social Sciences/MPA/MBA. 17 years post qualification experience in Personal Administration in a Govt./Semi Govt./Large Commercial Organization of repute”.

3. (i) According to the C.V. provided by you, Brig. Kamran Jalil, you have obtained BA Degree in 1982 from Pakistan Military Academy Kakul and BSc. (Hon) (1993- Staff

Course) from Command and Staff College Quetta (University of Balochistan).

(ii) Neither you had a Masters Degree at the time of your application nor you had 17 years post qualification experience. Strange enough you were still in service in the Pakistan Armed Forces when joined the PQA. There is no NOC or any correspondence showing that you had submitted application through proper channel. Another intriguing factor is that you were given the offer letter of appointment on 10-01-2013, reported for duty on the same date, and were given extraordinary leave for 30 days on 11-01-2013 on your request. Had you continued in the Pakistan Armed Forces, you would have retired on 17-07-2013.

Without going into further details and arguments, in the light of the above discussion, your appointment is totally illegal and clear violation of the rules.

4. The offer of appointment (Annex-B) contains a Clause that your appointment will be on probation for a period of 01 year extendable by order for further period not exceeding one 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.

5. You are hereby called to explain that;

- i) Your initial recruitment being illegal and in clear violation of law/rules and you still being in the probation period, why you should not be terminated forthwith?
- ii) 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?

6. You are further informed that Government is not barred to initiate further proceedings against you, in the service matters if more evidence is brought forth; and or take any civil/criminal proceedings that are permitted under any law of the land.”

4. In response to the said notice, the Petitioner through a letter dated 16.04.2014 submitted his detailed reply, and with regards his qualification and experience, asserted that he was fully qualified as he had passed his MBA examination in the year 2009 from PIMSAT University (notwithstanding a degree was issued in May, 2013), therefore, as far as the qualification of MBA (as required in the newspaper advertisement), the same stood satisfied, and with regards seventeen (17) years post

qualification experience in a Govt./Semi Govt./Large Commercial Organization of a repute, he stated as under:-

4. So far as the question of seventeen years required experience is concerned, it is stated that during the service of Pakistan Army, under its strict discipline and administration, I had gained more than 31 years of experience. While I applied in PQA, I was fully confident that the selection board and appointing authority, in view of my long experience in military service, will prefer me in recommending for the post. The competent authority also granted its approval being the most suitable for appointment in PQA against the administrative position. Of course all conditions for appointment against the post of Director (HRM) BPS 20, as laid down in PQA rules and same published in advertisement were before the officials responsible for short listing the candidates selected me for issuance of interview letter. All the facts were available before the members of the selection board and the appointing authority who exercised their authority and selected/appointed me. In this regard, however the selection board and competent authority will be in a better position to justify my selection and appointment against the post. I am sure that my long experience gained during the military service essentially inclined the selection board and competent authority to select and appoint me against the administrative position.

5. As I was on the verge of retirement from military service when advertisement for appointment in PQA was published in the newspaper, therefore under this situation it was next to impossible for my appointment in PQA on the basis of secondment/deputation. Of course, procedure for appointment in PQA should have been followed as indicated in para 3(ii) of your letter under reply in case of my appointment on the basis of secondment/deputation. But, my case is not different. It is stated that the military personnel on the verge of retirement/SOD are permitted to take up employment in any Govt. department. As the confusion in my retirement date and consent of my military offices for appointment in PQA are remaining to be clarified I would explain these affairs in detail in the next paragraph separately.

