

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Amir Hani Muslim

**CIVIL APPEALS NO.599 TO 602 OF 2014 & C.M.A. NO.3434
OF 2014 AND C.M.A. NO.4915 AND C.A. NO.1547 OF 2014**

(On Appeal from consolidated judgment dated 20.12.2013 of the Lahore
High Court, Lahore, passed in W.Ps.No.19428 to 19430 of 2012, 14450
of 2013 and FAO No.400 of 2013).

Federal Public service Commission
& others (in all appeals)

Appellants

Versus

Altaf Hussain & another (in C.A. No. 599/2014)
Muhammad Atiqul Karim & others (in C.A. No.600/2014)
Muhammad Saif & others (in C.A. No.601/2014)
Muhammad Tariq & others (in C.A. No.602/2014)
Muhammad Naeem Akhtar & others (in C.A.1547/14)

Respondent(s)

For the Appellants
(in all appeals)

Mr. Sajid Ilyas Bhatti, DAG
Qari Abdul Rasheed, AOR
Mr. Mehmood Ahmed, Director (L)

On Court's call

Mr. Shakeel Ahmed Malik,
J.S, D&L, Establishment Division

(In C.A. No.599/2014)

Respondent No.1:

In person

For respondent: No.2:

Mr. Imran Fazal Siddiqui, ASC

(In C.A. No.600/2014
and CMA 3434/2014)

For respondent No.1:

Raja Muhammad Asghar, ASC

For respondent No.3:

Mr. Ibrar Ahmed, ASC

For applicant (CMA 3434/14):

Agha Muhammad Ali Khan, ASC
Syed Rifaqat Hussain, AOR.

(In C.A. 601-602/2014)

For respondent No.1:

Mr. Muhammad Amir Malik, ASC

For respondent No.2:

Mr. Imran Fazal Siddiqui, ASC

For respondent No.3:

Mr. Ibrar Ahmed, ASC

(In CMA 4915/2014
and C.A. 1547/2014)

For respondent No.1:

Mr. Muhammad Amir Malik, ASC

For respondent No.2(RTO):

Ms. Misbah Gulnar Sharif, ASC. aw. Ch. Akhtar Ali Akh.
Mr. Imran Fazal Siddiqui, ASC.

Date of hearing:

20 & 21.11.2014

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JUDGMENT

AMIR HANI MUBLIM, J.-

These Appeals, by leave of the Court, are directed against common judgment dated 20.12.2013, passed by the Lahore High Court, Lahore, whereby the Writ Petitions and the FAO filed by the Respondents were allowed.

2. The facts necessary for these proceedings are that in the year 2010 the Federal Public Service Commission floated a Public Notice in the press captioned as "Section Officers Promotional Examination-2010", calling Applications from employees working in various Federal Government Offices to appear in the Section Officers Promotional Examination 2010 (SOPE). The following eligibility and ineligibility criteria were mentioned in the advertisement:-

2. The following categories of Government Servants are eligible for the Examination:-

All Civil Servants who have put in minimum 8 years of service in BS-11 to 16 in the President's Secretariat, prime Minister's Secretariat, Senate Secretariat, National Assembly Secretariat, Federal Secretariat, Attached Departments, Wafaqi Mohtasib's Secretariat, Federal Service Tribunal, Federal Public Service Commission, Intelligence Bureau and also the Civilian employees of Pakistan Armed Forces Headquarters and their lower formations:

3. The employees of the following offices are not eligible:

- i) Directorate General of Inspection and Audit (Income Tax/Customs and Federal Excise).
- ii) Additional Directorate of Inspection (Direct Taxes), Faisalabad.
- iii) Accountants General in the Provinces.
- iv) AJK Council.
- v) Election Commission of Pakistan.
- vi) Shariat Court.

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- vii) Other department
- viii) Other departments which have not been declared as attached departments in terms of Schedule-III of Rules of Business, 1973.

3. However, on 15.7.2012, the Commission again floated another advertisement in the press for holding Section Officers Promotional Examination 2012, with the following eligibility and ineligibility criteria:-

The following criteria of Federal Government Servants are eligible :-

All Civil Servants appointed on regular basis in BS-11 to BS-16 who have put in minimum 8 years of service and they are serving till closing date in President's Secretariat, Prime Minister's Secretariat, Senate Secretariat, National Assembly Secretariat, Federal Secretariat (Ministry/Division), Attached Departments, Wafaqi Mohtasib's Secretariat, Federal Service Tribunal, Federal Public Service Commission, Intelligence Bureau and also the Civilian Employees of Pakistan Armed Forces Headquarters and their lower formations.

