

# IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-846 of 2015

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

**Cdr. (R) Mansoob**

**Ali Khan, Petitioner**

through:

Mr. Abdul Salam Memon, Advocate

**Federation of Pakistan**

Respondent No.1through:

Mr. Muhammad Nishat Warsi, DAG

**Port Qasim Authority/**

Respondent No.2 and 3 through:

Mr. Muhammad Arshad Khan Tanoli  
Advocate

Dates of hearing:

01.04.2019, 02.04.2019, 10.04.2019  
and 12.4.2019

Date of announcement:

26.04.2019

## J U D G M E N T

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**ADNAN-UL-KARIM MEMON, J.** Petitioner through this Constitutional Petition is seeking restoration of his service terminated by the Port Qasim Authority (PQA)/the Respondent No. 02 vide letter dated 18.06.2014.

2. The petitioner is an ex-service man, who after his retirement from Pakistan Navy on 07.12.2009, applied for the post of Director (Private Sector Projects) BPS 20 in respect of an advertisement by PQA published in daily `Dawn` on 29.9.2012. As per the Petitioner, the Respondent No.2/PQA after receiving applications started recruitment process and conducted his interview on 12.11.2012. The Petitioner further claims that he having successfully qualified in the interview was recommended for Medical Fitness. Per petitioner, he appeared for his Medical Fitness Examination and was declared fit for the appointment and was thereafter appointed as the Director (Private Sector Projects) BPS-20 vide appointment order dated 10.01.2013 issued by the respondent No.2/PQA. The Petitioner has further submitted that subsequently the Respondent No.2/PQA served him with show cause notices dated 16.4.2014 and 14.5.2014 alleging that his appointment was illegal and against the directives issued by the Honorable

Supreme Court of Pakistan vide its orders dated 31.1.2011 and 19.12.2013 passed in Civil Petition No.735-K of 2010 and finally his service was terminated vide impugned order dated 18.6.2014. The Petitioner being aggrieved by and dissatisfied with the impugned order, filed Civil Suit bearing No.1084 of 2014 before the learned Single Judge (Original Side) of this Court, (Re-Cdr ® Mansoob Ali Khan vs. The Federation of Pakistan and others), for Declaration, Cancellation and Injunction. The prayer is reproduced below:

**“a) Declare that the Impugned Letters dated 16.04.2014, 14.05.2014, 18.06.2014 and 23.06.2014 to the Plaintiff is illegal, mala fide without jurisdiction, arbitrary has been issued to cause prejudice to the Plaintiff, is discriminate and of no legal effect and set aside the same.”**

The learned Single Judge (Original Side) passed the following order dated 11.02.2015 in the Civil Suit, referred herein below:-

**“Learned counsel for defendant No.2 submits that defendant No.2 Port Qasim Authority against whom the plaintiff is seeking the relief being its employee enjoy statutory rules of service and as such suit in the present form is hit by recent pronouncement of Hon’ble Supreme Court wherein it has been observed that the suits filed by the employees of the corporation/statutory authority having statutory rules are to be referred to the learned Division Bench for adjudication in accordance with law. Accordingly, the plaintiff is directed to provide one more set of pleadings/annexures. Once such additional set is made available to the concerned branch, it shall refer the matter to the concerned Writ Branch for its presentation before the learned Division Bench for appropriate orders.”**

This court vide common judgment dated 11.12.2017 converted the aforesaid Civil Suit into Constitution Petition for decision on merits.

3. The Respondents No.2 and 3 filed comments by way of `counter affidavit` and raised legal objections about the maintainability of the instant Petition.

4. We enquired from the learned Counsel for the Petitioner that how he would justify appointment of the Petitioner against the post of Director (Private Sector Projects) BPS-20 in PQA in disregard of the order dated 31.1.2011 passed by the Hon’ble Supreme Court of Pakistan in Civil Petition No. 735 –K of 2010, directing the respondents that “no more appointment/promotion/transfer irrespective of the fact whether the employees are on contract basis or otherwise,

shall be made by the Chairman/Board of Governors of the Port Qasim Authority till furnishing of a comprehensive report as mentioned hereinabove”. Mr. Abdul Salam Memon, learned Counsel for the Petitioner, in reply to the query, argued that the Petitioner was ex-service man of Pakistan Navy and after rendering more than 28 years of active service in Pakistan Navy, he joined the Port Qasim Authority (“PQA”) in the year 2012. However, before joining PQA, he served in other prestigious institutions; that the Petitioner is prejudiced against the action of the Respondents, especially the Respondent No.3, who in order to show purported compliance of the Hon’ble Supreme Court of Pakistan’s order dated 19.12.2013 passed in C.P. No.04/2013 [*Abdul Jabbar Memon V. PQA and others*] has victimized the Petitioner. As per the learned counsel, the petitioner was served with a show cause letter dated 16.4.2014, whereby he was asked to furnish explanation with regard to his appointment in PQA. The petitioner in his reply denied the allegations leveled against him with the assertion that contents of the show cause notices issued to him were based on mala fide and were without jurisdiction, discriminatory, on ulterior motives and on pick and choose policy. The Petitioner was also served with another show cause notice dated 14.5.2014, which was replied by him on 23.5.2014; he added that the Respondent No.2 being an autonomous body has the right and power to employ people and all incidental matters pertaining to employment were to be looked into by the Respondent No.2 only. According to the learned counsel, the Respondent No.3 has no jurisdiction in the matter relating to the Petitioner as the Chairman of the PQA was the Competent Authority for all issues relating to the appointment in BPS-19 and 20. Thus, according to him the impugned order is without jurisdiction and beyond the authority of the Respondents, who had victimized him during the pendency of the aforesaid C.P. No.04/2013 before the Honorable Supreme Court and that the statement filed by PQA before the Honorable Supreme Court did not reflect the correct position. He further contended that the Respondent No.3 without giving the Petitioner any right of hearing decided that his appointment was illegal. He continued that the impugned letters were predetermined and outcome of malice

