

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

## C.P No.D-4716 of 2016

Asif Hussain .....Petitioner

Versus

The Federation of Pakistan & others .....Respondents

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**Date of hearing: 08.03.2017**

Mr. Danish Rashid Khan Advocate for Petitioner.

Mr. Muhammad Arshad Khan Tanoli Advocate  
for Respondent No. 2 to 4.

Mr. Zohaib Khalid Advocate for Respondent No. 5 to 9.

Mr. Ali Safdar Deeper Advocate for Respondent No.10.

Shaikh Liaquat Hussain, Assistant Attorney General.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON,J:-** Through the instant Petition, the Petitioner

has prayed for the following relief(s):\_

- a. To declare the Office Order dated 23.05.2016 thereunder Respondent No.5 to 10 are appointed as Electrician (onboard ship) (BS-15) is in violation of the Regulation 8,9, & 10 of statutory service rules / regulations of PQAESR-2011 and as such same is unlawful, void-abinitio and without lawful authority.*
- b. To Declare the Office Circular dated 09.07.2015 is unlawful, arbitrary and issued in contravention to the Regulations 8, 10 & Schedule II, Sr. No.24 and Schedule IV, Sr. No. 22 of Service of P.Q.A as contained in Notification dated 5<sup>th</sup> March 2011 published in Gazette of Pakistan dated 9<sup>th</sup> April, 2011.*
- c. Declare that Petitioner was unlawfully bypassed from the said selection process despite having fulfilled prescribed qualification & requisite experience for the post of Electrician*

***(onboard ship) (BS-15) and may be declared successful candidate against the said post.***

2. Gist of the case as averments of the parties is that the Respondent-Authority vide its internal circular dated 09.07.2015 had invited applications from amongst Port Qasim Authority employees for their consideration against the post of Electrician (on board ship) BS-15 subject to the fulfillment of the requisite criteria mentioned against the post. Petitioner has submitted that the aforesaid post of the Electrician is to be filled by direct recruitment in terms of criteria laid down under the Schedule II Sr. No. 24 and Schedule IV of Method of Appointment. Petitioner has averred that the Petitioner had applied against the said post vide his application dated 11.08.2015 but he was not considered and other candidate were short listed and declared successful candidates for the post of Electrician (on board) BS-15. Petitioner claims that the Private Respondents, who have been selected for the aforesaid post do not qualify and have no requisite experience for the post of applied for. Petitioner has added that the impugned circular dated 09.07.2015 was issued in contravention to the Method of Appointment prescribed under the PQA Employees Service Regulation-2011. Petitioner has further submitted that all the appointments were made by the Respondent-Authority against the post of Electrician (on board) in violation of prescribed quota and so also Recruitment Rules. Petitioner has further averred that Private Respondents have been promoted against the post of Electrician (on board) BS-15 vide impugned office order dated 23.05.2010 without lawful authority. Petitioner being aggrieved by and dissatisfied with the discriminatory treatment meted out to him had preferred appeal to the Respondent No.3, which could not be entertained, as such the Petitioner has filed the instant Petition on 30.08.2016.

3. Notice was issued, the Respondents, filed their para-wise comments and denied the allegations leveled against them.

4. Mr. Danish Rashid Khan, learned Counsel for the Petitioner, at the very outset has stated that he does not press prayer clause "C" of the prayer clauses and argued that the instant Petition may be treated as Petition in the nature of writ of quo-warranto; that the Private Respondents had been promoted vide impugned office order dated 23.05.2016, who were ineligible and inexperienced persons and those were apparently close relatives of the senior officers of Port Qasim Authority including Director (HRM) and Manager (HRM) who misused public power vested upon them and flouted the principle of law laid down by the Hon'ble Apex Court in this regard, while issuing promotion order in favour of the Respondent No. 5 to 10, who are employees of the PQA and serving against the different posts of lower scales; that the impugned circular dated 09.07.2015 was issued in contravention to the Method of Appointment prescribed in the Statutory Provisions of PQAESR-2011, as these posts are to be filled 100% by direct recruitment and as such mode of appointment by way of promotion is not provided therein, hence impugned promotion against the post of Electrician (BS-15 is made on the basis favoritism, nepotism, malafide and vindictiveness by the of the Respondents; that under the Method of Appointment prescribed in the Regulations No. 8 & 10 of PQAESR-2011, the post of Electrician (BS15) can only be filled by the mode of direct recruitment after advertising the post in the leading newspapers as per the Regional/Provisions quota of the Federal Government; that the impugned appointments were made from back door policy, in violation of Article 10-A 14, 25 & 27 of the Constitution of Pakistan. In support of his contention he relied upon the case of Muhammad Akram Vs. Selection Committee (NLR 2003 Civil 65). He lastly prayed for allowing the instant petition.

