

# IN THE HIGH COURT OF SINDH KARACHI

## Before:

Mr. Justice Aftab Ahmed Gorar  
Mr. Justice Adnan-ul-Karim Memon

## C.P. No. D- 6581 of 2020

Dr. Qamar-ul-Arafeen  
Petitioner  
through : Mr. Abdul Salam Memon, advocate along with  
Ms. Rabiya Javed, advocate.

Respondents 1 to 4  
Though : Mr. Shoaib Mohiuddin Ashraf, advocate  
along with Mr. Ameer-Uddin, advocate a/w  
Asif Mukhtar, Director Legal, Karachi University.

Respondents 5 & 6  
Though : Syed Hussain Shah, AAG

Date of hearing  
& order : **18.01.2022**

## ORDER

**ADNAN-UL-KARIM MEMON, J.** Through this petition, the petitioner has impugned the resolution/decision dated 14.11.2020, wherein the approval of the appointment of the petitioner as Assistant Professor (BPS-19) was refused by the Syndicate of respondent-Karachi University and despite two times recommendations made by the Selection Board of respondent-university for appointment as Assistant Professor in the Centre of Digital Forensic Science and Technology ('CDFST'), the approval of the appointment of the petitioner as Assistant Professor was refused due to lack of qualification and the said post will be re-advertised.

2. The case of the petitioner is that in pursuance of the advertisement published in Daily Dawn dated 03.12.2016 for the appointment of Assistant Professor (BS-19) in the Centre of Digital Forensic Science and Technology, he applied for the said post and was recommended by the Selection Board vide minutes of the Selection Board's meeting held on 03.02.2020. The recommendation of the petitioner was placed before the syndicate for confirmation/approval, however, the aforesaid recommendation was set at naught by the syndicate and remitted the matter of the petitioner to the Selection Board for reviewing the qualification and research papers of the petitioner, surprisingly after post remittance the Selection Board once-again after reviewing the educational qualification and research papers opined that since there is the shortage of expertise in the field of Digital Forensic Science and Technology, the candidature of the petitioner is recommended. Finally, the matter was landed before the syndicate, however, the candidature of the petitioner was declined on the premise that the petitioner lacks the qualification for the subject post vide

minutes of the meeting held on 14.11.2020 and the matter needs to be re-examined by the Selection Board.

3. Mr. Abdul Salam Memon, learned counsel for the petitioner, has argued that the respondent university had scrutinized the application of the petitioner and found his application under the rules and regulations of the respondent university. The Selection Board had found him a suitable candidate and recommended his name for appointment to the post in question. The recommendations of the Selection Board were placed before the Syndicate, however, the syndicate did not agree with the recommendations of the Selection Board and remitted the matter to the Selection Board for reconsideration of its decision on the analogy that petitioner being non-Ph.D. in Digital Forensic Science and Technology could not be considered for appointment for the post in question. The matter was taken up in the meeting of the Selection Board and found the petitioner fit for the post. However, Syndicate had reversed the decision of the Selection Board and its recommendations to the extent that the petitioner being non-Ph.D. in Digital Forensic Science and Technology could not be considered for an appointment for the post in question. Learned counsel referred to the report of the syndicate, whereby the only reason assigned for declining the Selection Board recommendation was that he (petitioner) does not possess the requisite degree in Forensic Science. Instead, he claims to have possessed a degree in computer science, and hence he does not qualify for the requirements of the post and advertisement. Learned counsel submits that though the Selection Board has recommended yet again as there was no other alternate fit and suitable person available, to the best of their knowledge, yet in defiance of their reasons and decisions attributed for the petitioner, they are in process of appointing a stranger on the additional charge for the CDFST University of Karachi to one Dr. Nadeem Mehmood who was also Associate Professor and Chairman of the Department of Computer Science with immediate effect. He submits that even he does not possess any degree at par with the alleged requirement for the Centre of Digital Forensic Science and Technology, though the petitioner in addition to such degree has submitted a thesis concerning soft computing approaches in Forensic (An Intelligent System Approach) hence the only person at present who is more appropriate and familiar is none other than the petitioner and the syndicate jointly never applied their mind insofar as the twice recommendations of the Selection Board are concerned. He has also relied upon the training extended by the petitioner about DNA, CCTV Camera, Loc Tracking, under the reference of the orders of this Court. He placed reliance upon the case of GHAYASUDDIN SHAHANI and others v. AKHTAR HUSSAIN and others, **2021 §CMR 1204**, and argued that since the rules and regulations of the respondent university are silent on the subject therefore the terms of the advertisement shall be followed and as per terms of advertisement he has qualification for the subject post. He also relied upon the cases of Dr. SHAMIM TARIQ v. INTERNATIONAL ISLAMIC UNIVERSITY, ISLAMABAD through President and others, **2020 §CMR 568**, and Dr. IKRAMULLAH KHAN v. KHYBER PAKHTUNKHWA AGRICULTURAL UNIVERSITY, PESHAWAR and others, **2018 §CMR 1191**.

