

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Irfan Saadat Khan, J.**  
**Agha Faisal, J.**

CP D 5058 of 2021 : Muhammad Rashid Siddiqui vs.  
Province of Sindh & Others

For the Petitioner : Mr. Khawaja Shams-ul-Islam, Advocate

For the Respondents : Mr. Ali Safdar Depar  
Assistant Advocate General Sindh

Barrister Waleed Khanzada

Mr. Ashfaq Rafiq Janjua, Advocate

Date/s of hearing : 10.11.2021

Date of announcement : 15.11.2021

## JUDGMENT

**Agha Faisal, J.** The petitioner, being a serving officer of the Karachi Water & Sewerage Board – Respondent no. 2 (“KWSB”), has primarily assailed a notification issued by KWSB dated 10.06.2021 (“Impugned Notification”), whereby departmental promotion and selection committees have been constituted in *admitted* compliance with the resolution of the Board of KWSB dated 04.05.2021 and confirmed on 09.06.2021 (“Resolution”). Vide an interim order dated 02.09.2021, the Impugned Notification was suspended and the restraint subsists till date, rendering the entire edifice of promotions in KWSB otiose.

2. Per petitioner’s counsel, the Impugned Notification was illegal on the grounds that it was contrary to a cabinet decision; in derogation of an earlier board resolution dated 02.01.2020 (“Earlier Resolution”); and in violation of section 19A of the General Clauses Act 1897<sup>1</sup> (“GC Act”). *Sameena Parveen*<sup>2</sup> was quoted to insist that inclusion of members of the same organization in a departmental promotion committee (“DPC”) was against the Constitutional scheme. Hence, it was submitted that the Impugned Notification ought to be struck down.

<sup>1</sup> Reliance was placed upon *Ummatullah vs. Sindh* reported as *PLD 2010 Karachi 236* (“*Ummatullah*”).

<sup>2</sup> Per *Abdul Hameed Dogar CJ in Punjab vs. Sameena Parveen* reported as *2009 SCMR 1* (“*Sameena Parveen*”).

3. Barrister Waleed Khanzada spearheaded the case of the respondents and sought to demonstrate that the Impugned Notification was issued in due conformity with the Resolution in specific and the law in general. It was argued that no cabinet decision had been placed on record by the petitioner, hence, the question of ascertaining infringement thereof never arose; the Earlier Resolution could not be afforded more sanction than the Resolution itself; section 19A of the GC Act had not been violated; and finally that inclusion of members of the organization in a DPC was not repugnant to the Constitutional scheme and illustrated that the Federal as well as Provincial selection / promotion boards contained members / secretaries of the same government.

4. We have heard the respective counsel and perused the record. It is considered appropriate to consider the respective challenges to the Impugned Notification is seriatim herein below.

5. The first objection to the Impugned Notification was the allegation that it is contrary to a cabinet decision. At the very outset it is imperative to denote that no cabinet decision, violation whereof was alleged, had been placed on record by the petitioner. Upon being so confronted during the course of the final hearing, the petitioner's counsel insisted that the same ought to have been placed on record by the respondents. We find ourselves unable to discern the implication of a purported cabinet decision without the same having been deigned to have been placed before us by the petitioner.

6. The next objection was with respect to the Impugned Notification being contrary to decisions of the board of KWSB itself. It is considered illustrative to reproduce the operative constituents of minutes of the board meeting whereat the Resolution was passed and the Impugned Notification.

## Minutes

"MEETING OF THE BOARD OF KW&SB, HELD ON 04.05.2021

The 3<sup>rd</sup> Meeting of the Board was held under the Chairmanship of Minister for Local Government, Govt of Sindh on Tuesday the 4<sup>th</sup> of May 2021 at 12:15 PM, at his Committee Room, 4<sup>th</sup> Floor, New Sindh Secretariat, Shahra-e-Kamal Ataturk. Karachi

### AGENDA

The following Agenda was placed before the Board for its consideration, which was earlier circulated vide No SECY(KW&SB – BOARD)/B-1(1)/26 dated 29.04.2021:

1. Confirmation of the Minutes of the 2<sup>nd</sup> meeting of the Board held on 09.03.2021...
3. To Constitute the Departmental Promotion Committee I & II and the Selection Committee 1 & II as required under KW&SB Employees (APT) Rules, 1987....