and the actions of the Respondents were malafide and may be declared to be of no effect. He stated that the Respondents summoned the Petitioner on 18.6.2014, conducted his interview and passed the termination order on the same day i.e. 18.6.2014. According to him, this aspect alone was the manifestation of the fact that the entire scheme to terminate the Petitioner was preplanned by the Respondents and an office order was issued on 23.6.2014 confirming the termination of the petitioner. He further asserted that the actions of the Respondents were contrary to the fundamental rights of the petitioner guaranteed under Article 9, 10A and 25 of the Constitution of Islamic Republic of Pakistan. According to him, it is a settled principle of law that whenever someone acts in excess of his authority or in a manner which is mala fide or arbitrary the same is illegal and hence the instant case is a clear example of Respondents acting in excess of their authority. In support of his contention, he relied upon the judgment rendered in the case of Nasir Said vs. WAPDA and another [PLD 1987 SC 421]. He further argued that the Respondent No.3 was not the appointing authority of the Petitioner; therefore, he could not have issued the charge sheet and termination letter against the officers, even those in Grade-20. He next relied upon the case of Brig. Retd. Safdar Hussain Awan vs. Government of Pakistan through Principal Secretary to the Prime Minister and others [2008 PLC (C.S.) 949] and argued that in the present case petitioner was appointed by PQA Board, which is an autonomous body; whereby the services of the petitioner were terminated by the Respondent No.3, who was not the competent authority; therefore, the order of termination/removal from the service passed by an incompetent authority was held to be illegal. He next relied upon the case of Merajdin Bhatti vs. Chairman, Punjab Board of Technical Education, Lahore and 04 others [2005 PLC (C.S) 551] and argued that the basic termination order of the petitioner having been passed by an incompetent authority, cannot sustain under the law, which stands vitiated by operation of the law. He next relied upon the case of Habib Bank Limited and others vs. Mahmood Ali Khan and others [2004 SCMR 693] and argued that the orders of termination of the petitioner and prior to its issuance of

the charge-sheet, show-cause notices and other proceedings were initiated by an incompetent authority; therefore, the entire disciplinary proceedings were held to be nullity in eyes of law and were then set-aside. He next relied upon the case of *Muhammad Rafi and another vs. Federation of Pakistan and others* [2016 SCMR 2146] and argued that the Respondent-Authority/PQA, after complying with the codal formalities appointed the petitioner, who joined the service accordingly; where-after the process was scrapped on the ground that it was not transparent. He added that the Respondent-Authority/PQA had taken no action against those persons, who had initiated allegedly non-transparent recruitment process for appointment of the petitioner, if any; therefore the action of the Respondent-Authority/PQA to scrap the appointment of the petitioner is contrary to the basic spirit of the Port Qasim Authority Employees Service Regulations, [PQAES] 2011.

5. We posted another question to the learned counsel whether there was any approval of the competent authority i.e. Federal Government/Prime Minister as provided under Regulation No.4 of PQAES Regulations for appointment of the petitioner. The learned counsel in reply, relied upon the case of *Muhammad Ilyas Khokhar and 24 others vs. Federation of Pakistan and others* [2006 SCMR 1240] and argued that if, there was no ex-post facto approval of the minutes of meeting of PQA Board regarding recommendation of the petitioner for the post of Director (Private Sector Projects) BPS-20 in PQA by the Establishment Division, it would not make the appointment of the petitioner illegal. He next relied upon the case of *Fuad Asadullah Khan vs. Federation of Pakistan through Secretary Establishment and others* [2009 SCMR 412] and argued that if there were any Irregularities committed by the PQA Board qua in the appointments, the appointees could not be condemned subsequently with the change of the Heads of the Department or at other level. He added that such act of the departmental authority was unjustified as the candidate otherwise was fully eligible and qualified to hold the job. He lastly prayed for allowing the instant petition.

6. Conversely, Mr. Muhammad Arshad Khan Tanoli, learned Counsel appearing for Respondents No.02 and 03, argued that the Petition is not maintainable in the light of the Order dated 31.1.2011 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.735 –K of 2010 with directions to the respondents that “no more appointment/promotion/transfer irrespective of the fact whether the employees are on contract basis or otherwise, shall be made by the Chairman/Board of governor of the Port Qasim Authority till furnishing of a comprehensive report as mentioned hereinabove”. The learned Counsel contended that the Respondents, in compliance of the order, had submitted `Concise Statement/Report` before the Honorable Supreme Court and the name of the Petitioner was duly listed at Sr. No.59 in the said report available at Pages No. 131 to 133 along with the Counter Affidavit filed by the PQA. He further contended that the Petitioner cannot seek relief from this Court and if he is aggrieved, he should approach the Hon'ble Supreme Court in the same matter. For convenience, the relevant portions from the said Annexure “I” are reproduced as under:

IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD  
(Original Jurisdiction)

CMA No.7099/2013  
In  
Constitution No.04/2013

In re:

ACTION TAKEN AGAINST APPOINTMENT IN THE PORT QASIM AUTHORITY MADE IN VIOLATION OF JUDGMENT IN THE CASE OF ABDUL JABBAR MEMON AND OTHERS (1996-SCMR-1349).

