HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No.260 of 2022

Pakistan Engineering Council through its Registrar
Vs.
Higher Education Commission of Pakistan through its Chairperson and another

Petitioner by :	**Barrister Raheel Ahmed, Barrister Ayesha Siddique and Mr. Umer Rehman, Advocates.**
Respondents by :	**Mr. Shahid Habib, Advocate for HEC.** **Ms. Azra Batool Kazmi, A.A.G.** **Dr. Agha Ghulam Haider, Deputy Director (Legal), Ministry of FE&PT.** **Hafiz Ahsan Ahmed Khokhar, Adv. for Respondent No. 3.** **M/s Mohammad Shahzad Hanif Mayo and Muhammad Ali Jahri, Advocates for Respondent No.4.**
Date of Hearing :	**31.10.2024.**

Babar Sattar, J:- The petitioner has impugned notification dated 08.12.2021 issued by the Higher Education Commission **("HEC")** pursuant to which it has been held that B.Sc. Engineering and B-Tech (Honors) ought to be considered at par for determination of grade and promotion in their respective domains.

2. As the learned counsels for all parties have filed written arguments that form part of the record. Their arguments are only being summarized briefly and the cases cited by them will be discussed in the body of the judgment.

3. Learned counsel for the petitioner submitted that the only declaration that a degree is academically equivalent to another falls within the domain of HEC, which has no jurisdiction to issue direction to employers with regard to recruitment and promotions etc. on the basis of academic credentials as determined by the Supreme Court in ***Province of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Farasatullah and others*** ***(2020 PLC (CS) 1423)***. He further submitted that it was also held by the august Supreme Court in ***Maula Bux Shaikh Vs. Chief Minister Sindh (2018 SCMR 2098)*** that whether any academic qualification can be equated with another academic qualification for purposes of Engineering falls within the domain of Pakistan Engineering Council **("PEC")**. He submitted that the HEC through the impugned notification is trying to do indirectly what it is prohibited from doing directly. He submitted that while HEC could grant equivalence to educational qualifications, it had no mandate to accredit any educational qualification as being an engineering degree and the Supreme Court had determined in ***Farasatullah*** that HEC could only grant equivalence as an academic matter. He submitted that in the National Qualifications Framework of Pakistan, 2015, issued by HEC, equivalence was granted on the basis of a comparable level of education. But such equivalence did not mean that the qualifications were interchangeable. He submitted that whether or not a certain degree instilled a certain skill could only be determined, especially in a professional field, by the regulator of the profession, which, in the case of engineering, was PEC.

4. The learned counsel for HEC submitted that the impugned notification suffers from no infirmity and had been issued by HEC in exercise of its powers under section 10 of the Higher Education Commission Ordinance, 2002 **("HEC Ordinance")**. He submitted that pursuant to sections 10(a), (e), (o), and (q) of the HEC Ordinance, HEC was vested with powers to grant accreditation to institutions and also determine the equivalence of degrees, diplomas and certificates. He submitted that it was in exercise of such powers that the impugned notification was issued. He submitted that in terms of section 20 of the HEC Ordinance, the provisions of such law were given overriding effect over any other law for the time being in force, which included the Pakistan Engineering Council (PEC) Act, 1975 **("PEC Act")**.

5. Learned Assistant Attorney-General submitted that it fell within the domain of the Federal Government to determine the criteria for employment as well as promotion and neither HEC nor PEC was vested with any mandate to determine as to which individuals ought to be employed or promoted by the Federal Government.

6. Learned counsels for respondents No.3 and 4 submitted that the petitioner was seeking to mislead the Court by relying on ***Maula Bux Shaikh.*** The part of the judgment that the petitioner relied on was obiter dicta and not the ratio of the judgment. They submitted that there was a chequered history whereby PEC had constantly strived to undermine the professional prospects of those who attained degrees in

technology, including B-Tech. They submitted that it was for holders of degrees in technology and holders of degrees in engineering to compete on a level playing field, where posts for such positions could be filled by an individual possessing either degree, and no quotas could be carved out for holders of engineering degrees in order to give them a preference over holders of technology degrees.

7. The question before the Court relates to statutory authority vested in PEC under provisions of the PEC Act and the statutory authority vested in HEC under the HEC Ordinance, and whether either of the two regulators is vested with statutory authority to determine the criteria for employment and promotion of employees within the private or the public sector.

