

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

W.P. No. 254853-2018
Muhammad Amir Hayat etc. Vs. Province of Punjab etc.

| r. No. of order/roceeding | Date of order/ Proceeding | Order with signature of Judge, and that of parties or counsel, where necessary. |
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01.11.2019, Mr. Mahmood Ahmad Qazi, advocate for the petitioners in W.P.No.254853-2018.
Barrister Mukhtar Ahmed Tetry, Advocate for the petitioners in W.P.No.231739-2018, W.P.No.229871-2018, W.P.No.8195-2019, W.P.No.232684-2018 and W.P.No.232683-2018.
Mr. Rizwan Afzal Tarar, Advocate for the petitioner in W.P.No.2392 of 2019.
Syed Musa Raza, Advocate for the petitioner in W.P.No.9583 of 2019.
Mr. Adeel Khawar Nahra, Advocate for the petitioner in W.P.No.236552 of 2018.
Mr. Muhammad Suleman, Advocate for the petitioners in W.P.No.235735 of 2018 and petitioners in Crl.Org.Nos.230838-W of 2018, 230890-W of 2018, 234190-W of 2018 and 233681-W of 2018.
Mr. Zulfiqar Ahmad, Advocate for the petitioner in W.P.No.89514 of 2017.
Mr. Muhammad Ejaz, A.A.G. with Raja Tariq Mehmood, CEO(DEA), Pakpattan, Muhammad Anwar, DEO (M.EE) Faisalabad, Iftikhar Khan CEO Sheikhpura, Riaz Qadeer Bhatti CEO Sargodha, Humayun Akhtar Sahi DS/Senior Law Officer (Legal) Lahore, Hasnat Ahmad DEO (M.EE) Sheikhpura, Muhammad Sajjad L.O. o/o CEO, DEA Sheikhpura, Mst. Rubina Nasreen DEO (W.EE) Sheikhpura, and Abdul Sattar, L.O. o/o CEO (DEA), Faisalabad.

Through this single judgment, the following constitutional petitions are disposed of as in all these petitions the common questions of law and facts have been raised:-

1. W.P. No. 254853-2018 titled "Muhammad Aamir Hayat etc. Vs. Province of Punjab etc."
2. W.P. No. 231739-2018 titled "Sidra Batool Vs. Govt. of Punjab etc."
3. W.P. No. 229871-2018 titled "Muhammad Ahmad Azad etc. Vs. Govt. of Punjab etc."

4. W.P. No. 235045-2018 titled "Anam Ilyas Vs. Govt. of Punjab etc."
5. W.P. No. 235735-2018 titled "Muhammad Naeem Akhtar Vs. Secretary School Education."
6. W.P. No. 236552-2018 titled "Ayesha Ajmal etc. Vs. Secretary School Education etc."
7. W.P. No.8195-2019 titled "Muhammad Zahid Vs. Govt. of Punjab etc."
8. W.P. No. 43756-2019 titled "Asma Musawar Vs. Province of Punjab etc."
9. W.P. No. 89514-2017 titled "Asma Bashir Vs. Province of Punjab etc."
10. W.P. No. 232684-2018 titled "Hameed Asghar Vs. Govt. of Punjab etc."
11. W.P. No. 232683-2018 titled "Kiran Naureen Vs. Govt. of Punjab etc."
12. W.P. No. 9583-2019 titled "Saba Latif Vs. Secretary Education etc."
13. W.P. No. 2392-2019 titled "Mudassar Rabbani etc. Vs. Secretary School Education etc."
14. Crl. Org. No. 234190-W-2018 titled "Zia Yousaf Vs. Ambreen Raza."
15. Crl. Org. No. 233681-W-2018 titled "Fawad Ali Vs. Ambreen Raza."
16. Crl. Org. No. 230838-W-2018 titled "Muhammad Qayyum Khan Vs. Ambreen Raza."
17. Crl. Org. No. 230890-W-2018 titled "Manzar Javed Qasmi Vs. Ambreen Raza."

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2. The brief facts in peculiar circumstances giving rise to the filing of these writ petitions are that the petitioners were appointed on the basis of advertisement published in the newspaper against their respective posts of Elementary Secondary Educators (Science-Math) but were terminated during their training course on the ground that they were Bachelor in Commerce (B.Com) whereas the required qualification was simple B.A/B.Sc.