4. Mr. Shoaib Mohiuddin Ashraf, learned counsel representing the respondent-university has contended that the instant Petition is not maintainable in law; that the issues

raised by the learned counsel for the Petitioners involve factual controversy, which requires evidence; therefore, Constitutional Jurisdiction of this Court cannot be invoked; that the Syndicate in its meeting held on June 6, 2016, vide resolution No.8 approved the establishment of the Centre of Digital Forensic Science and Technology at the University of Karachi. Learned counsel submitted that the University of Karachi advertised the post of Assistant Professor (BS-19) in the CDFST on 03.12.2016 and after scrutiny of the findings of the Selection Board, the petitioner was found ineligible for the above-said post by the Syndicate. He emphasized that writ of mandamus is not available to him against the decision of the Syndicate. He stressed the ineligibility and the suitability of the petitioner for the post applied for could not be looked into by this Court under Article 199 of the Constitution. Learned counsel referred to comments filed on behalf of respondents 1 to 4 and referred to Annexures-A to Q1 attached with comments and submitted that petitioner had already filed a review application to the syndicate against its decision dated 14.11.2020 under Section 40 of the Karachi University Code, which is pending and this fact consciously, deliberately and willfully concede with malafide intention. He further pointed out that on 22.12.2020, the petitioner after the filing of his subject petition has also approached the Worthy Chancellor, University of Karachi by filing an appeal against the Syndicate decision under Section 7(4) of Karachi University Code, the same is also pending. Learned counsel further pointed out that the Hon'ble Supreme Court of Pakistan has already held in its various pronouncements that interference in the internal governance and affairs of the educational institutions are not called for by this Court under Article 199 of the Constitution on the premise that university authorities possess technical expertise and experience of the educational institutions. He lastly prayed that since the administrative and policy matters of the universities are under attack, therefore, until and unless there is any violation of any fundamental right or any law, the indulgence of this Court is not required. Per learned counsel, the requirement of the subject post is Ph.D. Degree in Forensic Science and Technology and the petitioner lacks the qualification as such he cannot be accommodated under the law. In support of these contentions, he relied upon the cases of *Dr. MIR ALAM JAN VS Dr. MUHAMMAD SHAHZAD, 2008 §CMR 960*, *ARSHAD ALI TABASSUM VS The REGISTRAR, LAHORE HIGH COURT, LAHORE, 2015 §CMR 112*, *ASIF HASSAN VS SABIR HUSSAIN, 2019 §CMR 1720* and an *unreported judgment passed in CP No.D-5616/ 2014, Dr. AKHTAR HASSAN KHAN VS FEDERATION OF PAKISTAN, 2012 §CMR 455* and *SAID ZAMAN KHAN VS FEDERATION OF PAKISTAN through Secretary Ministry of Defence, 2017 §CMR 1249*. He lastly prayed for the dismissal of the instant petition.

