JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3208 of 2019

Waseem Khurshid

Versus

Federation of Pakistan through Secretary, Ministry of Federal Education and Professional Training and others

Date of Hearing:	08.07.2021
Petitioner by:	Mr. Muhammad Umair Baloch, Advocate
Respondents by:	M/s Abdul Rahim Bhatti and Qaiser Rahim Bhatti, Advocates Raja Saad Sultan, learned Assistant Attorney-General Mr. Mahmood-ul-Hassan, Superintendent (Legal), F.B.I.S.E.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Waseem Khurshid, impugns the criteria for promotion to the post of Director (Finance) (BPS-19) prescribed in the notification (S.R.O. No.1355(I)/2015) dated 28.12.2015 issued by the Federal Board of Intermediate and Secondary Education, Islamabad **("F.B.I.S.E.")** in exercise of the powers conferred by Section 17 of the Federal Board of Intermediate and Secondary Education Act, 1975.

2. The post of Director (Finance) (BPS-19) was one of the four posts that were created vide the said notification dated 28.12.2015. Appointment to the said post is to be made 100% by promotion. The said notification also provides that in case no suitable person is available for promotion, the post shall be filled by transfer from amongst the persons possessing matching qualifications and experience as prescribed in Schedule-IV to the said notification, and failing that by initial appointment. The feeding cadres for the said post are Deputy Secretary (Finance) (BPS-18) and Deputy Director (Audit) (BPS-18). For a person to be eligible for appointment to the post of Director (Finance) (BPS-19), he is required to have at least 12 years of service in BPS-17 and above or 7 years of service in BPS-18, in case of initial appointment in BPS-18. Furthermore, the persons eligible for promotion are required to possess the minimum

qualification and experience prescribed for initial appointment in Schedule-IV. Schedule-IV to the said notification provides that the minimum qualification and experience for appointment as Director (Finance) (BPS-19) is as follows:-

> ***"First Class Master Degree or its equivalent qualification in financial discipline from the Institutions recognized by the Higher Education Commission along with 12 years of experience in BPS-17 or above including 05 years in BPS-18, after acquiring the required qualification.***
>
> ***or***
>
> ***Chartered Accountant or its equivalent qualification with 05 years of professional experience in managerial capacity after acquiring the required qualification."***

3. Presently, the petitioner is serving as Deputy Secretary (Finance) (BPS-18) in the F.B.I.S.E. and has the required length of service to be eligible for consideration for promotion as Director (Finance) (BPS-19). However, he does not have the required length of experience after acquiring the First Class Master Degree. The petitioner's challenge to the said notification dated 28.12.2015 is only to the extent of the requirement of the 12 years of experience in BPS-17 and above including 5 years in BPS-18 to be after the acquisition of the required qualification of a First Class Master Degree. The petitioner has obtained a degree of Master of Business Administration in Finance and Accounting from Preston University, Kohat, Pakistan on 19.04.2018. The said degree was acquired by the petitioner during his service as Deputy Secretary (Finance) (BPS-18). He does not have the required post-qualification length of service. On 22.07.2018 and 05.03.2019, the petitioner submitted representations to the Secretary, F.B.I.S.E. and Chairman, F.B.I.S.E., respectively seeking consideration for appointment as Director (Finance) (BPS-19). The said representations were turned down vide F.B.I.S.E.'s letter dated 09.05.2019. This has caused him to file the instant writ petition to assail the requirement of post-qualification experience.

4. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the eligibility criteria for promotion to the post of Director (Finance) (BPS-19) introduced through the notification dated 28.12.2015 is

unreasonable and irrational inasmuch as it requires a First Class Master Degree to be obtained before 12 years of experience in BPS-17 and above including 5 years in BPS-18; that there is no officer in the F.B.I.S.E. who fulfills the said eligibility criteria to be considered for promotion to the post of Director (Finance) (BPS-19); that the petitioner meets the criteria regarding the length of service but does not have the post-qualification length of service; that the requirement for the length of service to be after the acquisition of a First Class Master Degree or its equivalent qualification in a financial discipline is absurd; that the petitioner had obtained a First Class Master Degree on 19.04.2018; and that the petitioner's aggregate experience in BPS-17 and above is more than 12 years including 5 years of experience in BPS-18.