3. To begin with, their termination letters were challenged through W.P.No 8056-2013 which was dismissed on 20.05.2016 but I.C.A. No.1133-2016 along with ICA No.1142/2016 was allowed on 28.03.2017 and the case was sent to Secretary/respondent No.1 for his decision but he rejected the representation on 18.07.2017 which order was again challenged by the petitioner in W.P.No.57448-2017 titled "Noreen Fatima Vs. Secretary Education Schools etc." which was allowed by this court on 08.03.2018 by setting-aside the order dated 18.07.2017 passed by respondent No.1 and again remanded the case to him to decide the matter keeping in view the directions already issued by the Division Bench in ICA No.1133-2016 dated 28.03.2017 and also the fact that in the new Recruitment Policy, the qualification of B.Com was included as a basic qualification duly applicable to the petitioners and then pass a speaking order after hearing the petitioners within two months. On 06.08.2018, the Secretary School Education Department rejected the representation against which the present writ petition was filed.

4. After realising about the fundamental lacunas in the said order, the Secretary/respondent No.1 had again passed an order on 08.07.2019 on the representation of the petitioners by rejecting it.

However, the respondent No.1 appeared before this court on 11.10.2019 and vowed to review the order dated 08.07.2019 and pass a fresh order in view of the observations/directions issued by this court on 08.03.2019. Surprisingly, on 30.10.2019 the representations of the petitioners were again dismissed while directing the District Recruitment Committees to consider their cases for appointment and, therefore, the petitioners were not regularized.

5. Arguments heard. File perused.

6. The peculiar background of the present writ petition has clearly demonstrated before this court not only misinterpretation of the directions/orders passed by this court but also an ignorance of law and the facts which either suggest incompetency of the respondents or their deliberate efforts to bypass the intent of the said order. Such a casual attitude is regrettable and raises question mark

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the way the Education Department is being run. This is understandable only if we are made to believe, which this court would be the last to do, that the provincial government attaches minimum importance to the education sector.

7. It is a simple case of regularizing the services of the petitioners on the ground that they held the basic qualification of B.Com degree; a degree which was not only ordered to be considered in the previous Recruitment Policy for initial recruitment but was also mentioned as a basic qualification in a subsequent recruitment policy. It appears that respondent No.1 was ill-advised to frustrate the orders of this court for the following reasons:-

- (a) The order dated 18.07.2017 passed by respondent No.1 while holding that B.Com degree cannot equate with B.A. degree, therefore, the contract could not be restored which however has been set-aside by this court by directing the respondent to pass a speaking order in view of the fact that in the new Recruitment Policy B.Com included in basic qualification and more so, because the direction issued by Division Bench of this court in order dated 20.05.2017 must be followed.
- (b) On 06.08.2018 the then Secretary/respondent No.1 rejected the representation while holding that cases of the petitioners could be dealt with under the Recruitment Policy 2011 while upholding the earlier order dated 18.07.2017 in a most casual manner. This order was, therefore, recalled by his incumbent and a new order was passed on 08.07.2019 but a direction was issued in paragraph 3 to put the petitioners in a screening test, though observing that those appointed in the year 2017 were protected on the principle of locus potantiate. This order was also reviewed by the present Secretary/respondent No.1 vide another order dated 30.10.2019 in which it was mentioned that the prescribed screening test was mandatory for the appointment under Recruitment Policy 2016-17, therefore, the cases of the petitioners were remanded to

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the District Recruitment Committee with the direction to re-examine their case and consider them for the appointment under Recruitment Policy 2016-17 which would put them in rigours of bureaucratic red tapism, as it would mean that the petitioners could be appointed/re-appointed or reinstated but could not be regularized.

- (c) The question of having B.Com as basic qualification was already settled and does not leave any room for discussion with respondent No.1. The stand taken before this court through the said previous order was that besides B.Com, there are other requirements to be considered by the Recruitment Committee for the appointment. But this is rather an eyewash providing yet another ground to withhold the relief to the petitioners. Obviously, the petitioners did not apply under the new policy because they were not supposed to. If they had the basic qualification which has already been acknowledged by the respondent, their regular appointments should be considered from the date of their initial recruitment dates and, therefore, they are not only entitled to the extension of their contract period, in the absence of any other reasons, but also have a right to be considered for regularization in view of the period of service in the department.

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8. For the foregoing reasons, the petitioners were required to be appointed and regularized under the old Recruitment Policy on the basis of their basic qualification of B.Com. which had remained the precise discussion before this court in all the previous writ petitions, therefore, no new ground could be taken to frustrate the orders of this court, which have attained finality.

9. In this view of the matter, the order dated 30.10.2019 and the previous orders dated 08.07.2019 as well as 06.08.2018 are hereby set-aside and the respondent-Secretary is directed to pass an order for regularization of the services of the petitioners from their initial

appointment keeping in view their performance in service period through a speaking order within a month, a compliance report of which shall be submitted to this court through its Deputy Registrar (Judicial). However, a laxity in this respect shall initiate contempt proceedings against the respondent-Secretary. Disposed of.

(ALI BAQAR NAJAFI)
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