

ORDER SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Writ Petition No. 607 of 2019

Shahid Aziz

vs

Chairman Punjab Labour Appellate Tribunal, Multan and 4 others.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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17.01.2020.	Rana Muhammad Nazir Khan Saeed, Advocate. Muhammad Aurengzeb Khan, AAG.
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Through this constitutional petition, the petitioner has called in question order dated 01.11.2019 passed by Chairman, Punjab Labour Appellate Tribunal, Multan who has dismissed the appeal filed by the petitioner against judgment dated 03.12.2016 passed by learned Labour Appellate Court-X, Sahiwal, whereby grievance petition of the petitioner against his termination from service has been dismissed.

2. It is contended by learned counsel for the petitioner that as the petitioner had been appointed by competent authority as driver in BS-04, his services aggregating 5 years could not be terminated vide impugned order dated 31.07.2015 without holding of a regular inquiry, therefore, judgments of both the courts below as well as orders of respondent authorities are not sustainable in the eye of law and by setting-aside the same, he be reinstated in service.

3. The learned AAG has defended the impugned order passed by the Labour Court and the Labour Appellate Court by stating that where the appointment itself was not proper, it cannot be saved under any principle of law as it would amount to perpetuating an illegal gain.

4. The advertisement in daily Nawa-i-Waqt, Lahore for appointment to the post of Driver (BS-04) was issued on 04.05.2009, in which required qualification for the post of driver was middle pass and LTV driving license holder with two years' experience on the closing date of receipt of applications i.e. 20.05.2009. Although the petitioner applied for the said post, he did not possess any LTV driving license which was subsequently issued to him on 02.12.2009 which he placed on record and obtained appointment letter dated 13.05.2010, whereby he was appointed on contract basis for three years which period was extended for further three years vide letter dated 09.05.2013, however, during subsistence of original agreement, one Saleem Mehmood, who was also a contestant challenged the appointment of the petitioner by filing a complaint before the Ombudsman, by claiming that the petitioner on the date of appointment lacked requisite qualification, who referred the matter to the respondent department and consequently due to lack of his driving experience, his services were terminated and departmental appeal as well as grievance petition and appeal in the hierarchy of the Labour Courts have been concurrently dismissed.

5. The claim of the petitioner is that he was rightly appointed by the competent authority on 13.05.2010 as he was having Car/Jeep driving license since 2008 and he obtained his LTV driving license on 02.12.2009 and there was no requirement of having two years driving experience according to letter dated 12.08.2015 issued by the Director General Local Government and Community Development, Government of Punjab, therefore, his appointment could not be set aside. Suffice it to say that the petitioner was appointed in furtherance of advertisement dated 04.05.2009 and appointment process was finalized on 13.05.2010 as per conditions mentioned in the said advertisement whereas the letter dated 12.08.2015, which was subsequently issued for another recruitment process could not be made applicable with retrospective effect to the appointment process in which the petitioner was appointed.

6. The petitioner claims that as he had possessed driving Car/Jeep driving license since 2008, he had 2 years driving experience on the date of appointment. The possession of Car/Jeep driving license by the petitioner was of no use as the same was not the basic requirement for appointment rather LTV driving license was required and the experience of driving LTV would be the requisite experience instead of driving experience under any other license. However, even if it be assumed that petitioner had driving experience on the basis of afore-said non-relevant license issued in 2008 and the same could be considered for appointment, it is pertinent to mention that two years on the last date prescribed for submission of

application for appointment even on the basis of said license had not been completed. The petitioner cannot claim that the basic requirement or eligibility criteria for appointment be changed to suit his purpose at his will by including in the same category of license held by him as the same would amount to injustice and shall cause prejudice to the rights of the other contesting applicants. Moreover, the fixation of appointment criteria was essentially an administrative matter falling within the exclusive policy making domain of the government and interference in such matter by the courts was not warranted. Reliance is placed on **Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others versus Hayat Hussain and others** (2016 SCMR 1021).

7. The petitioner claims that his service contract could not be terminated at this stage as he had served for five years entitling him to be regularized in service, which right would be lost in case of termination of his contract, besides in view of period of service rendered by him, requirement of experience had become irrelevant as he had in the meanwhile gained the requisite experience. Where a person lacks basic qualification to be appointed, any time spent in rendering the said service would not cure the defect in his appointment especially when there were other contestants available for the said post who could not be appointed solely for the reason that the petitioner was selected for appointment. Moreover, lack of basic qualification or failure to meet with the eligibility criteria is a defect which cannot be cured by

attaining said qualification or higher qualification subsequently, unless the same is permitted by the statute, rules, regulations, policy decision or the advertisement through which applications for appointment are invited. Reliance in this behalf is placed on **Khurram Iqbal versus Deputy Director Food, D.G. Khan and another** (2013 SCMR 55). The claim of the petitioner that he was appointed by the departmental authorities after due process and his services cannot be terminated at this stage is without any force as in the case of **Muhammad Zahid Iqbal and others versus D.E.O., Mardan and others** (2006 SCMR 285) it has been laid down that in case the appointees were qualified for appointments, their appointments could not be terminated due to any lapses, laxities and irregularities committed by Government itself during the appointment process but the said benefit would not be available to appointees who at the time of their initial appointments, lacked basic qualifications, requirements and eligibilities.