5. Learned counsel for the petitioner further submitted that in the written comments, the position taken by the Establishment Division (respondent No.2) was that the requirement for post-qualification experience needs to be reviewed in order to remove the blocking provision which places the existing eligible persons in a disadvantageous position; and that respondent No.2's view that eligible persons possessing the minimum length of service should be considered for promotion without the condition of qualification prescribed for initial appointment had been opposed by the Chairman, F.B.I.S.E. and the Secretary of the Ministry of Federal Education and Professional Training. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

6. On the other hand, learned counsel for F.B.I.S.E. submitted that the petitioner has no vested right to be promoted as Director (Finance) (BPS-19); that the notification providing for the eligibility and qualifications for promotion to the said post was issued on 28.12.2015 whereas the instant writ petition was filed on 24.09.2019, i.e. more than three and a half years after the issuance of the said notification; that when the said notification was issued, the petitioner had not even obtained a First Class Master Degree; that on the petitioner's own showing he obtained a First Class Master

Degree on 19.04.2018; that since the petitioner does not have the required post-qualification length of service, he cannot be considered for promotion as Director (Finance) (BPS-19); and that the views of the Establishment Division cannot be given preference over the eligibility criteria in the notification dated 28.12.2015 which has been issued in exercise of statutory powers. Learned counsel for F.B.I.S.E. prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 and 3 above and need not be recapitulated.

8. Through the notification dated 28.12.2015, an amendment had been brought about in the Federal Board of Intermediate and Secondary Education (Service) Regulations, 2005 **("the 2005 Regulations")**. The said Regulations, when initially made, did not include the post of Director (Finance) (BPS-19). The post of Director (Finance) (BPS-19) was created through the said notification dated 28.12.2015 after the Board of Governors of F.B.I.S.E. had expressed the need for requiring a professional qualified and experienced person to be appointed in the Finance Department of F.B.I.S.E. It is an admitted position that after acquiring the First Class Master Degree from Preston University Kohat, the petitioner does not have the required experience of 12 years in BPS-17 or above including 5 years in BPS-18. The vital question that needs to be answered is whether this Court, in exercise of its Constitutional jurisdiction under Article 199 of the Constitution, can declare the eligibility criteria for promotion to a particular post to be unlawful only because the persons in the feeding cadre of the department do not meet the prescribed eligibility criteria. In the case at hand, the mere fact that no Deputy Secretary or Deputy Director in the F.B.I.S.E. has post-qualification experience of 12 years in BPS-17 or above including 5 years in BPS-18 does not mean that an appointment to the post of Director (Finance) (BPS-19) cannot be made. As mentioned above, in the said notification dated 28.12.2015, it has

been clearly mentioned that if no suitable person is available for promotion, the post shall be filled by transfer from amongst the persons possessing matching qualifications and experience as prescribed in Schedule-IV and failing that by initial appointment. Therefore, there is nothing preventing the F.B.I.S.E. from initiating the process of filling the post of Director (Finance) (BPS-19) by transfer if there is no Deputy Secretary or Deputy Director in F.B.I.S.E. who fulfills the prescribed eligibility criteria for promotion to the said post.

9. F.B.I.S.E. could not be prevented from exercising its statutory power to change an eligibility criterion for appointment or promotion to any of the posts in F.B.I.S.E. Furthermore, an employee of F.B.I.S.E. has no vested right for the prescribed eligibility criteria to remain constant and unaltered for all times to come. Reference in this regard may be made to the following case law:-

(i) In the case of Government of Khyber Pakhtunkhwa Vs. Hayat Khan (2016 SCMR 1021), it has been held as follows:-

> ***"8. It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down as held by this Court in the case of The Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (PLD 1960 SC 81), the relevant portion therefrom is reproduced herein below:-***
>
> > ***"In our opinion the High Court made the above order without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the Inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time the pay***

scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. In the circumstances it cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ." "

ii) In the case of Imtiaz Ahmad Vs. Punjab Public Service Commission (PLD 2006 SC 472), it was held as follows:-

"...The law maker is fully competent to make rules, alter qualification or criteria for a particular post and no one can make a grievance about the determination of the criteria of eligibility or about the conditions and qualifications provided by the competent authority or rule making authority for appointment and selection against the post, which are to be considered as it exit at the time of appointment or inviting applications from the candidates for such post, as the case may be, as well, as so held by this Court in a number of cases, out of which some of the relevant reported judgments can be conveniently referred. i.e. (1) Government of N.-W.F.P., Health and Social Welfare Department through its Secretary v. Dr. Sheikh Muzaffar Iqbal and others 1990 SCMR 1321 = Government of N.-W.F.P. Health Department and Social Welfare Department v. Dr. Sheikh Muzaffar Iqbal 1990 SCMR 1524, (2) Federation of Pakistan through Secretary, Government of Pakistan, Establishment Division, Islamabad v. Mirza Muhammad Irfan Baig and 4 others 1992 SCMR 2430, (3) Dr. Mrs. Shahnaz Akhtar, Associate Professor v. Government of N.W.F.P. through Chief Secretary, Peshawar and others 1998 PLC (CS) 1112, (4) Mumtaz Ali Bohio v. Federation Public Service Commission through Chairman at Islamabad and another 2002 SCMR 772, and (5) Dr. Muhammad Hussain v. Principal, Ayub Medical College and another PLD 2003 SC 143."

