

2017 PL C (C.S.) 1137

[Lahore High Curt]

Before Syed Mansoor Ali Shah, CJ

MUHAMMAD AHMAD SAMDANI

Versus

GOVERNMENT OF PUNJAB and others

W.P. No.9938 of 2017, heard on 14th June, 2017.

Civil service---

---Recruitment for public posts---Petitioner impugned appointment of respondent as Project Director against advertisement of the said post by Punjab Environmental Protection Agency---Contention of the petitioner, inter alia, was that the said appointment and process of recruitment was not transparent and tainted with mala fide--Validity---Allegations that respondent was removed by High Court in an earlier Constitutional petition was not relevant as the said removal was not due to any personal disqualification of the respondent and had no bearing on his present appointment---Contention that there was a pending inquiry into the respondent before National Accountability Bureau was also not relevant as pendency of an inquiry was not a disqualification---Petitioner himself did not hold the requisite qualification for the post as he did not hold a degree from a foreign university, hence, petitioner himself had no right to the post of the Project Director---Nothing therefore existed on record to establish that the process of appointment in any way was tainted or tailored to promote the case of respondent and allegations of petitioner were not substantiated by the record, hence appointment of respondent Project Director from the existing record did not appear to be illegal or based on mala fide---Constitutional petition was dismissed, in circumstances.

Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others PLD 2012 SC 132; and Engr. Ghazanfar Ali Khan and others v. F.O.P. and others PLD 2014 Lah. 375 ref.

Muhammad Azhar Siddique and Muhammad Rizwan Gujjar for Petitioner.

Anwar Hussain and Ahmad Hasan Khan, Additional Advocates General, Punjab.

Hafiz Muhammad Saleem for Respondent No.12.

Muhammad Nawaz Manik, Director (Law), Environment Protection Department, Punjab.

Mian Ejaz Majeed, Deputy Director (L&E) Environmental Protection Agency, Punjab, Lahore.

Date of hearing: 14th June, 2017.

JUDGMENT

SYED MANSOOR ALI SHAH, C.J.--- Brief facts of the case are that Environmental Protection Agency, Punjab ("EPA") advertised certain posts including the post of Project Director for a scheme launched for the EPA under the name and title of "Capacity Building of EPA Punjab for Enforcement of Environment Standards in Punjab including Combined Effluent Treatment Plants (CETPs) and Industrial Estates (IEs) under J&C Program". It is submitted that petitioner applied for the said post, however, was not selected. Grievance of the petitioner is that process adopted for the appointment of Project Director was not transparent and as a consequence tainted with mala fide.

2. Learned counsel for the petitioner has argued that the entire recruitment process has been tailored to accommodate respondent No.12 as a Project Director so that he can maintain control over the Environment Protection Department. He submits that this is evident from the fact that initially the advertisement describes the age of Project Director as 35-55 years and in the corrigendum advertised on 04.02.2017 the age limit of the Project Director has been enhanced to 35-58 years. He further contends that respondent No.12 has already been removed by this Court as Director General of EPA vide judgment dated 26.10.2016 passed in Writ Petition No.27033/2016. He adds that respondent No.12 is also under probe by the National Accountability Bureau ("NAB"). He has also referred to letter issued by the Federation of Pakistan, Chambers of Commerce and Industry dated 28.11.2016 highlighting that respondent No.12 is involved in corruption and, therefore, must not be appointed in the Environment Department.

3. Referring to the process adopted for the appointment of the Project Director, learned counsel submits that the list of ineligible candidates prepared by the respondent department shows that certain candidates were not considered because some of their documents were missing e.g., lack of domicile, experience certificate or academic degrees. He submits that no opportunity was granted to the candidates to supply the said documents and the entire process has been hurriedly carried out just to give advantage to respondent No.12.

4. Even though the petitioner has not raised this point in his pleadings, he submits that the entire Project is a burden on the public exchequer because it is not required. He submits that at best in pursuance to order of this Court dated 20.10.2016 passed in W.P. No.12016/2014, EPA undertook to upgrade the Central Laboratory, at the cost of Rs.158.483 million but the Project does not provide for improvement of the Central Laboratory, EPA, hence, the Project has no useful purpose. In support of his contention he has placed reliance on Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132) and Engr. Ghazanfar Ali Khan and others v. F.O.P. and others (PLD 2014 Lahore 375).

5. Mr Anwaar Hussain, Additional Advocate General Punjab along with Chief (Environment), P&D Department has referred to PC-II of the Project titled: "Capacity

Building of EPA Punjab for Enforcement of Environment Standards in Punjab including Combined Effluent Treatment Plants (CETPs) and Industrial Estates (IEs) under J&C Program" which has been prepared with total cost of Rs.295.331 million with the gestation period from 2016-2018. He submits that the Project has two main objectives:

- (a) To identify gaps so as to restructure and build capacity of EPA, etc.
- (b) Establishment of Environmental Monitoring Center by operationalization of laboratories of EPA.

He submits that in the wake of order passed by this Court dated 20.10.2016 in W.P. No.12016/2014 special emphasis has been laid on the upgradation of the Central Laboratory. He referred to the portion of PC-II under item 6 i.e., Description, Justification and Technical Parameters, to point out that the human resource at the enhanced Central Laboratory EPD shall be enhanced and its equipment repaired and upgraded. Referring to the total allocation of fund for the purpose of upgrading/improving the Central Laboratory, it is submitted that a total Rs.113.42 million is to be spent on the infrastructure and Rs.44.986 million is to be spent on the human resource with a total sum of Rs.158.485 million allocated for the Central Laboratory, as undertaken before this Court in the earlier case.