APPLICATION FOR SUBMISSION OF REPORT ON BEHALF OF PORT QASIM AUTHORITY.

11. **That according to instructions contained in Estacode regarding appointments in BPS-20 and above in the statutory bodies, the competent authority is the Prime Minister. Appointments in PQA in BPS-20 and above were not submitted for approval to the competent authority through Establishment Division as per instructions as well as PQA Service Regulations. Thus, such appointments are also violative of Rules and non-transparent. Details of such appointments are also on record.**

13. That on the basis of 2003 regulations during the period of 2008 to March 2011, details of recruitment / appointments of various categories are as under:-

a)	Appointment of Officers BPS-17 and above	38
b)	Appointment made on the directive of Federal Govt.	03
c)	Appointment made in the year 2008 in staff category	190
d)	Appointment made during the year 2009	140

Summary of appointment of Officers made during the 2011 to 2013

a)	Appointment of Officers as BPS-17 and above.	25
b)	Appointment during the year 2011	79
i)	Staff appointed against advertisement dated 22/10/2010	13
ii)	Security staff appointed against advertisement dated 22/10/2011.	66
C)	Appointment made during the year 2012	07
i)	Staff appointed through advertisement dated 10.12.2011, 15.2.2012 & 9.8.2012	06
ii)	Staff appointed on Daily Wages (Now Regularized)	01
D.	Appointment made during the year 2013	272
i)	Appointments of Security Staff on Daily Wages through Advertisement 19 & 21 May 2012 (Now regularized)	200
ii)	Appointments of Daily Wages other staff (subsequently regularized)	70
iii)	Appointments of daily wages staff (Naib Qasid) (subsequently regularized)	02
E.	Appointment of Dependents of deceased employees	27
	Total	<b>410</b>
	Total recruited from 2008-2013 staff & officers (410+481)=	<b>891</b>

PRAYER

**It is therefore most respectfully prayed that this Hon'ble Court may graciously declare, after examining the case and after hearing the parties, the aforesaid appointments as being illegal, without lawful authority and of no legal effect, non transparent and in abuse of authority.**

Sr. No.	Name of Appointee	Domicile	Advertisement Date	Meeting date of DPC/Selection Board	Appointment/Regularization Date	Initial or Contract/Regularization	Appointment Post /BPS	In Accordance with Advertisement initial officer (Yes/No)	Tien No. of Cadre Recruittee vacancies available as per recruittee/promotee ratio	Tien available Merit/Provincial Quota (Yes/No)	Remarks and/or Braches/Relaxation in Laws/Rules in appointment (if any)
59.	Cdr. @ Mansoob Ali Khan	Sindh (Rural)	30.09.2012	12.11.2012	28.01.2013	Initial	Director (PSP) BPS-20	Yes	Not considered	No	Appointment against quota non-availability

vii. **Ex-Army and Naval officers (Pensioner) were appointed without having requisite qualification and relevant experience required for such posts, and appointed on regular basis. In addition their pay was fixed at a higher stage against the BPS mentioned in the advertisement. (Emphasis Added).**

He further submitted that the appointment of the petitioner was not made as per PQAES Regulations, 2011; that the Petitioner did not meet the criteria which could not be circumvented. He further pointed out that the appointment of the Petitioner was effected during the operation of stay order of the Hon'ble Supreme Court of Pakistan; therefore, he was rightly dismissed from the service. Learned Counsel further submitted that the Director (HRM) vide letter dated 30<sup>th</sup> October, 2014 informed that Port Qasim Authority (PQA) Board vide Board Resolution No.10/2014 inter alia approved/ratified the orders of the Chairman PQA in respect of the Petitioner. He in the end prayed for the dismissal of the instant petition.

7. Mr. Muhammad Nishat Warsi, learned DAG representing Respondent No.1 adopted the arguments of the learned Counsel for Respondents No. 2 and 3.

8. Heard learned Counsel for the parties, perused the material available on record and the case law cited at the bar.

9. In our view, the Petitioner's assertion for determination could be summarized as under:-

**Whether the Petitioner was appointed in accordance with the law and had requisite qualifications and experience of Director (Private Sector Projects) in BPS-20 to claim reinstatement in service with Port Qasim Authority under PQAES Regulations, 2011?**

**Whether the post of the Director (Private Sector Projects) in BPS-20 was abolished through Board Resolution No.10/2014 dated 16.9.2014 pursuant to the statement made by the Chairman, Port Qasim Authority before the Hon'ble Supreme Court regarding illegal and irregular appointment of the petitioner?**

10. Our attention was invited to the advertisement dated 29.9.2012. The learned Counsel for the Respondents argued that the Petitioner did not possess the requisite qualification in the discipline of civil engineering and experience for the advertised post, the advertisement is reproduced below:

### **PORT QASIM AUTHORITY**

Bin Qasim, Karachi-75020

#### **JOB OPPORTUNITIES**

PORT QASIM AUTHORITY INVITES APPLICATIONS FROM SUITABLE CANDIDATES FOR APPOINTMENT TO THE FOLLOWING POSTS ON TEMPORARY BASIS LIKELY TO BE REGULARIZED IN FUTURE