Agenda Item No. 3: To Constitute the Departmental Promotion Committee I & II And the Selection Committee I & II as required under KW&SB Employees (APT) Rules, 1987.

3.1 The Managing Director KW&SB placed his recommendation for constitution of Departmental Promotion & Selection Committees under Rule - 8 of KW&SB Employees (APT) Rules, 1987 which states as under:-

"There shall be one or more promotion committees and selection committees as may be determined by the Board".

He, therefore, requested the Board to accord its approval to constitute the Departmental Promotion & Selection Committee - I (for promotion & appointments in BPS - 16 & above), and the Departmental Promotion & Selection Committee - II (for promotion & appointments in BPS - 1 to BPS - 15), with following composition:

Departmental Promotion & Selection Committee – I  
(For promotion & appointments in BPS-16 & above)

I.	Managing Director	Convener
II.	DMD (HRD&A)	Member / Secretary
III.	DMD (Finance)	Member
IV.	C.E (W/D)	Member
V.	C.E (Sew)	Member

Member if in conflict must abstain, 3 out of 5 is quorum, and substitute shall not below BS-20.

Departmental Promotion & Selection Committee -II  
(For promotion & appointments in BPS-01 to BPS-15)

I.	DMD (HRD&A)	Convener
II.	DMD (RRG)	Member
III.	C.E (E&M-W)	Member
IV.	C.E (WTM)	Member
V.	Director Personal	Member / Secretary

3.2 The Board discussed in detail the legal provisions – method of appointments by Rule - 4 of KW&SB Employees (APT) Rules, 1987 while Rule - 5(1) (a) of said Rules, relates with promotions and Rule - 5(b) pertains to initial appointment, and Rule - 5(2) relates with method, qualification & other conditions applicable to a post. Also, Board verified the mandate under Rule – 6(1) & (2) of said Rules, for the purpose. The Board was informed that the promotions in different grades in KW&SB were not made since 2012 that is greatly affecting the efficiency of the KW&SB.

3.3 Dr. Sarosh H. Lodi and Mr. Abdul Kabir Kazi – Members Board, seconded the recommendation and suggested that the HR Committee may assigned the responsibility to verify the proceedings of DP&SC-I & II within a stipulated period of 30 days such recommendations shall place before the Appointing Authority, as defined under Rule 6(1) of KW&SB Employees (APT) Rules, 1987 states; "The Board shall be the appointing authority in respect of the posts in BPS-17 and above; provided that appointments to posts in BPS-18 and above shall be made with the approval of Government".

3.4 Mr. Abdul Kabir Kazi informed the Board that there exists a judgment – Order of the Hon'ble Supreme Court Of Pakistan, whereby it has been held that in case of the promotions of the employees of an autonomous body corporate – Board of the entities are the appointing authority are competent to accord approvals on the recommendations of the departmental promotion and selection committees for the promotions and selections of the employees within respective payrolls in accordance with the statutory Rules and that after said judgment of the Apex Court further approval or confirmation from Government appears not required anymore. Also that, under Rule 6(2) of said Rule "The Managing Director shall be the appointing authority in respect of the post in BPS-1 to 16".

3.5 Resolution:

i) The Board unanimously resolved to accord its approval to constitute the recommended Departmental Promotion & Selection Committee - I & II, ibid, with the direction that both the constituted committees shall proceed with the cases of promotions - appointments of the eligible employees – candidates, strictly in accordance with the provisions of KW&SB Employees (Service) Rules, 1987, and the HR-Reforms Committee of the Board shall oversee the proceedings of the Departmental Promotion & Selection Committees; and,

ii) HR Committee of Board shall review & place the recommendations of Departmental Promotion & Selection Committee-I before the Board within a period of 30 days, for its consideration and further approval of the competent authority as per APT rules 1987."

(Underline added for emphasis)

## Impugned Notification

"In exercise of the power as conferred in BOARD under Rule 8 of the KW&SB Employees (APT) Rules 1987, states; "There shall be one or more promotion committee and selection committees as may be determined by the Board". For the purpose of Promotions and Selections in KW&SB as per Rules.