8. PEC was established under the PEC Act which was promulgated for purposes of regulations of the engineering profession. The functions and powers of PEC are provided under section 8 of the PEC Act and include, *inter-alia,* "*accreditation of engineering qualifications for the purpose of registration of registered engineers, professional engineers."* Sub-clause (l) of section 8 confers on PEC the function of assisting the Federal Government as a think tank and sub-clause (r) of section 8 empowers PEC to coordinate between various engineering forums and the Federal Government. Section 10 endows PEC with the authority to accredit educational qualifications granted by institutions in Pakistan and section 11 vests authority in PEC to accredit foreign engineering qualifications. Section 14 empowers PEC to accredit engineering institutions. Section 27

provides for penalties and proscribes anyone from undertaking *"Professional Engineering Work"* without being registered as an engineer with PEC and further includes penalty for anyone employing an individual for professional engineering work who is not registered as an engineer with PEC. "Professional Engineering Work" is also defined under section 2(XXV) of the PEC Act.

9. The HEC has been established pursuant to provisions of the HEC Ordinance and according to its preamble, HEC was established *'in the interest of improvement and promotion of higher education, research and development.'* The powers and functions of HEC are provided under section 10 of the Ordinance and the powers of HEC relevant for our purposes are listed below:

> ***10. Powers and functions of the Commission*** *(1) for the evaluation, improvement and promotion of higher education, research and development, the Commission may—*
>
> > *(a) formulate policies, guiding principles and priorities for higher education Institutions for promotion of socio-economic development of the country;*
> >
> > *(e) set up national or regional evaluation councils or authorize any existing council or similar body to carry out accreditation of Institutions including their departments, faculties and disciplines by giving them appropriate ratings. The Commission shall help build capacity of existing councils or bodies in order to enhance the reliability of the evaluation carried out by them;*
> >
> > *(o) determine the equivalence and recognition of degrees, diplomas and certificates awarded by Institutions within the country and aboard;*
> >
> > *(q) provide guidelines as regards minimum criteria and qualifications for appointment, promotion, salary structure in consultation with the Finance Division and other terms and conditions of service of faculty for adoption by individual Institutions and review its implementation.*

10. HEC may have been conferred with the function of facilitating education programs to address the needs of the employment market. But its role in providing guidelines to determine the criteria for purposes of appointment and promotion is limited for purposes of determining the terms and conditions of service of faculty, which can be adopted by universities and other degree awarding institutions offering higher education or institutions undertaking research and development activities.

11. Before we consider the legality of the impugned notification, let us consider the case law with regard to the authority of PEC and/or HEC relevant for our present purposes. In ***Muhammad Siddique Nasim Vs. The Secretary, Government of the Punjab, Irrigation and Power Department, Lahore and another (1987 SCMR 302),*** the Supreme Court held that PEC was vested with the statutory function to grant recognition to engineering qualifications and could render advice to a Provisional Government as to whether or not to treat the degree of B-Tech (Honors) as equivalent to BSc Engineering. And if the Provisional Government accepted such advice, *"no fault can be found with its actions in this regard."* It further held that, *"it is essentially a question of policy whether a particular degree should be recognized as equivalent to another degree for the purpose of recruitment to a post within the sphere of the Provincial Government."* In the said case an individual who was seeking to pass the examination and attain the degree of B-Tech (Honors) had challenged the action of the Provincial Government in withdrawing a notification that had

reserved certain posts for individuals holding the degree of B-Tech (Honors).

12. After citing with approval the judgment of the Sindh High Court in *Mohammad Azim Jamali and 11 others Vs. Government of Pakistan through Secretary/Chairman, Ministry of Railways and 33 others (1992 PLC (C.S.) 637),* the Supreme Court held in ***Fida Hussain Vs. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another (PLD 1995 Supreme Court 701)*** that, "*we may point out that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant/employee is sufficient for promotion from one Grade to another higher Grade and whereas it is in the domain of the Pakistan Engineering Council to decide, as to whether a particular academic qualification can be equated with another academic qualification, but it has no power to say that the civil servants/employees holding particular academic qualifications cannot be promoted from a particular Grade to a higher Grade. The main object of the Act as pointed out by one of us (Ajmal Mian, J.) and Saiduzzaman Siddiqui, CJ. (as he then was) in the above High Court judgment is to regulate the working of professional engineers and consulting engineers and not to regulate the qualifications or the working of the engineers in the government or semi-Government departments. … the Pakistan Engineering Council is vested with the functions to regulate the person qualified to practice as professional engineers and consulting engineers and not persons who are employed in the Government or semi-Government organizations.… 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. However, it cannot abdicate its power to decide the above question in favor of a corporate body which is not in its control nor can it act in a manner which may be violative of Article 25 of the Constitution on account of being discriminatory." In ***Fida Hussain,*** the Supreme Court exercised its review jurisdiction. The question before the Supreme Court was whether the policy of the Government to treat B-Tech as equivalent to B.Sc. Engineering for purposes of promotion suffered from illegality. The Supreme Court held that, *"even if we were to hold that Pakistan Engineering Council had not approved the above equalization of the above academic degrees, it would not make any difference as the basic question in the present case which escaped notice of the learned Judges of the Bench of this Court which rendered the judgment involved is, as to whether the Pakistan Engineering Council is competent to decide the question, whether a particular academic degree should be accepted as sufficient academic qualification for promotion of civil servants and employees of the semi-Government organizations from a particular lower grade to a particular higher grade or is it within the domain of the Government or the semi-Government organization concerned."*