S#	Name and Scale of the Post	No. of Posts	Prescribed Education Qualification and Experience	Domicile	Age Limit
1	Director (Private Sector Projects) BPS-20	01	At least 2 <sup>nd</sup> Class Master's /Bachelor's in Civil /Mechanical/Electrical Engineering Registered with Pakistan Engineering Council as professional Engineer.  17 years post qualification experience in a Govt./Semi Govt./Planning Development and Construction Organization of repute	Merit	Up to 50 years
2	Director (Security & Transport) BPS-20	01	At least 2 <sup>nd</sup> Class Master's Degree in Administrative/ Social Sciences/Transport Management.  17 years post qualification experience in administration and Security / Transport Function in a Govt./Semi Govt./Large Commercial Organization of repute.	Merit	Up to 50 years
3	Director (Human Resource) BPS-20	01	At least 2 <sup>nd</sup> Class Master's Degree in Administrative/ Social Sciences/MPA/MBA.  17 years post qualification experience in Personnel	Merit	Up to 50 years



			Administration in a Govt./Semi Govt./Large Commercial Organization of repute.		
SUBMISSION OF APPLICATIONS					
<ul style="list-style-type: none"> <li>• Applications along with attested copies of all relevant documents/testimonials concerning age, qualifications experience and CNIC etc. alongwith 02 passport size photographs should reach to P.O. Box No.9103, Bin Qasim, Karachi within 15 days from the date of publication of this advertisement.</li> <li>• Only short listed candidates will be called for test/interview.</li> <li>• No TA/DA will be allowed for test /interview.</li> <li>• The Authority reserves the right to reject any or all applications.</li> <li>• Relaxation in age will be considered as admissible under the rules.</li> </ul>					
(MUHAMMAD SAQIB) SECRETARY					

11. We have noticed that the post advertised in the Newspapers, pertained to Planning Development and Construction which was for civil engineering, whereas the petitioner had acquired his Degree in the discipline of Mechanical Engineering as such, bare qualification in Mechanical Engineering in our view would not suffice in addition to which, experience of the relevant field i.e. in Civil Engineering was also a necessary requirement. Therefore, apparently, in absence of the requisite qualification and experience, the Petitioner appears to be not eligible to hold the post of Director (Private Sector Projects) BPS-20 in PQA on contract or on regular basis. Additionally, as elucidated herein above, the Petitioner was appointed in complete disregard of the Regulation No 4 as discussed supra, having no requisite experience of 17 years in the relevant field. Therefore, he cannot make a case for reinstatement in service under the law, for the simple reason that the Honorable Supreme Court in Civil Petition No.7/2011 out of CP No.735-K-2010 and CMA 486-K/2010 vide order dated 14.02.2011, in the case of Abdul Jabbar Memon versus Federation of Pakistan and others, held that the Chairman PQA may make appointments strictly on merits, which are necessary and for running day to day affairs of the PQA, subject to the information of this Court. Prima-facie, the ex-management of PQA violated the aforesaid direction of Honorable Supreme Court and filled the post of Director (Private Sector Projects) BPS-20 in PQA in haste to accommodate the petitioner without intimation to the Honorable Supreme Court. The relevant portion of the Termination Order is reproduced as under:

**NO.1(9)/2008-P&S-II**  
**GOVERNMENT OF PAKISTAN**  
**MINISTRY OF PORTS & SHIPPING**  
 \*\*\*

Islamabad, the 18<sup>th</sup> June, 2014

To: The Chairman  
 Port Qasim Authority  
 Karachi

Subject: **HONOURABLE SUPREME COURT ORDER DATD 19-12-2013.**

This order will dispose of the case of Cdr. (Retd) Mansoob Ali Khan, Director (Private Sector Projects).

In the Constitution Petition No.4 of 2013 and others filed by Mr. Abdul Jabbar Memon Vs. PQA and others, the Honorable Supreme Court of Pakistan passed an order on 19-12-2013, the relevant portion is reproduced here:-

**Order Dated 19-12-2013**

Learned counsel for the Port Qasim Authority submits that he has instructions to make a statement before this court that the Competent Authority shall examine the legality and vires of all the appointments and promotions made during the last five years within the Port Qasim Authority and shall pass appropriate orders within four weeks from today. Petitioner Mr. Abdul Jabbar Memon is satisfied with the statement made. That being so, all these cases are disposed of accordingly. However, it would be open for the petitioner to have the main case resurrected, if there is a live issue.

2. Two other relevant extracts from the orders of the Honorable Supreme Court of Pakistan are reproduced here:-

- i. Civil Petition No.735-K of 2012 & CMA No.486-K of 2012, Abdul Jabbar Memon Vs. Federation of Pakistan and others dated 31-01-2011.

“In view of the sensitivity and importance of the matter, this petition filed under Article 185(3) of Islamic Republic of Pakistan, 1973 is converted into petition under Article 184(3) of the Constitution to examine as to how and under what circumstances more than 400 employees in Grade-I to Grade-20 have been appointed without observing any codal formalities and by ignoring the merit. In such view of the matter, it is hereby directed that no more appointment/promotion/transfer irrespective of the fact whether the employees are on contract basis or otherwise, shall be made by the Chairman/Board of Governor of the Port Qasim Authority till furnishing of a comprehensive report as mentioned hereinabove.

- ii. Civil Petition No. 7/2011 out of CP No.735-K-2010 and CMA 486-K/2010 dated 14-02-2011, Abdul Jabbar Memon versus Federation of Pakistan and others.

