

2019 P L C (C.S.) 1299

[Lahore High Court (Bahawalpur Bench)]
Before Jawad Hassan and Shahid Jamil Khan, JJ
WASEEM AKRAM

Versus

The SECRETARY and others

I.C.A. No.44 of 2019, heard on 20th March, 2019.

(a) Punjab Medical and Health Institutions Act (IX of 2003)---

----S.6(1)---Administrative Committee---Jurisdiction---Administrative Committee cannot substitute Board of Management or Selection Committee, as its function under S.6(1) of Punjab Medical and Health Institutions Act, 2003, is to act temporarily, when Board of Management is non-functional.

(b) Punjab Medical and Health Institutions Act (IX of 2003)---

----S.6(1)---Law Reforms Ordinance (XII of 1972), S.3---Intra Court Appeal---Act of government---Contract appointment---Cancellation of---Appellants were ad-hoc or temporary employees of Medical College and Hospital and their contract had been renewing for many years---Authorities terminated all such employees and the relevant notification was maintained by the Single Judge of High Court in exercise of Constitutional jurisdiction---Validity---No one could be prejudiced or victimized for an act or omission on the part of government---Appellants participated in recruitment process bona fide and were appointed against posts in question after competing---No action was taken against management or a particular person in the management for alleged irregularities, illegalities or misuse of power---Action of withdrawing appointments of appellants through notification in question was an attempt to camouflage irregularities by authorities---Re-appointments of appellants were carried out by departing from procedure under the law, when term of contract and ad-hoc existing employees were expiring---Board of Management and Selection Committee were not in existence, therefore, Principal of the College in his wisdom adopted procedure of re-employment or fresh employment---Such procedure could be placed for approval only before Board of Management, after its constitution by the Government, who was competent authority under para (4)(ii) of Third Schedule, on recommendation of Selection Committee---Division Bench of High Court declared withdrawal of contract appointments as without lawful authority and set aside notification in question---Intra-court appeal was allowed in circumstances.

Muhammad Farooq Warind, Muhammad Qasim Shah and Muhammad Siddiq Chohan for Appellants.

Mian Muhammad Akbar, Assistant Advocate General Punjab.

Khurram Shahzad, Advocate/Legal Advisor along with Dr. Mubarak Ali, Principal, Sheikh Zayed Medical College/Hospital, Rahimyar Khan for Respondents.

Date of hearing: 20th March, 2019.

JUDGMENT

SHAHID JAMIL KHAN, J.----This and connected appeals (I.C.As. Nos.45 to 138 of 2019) are against judgment dated 21.02.2019 in Writ Petition No.10960 of 2018 passed by learned Single Judge of this Court, whereby writ petitions of the appellants were dismissed and the action of respondent No.3 of recalling the contract appointments of the appellants was endorsed.

2. On notice, Dr. Mubarak Ali, Principal, Sheikh Zayed Medical College/Hospital, Rahimyar Khan along with his counsel is present. Facts of the case, as noted during arguments are;

Sheikh Zayed Medical College Hospital, Rahimyar Khan is an institute established, in the year 2003, under The Punjab Medical and Health Institutions Act, 2003 ("Act of 2003"). Board of Management ("BoM") was constituted under section 6 of the Act of 2003, by the

Government from time to time. The term of the members of BoM expired in the year 2015, whereafter it was not re-notified till to-date. Affairs of the institute were being run by an Administration Committee ("AC"), notified by the Chief Minister, under section 6(10) of the Act of 2003.

Admittedly, the AC was also not available from January, 2018 till August, 2018 and the appointments of the appellants were processed during this period. The AC was re-notified on 09.08.2018 and the appointments, during this period, were placed before it for approval. The AC in its 8th formal meeting held on 30.08.2018, approved the appointments of Charge Nurses (BS-16), however, the appointments of appellants were not approved and it was decided to withdraw the appointment letters. Operative part of the Notification is reproduced hereunder:-

"The Administrative Committee, SZMC/SZH, R.Y. Khan in its 8th formal meeting held on 30.08.2018 discussed the agenda Item No.30 and the Administrative Committee unanimously decided to withdraw all the appointments of Paramedical, Clerical, Ministerial and other Misc. Staff of BS-01 to BS-16 as List "B" due to non-approval of Administrative Committee and recruitment made by adopting the criteria of contract appointment policy 2013 instead of contract appointment policy 2016 which is in vogue. The Administrative Committee further directed the Principal and Medical Superintendent for afresh appointments through afresh advertisement by observing all codal formalities under PM and HI Act/Rules, 2003 and Contract Appointment Policy, 2004 read with amended Recruitment Policy, 2016 which is in vogue. The Selection Committee may also be re-constituted under the supervision of Principal and Medical Superintendent in case of Hospital with members of Senior Professors/Doctors and concerned specialty member along with representative of Government of the Punjab, SHC and ME Department, Lahore. However, a female member may also be included in the Committee. All appointments should be finalized on merit basis consisting on educational qualification, test, interview and experience marks as mentioned in Recruitment Policy, 2016."

[emphasis supplied]

Dr. Mubarak Ali, Principal, was asked specifically that under what authority of law he processed and appointed the appellants during interregnum period, he referred to Notification dated 06.10.2003, contending that Principal is competent authority for appointment of employees from BS-1 to BS-16.