5. Mr. Muhammad Arshad Khan Tanoli, learned counsel for the Respondents No. 2 to 4 has contended that the Respondent No.2 being the Statutory Authority

has legitimate prerogative to amend vary modify, terms and the conditions as well as Method of Appointment of any post in accordance with the requirement of the Authority; that the post of Electrician BS-15, Respondent No.4, has issued circular dated 09.07.2015 with the approval of the Competent Authority; and applications were invited from amongst the eligible employees of PQA for considering their promotion to the post of Electrician (BS-15) subject to their eligibility and fitness as well as departmental selection process and Petitioner participated in the process initiated under circular dated 09.07.2015; that PQA Board approved to fill up the post of Electrician BS-15 through the Method of promotion by way of circulation amongst the eligible employees vide Br. No. 54/2015 dated 10.09.2015, however academic qualification stipulated under the PQAESR-2011; that process for the selection against the post of Electrician BS-15 was finalized in the transparent manner and strictly on merit; that total 23 applications were received from the employees and 18 candidates were short listed including the Petitioner and all short listed candidates were called for written test on 18.11.2015, however only 11 could pass the written test and qualified for interview by obtaining 50% marks, including the Petitioner, who obtained 40 marks out of 75 marks; that meeting of Selection Committee, headed by the Director General (Admin) was held on 23.02.2016, such candidates were interviewed by the Departmental Selection Committee and forwarded its recommendations to the Chairman of PQA being the Competent Authority, however the Chairman of PQA prior to his approval had also conducted interview of the recommended candidates personally on 16.05.2016, whereby disagreed with one recommendation rest have been approved after replacing with suitable candidates; that the Respondents No. 5 to 10 have been promoted under order dated 23.05.2016 on the basis of such transparent selection process and Petitioner being part of the process have participated therein but finally not be

recommended; that prescribed academic qualification is in consonance with the PQAESR-2011. He lastly prayed for dismissal of the instant petition.

6. Mr. Zohaib Khalid Advocate for the Respondent No. 5 to 9 has supported the contention of learned counsel for the Respondent No. 2 to 4.

7. Mr. Ali Safdar Deeper, learned Counsel for the Respondent No. 10 adopted the arguments of the learned counsel for the Respondent No. 2 to 4.

8. Shaikh Liaquat Hussain, Assistant Attorney General, supported the contention of the learned counsel for Respondent No. 2 to 4.

9. We have heard the learned Counsel for the parties and perused the material available on record and case law cited at the bar.

10. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution. The private Respondents are holding the public post, therefore falls within the Purview of Sub-Clause (1)(b)(ii) of the Article 199 of the Constitution, which permits the High Court to issue a “Writ of Quo-warranto” requiring a person within its 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. It is also clear that, while acting under Clauses (b) (ii) of Article 199 of the Constitution, the High Court could declare that the Holder of the Public Office is not entitled, if the office in question of that post, it comes to the conclusion that incumbent has no authority to hold the same. The Office of the Respondent-Authority is a Public Office and for that reason they are amenable of the jurisdiction of this Court under Article 199 of the Constitution. We are fortified on this issued by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Salahuddin and 2 others Vs. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others (PLD 1975 SC

244) and Barrister Sardar Muhammad vs. Federation of Pakistan and others (PLD 2013 Lahore 343). So the arguments of the learned counsel for the Respondents that Constitutional Petition is not maintainable under Article 199 of the Constitution of Pakistan against the Respondents is not sustainable in law. The Petition in our is maintainable under Article 199 of the Constitution and can be decided on merits.

11. The person invoking the jurisdiction under Article 199 of the Constitution of Pakistan is not required to fulfill the stringent conditions required for bringing himself within the meaning of aggrieved person. But, any person can move to a Court and challenge the usurpation or unauthorized occupation of a Public Office by an incumbent of that office and he is not required to undergo the stringent criteria to establish his locus-standi.

12. On merits, the Petitioner has mainly impugned the promotion of the private Respondents on the premise, inter alia, that they do not qualify to hold the Public Office and that they have been promoted /appointed in violation of the Port Qasim Authority Employees Service Regulations 2011.

