

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.2512-P/2018

JUDGMENT

Date of hearing.....13.11-2018.....

Petitioner: (Ali Azim Afridi, Advocate) in person.

Respondents: (Syed Waqar Shah, Special Secretary to
Speaker Provincial Assembly Khyber
Pakhtunkhwa and another) By Qazi Muhammad
Anwar, Advocate.

QALANDAR ALI KHAN, J.- Ali Azim Afridi,

Advocate District Court, Peshawar, while referring to various provisions of the Constitution of the Islamic Republic of Pakistan, 1973, especially those relating to constitution of Provincial Assembly and also provision relating to regulation of the recruitment and conditions of service of personnel appointed in the Assembly Secretariat, pointed out in his instant writ petition under Article of 199 of the Constitution of the Islamic Republic of Pakistan, 1973, that a post of Special Secretary to Speaker was created for a period of 06 months, in anticipation of approval of Finance Committee so as to assist respondent No.2 i.e. the

Speaker Provincial Assembly Khyber Pakhtunkhwa, Peshawar; and in order to fill in the post, services of respondent No.1, Syed Waqar Shah, who was working as Senior Officer, flight services in Pakistan International Airlines Corporation (P.I.A.C), were requisitioned on deputation basis; and for giving effect to the same, a meeting of the Finance Committee of the Provincial Assembly of Khyber Pakhtunkhwa took place in the Assembly Secretariat, allowing approval of creation of the post of Special Secretary to respondent No.2. Although services of respondent No.1 were requisitioned by way of transfer on deputation basis for a period of 03 years, yet through another order dated 15.12.2014 respondent No.1 was absorbed in the Assembly Secretariat in utter disregard of the guidelines laid down by the august Supreme Court of Pakistan, which were widely circulated; hence the instant writ petition for declaration to the effect that the impugned notification dated 15.12.2014, allowing absorption of respondent No.1 in Khyber

Pakhtunkhwa Provincial Assembly was void ab initio, coram non iudice and without any lawful authority.

2. The respondents, in their comments, resisted the writ petition on several legal and factual grounds, including the one with regard to status of employees of the Provincial Assembly as civil servants, a writ of *quo-warranto* being distinguishable from the writ of *certiorari* under Article 199 (1) (ii) and also from writ of *Mandamus* under Article 199 (1) (i), the employees of Assembly and also the Speaker enjoying independent status in respect of terms and conditions of their service, and judgments of the Superior Courts relied upon by the petitioner clearly distinguishable from the case of respondent No.1 who was absorbed, according to the respondents, through a legal process, which was also not objected to by the other secretariat employees as the post against which respondent No.1 was absorbed was newly created, having nothing to do with the terms and conditions of incumbents of the post in the Provincial Assembly. It was clarified in the comments that employees of the Assembly were

classified as civil servants only for the limited purpose of Service Tribunal Act.

3. Arguments of the petitioner, in person, and learned counsel for the respondents heard; and record perused.

4. The petitioner, through the instant writ petition, challenged absorption of respondent No.1 as Special Secretary to Speaker, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar. There was already a post of secretary to the Speaker in BPS-19, besides the posts of secretary (BPS-21), Senior Additional Secretary (BPS-20) and Additional Secretary (BPS-19), but there was no post of Special Secretary to the Speaker; which was created for a period of 06 months on the orders of the Speaker for the first time vide notification dated 13.09.2013 for performance of the following duties:-

1. *Accompany with Speaker on visits to his constituency and assist him in constituency related issues.*
2. *Meet certain constituents personally as the first point of contact and apprise the Hon'ble Speaker about the situation.*

3. *Meet constituents who visiting Assembly Secretariat and dispose of the matters personally.*
4. *Keep track of local events incident etc which could be of interest to the Speaker and bring these to his attention/notice.*
5. *Supervision of construction work in the Hon'ble Speaker constituency.*
6. *To maintain liaison amongst the C.M, Minister, Mr. Speaker and visiting dignitaries."*

However, item 6 of minutes of meeting of the committee shows justification for creation of the post “*to follow all the business, contacts and liaison with other dignitaries of Mr. Speaker*”. The aforesaid justification was furnished in response to the query of Minister Finance about staff working in the Assembly. It may also be added here that in the aforementioned notification dated 13.09.2013, it was provided that schedule-II (Temporary Posts) appended to the Recruitment Rules, 1974, shall stand amended to the extent specified above; but no such amendment was found incorporated in the schedule till date, as on the Court direction, the schedule, updated today i.e.

13.11.2018 was furnished showing the post of Special Secretary to the Speaker in BPS-19.

5. Moreover, in the Khyber Pakhtunkhwa, Provincial Secretariat (Recruitment) Rules, 1974, (hereinafter referred to as the **Recruitment Rules, 1974**), the following three methods of recruitment were prescribed in Rule-5 of Recruitment Rules, 1974.