4. In this backdrop of facts, learned counsel for the appellants submitted that there are two categories of appellants; first, those who were appointed eight to fifteen years before and their contract was being extended regularly; second category is of the employees who were appointed on ad hoc, basis for six months and the appointments were being extended from time to time for about last nine years. Further argued that Recruitment Policy, 2013 did not exist. Explaining that Contract Appointment Policy, 2004 ("the Policy of 2004") was being amended from time to time and last amendment in this regard was made in the year 2016, he contended that reference to the Policy of 2013 and 2016 in the impugned Notification dated 21.01.2019 is misconceived. He argued that the impugned decision by AC is non-speaking and appellants are treated discriminately because appointments of one category, under the similar circumstances by the same authority, were approved, whereas appointments of the appellants are withdrawn. He concluded that the appellants have been victimized without attributing any fault or connivance in the process of recruitment.

5. Learned counsel for the respondents along with Principal could not deny that the Policy of 2004 was being amended from time to time and last amendment in this regard was made in the year 2016. However, it was explained, that through last amendment marks of the interview have been reduced to 05 from 20, and the appellants, during recruitment process, were given marks out of 20. It is contended that power to grant marks, in interview, was exercised

arbitrarily by giving less marks to a candidate at a higher merit and higher marks to a candidate at lower merit. When confronted whether this reason is mentioned in the impugned Notification, the answer is in negative.

Replying to the plea of the discrimination, learned counsel submitted that thousands of people had applied in the second category whereas candidates for the other category of post, confirmed by the AC, were not much. Confronted with the impugned withdrawal order, which is non-speaking, and passed without providing opportunity of being heard, no plausible explanation was offered.

6. Heard. Record perused.

7. We have perused different provisions of the Act of 2003. Intent of the legislation is to establish an efficient management of Medical and Health Institutions in Punjab. Under Section 3 of the Act of 2003, the Government can establish Medical or Health Institutions and can also apply this Act to the existing Medical and Health Institutions. Respondent Medical College is one of the institution established under the Section 3. BoM, as noted above, is not in existence after 2015 and affairs of the institution are being run by AC notified by the Chief Minister under Section 6(10) of the Act of 2003. The subsection (10) envisages to deal with a situation where BoM is non-functional or unable to perform its function.

8. It appears that Government of Punjab through respondent No.1 is unable to regulate affairs of this institution. Non existence of BoM and absence of AC for seven months is a glaring negligence on the part of Government and respondent No.1, which is the root cause of dispute before us. Nobody, even, bothered to appear before this Court from the office of respondent No.1 despite an intimation by Mian Muhammad Akbar, Assistant Advocate General, Punjab, as he stated before the Court. The Secretary (respondent No.1) is directed to file personal explanation in this regard with Deputy Registrar (Judicial) of this Court within thirty days along with explanation why BoM has not been constituted after 2015.

9. The dispute in question is result of inaction by the office of respondent No.1 and mismanagement by other respondents. No provision of law or rule could be preferred to show that such appointments by the Principal in absence of BoM and Selection Committee could be placed before AC for approval. The AC, in our opinion, could not substitute the BoM or Selection Committee, as its function under Section 6(10) was to act temporarily, when BoM is non-functional. To run the affairs of the Institution, including approval of appointments, through AC, without constituting BoM since 2015 is against the spirit of law, hence disapproved.

Re-appointments of employees, who admittedly are serving the institution from last nine to fifteen years, could not have been withdrawn by the AC in the manner noted hereinabove. We are also not convinced with the explanation by the respondents that after amendment of Policy of 2004 in 2016 restriction of marks from 20 to 05 was a reason for withdrawal of the appellants' appointments. Besides the fact this reason is not mentioned in the impugned Notification dated 21.01.2019.

We are convinced that impugned exercise of power by AC is colorable qua the appellants, and is based on misconception that different policies were in vogue during appointments of the appellants and the other category of employees. In our opinion, appointments against both categories of posts, in absence of BoM, Selection Committee and AC, deserved equal treatment.

It is an established principle that no one can be prejudiced or victimized for an act or omission on the part of Government. The appellants had participated in the recruitment process bona fide and were appointed against the posts in question after competing. Admittedly, no action has been taken against the management or a particular person in the management for, alleged irregularities, illegalities or misuse of power. It appears that the action of withdrawing

appellants' appointments through impugned Notification is an attempt to camouflage the irregularities been done by the respondents.

10. We have also examined the impugned judgment. We agree with findings by learned Single Judge that Appointing Authority for appointments in BS-1 to 16 was "Board" on the recommendation of the Selection Committee, under para (4) of Third Schedule. The Selection Committee is to be established by BoM, consisting of four members headed by the Principal. Yet we are not in agreement with the decision that such appointments, to the extent of appellants, were duly disapproved by AC relying upon the applicable Policy of 2016. The reasons of disagreement, as noted above, are that successive notification of AC by Chief Minister from year 2015, without constituting BoM is against spirit of the Act of 2003 and the impugned decision by AC was misconceived, besides being discriminatory.

It appears that re-appointments of appellants were carried out, by departing from the procedure under the law, when term of contract and ad hoc existing employees were expiring. Since BoM and Selection Committee were not in existence, therefore, the Principal in his wisdom adopted the procedure of re-employment or fresh employment. In our opinion, such procedure could be placed for approval only before the BoM, after its constitution by the Government, which is Competent Authority, under para (4)(ii) of Third Schedule, on recommendation of the Selection Committee.

11. For what has been discussed above, this and connected appeals are allowed. The impugned Notification dated 21.01.2019 to the extent of appellants is set-aside and as a consequence all the notices for withdrawal of contract appointment are declared as without lawful authority.

Respondent No.1 is directed for establishment of BoM under section 6 within thirty days, without fail, and compliance of all other provisions including constitution of Selection Board for the purpose of employment as envisaged under Section 9 of the Act of 2003 and cases of appellants be placed before it.

The appellants be treated, in future, in accordance with law keeping in view their rights guaranteed under Article 4 read with Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

MH/W-6/L Intra court appeals allowed.