The employees of the following offices/categories are not eligible :-

- (i) All subordinate Offices such as Customs/Central Excise & Income Tax including field offices of the FBR
- (ii) Accountant General in the Provinces
- (iii) AJK Council.
- (iv) Provincial Governments, AJK & Gilgit-Baltistan Governments
- (v) Election Commission of Pakistan
- (vi) Federal Shariat Court
- (vii) Semi Government, Autonomous Bodies, Corporations & Regulatory Authorities
- (viii) Strategic Organizations such as PAEC, KRL, AWC and others
- (ix) The employees working below BS-11 and those who are placed in BS-17 on regular basis
- (x) The employees mentioned at (i) to (viii) working on deputation basis in Federal Government
- (xi) Other departments which have not been declared as attached departments in terms of Schedule III of Rules of Business, 1973.

4. The Respondents, who are employees of various filed offices of the Federal Board of Revenue, challenged the ineligibility criteria mentioned

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in the advertisement dated 15.7.2012 and letter dated 21.4.2011, issued by the Federal Board of Revenue, declaring all the field offices as its subordinate offices, through Writ Petitions. In F.A.O, the Respondent Altaf Hussain while working as Auditor (BS-16) in the Regional Tax Office, Gujranwala, applied to appear in the SOPE. He appeared in the examination but his result was withheld by the Appellant and his candidature was rejected. Altaf Hussain filed Representation and Review Application before the Commission, which were rejected by orders dated 7.8.2013 and 18.7.2013 respectively, therefore, he filed FAO before the learned High Court, challenging the said orders of the Commission.

5. The learned High Court, vide impugned judgment, allowed the Writ Petitions and the FAO, in the following terms:-

"Consequently, all the writ petitions as well as the FAO are hereby accepted by declaring the ineligibility criteria mentioned at Sr.No.1 of the advertisement for Section Officer Promotion Examination-2012 that "All subordinate Officers such as Customs/Central Excise and Income Tax including field offices of the FBR, as well as the letter/ order dated 21.4.2011 as illegal and unlawful and the same are hereby set aside being against the Rules of Business, 1973 and the petitioners are declared eligible to appear in the Section Officers Promotional Examination by treating them at par with the other employees working in the FBR whether at headquarter or in the alleged filed office"

6. The learned Deputy Attorney General for Pakistan has contended that the employees working in the field offices of the F.B.R are required to serve anywhere in Pakistan in terms of their letters of appointment and not in the Federal Secretariat or the F.B.R Headquarters therefore, they were not eligible to appear in the S.O.P.E. He next contended

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at the Commission has rightly rejected the candidature of the employees who were working in the subordinate offices of the Federal Board of Revenue. He next contended that the Federal Board of Revenue has rightly declared its field offices as subordinate offices and the learned High Court has fallen in error in holding that the F.B.R has no power to issue such O.M. He further contended that the ineligibility criteria mentioned in the advertisement by the Commission were in accord with the Rules of Business of 1973 and the Commission can reject the candidature of a candidate, if a candidate does not fulfill the same.

7. On the other hand, the learned Counsel for the Respondents has contended that the F.B.R has been declared as an attached department of the Revenue Division by the Rules of Business, 1973, and the employees working in the F.B.R irrespective of the fact whether they are working in the field offices or in the Headquarters, are eligible to appear in the Section Officers Promotional Examination. The learned Counsel has supported the impugned judgment.

8. We have heard the learned Counsel for the parties at length and have perused the relevant record. We find that the letter dated 21.4.2011, issued by the F.B.R, on the basis of which the criteria for ineligibility have been given is in conflict with the language of Rules of Business of 1973. Under Schedule III (Rule-4 (4)) of the Rules a list of attached departments declared by the Federal Government is given and under Serial No.89B the Federal Board of Revenue has been shown as an attached department of the Revenue Division. The Federal Board of Revenue can neither substitute nor

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amend the entry No.89B in the Rules of Business through an unauthorized letter dated 21.4.2011.