6. As per military rules, on completion of services limit as a Brigadier, I would have retired on 17-07-2013. But I applied for early retirement in end December 2012, as permissible under the military rules' subject to valid reason. In order to get the early retirement from military service, I mentioned the reason in clear terms, that my selection for appointment in PQA has been approved and appointment orders are under issue. Therefore on grounds of my selection and appointment in PQA, my request for early retirement from Pakistan Army was approved and retirement order No. 0313/21068/MS-18 dated 22-1-2013 was issued. Therefore, my appointment in PQA was on record and in the notice of GHQ MS Branch Rawalpindi. Moreover, before applying for appointment in PQA against the advertisement, I had also brought into the notice of my local commander, General Officer Commanding 25 Mechanized Division Malir Cantt, Major Gernal Agha Masood Akram, who permitted me with pleasure. He further advised me to apply for early retirement, as I had already become eligible for the same, as indicated above. After confirmation of my selection and approval of appointment in PQA, accordingly, I did it in due course of time which I have mentioned above therefore. Nothing has been concealed by me from my concerned military offices. I

have also informed PQA in my CV attached with my application dated 11-10-2012 about my military background and date of retirement. In this way, I have done the needful. However, if any formality is still remaining to be fulfilled, same may kindly be informed, so that ex post facto approval may be obtained from the concerned authorities.

7. On receipt of appointment letters No.PQA/HRM/M-1/97/2012 dated 10-01-2013, I immediately reported for my duty on the same day i.e. 10-01-2013 as I was eligible to do it under the rules. Had I reported for duty prior to the date of my appointment letter, this would have been an unlawful act/against the rules. But my case is not of this nature thus, there is no intriguing factor involved in my duty joining date, as it is not in breach of any rule/law.

8. My case for grant of EOL (without pay and allowances) for 30 days from 11-01-2013 is not a violation of any rule/ law. It is stated that I was extremely in need of leave. Therefore I applied for grant of EOL. Although, there is a provision of availing LFP (leave with full pay) subject to adjustment of future earning of LFP but I preferred EOL. As per leave rules grant of EOL for a maximum period of two years is at the discretion of the head of my office. Accordingly, under the rules, the competent authority sanctioned my EOL for a period of 30 days with effect from 11-01-2013 to enable me to expedite personal affairs. There was no breach of rules in applying for the same and acceptance of my request by the competent authority.

9. I would like to mention here that I have not drawn any salary from PQA upto 31-01-2013 and my pay as Director (HRM) BPS 20 was fixed w.e.f 01-02-2013 in terms of Govt. of Pakistan Cabinet Secretariat establishment divisions OM No.10/52/95-R.2(pt) dated 21-08-2011 with concurrence of Finance and Internal Audit Departments of PQA. Accordingly same notified under the office order number PQA/HRM/M-1/110/13 dated 17-07-2013.

10. I joined my duties in PQA on 10-01-2013 and have satisfactorily completed the probation period of one year on 09-01-2014 and prior to the ending date no letters/memo conveying further extension in the probation period was served to me. Under this situation as per para-1[vii] of my appointment letter No.PQA/HRM/M-1/97/2012 dated 10-01-2013 my appointment against the post of Director (HRM) BPS 20 shall be deemed to have been regularized from 10-01-2014. Merely by reason that there is nothing on the file about the termination of my probation period, it is being considered that my probation period has automatically been extended for a further indefinite period, does not make any sense. It is completely an invalid ground that I am still under the probation period. It is regretfully stated that on this ground/context it will be absolutely unlawful to take up my case for termination of service under para 5 of your letter under reply, referred to above, as well clearly against the para 4 of my appointment letter 10-01-2013. Therefore in view of above clarification, supported with the terms and conditions of my appointment, it is stated that my probation period has already been completed and my services have regularized from 10-01-2014, consequently, my case does not fall within para 5 of your letter under reply.

11. I would like to invite your kind attention towards my case of appointment/selection from the first step to the ending step. It will be evident that my case from the event of short-listing, call up interview and to the issuance of appointment letter, was processed in accordance with the

procedure and during the course of proceedings it must have passed through many hands of concerned officials. During that period if anything was found illegal or lacking in requirement, PQA had the right to reject or disqualify my case for appointment. On the other hand any lack of requirement (which is denied) could have been brought into my notice for compliance but no steps were taken by the authority. Is it a fair treatment with me? Am I alone responsible for processing my case for appointment? I have given my explanation in detail for removal of confusion, if any. As I have stated in previous paragraphs that in-case anything is remaining to be done, ex post facto approval of the competent authority can be obtained to complete the record/requirement.