6. Referring to the process adopted in appointing the Project Director, learned Law Officer submits that description of the age and its eligibility criteria has been clearly spelled out in PC-II which describes the age to be 35-58 years. He submits that after approval of PC-II, advertisement was issued on 25.12.2016, however, because it described the wrong age, the corrigendum was issued on 04.02.2017, therefore, the age limit had already been provided in PC-II and was not changed later on as argued by the learned counsel for the petitioner.

7. He submits that a total of 23 applications were received for the post of Project Director out of which 21 candidates were declared ineligible and only two candidates were short listed for interview including respondent No.12. He submits that the second candidate did not come for the interview, as a result, respondent No.12 was appointed as Project Director who meets all the qualificational requirements given in the advertisement.

8. Reasons and details of the candidates who were declared ineligible have also been placed on the record. Perusal of the document reveals that the said candidates could not be considered because they could not supply the relevant documents i.e., domicile, experience certificate, copies of the degrees, etc. It is submitted that list of eligible/ineligible candidates was uploaded on the website on 05.03.2017 and were given three days to meet the objections but no one came forward. He submits that even today, except the petitioner, who was not appointed because he does not hold a foreign degree as per advertisement, no other candidate has approached this Court raising any grievance regarding the process adopted for the appointment of Project Director.

9. Learned Law Officer submits that he has serious objection regarding the bona fide of the instant petition. In this regard he submits that the petitioner who is a permanent employee of TEVTA since 1988 and is presently working as Instructor Mechanical (BS-17) in Govt. College of Technology Railway Road, Lahore. It is submitted that inspite of holding a government office he is privately carrying out business in the name and style of "Here Associates" and has referred to certain documents to show that he undertakes private work against consideration and also describes himself as "Dr. M.A. Samdani" when he does not hold a doctorate degree. Learned Law Officer has referred to Rule 16 of the Punjab Government Servants (Conduct) Rules, 1966 to submit that no government servant is allowed to engage in any trade or undertake any employment or work other than his official duties. He submits that in the present case the petitioner has violated the said rule and is liable to disciplinary action.

10. Learned counsel for respondent No.12 submits that the process for appointment has been transparent and respondent No.12 fully meets the qualificational requirements of the post and, therefore, has been rightly selected as Project Director.

11. I have heard the parties and perused the record.

12. Main thrust of the petition is that petitioner has been deprived from being appointed as the Project Director. It is further contended that process of appointment is not transparent and based on mala fide. I have gone through the record of the case in detail including PC-II of the Project, as narrated above.

13. A total of 23 candidates applied for the post out of which 21 were declared ineligible due to reasons mentioned above and only two candidates were short listed including respondent No.12. Second candidate did not turn up for interview, therefore, respondent No.12 was selected for the post.

14. There are allegations that respondent No.12 was removed by this Court in an earlier writ petition and that an inquiry against him is pending in NAB. As far as the writ is concerned, he was removed because his appointment did not meet the requirement of Environment Protection Department Services Rules, 1997 which required that a Director General, EPA be appointed from amongst APUG/PMC officers and as respondent No.12 was not from the said service, he was removed as Director General. Hence, removal order dated 26.10.2016 passed in W.P. No.27033/2016 was not due to any personal disqualification and has no bearing on his present appointment. As far as the pending inquiry before NAB is concerned, it is trite law that pendency of an inquiry is not a disqualification. As to the submission that the candidates were not given time to make up the deficiency in supplying their testimonial by allowing them extra time, it has been submitted by the learned Law Officer that three days were given to the candidates to meet the deficiency but they failed to do so. As far as the petitioner is concerned, he does not hold the requisite qualification for the post. He does not hold a degree from a foreign university which is the requirement for the post, hence, as far as the petitioner is concerned, he has no right to the post of the Project Director.

15. There is nothing on record to establish that the process of appointment any way was tainted or tailored to promote the case of respondent No.12. The allegations

levelled by the learned counsel for the petitioner are not substantiated by the record of the case, hence appointment of respondent No.12 as Project Director from the existing record does not appear to be illegal or based on mala fide.

16. As far as, the upgradation of Central Laboratory, EPA is concerned, I have gone through PC-II and have carefully examined the submissions made by the representative of P&D Department. It is clear that one of the fundamental features of the new Project is upgradation of Central Laboratory as directed in order dated 20.10.2016 passed in W.P. No.12016/2014. A sum of Rs.158.483 million has been allocated for the said purpose.

17. Regarding the conduct of the petitioner, learned Law Officer has pointed out that the petitioner being a civil servant is carrying out private business for gain which is violative of the Punjab Government Servants (Conduct) Rules, 1966. Considering that the petitioner is an employee of TEVTA, Chairman TEVTA is directed to inquire into the matter and if it is found that the petitioner is violating the law, to proceed strictly against the petitioner in accordance with law. Chairman, TEVTA will also submit his report with the Registrar of this Court regarding the action taken in this regard within three months from today. In case report of Chairman, TEVTA is not received within three months, office will put up this case on administrative side for necessary orders.

18. For the above reasons, this petition has no force and is hereby dismissed. Interim relief granted on 05.04.2017 is hereby vacated.

KMZ/M-122/L Petition dismissed.