- “a. By promotion of a person employed in the Secretariat;**
- b. By transfer on deputation of a person serving outside the Secretariat in connection with affairs of the Federation or the Province; and**
- c. By direct recruitment.”**

6. The transfer of respondent No.1 on deputation to the Provincial Assembly was, therefore, under method (b); but respondent No.1 was transferred on deputation from the corporation i.e. Pakistan International Airlines Corporation (P.I.A.C), as such, he did not meet the essential prerequisite for transfer on deputation while serving outside the secretariat in connection with the affairs of the Federation or the Province. In other words, transfer of respondent No.1 was in clear violation of the Recruitment Rules, 1974, from the very inception. It is also abundantly clear

from the whole exercise undertaken on the orders of the Speaker that the post of Special Secretary to the Speaker in BPS-19 was created in indecent haste for a specific person i.e. respondent No.1, who was serving as Senior Officer, Flight Services in the Pakistan International Airlines Corporation (P.I.A.C), and whose credentials for the post are still shrouded in mystery and best known to the respondents, particularly the Speaker.

7. The respondents disputed assertion of the petitioner that employees of the Provincial Assembly were civil servants, and claimed that they were classified as civil servants only for the limited purpose of Service Tribunal Act. They further claimed that the Provincial Assembly had its own constitutional status and the Assembly was not subordinate to any Provincial Institution. According to the respondents, Speaker of the Provincial Assembly under the Constitution and Rules of the Assembly was custodian of the house as well as Assembly. The issue of status of employees of

constitutional bodies, including the Provincial Assembly has been determined as civil servants by the august apex Court in its judgment reported as **2010 SCMR 1886**.

8. The transfer on deputation of respondent No.1 as Special Secretary to the Speaker of the Provincial Assembly in BPS-19, a newly created post vide notification dated 13.09.2013, was for 06 months, that too, in anticipation of the approval of the Finance Committee; but immediately after approval of creation of the post by the Finance Committee, respondent No.1 was appointed by way of transfer on deputation basis for a period of three years with effect from 18.12.2013, i.e. the date on which respondent No.1 took charge of the post, vide notification dated 27.12.2013. However, before expiry of three years period of deputation, respondent No.1, an officer of group-6 of the P.I.A.C was absorbed as Special Secretary to the Speaker (BPS-19) in the Provincial Assembly Secretariat, Khyber Pakhtunkhwa, with

immediate effect, vide notification dated 15.12.2014; which is impugned herein in the instant writ petition.

9. Having said that transfer on deputation of respondent No.1 to the Provincial Assembly Secretariat against the newly and '*specially*' created post of Special Secretary to Speaker Provincial Assembly, Khyber Pakhtunkhwa, was in clear violation of the Recruitment Rules, 1974, from the very inception, and thus void ab initio, and the superstructure of appointment on deputation for a further period of three years and subsequent absorption built on such a void order of transfer on deputation was not sustainable, not only because of elements of nepotism and favoritism clearly discernible from the unsavory conduct of authorities in the Assembly, especially Speaker who played key role in bypassing clear provisions of law and rules of the Assembly, despite his tall claim of being custodian of the Assembly. One wonders that how the Speaker, after trampling clear provisions of law and rules and also the most celebrated judgments of the

august Superior Courts thereby deprecating the unscrupulous practice of absorption of outsiders on extraneous consideration against lucrative posts in civil service, could nevertheless claim to be ‘custodian’ of the top legislative organ of the province, mandated by people of the province to legislate for them. It was, indeed, unfortunate that a person occupying such a dignified position in the province, especially in the realm of enacting laws for the province, showed scant regard for the laws and rules **(2018 SCMR 54, 2018 SCMR 48, 2017 SCMR 2051 and 2015 SCMR 456)**

10. The plea of the respondents that employees of the Assembly had no grievance against absorption of respondent No.1 against the post of Special Secretary to the Speaker; and further that how the petitioner, an outsider, could raise objection and file writ petition against absorption of respondent No.1 in the Assembly Secretariat is not only farfetched but also against the express provisions of Article 199 (1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, which lays down that on the application of *any person*, the High Court may make

an order “*requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office*”. We would, rather, appreciate the audacious step of the petitioner, a budding young lawyer, to bring to notice of the Court such glaring and daring violations of law and rules just to accommodate a blue-eyed by an authority none other than tasked with upholding law and rules being ‘custodian’ of the top legislative body of the province.

11. Consequently, the writ petition is allowed; and absorption of respondent No.1, Syed Waqar Shah, as Special Secretary to the Speaker, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar, vide impugned notification dated 15.12.2014 is declared illegal, void ab initio, *corm non judice* and without any lawful authority.

Announced
13.11.2018

J U D G E

J U D G E

(D.B) *Hon’ble Mr. Justice Rooh-ul-Amin Khan.*
Hon’ble Mr. Justice Qalandar Ali Khan.

(M. Iqbal)