12. In view of the position explained above I request your good self for withdrawal of allegations/charges on me in your letter under reply. This act of kindness will avoid undue financial burden on me and PQA, as a result of litigation in court of law for defending my case against the allegation/charges on me.

13. I would like to avail the remedy of personal hearing, preferably at Karachi.”

5. Through a letter dated 18.06.2014 (Annexure I/1) on the ground that neither the Petitioner had a masters’ degree at the time of his application, nor 17 years post qualification experience, his services were terminated forthwith. Full text of the said termination letter 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 DATED
19-12-2013.

This order will dispose of the case of Brig. Kamran Jalil (Retd), the then Director (HRM).

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 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 the Constitution 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-1 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. 7/201 out of CP No.735-K-2010 and CMA 486-K 72010 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 the 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 of 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 POA 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 (HRM) BS-20 was advertised in the local/national newspapers on 29-09-2012. In this advertisement it was mentioned that the required qualification is:

“At least 2nd Class Master's Degree in Administrative/ Social Sciences/ MPA/MBA. 17 years post qualification experience in Personnel Administration in a

Govt./Semi Govt./Large Commercial Organization of repute”.

Brig. Kamran Jalil (Retd), was appointed against this post.

4. Brig. Kamran Jalil (Retd), was given notice vide letter No.1(9)/2008-P&S-II dated April, 2014 that:-

(i) According to the C.V. provided by you, Brig. Kamran Jalil, you have obtained BA Degree in 1982 from Pakistan Military Academy Kakul and BSc. (Hon) (1993-Staff Course) from Command and Staff College Quetta (University of Balochistan).

(ii) Neither you had a Masters Degree at the time of your application nor you had 17 years post qualification experience. Strange enough you were still in service in the Pakistan Armed Forces when joined the PQA. There is no NOC or any correspondence showing that you had submitted application through proper channel. Another intriguing factor is that you were given the offer letter of appointment on 10-01-2013, reported for duty on the same date, and were given extraordinary leave for 30 days on 11-01-2013 on your request. Had you continued in the Pakistan Armed Forces, you would have retired on 17-07-2013. Without going into further details and arguments, in light of the above discussion, your appointment is totally illegal and clear violation of the rules.

iii) The offer of appointment contains a Clause that your appointment will be on probation for a period of 01 year extendable by order for further period not exceeding one 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.

5. You are hereby called to explain that;

i) Your initial recruitment being illegal and in clear violation of law/rules and you still being in the probation period, why you should not be terminated forthwith?

ii) Your initial recruitment being legal 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?

6. He submitted written response (Annex-I). He was given the opportunity of Personal Hearing but he did not appear on 18-06-2014. He has also instituted a Suit No. 828 of 2014 in the Honourable Sindh High Court Karachi. Next date has been fixed as 29th day of August, 2014 but no stay order has been granted. At the same time the Honourable Supreme Court has fixed hearing on 25th June, 2014 regarding the compliance of the Supreme Court order made on 19-12-2013 (reference para 1 above) now initiated by Mr. Abdul Jabbar Memon through a

Contempt of Court Petition against the Secretary, Ports & Shipping.

7. From perusal of record and his written response, it is clear that:-

- i) Brig (R) Kamran Jalil, even if we agree with his contention that he passed the MBA examination in session 2009 from PIMSAT University, though the Degree was issued in May, 2013, has not fulfilled at all, the condition of 17 years Post Qualification experience.
- ii) It is admitted that the application for the job in PQA was not routed through proper channel.
- iii) It is also admitted that he joined PQA while he was still technically a serving Brigadier in Pak. Army. To hush-up this, illegality, he managed an Extra Ordinary Leave (E.O.L). Right on the very second day of joining PQA, he applied for the grant of E.O.L.
- iv) The Probation period stands automatically extended as per Law, for the second Year, unless terminated with specific orders in writing.