5. In exercising the right of rebuttal, learned counsel for the petitioner argued that when there is a difference of opinion between the selection board and syndicate, the matter ought to have been referred to the Chancellor of the respondent university, which has not been done and the respondent-university unilaterally opined against the petitioner in violation of section 7(4) of the university code. Learned counsel further submitted that the recommendations twice made by the Selection Board it deem to be approved. Per learned counsel, the petitioner is the only qualified person in the country who has a Ph.D. in the field of Digital Forensic Science and Technology, thus he cannot be ignored on technical grounds.

Learned counsel referred to the statement dated 05.01.2021 and submitted that thesis/research paper submitted by the petitioner explicitly show that Digital forensics is art compared to technology, thus the petitioner cannot be non-suited on the ground that he has a Ph.D. degree in the discipline of Computer Science, though the petitioner meets criteria as outlined in the public notice for the subject post. Learned counsel referred to the grounds agitated by him in the memo of the petition and submitted that this Court can come to rescue the petitioner on the premise that the research papers and thesis specifically provide that the petitioner has worked in Digital Forensic Science. Learned counsel also referred to the various documents attached with the memo of the petition and argued that the respondents are adamant to accommodate someone else in place of the petitioner even he does not possess the degree at par as required under the law. Learned counsel further added that though the petitioner in addition to such degree has submitted thesis concerning soft computing approaches in forensic hence he is the only person at present who is appropriate familiar as none other than the petitioner and the syndicate jointly never applied their mind and insofar as the twice recommendations of the Selection Board is concerned. He prayed for allowing the instant petition.

6. We have heard learned counsel for the parties, perused the material available on record and case-law cited at the bar.

7. The question involved in this petition is whether the petitioner qualifies for the post of Assistant Professor (BS-19) in the CDFST?

8. We have gone through the contents of the Public Notice / Advertisement, published on 03.12.2016, which prima-facie shows that respondent-University invited applications on the prescribed application form for the post of Assistant Professor (B-19), in Digital Forensic Science and Technology, on the following terms and conditions:

**1. Assistant Professor: (B-19)**

**Digital Forensic Science and Technology**

**Requirements:**

Ph.D. in the relevant field from an HEC recognized University / Institution.

Preference will be given to a candidate possessing:

- 1) Ph.D. degree with specialization in Digital Forensic Science.
- 2) Experience in the relevant field in a National or International Organization.

9. It is a well-settled principle of law that merit includes qualification for certain posts in Statutory / Public Sector universities. The power to prescribe or modify the said criteria vests in the Selection Board of the Respondent-University according to Sections 6 & 7 of the Code of the University of Karachi, however, is subject to the approval of the Syndicate. The aforesaid code vests exclusive power to make an appointment on merits under the Acts / Ordinances and Rules framed thereunder. The Competent Authority of the respondent university is well within its right to prescribe criteria under the Code. Responsibility of fixing criteria for appointment of Assistant Professor in the Public Sector University primarily falls on the Competent Authority/Syndicate/Chancellor of the respondent-university, subject to the law. It is also settled law that Courts ordinarily refrain from interfering in the policymaking

domain of the Executive of the Public Sector Universities, until and unless the same offends the fundamental rights of the parties. More particularly, in the light of the ratio of the latest judgment of the Honorable Supreme Court in the case of Khyber Medical University, etc. vs. Aimal Khan, etc. vide order dated 4.1.2022 passed in Civil Petition No.3429 of 2021. In principle, it is the prerogative of the respondent-university to appoint a person of Public Sector University according to fitness and capability required for the post. However, in the present case, the petitioner claims to have a Ph.D. Degree in Digital Forensic Science. This stance has been belied by the respondent university on the premise that the petitioner possesses a Ph.D. Degree in Computer Science and not in Digital Forensic Science and Technology. The learned counsel for the petitioner has submitted that though the petitioner has Ph.D. Degree in Computer Science, however, he has almost done the work on Digital Forensic Science and relied upon the thesis submitted by him with the respondent-university. It is a settled principle of law that recommendations of the Selection Board are not binding upon the Syndicate. On the aforesaid proposition, we are guided by the decision of the Honourable Supreme Court in the case of *Dr. Habibullah's case* (PLD 1973 SC 144).

