

8. In view of the aforesaid, we find no merit in this petition, which is dismissed and leave refused.

(J.K.)

Appeal dismissed.

PLJ 2024 SC 526
[Appellate Jurisdiction]

Present: MUHAMMAD ALI MAZHAR, MRS. AYESHA A. MALIK AND
IRFAN SAADAT KHAN, JJ.

GOVERNMENT OF BALOCHISTAN through Secretary Forest and
Wildlife Department Quetta and another--Petitioners

versus

GHULAM RASOOL and others--Respondents

C.Ps. No. 183-Q to 195-Q of 2023, decided on 15.4.2024.

(Against the judgment dated 03.05.2023 passed by Balochistan Service Tribunal, Quetta in S.As. No. 475, 524, 564, 569, 570, 582, 587/2018, 101, 484/19, 96-98/20, 222/21)

Service Tribunals Act, 1973 (LXX of 1973)--

---S. 4--Application for appointment--Advertisement--Appearance in test & interview--Departmental recruitment committee--Issuance of--Offer letter--Withdrawal of appointment letter--Appeals--Time-barred--Fake appointment letter--It was clearly demonstrating that recruitment process was not initiated and completed in spur of moment but was conducted in different phases and segments--After conducting written test and interviews, Departmental Recruitment Committee recommended respondents for appointments against vacant posts--Record articulates that the drastic action of withdrawing appointments letters and terminating service was carried out without issuing any show-cause notice and without affording any opportunity of hearing to the terminated employees--Their appointment was recommended by DRC of five members where each case was considered diligently, and after a burdensome exercise, names were recommended by DRC--It could not be construed that respondents were appointed without fulfilling codal formalities--Rather, on their appointments with due process, some vested rights have been created in their favour which could not have been withdrawn in a perfunctory manner--Petition dismissed.

[Pp. 527, 528 & 529] A, B, C & D

Mr. M. Ayaz Khan Swati, Addl. AG Balochistan for Petitioners.
N.R for Respondents.

Date of hearing: 15.4.2024.

JUDGMENT

Muhammad Ali Mazhar, J.--These Civil Petitions for leave to appeal are directed against the judgment dated 03.05.2023, passed by the Balochistan Service Tribunal, Quetta, in Service Appeals No. 475, 524, 564, 569, 570, 582, 587/2018, 101, 484/2019, 96-98/2020 and 222/2021.

2. The respondents in their service appeals before the Service Tribunal pleaded that they were appointed after due process and fulfillment of all codal formalities. They submitted their applications for jobs in response to the advertisement published in the newspapers; they appeared in the test and interview, were declared successful, and after joining such a competitive process, were selected by the Departmental Recruitment Committee. As a result thereof, offer letters were issued to them and they joined their duties; but just after twenty days, their appointment letters were withdrawn without the issuing of any show-cause notice and without providing any opportunity of hearing.

3. The learned Additional Advocate General, Balochistan (A.A.G.) argued that the respondents were appointed without adopting the laid down mandatory procedure for making appointments but that the appointments were made on political influence and since the appointments were illegal, therefore the competent authority rightly cancelled/withdrew their appointments. He further argued that the appeals before the Service Tribunal were time barred. It was further contended that the competent authority constituted an Inquiry Board for the purpose of inquiry in accordance with the Sections 9 and 10 of the Balochistan Employee Efficiency and Discipline Act, 2011, and initiated departmental proceedings soon after realizing the factual position. It was further contended that the Service Tribunal was itself not clear on how many respondents were in possession of fake appointment orders.

4. Heard the arguments. It is clearly demonstrating that the recruitment process was not initiated and completed in the spur of the moment but was conducted in different phases and segments. The recruitment process was initiated pursuant to the Finance Department, Schedule of New Expenditure 2012-13, Budget Book Volume-VIII. The Government of Balochistan, *vide* Notification dated 31.08.2012, accorded administrative approval for the creation of posts

B in the Forest and Wildlife Department. The advertisements were published in vernacular newspapers for inviting applications of interested persons for jobs. The respondents applied for different vacant posts ranging from BPS-1 to BPS-15. The Government of Balochistan, vide Notification dated 01.09.2016, constituted a Departmental Recruitment Committee. After conducting written test and interviews, the Departmental Recruitment Committee recommended the respondents for appointments against the vacant posts. The respondents joined their duties according to the postings and their Service Books were also prepared, but out of the blue, their appointment orders were withdrawn/cancelled.