8. Moreover, his probation was not terminated, so his period of probation will go upto 09th January, 2015.

9. In light of the aforesaid discussion, Brig. Kamran Jalil (Retd)'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 Brig. Kamran Jalil (Retd)'s duly acknowledged, and concerned officer/registrar of the Honourable Supreme Court for information please.

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

C.C: i. **Sr. Joint Secretary (P&S)**
ii. **Director General."**

6. In pursuance thereof, an office order dated 23.06.2014 was issued striking off name of the Petitioner from the roll of the authority, against which, this constitutional petition in the form of Civil Suit No.1096 of 2014 was filed, wherein through order dated 11.07.2014 operation of Apr-2014 letter (Annexure G1) was suspended till the next date of hearing. However, through a correction in order dated 11.07.2014 operation of the termination letter dated 18.06.2014 as well as letter dated 23.06.2014 was

corrected to have been suspended on 17.07.2014. Whereafter, through order dated 13.02.2015 upon the rival counsel having come to an agreement that the rules of the defendant PQA were statutory in nature; in the light of the pronouncement of the Hon'ble Supreme Court of Pakistan the matter was referred to the Divisional Bench for adjudication. At that juncture, the suit was converted into the instant constitutional petition.

7. Learned counsel for the Petitioner submitted that Petitioner's MBA satisfied the qualification requisite and with regards 17 years post qualification experience, the counsel contended that since the Petitioner came with the Military background having passed B.A degree in 1982 from Pakistan Military Academy Kakul and BSc.(Hons) from Command and Staff College Quetta (University of Balochistan), therefore, on the basis of these extra ordinary credentials, the selection committee was pleased to appointment him at the post of Director (Human Resource) BPS-20 and as such no illegality has been committed by the appointing authority and the Petitioner has been made a scapegoat by the new management, which wishes to make an example out of the Petitioner in a very discriminative way. Learned counsel for the Petitioner submitted that the Petitioner took charge of the duties assigned to him from time to time by his superior officers and performed his duties to the best of his abilities and during his service he was given additional charge of other department, even once charge of acting Chairman, PQA was given to him. He further submitted that the respondents only issued the impugned notice to escape the rigors of contempt of the Hon'ble Supreme Court, which had passed the order dated 19.12.2013 in Civil Petition No.4 of 2014 and that the said order was based only on a statement made by the PQA through its counsel where PQA stated that they would examine the legality and *vires* of all appointments and promotions made during the last five years and would file a report, upon which the petition was disposed of. However, when the respondents failed to comply with the said order of the Hon'ble Supreme Court, a contempt petition was filed before the Hon'ble Supreme Court. He

next submitted that the respondents started victimization and targeting the Petitioner during the pendency of the aforesaid petition (C.P No.4 of 2014). He next contended that the contents of the impugned letter were not only concocted, but the same were prepared in a haste without application of mind. The exact date of issue has not been mentioned on the letter, however, the letter was received by the Petitioner on or about 07.04.2014 and the reply was sought latest by 20.04.2014.