“It has been observed that no rule/regulation has been framed which is sine qua non before making such appointment as provided under Section 50 and 51 of Port Qasim Authority Act 1973. It is quite amazing that no rule/regulation qua appointments could have been framed so far but he appointments, numerous in numbers, have been made by exercising the discretion which was never conferred upon either on Chairman or the Minister concerned. Be as it may, it is further directed that the mandatory requirements as envisaged under Section 50 and 51 or the PQA Act, 1973, be completed within a period of 30 days. We have made it clear in order dated 31-01-2011 that no more appointment/promotion/transfer irrespective of the fact whether the employees are on contract basis or otherwise shall be made by the Chairman/Board of Governors of the PQA till further order. The Chairman PQA may make appointments strictly on merits, which are necessary and for running day to day affairs of the PQA, subject to the information of this Court”

3. The post of Director (Private Sector Projects BS-20) was advertised in the local /national newspapers on 29-9-2012. In this advertisement it was mentioned that the required qualification is:

“At least 2<sup>nd</sup> Class Master’s /Bachelor’s in Civil/Mechanical/Electrical Engineering Registered with Pakistan Engineering Council as professional Engineer. 17 years post qualification experience in a Govt. /Planning Development and Construction Organization of repute.”

Cdr (Retd) Mansoob Ali Khan, was appointed against this post.

4. Cdr (Retd) Mansoob Ali Khan, was given notice vide letter No.1(9)/2008-P&S-I dated 16<sup>th</sup> April, 2014 that:-
- i. "Your recruitment was carried out after the order of Honorable Supreme Court (as mentioned above para 2-(i) and at the same time there is nothing on record to show that the Honorable Supreme Court was informed about it. You were offered the appointment vide Letter No.PQA/HRM/M-1/95/2012 dated 10-01-2013 and you joined duty on the same date."
  - ii. The offer of appointment contains a Clause that your appointment will be on probation for a period of 01 years extendable by order for further period not exceeding on year provided that if no order has been made by the day following the expiry of the extended period, the appointment shall be deemed to have been regularized. There is nothing on the file that shows that your probation period was terminated. As such it is considered that you are still under the extended period of probation. During this period your appointment is liable for termination at 30 days' notice or pay in lieu thereof at any time without assigning any reason thereof.
  - iii. You are hereby called to explain that:-
    - a) Your initial recruitment being against the directives of the Honorable Supreme Court (para-22(i) as explained above and you are still being in the probation period, why you should not be terminated forthwith?
    - b) Your initial recruitment being illegal and in clear violation of law/rules, you are not entitled for 30 days advance notice or salary in lieu as per original offer letter, and why you are not terminated forthwith without 30 days' notice or salary thereof?

5. Through another notice given vide letter No.1(9)/2008-P&S-II dated 14 May, 2014 he was informed that:-

"In pursuance of the directives of the apex court vide order dated 19-12-2013, the competent authority has examined your service record and credentials in order to examine the illegality of vires of your appointment as Director (Public Sector Projects BPS-20, in PQA, whereupon following irregularities / illegalities were observed:

"That at the time of appointment you did no fulfill the required experience for the post of Director (Public Sector Projects) BPS-20 as per the advertisement. As per the advertisement, you should have been in possession of 17 years post qualification experience in a Government/Semi Government/Large planning development and construction organization of repute in the field of civil engineering. However, it has been found as per CV submitted along with the application for appointment in PQA most of your service tenure is spread on the assignment of Instructor, DMEO, Chief Engineer, Manager ship Maintenance, Manager Shore installation and maintenance, DGM (ship Building), General Manager ship Repairs, attached with NUST university Karachi campus, Registrar, Director (Quality Assurance) and your service career in Karachi Ship yard as General Manager (Design & Proposal), which are irrelevant and do not fulfill the pre requisite of the post"  
Without going into further details or additional grounds, your appointment as Director (Private Sector Projects) BPS-20, appears to be illegal and in total violation of law/rules.

6. He submitted written response (Annexure I & II) and also explained his position in the personal hearing given to him today i.e. 18<sup>th</sup> June, 2014 in my office at Islamabad.

7. From the perusal of record, his written response (including his CV) and personal explanation, it is clear that he did not possess the required experience as per advertisement. His experience could at best be described as anything but not the one required by PQA as given in para 5 above.

8. Moreover, his probation was not terminated, so his period of probation will go upto 09<sup>th</sup> January, 2013.

9. In light of the aforesaid discussion, Cdr (Retd) Mansoob Ali Khan's appointment is totally illegal and in utter violation of merit. His services are terminated forthwith.

10. All the emoluments (salary, allowances and other financial benefits) that he received from PQA are to be recovered from his; and it would be deemed that he was neither appointed nor he joined PQA. This order will not place any bar on the PQA/Government to initiate any other action against him permissible under law of the land.

11. Copy of this order be given to Cdr (Retd) Mansoob Ali Khan's duly acknowledged, and concerned officer/registrars of the Honourable Supreme Court for information please.

Sd/-  
(Habibullah Khan Khattak)  
Secretary (Ports & Shipping)  
18-6-14

12. We have noticed that complete procedure for appointment of Serviceman and ex-serviceman is given in the Regulations No.36 & 58 of PQA Employees Service Regulations, 2011. The relevant portion of these regulations is reproduced hereunder:-

**“36. Joining PQA on Deputation/Secondment from Other Organization**

Criteria/procedure and the terms and conditions of the employees joining PQA on deputation/secondment shall be regulated under the laid down procedure in the Estacode and JSI-4/85 respectively, as amended from time to time.