10. Coming to the aforesaid proposition, we have found that prima-facie there is no manifest discrepancy in the decision of the syndicate requiring our attention. Even we see no substance in the arguments of the petitioner for the reason that the petitioner was required to meet the above criteria on the date of submission of his application; the petitioner, prima-facie, did not possess the requisite qualification on the said date and as such was not qualified to be considered for the job, a position at a seat of learning, maintained by the exchequer. Petitioners acclaimed academic brilliance in the relevant field as well as extensive teaching experience notwithstanding, nonetheless, digression from the prescribed criteria cannot be countenanced without setting an ominous precedent, casting its fall out on other disciplines as well. The Honourable Supreme Court has held in its various pronouncements that adherence to the statutory rules and procedures for the selection of public jobs is the only surest method to objectively select the best out of the best from a competing lot; it is rooted in the fundamentals of equal opportunity, equal treatment, and equal protection; any deviation therefrom would rock the bottom of the Republic, resting upon equiponderance. State authority in every sphere of life is a sacred trust to be exercised fairly and justly by the functionaries to accomplish the purposes assigned to them by law; it is their bounden duty to do right to all manner of people, without any distinction. It is most important that the right people are selected for official positions to serve the Republic as it is imperative to survive and sustain into today's competitive World; deviation would be treacherously subversive. The constitutionally recognized principle of equal opportunity is strengthened by divine affirmation, upheld, and followed by every modern constitution of the day.

11. As per the version of the respondent university, the petitioner has no Ph.D. degree in Digital Forensic Science and has a Ph.D. degree in Computer Science which is not relevant for the subject post. If this is the position of the case, this Court cannot say for and against on this point, though the petitioner has Ph.D. Degree in Computer Science; and, it is for the respondent university to decide in this regard.

12. In principle, this Court cannot perform the functions of a recommending / selection authority in service matters to substitute its opinion for that of the competent authority. On the issue, we are fortified with the decision of the Honorable Supreme Court in the case of *Sh. Muhammad Sadiq vs. Federal Public Service Commission and others*, **2013 §CMR 264**, *Dr. Mir Alam Jan vs. Dr. Muhammad Shahzad and others*, **2008 §CMR 960** and *Dr. Shamim Tariqe Vs. International Islamic, University Islamabad through President and others* **2020 §CMR 568**.

13. Primarily, it is a settled principle of law that our Constitution is based on Trichotomy as the law laid down by the Honorable Supreme Court in *Ziaur Rehman's case (PLD 1973 §C 49)* and this Court has only jurisdiction to interpret the law. This Court has no jurisdiction to take the role of the policymaker in the garb of interpretation as the law laid down by the Honourable Supreme Court in the cases of *Zamir Ahmad Khan's case (PLD 1975 §C 667)* and *Zamir Ahmad Khan's case (1978 §CMR 327)*.

14. In principle the competent authority had already given direction to all the universities of the country for appointment of Professor, Associate, and Assistant Professor, having qualifications of Ph.D. Degree in the relevant field. As such the respondent-University could not circumvent the law and fill the post in question having no requisite qualification of Ph.D. in the relevant field. The respondent-University had adopted the procedure; therefore, the action of the respondent was within the parameters of the law.

15. In view of what has been discussed above, the petitioner's counsel has failed to point out any infirmity or illegality, whereas the impugned decision of the syndicate aligns with the law laid down by the Honourable Supreme Court rendered in the case of the *Federation of Pakistan v. Muhammad Irfan Beig (1992 §CMR 2430)*, therefore, the petition being devoid of any merit is hereby dismissed along with the pending application(s) with no order as to costs.

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