13. In ***Chief Secretary to Government of NWFP Peshawar and 4 others Vs. Sayed Rehman, Research Officer (Stand), Veterinary Research Institute, Peshawar*** ***(1997 PLC (C.S.) 180)***, the Supreme Court upheld the decision of the Service Tribunal wherein it was held that the University Grants Commission was the authority capable of determining the equation of degrees, and that the grant of advance increments to technical and professional categories of employees based on such equation of M.Sc. (Hons.) and M. Phil degrees did not suffer from any infirmity.

14. In ***Pakistan Engineering Council through Registrar, Islamabad and others Vs. Federation of Pakistan through Secretary, Establishment, Islamabad and others*** ***(1998 SCMR 811)*** the question before the Supreme Court was whether a person could hold the post of Deputy Director (Engineering) without being registered as a Professional Engineer with PEC. The Supreme Court while reiterating the law laid down in ***Fida Hussain*** held that, *"the controversy whether respondent No.3 could hold the post of Deputy Director (Engineering) without being registered as a 'Professional Engineer' does not arise directly as there is nothing on record before us to conclusively establish that respondent No.3 in his capacity as Deputy Director (Engineering) is required to undertake the work of a Professional Engineer within the meaning of the [PEC] Act. The promotion of respondent No.3 to the post of Deputy Director (Engineering) having been made on the basis of qualifications and seniority-cum-fitness as*

prescribed under the relevant service rules, is not open to any exception."

15. In ***Nazir-ul-Hasan and 2 others Vs. Syed Anwar Iqbal and others (2014 SCMR 1827)*** the question of promotion of individuals holding diplomas in various disciplines came before the Supreme Court where such promotions had been challenged on the basis that PEC had advised that the diploma holders could not be granted equivalence to those holding engineering degrees for purpose of promotion. The Supreme Court held that the promotions had been granted in accordance with the service rules applicable to the posts and did not suffer from any infirmity. It held that, *"it is for the department/institution itself to determine as to whether the persons in its service are fit to hold a particular position. In the present case it has been done by the authority and rules have been framed thereunder which have been followed by the promotees/petitioners. Consequently, the impugned order is set aside and the promotion of the petitioners is upheld."*

16. The Supreme Court once again considered the provision of PEC Act in ***Maula Bux Shaikh and others Vs. Chief Minister Sindh and others (2018 SCMR 2098)*** in which it reconsidered the law previously laid down on the issue, including in ***Fida Hussain*** and held the following:

> *19. On examination of above case law, we note that nowhere in the judgments, the government power to prescribe for qualification and other conditions of service for promotion to a post has been assailed nor the judgments have put any sort of embargo on the government in prescribing the qualification and*

other conditions of service for a post for the purpose of promotion. Having said this, the judgments as discussed above, have rather focused on the government power in this regard to be unfettered to the extent that it is not in derogation of any law or provisions of the Constitution.

20. …[I]t is the domain of the Government to decide whether a particular academic qualification of a civil servant/employee is sufficient for promotion from one grade to another higher grade and whereas it is in the domain of the Pakistan Engineering Council to decide whether a particular academic qualification can be equated with another academic qualification but it has no power to say that the civil servants/employees holding particular academic qualification cannot be promoted from a particular grade to a higher grade … it has been laid down quite empathetically that the government exercises its own power under the domain of law with regard to promotion of civil servants/employees under Sindh Civil Servants Act, 1973 and Rules made thereunder while PEC Act does not overreach or put an embargo upon the government in the matter of prescribing qualification and other conditions of service of civil servants/employees for their promotion to higher grade … the provisions of PEC Act nor the rules and regulations made under it will operate as bar on government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to higher grade.