**58. Re-employment after the age of superannuation**

**(1) On reemployment after retirement the employee shall be regarded as contractual employee on special conditions, who will have no claim for inter-se-seniority or any other claim due to his previous service.**

**2) The reemployment shall not be made in contravention of the policy and procedures issued by Federal Government from time to time.” (Emphasis Added).**

13. We have noted that the method of appointment on the post of Director (Private Sector Projects) BPS-20 is provided under Schedule-II of PQAES-Regulations 2011 i.e. 60% by promotion and 40% by initial appointment, which is subject to approval by the Federal Government on the recommendations of PQA Board under Regulation-4, as mentioned above. We do not see any of the conditions, as discussed supra having being fulfilled in the appointment of the Petitioner against the aforesaid post.

14. It is also to be noted that the Petitioner had no vested right for reinstatement in service, which was purely on contract basis and his service was terminated in the light of the orders dated 31.1.2011, 14.12.2011, 26.04.2011, 02.6.2011, 18.11.2011, 09.01.2013, 07.5.2013, 04.12.2013, 19.12.2013 & 25.6.2014 (available at Pages No. 373 to 431) of the Honorable Supreme Court in the aforesaid proceedings.

15. It is also an admitted fact that the Respondents, in compliance with the order dated 31.1.2011, had submitted a concise statement/report before the Honorable Supreme Court and the name of the Petitioner was very much listed at Sr. No.59 in the said report available at Page No.131 to 133 along with the counter affidavit filed by Respondents No.2 to 4. The Chairman, Port Qasim Authority submitted before the Hon'ble Supreme Court that all the illegal appointments would be scrutinized and those found to be irregular would be undone. Pursuant to this statement, which was recorded in the Order dated 25.06.2014, the Port Qasim Authority (PQA) passed Board Resolution No.10/2014 dated 16.9.2014, relevant portion of which is reproduced as under:

**Board Resolution No.10/2014 dated 16.09.2014**

21. After necessary discussions, the Board resolved to agree with the recommendations of Administration Division and ratified the following action taken by the Chairman, PQA/Secretary (P&S)

- a. Issuance of Show cause Notices and termination orders dated 18.06.2014, in respect of following three (03) BPS-20 officers of PQA, being Competent Authority in terms of Regulation No.4 of PQA Employees Service Regulations-2011, amended 2013 read with Section-50 of PQA Act-1973.
  - i. Brig. (R) Kamran Jalil
  - ii. Lt. Cdr @ Adil Rashid
  - iii. Cdr. (R) Mansoob Ali Khan
- b. Issuance of Show Cause Notice to Mr. Muhammad Nauman Khan an officer of BPS-20, and subsequent proceedings pursuant to such show cause Notice in compliance of Supreme Court Order dated 19.12.2013, as and when interim order is vacated by the Hon'ble High Court of Sindh.

16. Even otherwise, the Petitioner's claim of his reinstatement is not sustainable in view of Regulation No.44 of PQAESR-2011, for the simple reason that petitioner's probation was not completed in terms of his appointment letter. The record also does not reflect that the service of the petitioner was regularized or confirmed. Therefore, the Respondent-PQA in our view was well within its right to terminate the service of probationer before its completion. It appears from the record that the petitioner had filed a Civil Suit No.1084/2014 before the learned Single Judge (O.S) of this Court, whereby he sought a declaration that he was permanently appointed as Director (Private Sector Projects) in BPS-20 in PQA. The suit (vide order dated 11.2.2015) was referred to the Division Bench of this

court and converted into a constitutional petition numbered as C. P. No. D-846 of 2015. The petitioner's case is based on the "Minutes of the Selection Committee" dated 12.11.2012 without approval of the competent authority i.e. Prime Minister of Pakistan. The minutes of the Selection Committee are reproduced below:

"A meeting of the Selection Committee to interview the candidates for appointment against the relevant vacant posts of Director (Security & Transport) BPS-20 and Director (Private Sector Projects) BPS-20, in Port Qasim Authority was held at Camp Office, Secretary Ports & Shipping, 14<sup>th</sup> Floor, PNSC Building, Karachi on 12<sup>th</sup> November, 2012 at 1030 hours. Following attended the meeting:-

- i. **Dr. Muhammad Khawar Jameel,**  
Secretary, Ministry of Ports & Shipping/Chairman
- ii. **Vice Admiral (Retd) Muhammad Shafi HI(M)**  
Chairman PQA/Member
- iii. **Vice Admiral (R) Azhar Shamim Anwar HI(M) S. Bt**  
Director General, Ports & Shipping / Member
- iv. **Mr. Muhammad Raza**  
Joint Secretary, Ministry of Port & Shipping/Member
- v. **Brigadier (Retd) Saeed Ahmed Khan, SI(M)**  
DG (Admin), PQA/Co-opted Member

2. After scrutiny of data/documents available alongwith applications/CVs of the candidates, 07 candidates for the post of Director (Security & Transport) BPS-20 and 12 candidates for the post of Director (Private Sector Projects) BPS-20 were found to be fulfilling the criteria and thus eligible for interview. Subsequently, the candidates were interviewed/assessed by members of the Selection Committee as per assessment sheets placed at Annexure-A & B. Keeping in view the assessment as well as qualification/experience, the committee recommended appointment of the following candidates as mentioned against each:

- A) \*\*\*\*\*
- B) **Engr. Cdr (R) Mansoob Ali Khan** as Director (Private Sector Projects) BPS-20 (1 year 7 months relaxation in upper age limit as per Regulation-12(3) of PQA Employees Service Regulations-2011 is admissible)  
S/o Mehboob Khan

Sd/-  
Muhammad Raza  
Joint Secretary  
(P&S)/  
Member

Sd/-  
Saeed Ahmed Khan SI(M)  
Brigadier (Retd)  
DG (Admin) PQA/Co  
opted  
Member

Sd/-  
Azher Shamim Anwar HI  
(M), S.Bt  
Vice Admiral (Retd)  
DG (P&S)/Member

Sd/-  
Muhammad Shafi HI(..)  
Vice Admiral (Retd)  
Chairman PQA/Member

Sd/-  
(Dr. Muhammad Khawar Jameel)  
Secretary (Ports & Shipping) Chairman

No.PQA/HRM/M-I/95/2012  
Dated: 10<sup>th</sup> January, 2013

To,

**Engr. Cdr (R) Mansoob Ali Khan**  
S/o. Mehboob Khan  
D-139, Street No.3, NHS Kansaz  
National Stadium Road  
Karachi

Subject: **APPOINTMENT IN PORT QASIM AUTHORITY**

The Competent Authority is pleased to offer you a post as Director (Private Sector Projects), BPS-20 on following terms and conditions:

- i. Pay Rs.36,000/- per month in the scale Rs.36000-2350-68900 plus usual allowances as admissible from time to time under the rules to BPS-20 officers.
- ii. Your appointment will be temporary and liable to termination at thirty (30) days' notice or pay in lieu thereof at any time without assigning any reason thereof.

- iii. If you wish to terminate your services in the Authority at any time, you shall resign in writing giving thirty (30) days' notice but shall continue to serve the Authority till your resignation is accepted in writing.
  - iv. If you absent yourself from duty before the acceptance of resignation by the Authority in writing you shall be liable to disciplinary action.
  - v. Your temporary appointment in the Authority will be subject to your Medical fitness and verification of your character, antecedents etc. by the Police/other Authorities.
  - vi. You will be required to produce Domicile Certificate, Education Certificate, other qualifications and character certificates before joining this office.
  - vii. You will be on probation for a period of one year extendable by order for further period not exceeding one year provided that if no order has been made by the day following the expiry of the extended period, the appointment shall be deemed to have been regularized.
  - viii. Your headquarter will be at Port Muhammad Bin Qasim, Karachi, but you shall be liable to serve anywhere in Pakistan.
  - ix. You will not be entitled to any T.A or D.A. for joining the post and also on termination or resignation from service you will not be allowed any conveyance or TA/DA to any place to which you may desire to proceed.
  - x. In respect of leave, sickness and other service matters you will be governed by such, orders, rules and instructions as the Authority may issue from time to time for the employees of your category/grade.
2. If the above terms and conditions are acceptable, you may sign the offer letter and return the same to HRM Department within 07 days of the receipt of this letter, failing which, the offer will be treated as cancelled without further intimation. **(Emphasis Added)**

Yours sincerely  
Sd/-  
Haris Hamid  
Director (HRM)

17. From what has been discussed above, we are of the considered view that the Port Qasim Authority (PQA) vide Board Resolution No.10/2014 dated 16.9.2014 ratified the impugned action of the management of PQA and that be discretionary powers to do so duly vested in the Respondents No.2. The Hon'ble Apex Court took cognizance of the matter about the affairs of Port Qasim Authority in respect of appointments, promotions and other ancillary appointments in *suo moto* proceedings and the Chairman Port Qasim Authority duly admitted in the proceedings that the appointments were irregular and that those persons had to be terminated. Hence in our view, the Petitioner did not have any vested right for reinstatement on the said contractual post. Besides, the issue of re-employment after retirement from the disciplinary force has been discouraged by the Honorable Supreme Court in SUO MOTU CASE NO.24 of 2010 [Regarding Corruption in Hajj Arrangements in 2010] and held at paragraph No.38 as under:-

“38. The matter of re-employment of police officers after their retirement also came under consideration by this Court in the case of In Re: Suo Motu Case No.16 of 2011 (PLD 2013 SC 443) wherein on 22.03.2013 it was held that re-employment in disciplinary force like Police or for that matter in any other department has to be made subject to section 14 of the Civil Servants Act, 1973 read with instructions contained in Esta Code under the heading “Reemployment”. It was further observed that undoubtedly, it is the Government, which has to perform its function strictly in

accordance with law but, prima facie, re-employment of police officers (noted SMC 24/10 34 therein) was not in conformity with the law and the judgment of this Court. Consequently, with the approval of the Competent Authority i.e. Chief Minister Sindh, the contract appointments of 8 police officers were terminated, whereas, one of the re-employed employee, namely, Mr. Waseem Ahmed, Additional Chief Secretary, Home Department (BS-21), who was also a former Police Officer and on retirement has been appointed by the Government of Sindh, tendered his resignation, which was accepted by the competent authority”

18. To elaborate further on the issue of re-employment of the Petitioner in PQA after his retirement from Pakistan Navy, we have to see whether his re-employment in PQA was in accordance with law and the dicta laid down in the cases decided by the Honorable Supreme Court or otherwise?