9. The Appellant (Commission) is created under Ordinance No.XLV of 1977. Section 7 of the Ordinance defines the functions of the Commission as under:-

- (a) To conduct test and examinations for recruitment of persons to All-Pakistan Services, the civil services of the Federation and civil posts in connection with the affairs of the Federation in basic pay scales 16 and above or equivalent;
- (b) to advise the President –
 - (i) on matters relating to qualifications for and method of recruitment to, services and posts referred to in clause (a);
 - (ii) on the principles to be followed in making initial appointments to the services and posts referred to in clause (a) and in making appointments by promotion to posts in BS 18 and above and transfer from one service or occupational group to another; and
 - (iii) on any other matter which the President may refer to the Commission; and
- (c) to hold examinations for promotion for such posts as the Federal Government may, from time to time, by notification in the official Gazette, specify."

In other words, the Appellant has only advisory role for the purpose of qualification of different persons and has not been conferred with the powers to determine eligibility or otherwise of a candidate in recruitment process of a department. Recruitment Rules are framed by the respective department of the Federal Government in consultation with the Establishment Division and the Appellant (Commission) has to strictly follow the eligibility or ineligibility criteria mentioned in the Rules. The Appellant has not been

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conferred with the power to amend or modify the recruitment rules in terms of Section (7) (*ibid*).

10. The Establishment Division has issued O.M.No.1/2/75-ARC dated 17.1.1975 in which the Rules for recruitment to the Office Management Group are circulated. These Rules provide the following eligibility criteria:-

"(b)(i) The remaining 1/3rd of the vacancies shall be filled by promotion of the departmental eligible candidates through a promotional examination. The Promotional examination will be conducted by the FPSC. The condition of eligibility will be eight years service in BS-11 to BS-16 in President's Secretariat, Prime Minister's Secretariat, Senate Secretariat, National Assembly Secretariat, Federal Secretariat (Ministry/Division), Attached Departments, Wafaqi Mohtasib's Secretariat, Federal Service Tribunal, Federal Public Service Commission, Intelligence Bureau and also the Civilian Employees of Pakistan Armed Forces Headquarters and their lower formations.

In the advertisement floated in the year 2010, by the Appellant, the ineligibility criteria were different than the one published in the year 2012. The Appellant made amendments in the ineligibility criteria on the basis of unauthorized letter dated 21.4.2011 of Second Secretary of the Federal Board of Revenue.

11. In the case in hand, the learned High Court was justified in setting at naught the ineligibility criteria introduced by the Appellant that too, on the basis of an unauthorized letter dated 21.4.2011, issued by the Second Secretary (Customs-III) of the Federal Board of Revenue, which is against the entry contained in the Rules of Business 1973. The Federal Board of Revenue is admittedly an attached department of the Revenue Division as per the Rules of Business 1973 and cannot itself declare the field

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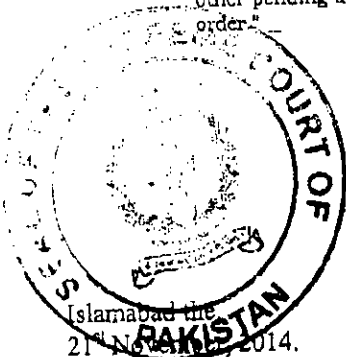
C.A.No.599/14 etc.

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offices as its subordinate offices. The letter dated 21.4.2011, written by the Second Secretary was unauthorized and was tainted with malice with the object to deprive the employees of the F.B.R from availing the opportunity of appearing in the Section Officer Promotional Examination. The learned DAG when confronted with the letter concedes that the officer was not authorized to address such a letter.

12. For the aforesaid reasons, we are in complete agreement with the reasoning advanced by the learned High Court in the impugned judgment, which do not warrant any interference by this Court. The above are the reasons for our short order of even date, which is reproduced below:-

"We have heard the arguments of the learned ASCs for the Parties, some of the Respondents, who have appeared in person, and perused the case record. For reasons to be recorded later on separately, these appeals are dismissed. The other pending applications are also disposed of in terms of the order."



Islamabad the
21st Nov 2014.
Approved for reporting.
Sohail V**

Ch. Anwar Zahedi Jinnah
Ch. Amir Han Muslimi

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