21. The PEC Act as its preamble itself shows so also reading of the whole Act shows that it essentially deals with regulations of engineering profession in it, inter alia, it prescribes for qualification of professional engineers, maintenance of register of professional engineers and accrediting of engineering universities etc. and not as a regulator of employment be that be of government service or in the private service. The reasons for it could be found that all sort of engineering work could not be and may not be a professional engineering work for performance of which professional engineers are required. For example, technician, mechanic, draftsman, foreman, supervisor and overseer etc. at best could be a skilled workman who may work independently or under the supervision of professional engineer and for such technician, mechanic, draftsman,

> *foreman, supervisor and overseer the employer may not require holding of professional engineering degree. However, if the person is required to perform any of professional engineering work as defined under the PEC Act, the provisions of this Act will come into operation for ensuring as the work of professional engineer can and only be performed by professional engineer as recognized by PEC Act.*
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> *22. We may further observe that section 27 of the PEC Act provides for penalty for a person who undertakes any professional engineering work if his name is not borne on the Register but it also makes the employer who employs for any professional engineering work any person whose name is not, for the time being, borne on the Register to perform professional engineering work, shall also be liable for penalty as prescribed in the PEC Act itself. Thus both civil servant/employee and their employer would be liable to penalty as provided under section 27 if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act."*

In ***Maula Bux Shaikh*** the Supreme Court reiterated and clarified the law laid down in ***Fida Hussain***.

17. Most recently in ***Mohammad Uneeb Ahmed Vs. Federation of Pakistan (PLD 2022 SC 345)*** by judgment dated 18.10.2021, the Supreme Court upheld the equivalence granted to individuals who had passed F.Sc. examination and individuals who had passed the diploma of Associate Engineers for purposes of being eligible to seek admission in B.Sc. Engineering Programs. The limited quota reserved by PEC for the diploma holders was declared ultra vires the PEC Act and it was held that F.Sc. and D.A.E. certificate holders were entitled to compete on a level playing field for purposes of being admitted to the B.Sc. Engineering Program.

18. The law laid down by the Supreme Court in ***Maula Bux Shaikh*** is unambiguous. It is for PEC to determine in exercise of its powers under provisions of PEC Act as to who is entitled to be accredited as a Professional Engineer within the meaning of section 2(xii) of the PEC Act and it is only Professional Engineers who can undertake Professional Engineering Work as defined under section 2(xxv) of the PEC Act. PEC is vested with no authority to determine whether any particular post within the employment of a public or private body needs to be filled by a Professional Engineer. What is prescribed under section 27 of the PEC Act is that Professional Engineering Work may only be undertaken by Professional Engineers registered with PEC. However, whether or not the scope of duties and functions to be performed by a person serving against a certain post entails undertaking Professional Engineering Work is a matter of fact and can only be determined on a case to case basis in view of the duties and functions actually being performed. The nomenclature attributed to such post is not the determining factor for such purpose as held by the Supreme Court in ***Pakistan Engineering Council through Registrar, Islamabad Vs. Federation of Pakistan through Secretary, Establishment, Islamabad*** ***(1998 SCMR 811)***. Similarly, as held in ***Maula Bux Shaikh***, PEC has no role in determining whether an employer can or cannot treat the qualification of B-Tech at par with B.Sc. Engineering for purposes of recruitment and/or promotion. The criteria for both recruitment and promotion is a quintessential policy matter to be determined by the employer in accordance with its human resource policy.

19. The principle that the criteria for employment and promotion being a quintessential policy matter also applies squarely to HEC. The HEC in view of the powers and functions conferred on it under provisions of the HEC Ordinance is vested with no authority to determine or declare as to which degrees can be treated as equivalent to others for purposes of recruitment or promotion etc. HEC is vested with statutory authority to grant equivalence to academic and educational qualifications. The scope of such authority is limited to declaring whether one academic or educational qualification can be treated as equivalent to another. HEC in its National Qualification Framework of Pakistan, 2015, has correctly noted that a certain qualification being equivalent to another only reflects that such qualifications may be comparable in terms of the period of instruction leading to the award of such qualification etc. And such equivalence does not signify that the knowledge, skill or competence acquired by the qualification holder is interchangeable with another individual holding another degree or qualification that has been declared equivalent. HEC therefore is vested with no authority to advise employers as to which degrees can be considered equivalent for purposes of recruitment or for purposes of promotion. The skills, competence and knowledge that is required for purposes of a certain post is a policy matter to be determined by the relevant employer. And while an employer can seek guidance from any equivalence granted by HEC declaring one qualification as comparable to another, any such equivalence or guidance provided by HEC is not binding on any employer. The criteria for recruitment as well

as criteria for promotion therefore fall squarely within the domain of the relevant employer to be determined on the basis of its relevant policy consideration, and not PEC or HEC.

20. For the aforementioned reasons, this Court finds that the impugned notification suffers from legal infirmity as it falls beyond the scope of the statutory authority vested in HEC. It is not for HEC to determine which degrees are equivalent to others for purposes of satisfying the criteria of recruitment or promotion as adopted or applied by employers. The petition is ***allowed*** in the above terms and the impugned notification dated 08.12.2021 is ***set aside***. It remains within the competence of employers to allow B.Sc. Engineering and B-Tech degree holders to compete for jobs and promotions on a level playing field.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **19.11.2024.**

JUDGE

Approved for reporting.

M.A. Raza