13. We have gone through the contents of the circular dated 09.07.2015 issued by the Respondent-Authority, which prima-facie shows as under:-

No. PQA/HRM/M-I/10/2015

Dated 9<sup>th</sup> July 2015

### **C I R C U L A R**

*Applications are invited from amongst PQA employees for their consideration against the following post subject to fulfillment of requisite criteria mentioned below and clearance of departmental exam/test etc.*

	Name of Posts	Requisite Criteria
i)	Electrician (on board ship Bps-15	B. Tech (Elec) or Diploma of Associate Engineer (Elect)

**2. Interested employees who possess the aforesaid qualification should apply to HRM Department through proper channel along with relevant documents/testimonials within 15 days from the date of issuance of this circular."**

(Sirajuddin Chandio)  
Director (HRM)

14. In pursuance of the aforesaid Circular Port Qasim Authority had invited applications from amongst Port Qasim Authority employees for their consideration against the post of Electrician (on board ship) BS-15 subject to the fulfillment of requisite criteria mentioned against the post. The criteria required for the post of Electrician (on board ship) BS-15 is B-Tech(Elect) or Diploma of Associate Engineer(Elect). As per counter affidavit filed by the Respondent No. 5 to 10 explicitly show that they have qualified and have been declared successful in written test and in interview and presently they are performing their duties after promotion to the post of Electrician (on board ship) BS-15. Record further reflects that the documents attached with their counter affidavit prima facie show that they have certain qualification i.e. Diploma of Associate Engineer in Electrical, which is the basic criteria for appointment on the post.

15. Perusal of record further reflects that the Respondent-Authority approved minutes of 166<sup>th</sup> Board Meeting held on 10.09.2015, wherein it was resolved that the relaxation in rules for filling up the seven vacancies of the Electrician (on board ship) BS-15 through circulation amongst PQA Employees, who fulfilled the prescribed eligibility / criteria of the post as per PQAESR-2011, instead of appointment through direct induction. It was further resolved that the selection will be made after clearance of departmental exam/test.

16. Perusal of Office Circular dated 09.07.2015, testimonial of the private Respondents attached with their counter affidavit. Resolution passed by the PQA Board on 10.09.2015 and Office Order dated 23.05.2016 prima facie show that there were 12 sanctioned posts of the Electrician (on board ship) BS-15 under Operation Division of PQA, out of which 7 were lying vacant. As per PQAESR-2011, the post of Electrician BS-15 is reserved for 100% direct recruitment. As

per Resolution passed by the Respondent-Authority as discussed supra, the Board resolved to fill up the above vacancies through departmental candidates eligibility/criteria as per PQAESR-2011, in order to meet the emergent requirement of the operation division.

17. It is a well settled principle of law that merit includes qualification for certain posts in Statutory/Public Sector Organizations. The power to prescribe or modify the said criteria vests in the Federal Government pursuant to Article 90 of the Constitution of Pakistan. The said Article vests exclusive power in the Executive to not only appoint, heads of Statutory Bodies, Autonomous Bodies, Semi-Autonomous Bodies, Regulatory Bodies, Public Sector Companies/State Owned Entities etc.; but also to make appointment on merits under the Acts / Ordinances and Rules framed thereunder. The Cabinet/Competent Authority is well within its right to prescribe criteria under Article 90 of the Constitution of Pakistan. Responsibility of fixing criteria of appointment in Public Sector Companies/State owned Entities Primarily falls on the Executive Branch of the State subject to the law. It is also settled law that the Courts ordinarily refrain from interfering in policy making domain of the Executive.

18. In view of the above facts and circumstances of the case, we are constrained to observe that as per section 50 of the PQA Act 1973, the PQA Board is empowered to appoint such officers and servants and it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit. Regulation 24 substituted in revise amendment Regulation-2013 and the Chairman PQA shall be competent to approve certain changes of the permanent post in pay scale on fulfillment of other formalities prescribed by the PQA Board, however such relaxation and Rules for filling up the aforesaid 7 posts



of Electrician (on board ship) BS-15 through circulation amongst PQA Employees.

19. Prima facie the issue involved in the present matter is a policy decision taken by the Competent Authority of PQA. We are fortified with the decision rendered by the Hon'ble Supreme Court in the case of Ghulam Rasool Vs. Government of Pakistan & others (PLD 2015 SC 6), wherein the Hon'ble Supreme Court has held in Paragraph No.9 that Courts ordinarily refrain from interfering in policy making domain of the Executive. Furthermore, in absence of any malafide or illegality, the Competent Authority's decision with respect to the appointment for the aforesaid posts in PQA cannot be interfered with in Constitutional Jurisdiction of this Court, unless it is shown that the incumbents are not fulfilling the criteria set forth by the Competent Authority, which has not been agitated by the counsel for the Petitioner.

20. We do not see any substance on the issue of appointment of private Respondents against the post of Electrician (on board ship) BS-2015, as has been raised by the Petitioner.

21. In the light of facts and law discussed above, the appointment of the private Respondents do not seem to suffer from any inherent defect under the law, besides the Petitioner has also failed to point out any legal flaw in the appointment of the private Respondents, to warrant interference by this Court under Constitutional Jurisdiction. Therefore the instant Petition is inappropriate, and is dismissed along with listed applications.

Karachi  
Dated:

JUDGE

JUDGE