

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**D.I.KHAN BENCH**  
*(Judicial Department)*

**W.P. No.1024-D/2017 with**  
**C.M.No.1186-D/2017**

**Raheel Ahmad**

**Versus.**

**Govt. of K.P.K and others**

**JUDGMENT**

For petitioner: **Mr. Muteeullah Rind Advocate.**

For respondents  
No.1 to 4: **Mr. Kamran Hayat Miankhel, Addl:  
A.G. alongwith Abdul Majeed  
(respondent No.4 in person).**

For respondent  
No.5: **Muhammad Anwar Awan Advocate.**

Date of hearing: **16.5.2018.**

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**IJAZ ANWAR, J.-** Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks the following relief:-

*“In wake of submission made above,  
it is humbly prayed that on  
acceptance of instant writ petition,  
respondents No.1 to 4 may kindly be  
directed to appoint the petitioner as  
Lab Assistant (BPS-6) against  
vacant post on merit, and*

*respondents No.1 to 4 may please be directed to declare the impugned appointment order of respondent No.5 as null and void.”*

2. Precisely stated the facts of the case are that pursuant to the advertisement dated 19.10.2016, the petitioner applied for the post of Laboratory Assistant (BPS-6). He appeared in test/interview and secured 68/100 marks, but later on through publication the test/interview so conducted was cancelled and the respondent No.5 was appointed vide order dated 02.11.2017 on political influence despite the fact that he has not even applied for the said post.

3. Arguments heard and record perused.

4. Perusal of the record reveals that the respondent No.2 advertised different posts, including the posts of 04 Laboratory Assistant (BPS-6), one post each for 04 separate districts, through daily newspapers dated 19.10.2016. Initially departmental test was conducted despite the fact that there are standing instructions of the Provincial Government that for all appointments, the department is required to conduct written test through National Testing Service (NTS). Initially the candidates qualifying the written test were called for interview, however, as admitted by the respondents the interview

was subsequently cancelled for the reasons that no suitable candidate was available. It transpired that in order to accommodate the respondent No.5 and certain other candidates, the interview was again re-arranged without calling other shortlisted candidates and thus respondent No.5 including 02 other candidates were appointed as Laboratory Assistant on regular basis.

5. The respondent No.4, present in the Court, was asked what was the quota allocated to District D.I.Khan, he stated that he is not the appointing authority and the appointments were made by the respondent No.2. He however, conceded that there were only 01 post allocated for District D.I.Khan. We have also been informed that all the 03 candidates appointed belongs to Tehsil Kulachi, the home town/constituency of the Minister of Agriculture. The result of shortlisted candidates would show that the petitioner has topped the written test by securing 68 marks out of 100, but he was deprived while the respondent No.5, who has not even appeared in written test was allowed appointment.

6. It is a matter of great concern that three appointments of Laboratory Assistant were made from the candidates of Tehsil Kulachi and the other districts were deprived as one post of Laboratory Assistant was earmarked for each district. We are facing cases of civil

servants day to day in the High Court wherein adjustments and appointments are made in other districts of the candidates belonging to District D.I.Khan and are then subsequently reposted in District D.I.Khan as these candidates were not ready to perform their duties in other districts. In the instant case the fault lies with the appointing authority that as to why he has made appointments in District D.I.Khan over and above their entitlement. Making such appointments give support to the argument of the learned counsel for the petitioner that since it was the constituency of Minister for Agriculture, as such, the appointments were made at the choice of Minister concerned.

7. The august Supreme Court of Pakistan in case of ***“Zahid Akhtar Vs. Government of Punjab through Secretary, Local Government and Rural Development, Lahore and 2 others”*** **(PLD 1995 S.C. 530)**, while discussing the role of Bureaucracy and their dealing with the public representative held as under:-

*“Tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy.*

*Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed as incharge of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order of direction of such elected functionaries without bringing to their notice, the legal infirmities in such order's/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. A Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-*

*compliance would have exposed the concerned Government servant to the risk of disciplinary action.”*

8. Similarly, in the matter of appointments the august Supreme Court of Pakistan in the case of “**Chief Secretary Punjab and others Vs. Abdul Raoof Dasti**” (**2006 SCMR 1876**), held as under:-

*“26. It is our misfortune that when we are looking for individuals to serve our own-selves, we search for the best of doctors, the best of architects, the best of lawyers, the best of engineers, the best of cooks, the best of butlers and so on but when it comes to selecting similar individuals to serve the public, we get swayed by nepotism, by petty personal interests and by other similar ulterior and extraneous considerations and settle for the ones not worthy of serving the public in the requisite manner. We need to remind ourselves that choosing persons for public service was not just providing a job and the consequent livelihood to the one in need but was a sacred trust to be discharged by the ones charged with it, honestly, fairly, in a just and transparent manner and in the best interest of the public. The individuals*

*so selected are to be paid not out of the private pockets of the ones appointing them but by the people through the public exchequer. Therefore, we must keep it in mind that not selecting the best as public servants was a gross breach of the public trust and was an offence against the public who had right to be served by the best. It is also blatant violation of the rights of those who may be available and whose rights to the said posts are denied to them by appointing unqualified or even less qualified persons to such posts. Such a practice and conduct is highly unjust and spreads a message from ones in authority that might was right and not vice versa which message gets gradually permeated to the very gross root level leading ultimately to a society having no respect for law, justice and fair play. And it is the said evil norms which ultimately lead to anarchic and chaotic situations in the society. It is about time we suppressed such-like evils tendencies and eliminated them before the same eliminated us all.”*