8. There was no bar upon the respondents to terminate petitioner's service contract, especially in view of Clause-17 of his appointment letter/contract providing for termination, which could be done without assigning any reason. Furthermore, Clause 13 thereof provides that in case of obtaining appointment on the basis of forged/bogus documents or through deceitful means, his appointment shall be considered as *void ab initio*. The petitioner was bound by the terms and conditions of his contract and could not claim immunity against termination by claiming a vested right for appointment as

the aforementioned clauses clearly depict that appointment was tentative and subject to conditions mentioned in the appointment letter. It is settled by now that such like tentative appointment would always be subject to verification of character and antecedents. Reliance in this behalf is placed on *Executive District Officer (Education), Rawalpindi versus Muhammad Younas* (2007 SCMR 1835).

9. The principle of Locus poenitentiae relied upon by the petitioner is also of no help to him as the said principle confines the powers of the authorities for receding its decisions to a time frame till a decisive step is taken, but the said principle of law does not provide that every order once passed becomes irrevocable and past and closed transaction, rather it is subject to certain exceptions, which includes power to recede an order even after the same has taken effect in cases where the said order is illegal, unlawful, coram non iudice, without jurisdiction or lawful authority on any other defect that strikes down the root of the matter for the reason that perpetual rights cannot be gained on the basis of an order suffering from any of the said vices. Reliance in this behalf is placed on *The matter of Contempt proceedings against Chief Secretary Sindh and others* (2013 SCMR 1752). Moreover in the case of *Muhammad Younas* (supra), it has been held that principle of locus poenitentiae would not be attracted to an order of appointment secured by fraud and misrepresentation.

10. In the instant case the petitioner had not been proceeded against on the case of his misconduct after he

had been inducted in service which necessitated regular inquiry as per principles laid down by the Superior Courts of this country, rather this is a case where the allegation against the petitioner was that on the last date fixed for submission of application form for appointment and on the date of his appointment, he was not possessed with requisite qualification. It was for him to substantiate his eligibility for appointment at all relevant times, i.e. on the last date of filing of his application for appointment and on the date of appointment by producing relevant documents. He has neither claimed that he held LTV driving license and two years driving experience on the basis of same on the last date prescribed for filing application nor he has produced any document through which he could substantiate that he had obtained the requisite qualification prescribed for appointment. The documents available on the record were sufficient to determine whether the petitioner had sufficient experience and was qualified to be appointed on the date of his application and recruitment therefore, there was no need for recording of any evidence to prove the said documents and holding regular inquiry in the matter as there was no factual controversy requiring resolution and determination in view of the fact that the petitioner neither raised any triable issue nor claimed to have possessed LTV driving license prior to the closing date of filing the application. Besides, holding of a regular inquiry to prove admitted documents would have been an exercise in futility in the given circumstances of the case. Therefore, the objection against termination of contract

without holding regular inquiry, which was itself in accordance with the terms and conditions of his contract, is baseless and is repelled.

11. Although the petitioner claims that on the date of appointment he possessed LTV driving license but fact still remains that he lacked two years' experience which was required before he could be appointed. As he lacked basic qualification to be appointed, his appointment order was issued without lawful authority and was not sustainable. Where basic appointment order was issued without lawful authority, then superstructure built thereupon would fall on the ground automatically. Reliance in this behalf is placed on **Muhammad Younas** (supra) and **Yousaf Ali versus Muhammad Aslam Zia and 2 other** (PLD 1958 SC 104).

12. The impugned orders are based on concurrent findings of fact recorded by the courts of competent jurisdiction, which cannot be reversed solely for the reason that on reappraisal of evidence/record of the case another view may also be possible especially when the view concurrently taken by the courts below is not shown to be suffering from any illegality, jurisdictional defect or perversity. Reliance is placed on **Abdul Wali Khan through Legal Heirs and others versus Muhammad Saleh** (1998 SCMR 760).

13. The appointment to the post being against prescribed criteria is not sustainable and the relevant authorities and courts below were justified to dismiss the claim of the petitioner by upholding his termination order which findings are well founded and do not suffer from

any illegality or jurisdictional defect for this Court to interfere in the same.

14. For what has been discussed above, this constitutional petition being devoid of any force is *dismissed*.

(MUZAMIL AKHTAR SHABIR)
JUDGE

Approved for reporting.

JUDGE

*Naveed **