5. The minutes of the meeting of the Departmental Recruitment Committee expounds the quorum of committee, comprising the Chief Conservator of Forest as Chairman, while four other members were representing the Services and General Administration Department, Finance Department, Forest and Wildlife Department, and Deputy Conservator of Forest, Government of Balochistan. The learned A.A.G. admitted that the Departmental Recruitment Committee was constituted under the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009. When we confronted him on whether any action was taken against the responsible persons who allegedly floated the recruitment process without approval, the learned A.A.G. argued that some disciplinary action was taken against the Chief Conservator of Forest. It is not comprehensible that it was a one-man show; rather, other committee members, including all other persons involved or engaged in receiving job applications, allowing respondents to sit in the written tests and interviews, issuing appointment letters, allowing joining and postings, preparing the service books, and communicating the names to the Accounts/Finance departments for incorporation in the payroll, must have been involved in the process. However, the learned A.A.G neither apprised us if any action was taken against them nor placed any lawful justification as to why others were exonerated if the recruitment process was allegedly a sham.

C 6. The record articulates that the drastic action of withdrawing appointments letters and terminating service was carried out without issuing any show-cause notice and without affording any opportunity of hearing to the terminated employees. The philosophy of natural justice is meant for affording a right of audience before any detrimental action is taken by any quasi-judicial authority, statutory body, or any departmental authority regulated under some law. The right to a fair trial is a fundamental right, while the vested right, by and large, is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. The doctrine of locus

poenitentiae sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. Indubitably, if the order is found illegal, no perpetual right can be claimed on the basis of such an illegal order, but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or they were not eligible for the posts on which their appointment was recommended by the Departmental Recruitment Committee of five members where each case was considered diligently, and after a burdensome exercise, the names were recommended by the Departmental Recruitment Committee. Therefore, it cannot be construed that the respondents were appointed without fulfilling the codal formalities. Rather, on their appointments with due process, some vested rights have been created in their favour which could not have been withdrawn in a perfunctory manner.

7. What can a desperate job seeker do? At best, he can apply for the job in response to the advertisements of vacant posts, submit his credentials according to the job requirements, and join the competitive process through written tests and interviews, then wait for the result and final call. It is not in his dominion to conduct due diligence, before making a formal application, on whether the recruitment process by means of advertisement in the newspaper for vacant situations is issued by the competent authority or not. The record reflects that the advertisement was published on 30.07.2016, the last date of submission of the application was 22.08.2016, the date of test/interviews was fixed on 19th & 20th September, 2016, and the applicants were again informed through a notice published in the newspaper on 27.08.2016, and a meeting of the Departmental Recruitment Committee was convened on 29.08.2016. In the case at hand, if the process was allegedly initiated wrongly, then why were the concerned government departments under a deep slumber or ignorance? Why, at very initial stage, was the entire recruitment process not scraped? Why was the Departmental Recruitment Committee constituted? Why were appointment orders issued with postings? And why were service books made? All of these questions are shrouded in a mystery and no logical justification was pleaded as to why the entire recruitment process was undone suddenly.

8. As an ultimate fact-finding forum, the learned Service Tribunal has already dealt with all the relevant features of the case and also relied on a judgment of this Court reported as *Inspector General of Police, Quetta and another vs Fida Muhammad and others* (2022 SCMR 1583) in which a somewhat similar bone of contention was dealt with and the ratio of the judgment is quite applicable in this

case. We have also noted that in paragraph 19 of the impugned judgment, the learned Tribunal, while allowing appeals of the respondents, fairly articulated that the department should not compromise on the requisite academic qualifications, and all academic certificates, testimonials, domiciles, CNICs etc. were directed to be verified from the concerned institutions/departments before activation of salaries and payment of back benefits and in tandem, the department was also allowed to hold an inquiry to ascertain whether the respondents were gainfully employed or not during the intervening period.

9. The learned A.A.G. could not point out any illegality or infirmity in the impugned judgment calling for any interference, therefore, leave is declined and aforesaid civil petitions are dismissed.

(J.K.)

Petitions dismissed.

PLJ 2024 SC 530

[Appellate Jurisdiction]

Present: SYED HASAN AZHAR RIZVI, MS. MUSARRAT HILALI AND
NAEEM AKHTAR AFGHAN, JJ.

KHIZAR HAYAT--Petitioner

versus

Malik AKHTAR MEHMOOD--Respondent

C.P. No. 760 of 2024, decided on 15.4.2024.

(Against judgment dated 18.01.2024 passed by the Lahore High
Court in RFA No. 66727 of 2020)

Civil Procedure Code, 1908 (V of 1908)--

---S. 96, O.XXXVII Rr. 2--Suit for recovery--Decision of arbitrator--
Application for leave to defended--Allowed--Suit was decreed--
Appeal--Dismissed--Execution of pro-note--Concurrent findings--
Petitioner had neither challenged decision of arbitrators nor
agreement for appointment of arbitrators or execution of cheque
and pro-note--There were concurrent findings by Courts below, this
Court did not normally go beyond such findings unless same were
perverse, arbitrary, fanciful or capricious which, in our candid view,
is not position in instant case--The impugned judgment passed by
High Court was well reasoned and based on proper appreciation of
all factors, factual as well as legal--Neither any misreading and non-
reading nor any infirmity or illegality had been noticed from record
which could make a basis to take a view other than High Court--
Petition dismissed.

[P. 532] A, B & C