8. Learned counsel for the Respondent Nos.2 and 3 to the contrary submitted that as an outcome of the order passed by the Hon'ble Supreme Court of Pakistan dated 19.12.2013 actions were instituted against a number of individuals, who were issued similar termination letters, and baring few all such employees have now left PQA, whereas, the Petitioner and another individual Adil Rashid, who was also appointed at the post of Director (Environment and Safety) BPS-20 through the same advertisement challenged such termination letter and a Divisional Bench of this Court in C.P No.D-1630 of 2015 through a detailed and elaborated judgment dismissed the said petition holding that the petitioner (Adil Rashid) was appointed in PQA in violation of the judgment of the Hon'ble Supreme Court and the law. Learned counsel referred to various portions of the said judgment and submitted that the said petitioner (Adil Rashid) also challenged the said outcome before the Hon'ble Supreme Court, which through its order dated 26.10.2020 dismissed the petition as leave was refused. Learned counsel stated that the present Petitioner definitely did not possess the prescribed qualification of MBA at the time of his appointment as he only received his MBA degree in May 2013. With regards post qualification experience of the Petitioner, the learned counsel stated that mere working in various departments of Army by the Petitioner (not withstanding that it was an irrelevant experience) the pre-requisite of post-qualification experience of 17 years could not be satisfied, therefore, the Petitioner lacked the required qualification as well as experience even at the time he was inducted in PQA and the then prevailing Managing

Committee committed gross irregularity and illegality by offering him the present position by overriding the criteria laid down. It was prayed that the petition be dismissed. In support of his contention, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court of Pakistan reported as 2016 SCMR 2017 in the case of Ms. Shabnam Irshad Ahmed & others v. Muhammad Muneer Malik & others, where the Hon'ble Supreme Court has been pleased to expound the concept of "relevant experience".

9. We have heard learned counsel for the Petitioner as well as learned counsel for Respondent Nos.2 and 3.

10. In our considered view the case of the Petitioner stands on the same pedestal as that of Mr. Adil Rashid, who was also appointed at the post of Director (Environment and Safety) BPS-20 through the same advertisement dated 29.09.2012 and was issued the similar termination letter. The latter challenged his termination letter and a Divisional Bench of this Court in C.P No.D-1360 of 2015 through an elaborated judgment dated 31.05.2019 dismissed the said petition and the Hon'ble Supreme Court maintained those findings, so no different treatment could be given to the petitioner's case, except from the above disclosure we frame the following pivotal points of legal importance being:-

- (a) appointments where holding of a degree is a prescribed requirement but the candidate did not possess the degree at the time of the appointment, effect thereof; and
- (b) What amounts to "post qualification experience."

11. While in common parlance the word "degree" connotes a unit of measurement, and describes the level, intensity or seriousness of something but in education, one earns a degree from a college or university after passing all the right courses. The date on which degree is

awarded or conferred becomes the date of graduation whereas the date of passing remains the date when results are announced confirming one has secured passing marks, usually reflected through a marksheet. The difference between marksheet/transcript and a degree certificate is that while a marksheet only lists all the classes and exams a student has taken and the grades or marks (s)he had received, a degree certificate signifies that the student graduated from the program successfully. In the case at hand the petitioner claims that he though had passed MBA examination in 2009 from PIMSAT University, but the Degree was issued to him in May, 2013. Interestingly no proof of him having passed the said exam through submission of marksheet or transcript in the year 2009 was provided in support of his claim. All he seems to have relied upon is the degree issued by Preston Institute of Management, Preston University Karachi Pakistan. No serial number or roll number on the said degree is available either. In the absence of marksheet/transcript it would be hard to believe that the petitioner had even passed his MBA exam at the time of his appointment or any benefit could be awarded to him from the dictum laid down in the case of *Jahanzaib Malik v. Balochistan Public Procurement Regulatory Authority* (2018 SCMR 414) where in the circumstances that at the time of submitting his application for an advertisement, appellant had not received his degree on basis of which he applied for the post, notwithstanding that he had completed his degree program before the last date for submission of application for the post but the degree was formally issued in March, 2015 for reasons beyond his control and degree itself showed that the appellant had successfully completed the requisite course work and examination in the academic year 2014, as well as the transcript issued by the concerned institute also verified the fact that the appellant had completed his degree in January, 2014, the Apex court disregarded the late issuance/submission of the degree in year 2015 and set aside judgment of the High Court whereby appellant was held to be not qualified to hold the post in question. The case at hand is highly distinguishable