19. In this regard, the Hon’ble Supreme Court of Pakistan in the case of Azhar Hayat v. Karachi Port Trust (2016 SCMR 1916) has dealt with the issue of deputation / absorption/ re-appointment of officers of Armed Forces of Pakistan in civil posts at paragraph 8 of the Judgment. We also refer to paragraph 2, No.4/85 of the JSI and Serial No.214, Part V, Chapter 2 of Volume I of the Estacode, reproduced herein below for better understanding the issue under discussion. It may be noted that both these provisions are identical.

**No.4/85 of the JSI / Sl. No.214 of the Estacode**

"It has been decided that Armed Forces Officers seconded to civil ministries (other than Defence), departments of the Central/Provincial Governments, autonomous/semiautonomous bodies and corporations etc., will be governed by the following terms and conditions:-"

**"2. Tenure" of the JSI / "1. Tenure" of the Estacode:**

(a) Officers will normally be seconded for a period up to three years extendable, in exceptional circumstances, by one year by the Government, after which the officer will normally either be recalled to the parent service or released. No extension in service will be allowed to officers who complete age/service limits for retirement during secondment.

(b) If the deputation of an officer tends to become indefinitely prolonged, permanent absorption of the officer concerned in the civil cadre by retiring him from the parent service, would be considered.

(c) In case of an emergency, the parent service will have the option of withdrawing a deputed officer without notice, if necessary.

(d) An officer will have the option to request for return to his parent service if he feels that his service career is adversely affected by continued deputation."

20. The petitioner’s case before us is for appointment in PQA as Director (Private Sector Projects) BPS-20 on contract basis vide Appointment Order dated 10<sup>th</sup> January, 2013. The main question for our consideration is the scope of the JSI/the Estacode and in particular whether permanent re-employment/absorption in such cases is permissible or not? The afore cited provisions of JSI/Estacode



clearly stipulates that officers may be seconded for a period of up to three years and only in exceptional circumstances such period can be extended by another year. We are cognizant of the fact that the petitioner was "re-employed on contract basis" after his retirement from Pakistan Navy in the year 2009. In this regard serial 231, Part V, Chapter 2 of Volume I of the Estacode is referred, which provides for the "Induction/Re-employment of Officers of Armed Forces of Pakistan in Civil Posts". Relevant paragraphs are reproduced hereunder for the sake of brevity:-

**"Sl. No. 231**

**Induction/Re-employment of Officers of Armed Forces of Pakistan in Civil Posts**

The question of institutionalizing the induction and re-employment of officers of the armed forces of Pakistan in civil posts has been under consideration for some time past. The President has now been pleased to decide that induction of officers of the armed forces of Pakistan and their re-employment, as the case may be, shall be regulated by the following instructions:-"

The particular provision which would be applicable to the petitioner, is of "officers of a rank of Lieutenant Colonel and above", and is attended to in the following paragraphs of Sl. No.231:

"18. Officers of the rank of Major/equivalent who retire or may have retired before completion of the prescribed age or service limit and officers of the rank of Lieutenant Colonel and above and equivalent who may retire or may have retired either after completion of prescribed service or age limit or before such completion will be eligible for re-employment on contract for 3 to 5 years, renewable upto the age of 60, upto the maximum of 10% of annual vacancies in various groups and cadres, as may be specified, on the terms and conditions mentioned hereinafter."

"19. Re-employment will be made in grades equivalent to their substantive rank, or temporary rank, if held for one year, in accordance with the army rank-civil grade equivalence formula already approved by the President. However, the officers will be eligible for being considered for a subsequent contract in higher grade. Re-employment of officers may be considered for a higher grade either at the time of subsequent contract or after completing service of three years in the existing contract whichever is earlier."

"20. Re-employment on contract basis will be made through the High Powered Selection Board which will also determine the group or cadre in which re-employment is to be made. The procedure for selection will be the same as prescribed in para 6."

"21. In selecting officers for re-employment, provincial quotas will be kept in view."

"22. Re-employment on contract in various grades shall be made by the authorities competent to make appointment to these grades in accordance with rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973."

21. The afore quoted paragraph 20 refers to paragraph 6 of Sl.231, which is reproduced hereunder:

"6. Induction will be made through the High Powered Selection Board constituted by the President for the purpose. The High Powered Selection Board will also determine the Occupational Groups to which the officers are allocated. For this purpose, each Service Chief may be asked to recommend by the 30th June every year names of officers for induction in grade 17 in various groups, keeping in view their educational qualifications and experience. For each vacancy, a panel of preferably 3 officers may be recommended. The recommendations will be scrutinized by the Ministry of Defence before they are placed before the Board."

22. Admittedly, the foregoing paragraphs of Sl.231 with regard to the re-employment of the petitioner have not been complied with. The petitioner has also failed to show that the competent authority had accorded approval to his appointment. Therefore, the petitioner's contention that he was properly appointed in PQA as regular employee has not been established.

23. Furthermore, the case law relied upon by the learned Counsel for the Petitioner, are quite distinguishable from the facts and circumstances of the present case.

24. The impugned order issued on the directions of the Honorable Supreme Court appears to be lawful as these were correctly concluded by the PQA that the petitioner was appointed in PQA in violation of the orders of the Honorable Supreme Court and the law. We are thus in total agreement with the impugned order issued by the PQA Authority, whereby service of the petitioner was rightly terminated. Consequently, this petition is dismissed along with the pending Application[s] with no order as to cost.

**JUDGE**

**JUDGE**

Nadir/\*

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