**9.** There is yet another very important aspect of the case. It was vehemently argued that the candidates

were not disclosed the outcome of their interviews for which they were called, however, the reply of the respondents in their comments is “*the interview was cancelled, due to the reasons that no suitable candidate was available.*” The learned Addl: A.G. was confronted this fact that when the Departmental Selection Committee has not found any suitable candidate what was the proper course for the department, he was having no answer. Ironically the respondents again called upon their blue-eyed and made appointments at the cost of merit as well as violating the rights of candidates of other districts of the Province. When once the Interviewing/Selection Committee came to the conclusion that none of the candidates, called for interview, was suitable for appointment, the proper course was to re-advertise the post instead of appointing persons, some of whom have not even appeared in written test.

**10.** In the instant case we find that the selection process was not transparent for multiple reasons; (i) When once the Departmental Selection Committee have failed to find suitable candidates, in such circumstances the posts of Laboratory Assistant should have been re-advertised, which has not been done; (ii) Only against one seat allocated for District D.I.Khan, three candidates have been appointed violating the zonal quota, besides, rights of other

candidates of other districts; (iii) The candidate, who even had not appeared in written test, has been allowed appointment manipulating the merit for him for the reason not explained before this Court; and (iv) Short listing not conducted through National Testing Service.

11. The august Supreme Court of Pakistan in the case of ***“Government of N.-W.F.P. through Secretary, Forest Department, Peshawar and others Vs. Muhammad Tufail Khan”*** **(PLD 2004 Supreme Court 313)**, while hearing appeal against the order of Service Tribunal allowing appeal in illegal appointments held as under:-

*“7. However, in spite of all these directions, this salutary principle is being frustrated with impunity. This malady which has plagued the whole society shall be arrested with iron hands and the principle of merits shall be safeguarded, otherwise, it would be too late to be corrected. In the case in hand admittedly the appointment was made clearly in violation of the codal formalities simply on the dictation of a political figure. The learned Tribunal while accepting the appeal has not at all adverted to these aspects.”*

The august Supreme Court of Pakistan in another case titled “*Muhammad Sadiq and another Vs. Federal Service Tribunal, Islamabad and others*” **(2003 P L C (C.S.) 1029)**, held as under:-

*“We are afraid, the opinion of the Law Division would not cure the illegality in the appointments made in violation of rules and the same cannot be approved and allowed to be perpetuated on the basis of a favourable opinion of Law Division. The act of making of the appointments in departure to the rules amounts to defeat the equal right of employment on merits, therefore, the appointments obtained by the petitioners would not create any right in their favour for regularization. The mere passage of time would not be a ground to allow the rectification of irregularity on the ground that the appointees should not suffer for the fault of concerned authorities. It is sad that the public functionaries through misuse of their powers, without observing the rules, make appointments to oblige their favourites and deprive the deserving persons from their legitimate right of service. We may observe that a holder of public office by misusing*

*his authority in breach of law and public trust, is guilty of misconduct. The Government while taking notice of such regularities should take appropriate action against the concerned authorities under the Government Servants (Efficiency and Discipline) Rules, 1973 to ensure the transparency in the appointments and to eradicate the element of favouritism and nepotism for advancement of policy of merits and fairness.”*

Similarly, recently in the case of “***Rashid Ali Channa and others Vs. Muhammad Junaid Farooqui***” **(2017 SCMR 1519)**, while dismissing the review petition, the apex Court held that:-

*“The question before this Court is not whether one or the other set of candidates had resorted to unfair means and illegal acts in order to gain employment, the real question relates to fairness, integrity and transparency of the process and procedure adopted by the Chairman and Members of the Commission to undertake the selection process. This Court has found serious flaws in the process of selection which point towards lack of transparency to facilitate nepotism and favoritism*

*that cannot be condoned or countenanced.”*

**12.** The other two candidates, who were also appointed alongwith the respondent No.5, are not before the Court, however, where there are clear manipulation on the part of the official respondents and apparent favouritism in appointments, it was for the department to have explained transparency and though they are not party to this petition still have to face the consequences when illegal appointments are made.

**13.** We for the reasons stated above, find that neither written test was conducted through National Testing Service (NTS) nor the appointment process has been carried out transparently rather it shows favouritism while making appointments, as such, for the supremacy of the rule of law and to have confidence of the people in this system, we are left with no other choice but to struck down all the appointments of Laboratory Assistant (BPS-6) made pursuant to the advertisement dated 19.10.2016 in District D.I.Khan. The official respondents are further directed to re-advertise the posts of Laboratory Assistant (BPS-6) and to fill the same strictly in accordance with law. We also direct the respondent No.1 to constitute a comprehensive inquiry and to see whether the appointments of other posts were also made only from D.I.Khan and merit has been

violated. The report shall be submitted within 30 days positively to the Additional Registrar of this Court for perusal of Judges in Chamber. This writ petition is admitted and allowed in the above terms.

Announced.  
Dt: 16.5.2018.

**JUDGE**

**JUDGE**

**Approved for reporting**