from the above cited precedent as in this case no proof has been provided to the court that the petitioner had completed his degree program before the last date for submission of application for the subject and the degree was formally issued later for reasons beyond his control. Also the degree itself fails to indicate that the petitioner had successfully completed the requisite course work and examination in the academic year preceding his employment in the year 2013. Ironically even after query from the Institute no transcript has been brought on record affirming that the petitioner has completed his degree course work before January 2013. The degree having no serial or roll number further shadows petitioner's claim. In the light of the foregoing discussion, question (a) supra could be answered in the manner that cases where an applicant had shown through marks sheet or transcript that he had passed all the requisites courses at the time of submitting his application for an advertised post requiring degree qualification but the applicant having not received his degree for reasons beyond his control and the degree having been submitted immediately upon receipt at the soonest opportunity, the applicant would be qualified to hold the post in question on this ground. This question however is answered against the petitioner in the present case based on the material available on the record.

12. Now coming to post qualification experience which is understood to mean the experience gained in a regular full time paid job subject to its relevancy acquired after attaining the requisite advertised qualification. Period reckonable as post qualification experience is taken from the date of commencement of experience which essentially must be after the date of attaining the qualification (counted after the result of requisite qualification officially announced by the Controller of Exam of a Board/University concerned or award of the degree) till the closing date. In service jurisprudence it is imperative that the words as used in the advertisement should be given a literal meaning. In the case at hand the advertisement required the applicant to have 17 years post qualification

experience. As the qualification for the job was at least 2nd class Master's degree in Administrative, Social Sciences, MPA or MBA and allegedly the petitioner acquired MBA qualification in the year 2013 (or if petitioner's version is believed in the year 2009) then post qualification experience of 17 years will be attained no earlier than 2026. This requirement of post-qualification experience is to be construed so strictly that even the experience attained during pendency of a case is to be ignored per the dictum laid down in the case of Asif Hassan v. Sabir Hussain (2019 SCMR 1720) where whilst the candidate appointed to post lacked the prescribed qualification and experience at time of appointment but fulfilled the same during pendency of writ filed against him, the Apex Court held that "where the eligibility of a public servant was under attack on the ground that such public servant did not fulfil the substantive condition of eligibility to such office on the cutoff date prescribed in the process, then such violation of the substantive statutory requirement could not be overlooked merely on the ground that an action is pending in the Court". With regards post qualification experience, not only it is necessary that numeric justification of post qualification experience is to be shown by an applicant, rather much emphasis has been laid down by the Hon'ble Supreme Court that the said experience ought to be relevant to the post. In the case of Selling of National Assets Including PIA at Throwaway Price reported as (2019 SCMR 1952) appointment of PIA's Chief Executive was set aside with immediate effect on the ground that whilst the respondent though had equal number of years' experience to his credit but the said experience was "not in line with what was required by advertisement for the post and he had no experience in the relevant industry". In the case of Ms. Shabnam Irshad Ahmed v. Muhammad Muneer Malik (2017 PLC(CS) 1263 SC) where criteria for appointment to post in question was advertised as "at least 12 years' experience as Programme Manager/Controller of Programmes/Producer in Radio/Television or equivalent post in the audio-visual centers of Education Department or

other relevant organization" and the candidate appointed had been working in the field of 'Design', which the Apex Court held that by no stretch of imagination could be termed and treated as experience in the field of 'Production' being a distinct field which had its own dynamics and even if the candidate appointed had the requisite experience in the field of 'Design' such experience could by no stretch of imagination be considered as 12 years' experience in the field of 'Production'. In the light of the above discussion question (b) supra is answered in the manner that post qualification experience will always be reckoned commencing from the date of attaining the qualification and the experience had to be relevant to the job and not a numerical fit alone, to which challenge the case of the petitioner does not rise.

13. Resultantly we do not find any merit in the instant petition which is dismissed along with pending application(s) with no order as to costs.

Judge

Judge