The Board has been pleased to constitute the Departmental Promotion & Selection Committee – I (for promotion & appointments in BPS-16 & above), and the Departmental Promotion & Selection Committee – II (for promotion & appointments in BPS-1 to BPS-15), with following composition:

Departmental Promotion & Selection Committee – I  
(For promotion & appointments in BPS-16 & above)

i.	Managing Director	Convener
ii.	DMD (HRD&A)	Member/Secretary
iii.	DMD (Finance)	Member
iv.	C.E (W/D)	Member
v.	C.E (Sew)	Member

(Member if in conflict must abstain, 3 out of 5 is quorum, and substitute shall not below BS-20.)

Departmental Promotion & Selection Committee – II  
(For promotion & appointments in BPS-01 to BPS-15)

i.	DMD (HRD&A)	Convener
ii.	DMD (RRG)	Member
iii.	C.E (E&M-W)	Member
iv.	C.E (WTM)	Member
v.	Director Personal	Member / Secretary

## 3.5 Resolution:

- i) The Board unanimously resolved to accord its approval to constitute the recommended Departmental Promotion & Selection Committee – I & \_\_\_, *ibid*, with the direction that both the constituted committees shall proceed with the cases of promotions – appointments of the eligible employees – candidates, strictly in accordance with the provisions of KW&SB Employees (Service) Rules, 1987, and the HR-Reforms Committee of the Board shall oversee the proceedings of the Departmental Promotion & Selection Committee; and,
- ii) HR Committee of Board shall review & place the recommendations of Departmental Promotion & Selection Committee-I before the Board within a period of 30 days, for its consideration and further approval of the competent authority as per APT rules 1987.

Hence Notified to comply with Resolution No. 3.5 (1) & (2) dated: 04.05.2021 duly confirmed by the followed meeting of the Board dated: 09.06.2021. *ibid*.”

(Underline added for emphasis)

It is *prima facie* apparent that the Impugned Notification mirrors the Resolution and appears to execute the decision taken by the board. It is imperative to denote that this juncture that the petitioner’s counsel had articulated no challenge to the board meeting and / or the Resolution passed thereat, therefore, there is no case of any dissonance of the Impugned Notification with the Resolution before us. On the contrary the *admitted* record demonstrates that the Resolution was passed at a meeting of the board of KWSB on 04.05.2021 and confirmed on a subsequent meeting of the board held on 09.06.2021.

Section 3 of the Karachi Water & Sewerage Board Act 1996 (“Act”) constitutes the board of KWSB and section 7 thereof governs its functioning. Once again it is reiterated that there is no challenge before us with respect to the board and / or its composition and nothing has been pleaded and / or articulated to suggest that the board is unable to amend, vary and / or modify any decision earlier taken by it upon subsequent occasions.

The board of KWSB passed the Resolution at its meeting dated 04.05.2021 and the minutes thereof were confirmed at the subsequent meeting dated 09.06.2021. Since no constraint of any sort whatsoever has been demonstrated before us for the board to be able to amend, vary and / or modify its earlier decisions, therefore, it is *prima facie* apparent that the board did in fact pass, and confirm, the Resolution and the Impugned Notification mirrored the Resolution so as to execute the decision of the board. In such context it is observed that since the Resolution, and / or the meeting whereat it was passed, was never under challenge before us, no case is made out to require the Impugned Notification to conform to any earlier edict of the board *admittedly* no longer in the field.

7. The next objection to consider is with respect to the GC Act. Section 20A<sup>3</sup> of the GC Act requires rules and orders etc. to be published; however, it was never endeavored by the petitioner's counsel to establish whether the Impugned Notification fell within the relevant remit.

It is *prima facie* apparent that the relevant provision of the law requires rules, orders and circulars *made or issued under any enactment* to be published. The Impugned Notification merely seeks to implement the Resolution of the board of KWSB and no case has been made out before us to consider the same to be a rule, order or circular made or issued under an enactment.

