

2017 PL C (C.S.) 981

[Lahore High Court]

Before Syed Mansoor Ali Shah, CJ

TALIB HUSSAIN

Versus

PRINCIPAL SECRETARY TO CHIEF MINISTER and others

Writ Petition No.40732 of 2016, heard on 16th March, 2017.

Civil Protection and Welfare Bureau (Appointment and Conditions of Service) Rules, 2010---

---R. 3 & Sched.---Punjab Destitute and Neglected Children Act (XVIII of 2004), Ss.13, 6 & 49---Constitution of Pakistan Art.199---Constitutional petition---Civil Service---Recruitment---Director-General of the Punjab Child Protection and Welfare Bureau---Additional charge---Scope---Petitioner impugned appointment of respondent on additional charge as the Director-General of the Provincial Child Protection and Welfare Bureau on the ground that the same was done in contravention of Child Protection and Welfare Bureau (Appointment and Conditions of Service) Rules, 2010--Validity---Appointment of Director-General of the Bureau was provided for in the Schedule to Child Protection and Welfare Bureau (Appointment and Conditions of Service) Rules, 2010, which clearly stated that an officer from DMG/Ex-PCS/PSSS/PMS could be posted on the same, and the Punjab Destitute and Neglected Children Act, 2004 or Rules framed thereunder, did not provide for appointment of Director-General on "additional charge"---Appointment of respondent was therefore made without lawful authority and respondent was directed to relinquish the post forthwith---Constitutional petition was allowed, accordingly.

Barrister Sardar Muhammad v. Federation of Pakistan and others PLD 2013 Lah. 343 and Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others PLD 2012 SC 132 rel.

Sheraz Zaka for Petitioner.

Nasar Ahmad, Deputy Attorney General for Pakistan.

Ms. Hina Hafeezullah Ishaq, Assistant Attorney General for Pakistan.

Anwaar Hussain and Ahmad Hassan Khan, Assistant Advocates General, Punjab.

Muhammad Mumaz, Child Protection Officer (Legal).

Ms. Saba, Child Protection Officer (Legal) and Hafiz Arshad Mehmood, Law Officer, S&GAD (Regulations Wing).

Zawar Hussain, Section Officer (Dev.) Home Department.

Qaisar Abbas and Mohsin Mumtaz, Research Associates and Civil Judges,
Lahore High Court Research Centre (LHCRC).

Date of hearing: 16th March, 2017.

JUDGMENT

SYED MANSOOR ALI SHAH, C.J.--- Through the instant petition, the petitioner challenges the appointment of respondent No.3 namely Fatima Sheikh, who was appointed as Director General, Child Protection and Welfare Bureau, Punjab on additional charge vide order dated 15.10.2014 issued by the Services and General Administration Department, Government of the Punjab.

2. Learned counsel for the petitioner while giving factual background submits that the Punjab Child Protection Bureau is established under the Punjab Destitute and Neglected Children Act, 2004 ("Act"). The Act envisages a Board of Governors of the said Bureau under section 6 of the Act, while under section 13 of the Act the Director General is appointed whose powers and functions are determined by the said Board. Under section 49 of the Act, Governor of the Punjab has promulgated the Child Protection and Welfare Bureau (Appointment and Conditions of Service) Rules, 2010 ("Rules").

3. Learned counsel for the petitioner submits that as per Rule 3 of the Rules method of recruitment, minimum qualification, age limit and other matters relating to the posting in the Bureau is provided in the Schedule to the Rules in the following manner:-

SCHEDULE					
	Functional Unit	Name of the Post with Basic Pay Scale	Appointing Authority	Minimum Qualification and Experience for Appointment	Method of Recruitment
1	2	3	4	5	6
	Child Protection and Welfare Bureau	1. Director General (BS-19)	Chief Minister		By Posting from amongst DMG/Ex-PCS/PSS/PMS officers with five years experience in BS-18 or above.

It is submitted that respondent No.3 is not from amongst the above mentioned groups and belongs to the Information Group as is evident from her appointment letter. She has also been appointed on additional charge while there is no provision for

appointment of the Director General of the Bureau on additional charge under the Act or the Rules.

4. Learned law officer on the other hand submits that respondent No.3 was appointed as Director General because she was the senior most officer available at the time when the last incumbent was transferred out of the Bureau. He also submits that due to paucity of officers she was the best choice at the time, therefore she was given additional charge to the post of Director General. He also states that since her appointment respondent No.3 has improved the condition of the Bureau and performed well.

5. I have heard the parties and gone through the record of the case.

6. The appointment of Director General of the Bureau is provided in Schedule to the aforementioned Rules, which clearly states that only an officer from DMG/Ex-PCS/PSS/PMS Officers can be posted as Director General. Additionally, the Act and the Rules do not provide for appointment of Director General on additional charge. The appointment of respondent No.3, is, therefore, clearly in violation of the Act and the Rules. The reasons given by the learned law officer for appointment of respondent No.3 at the time does not meet the requirement of the law.

7. Even otherwise it is most disturbing to note that respondent No.3 has been appointed on additional charge, for the last almost three years, since 15.10.2014. This reflects poor governance on the part of Provincial Government.

8. For the above reasons appointment of respondent No.3 as Director General, Child Protection and Welfare Bureau, Punjab on additional charge is declared to be without lawful authority being in violation of the provisions of Act, as well as, the Rules. Respondent No.3 is therefore removed from the office of the Director General, Child Protection and Welfare Bureau, Punjab. Reliance is placed on Barrister Sardar Muhammad v. Federation of Pakistan and others (PLD 2013 Lahore 343) and (Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132).

9. Considering that respondent No.3 has been holding the post of Director General on additional charge since 2014, she will relinquish her charge before the close of the working hours today. In the meanwhile, the Board of Governors will deal with day to day affairs of the Bureau till the appointment of new Director-General by the Government.

10. This writ petition is allowed in the above terms.

KMZ/T-10/L Petition allowed.