(iii) In the case of Muhammad Hussain Vs. Principal, Ayub Medical College (PLD 2003 SC 143), while referring to a catena of case law on the subject, held as follows:-

"4. ... We are not persuaded to agree with the prime contention of Sheikh Mehmood Ahmad, learned Advocate Supreme Court on behalf of petitioner that no amendment could be made in the relevant regulations/rules by the competent Authority adversely affecting the rights of the petitioner for the reason that there is no cavil to the proposition that Government is competent to enhance, alter or amend the prescribed qualification for a particular post which cannot be objected as qualification for a particular post cannot be kept unchanged for decades to safeguard the interest of a particular incumbent and day to day changes in every walk of life, scientific developments and increasing technical know-how cannot be ignored."

(iv) In the case of Mumtaz Ali Bohio Vs. Federal Public Service Commission (2002 SCMR 772), it was held as follows:-

> ***"6. Neither the competency of respondent No.1 to change the rules in public interest could be challenged nor any candidate has vested right to be governed by any particular set of Rules. It is within the domain of respondent No.1 to make any alteration in the recruitment policy before finalization of the appointments. If the rules are altered/changed, the latter rules will supersede the former. Vested rights originate from contracts, statutes, and by operation of law. None of the above conditions is attracted to this case: The Rules of 2000 could not be invoked for the examination to be held in the year 2001, when the rules of latter year were available."***

(v) In the case of Fida Hussain Vs. the Secretary, Kashmir Affairs and Northern Affairs Division (PLD 1995 SC 701), it was held as follows:-

> ***"13. We may again observe that it is exclusively within the domain of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy."***

(vi) In the case of Government of N.-W.F.P., Health and Social Welfare Department Vs. Dr. Sheikh Muzaffar Iqbal (1990 SCMR 1524), it was held as follows:-

> ***"No one can claim a vested right in promotion or in the terms and conditions for promotion to a higher post. The Government has the right to enhance the qualifications and the standards for recruitment and promotion in order to maintain efficiency in service. Except for the post which the civil servant happens to hold he cannot claim vested right in other higher tiers in the hierarchy."***

(vii) In the case of Muhammad Insha Ullah Vs. Chief Conservator of Forests (PLD 1988 SC 155), it was held as follows:-

> ***"In the absence of impairment of vested right, it would be within the exclusive competence of the Governor to determine the terms and conditions of the service. It cannot be said that a rule which grants weightage to academic qualifications against experience is unreasonable and harsh. With the increasing emphasis on specialization and improved techniques and knowledge, the academic qualifications may be granted greater weightage than the actual experience on the job without such qualifications."***

(viii) In the case of Government of Punjab Vs. Muhammad Javed (2013 PLC (C.S.) 459), the Division Bench of the Hon'ble Lahore High Court held *inter alia* that the government has every right to improve

and enhance the qualifications and standards for recruitment in order to maintain efficiency in service.

10. The petitioner is not aggrieved by any change in the terms and conditions with respect to the post that he is presently holding but the post which he hopes to be promoted to in the future. Since the post of Director (Finance) (BPS-19) did not exist in the 2005 Regulations when they were initially made, the petitioner cannot claim that his vested right had been impaired or adversely affected due to an amendment in the said Regulations through the notification dated 28.12.2015. The learned counsel for the petitioner has not been able to convince the Court that the requirement of post-qualification experience of 12 years in BPS-17 or above including 5 years in BPS-18 for an officer to be considered for promotion to the post of Director (Finance) (BPS-19) is irrational or arbitrary. This eligibility criterion may not suit the petitioner since he had obtained a First Class Master Degree in the year 2018 and does not have 12 years of post-qualification experience but this cannot be sufficient ground to declare the said eligibility criteria to be unlawful.

11. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 16/07/2021

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING

Uploaded by: Umer Rasheed Dar