The ratio of *Ummatullah* is clearly distinguishable in the present facts and circumstances as it dealt with regulations / orders issued pursuant to the Sindh Building Control Ordinance 1979, falling squarely within the remit of an regulation / order made / issued under an enactment.

This Court has held in *Afzal*<sup>4</sup> that where the parent statute does not require an instrument to be published in the gazette<sup>5</sup> then it is unwarranted to apply the GC Act to render the instrument invalid. A ten member bench of the august Supreme Court dwelled upon this issue recently, in the *Justice Qazi Faez Isa case*<sup>6</sup>, and *Umar Atta Bandial J.* maintained that no hard and fast rule of universal application can be laid down on the legal effect of non-publication of an instrument and it was imperative to consider the language employed in the particular statute as to whether publication in the gazette was mandated. This view of the august Court has been consistent as seen from *Saghir Hussain*<sup>7</sup> and *Bahadur Khan*<sup>8</sup>. Notwithstanding our observation supra that the Impugned Notification has not been shown to be a rule, order or circular made or issued under an enactment, it is seen that the Act imposes no requirement upon the board of KWSB to have the implementation notifications of its resolutions to be published in the official gazette.

8. The final objection was that the inclusion of persons from the organization itself was fatal to the constitution of the relevant committees. The reliance to bulwark this assertion was primarily placed on paragraph 3 of the

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<sup>3</sup> 20A. Rules and Order, etc., to be published – All rules, Orders, regulations and circulars having the effect of law made or issued under any enactment shall be published in the official Gazette.

<sup>4</sup> Per *Adnan Iqbal Chaudhry J* in *Muhammad Afzal vs. Pakistan & Others* reported as *PLD 2018 Sindh 529*.

<sup>5</sup> unless consequence of non-publication is provided.

<sup>6</sup> Per *Umar Atta Bandial J* in *Justice Qazi Faez Isa vs. President of Pakistan* reported as *PLD 2021 SC 1*.

<sup>7</sup> Per *Faqir Muhammad Khokhar J* in *Saghir Ahmed vs. Punjab* reported as *PLD 2004 SC 261*.

<sup>8</sup> Per *Ejaz Afzal Khan J* in *Bahadur Khan vs. Pakistan* reported as *2017 SCMR 2066*.

Earlier Resolution which suggested that the views of civil society stakeholders and technocrats may be obtained so as to benefit from the collective wisdom.

Respondents' learned counsel demonstrated from the record that while there had been no identification of any requirement for exclusion of persons from the organization itself in the relevant committees coupled with the fact that the Earlier Resolution had even otherwise been superseded, however, it was the civil society stakeholders and technocrats in the board itself that had passed the Resolution constituting the relevant committees.

It was further shown that the promotion / selection mechanism devised by the board required the relevant committees to act, however, subject to the caveat that any member in conflict must abstain and even then the quorum may not fall below three of five. It was further shown that any substitution could not be below BS-20.

It was further demonstrated that the recommendations of the relevant committees would have to be placed before the HR Committee of the Board and further approval of the competent authority could only be sought thereafter.

Upon scrutiny of the record, it is observed that no case has been set forth before us to require the DPC to comprise of persons extraneous to the organization itself.

It is also considered opportune to denote that the allegation that inclusion of members of the organization in the relevant committees is contrary to the Constitutional scheme remained unsubstantiated. No provision of the Constitution was identified to corroborate the existence of such a scheme and the said assertion has no nexus with the leave dismissal order in *Sameena Parveen*, which merely maintained that a decision on a point of law regarding civil servants may also be applicable to other civil servants not party to the relevant litigation.

9. The petitioner's counsel did not endeavor to identify any constituent of the Act, and / or the rules made there under, to substantiate the challenge to the Impugned Notification. It was also never articulated as to how the petitioner was aggrieved by the Impugned Notification; when no relief was sought with respect to the Resolution that had been passed and confirmed by the board of his employer. The grounds of challenge to the Impugned

Notification, invoked by the petitioner's counsel, have been discussed supra and found to be without sanction in law.

10. In view of the reasoning herein contained, we find that the present petition is devoid of merit, hence, the same (along with pending application/s) is hereby dismissed.

JUDGE

JUDGE

Khuhro/PA