JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1510 of 2023

Secretary Revenue Division / Chairman, Federal Board of Revenue

Versus

Federation of Pakistan through President's Secretariat (Public) and others

Dates of Hearing:	11.12.2023 and 22.12.2023
Petitioner by:	Mr. Muhammad Irshad Chaudhry, Advocate.
Respondents by:	Mr. Asim Shahbaz Malik, Advocate for respondent No.4. Mr. Munawar Iqbal Duggal, learned Addl: AG along with Ms. Asia Batool, learned AAG. Nemo for respondent No.3.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Secretary, Revenue Division / Chairman, Federal Board of Revenue (**"F.B.R."**) has voiced his grievance against the steps being taken by the office of the Wafaqi Mohtasib for the implementation of order dated 03.02.2023, passed by the President of Pakistan, whereby the petitioner / F.B.R. was directed to reconsider the complaint submitted by respondent No.3, Hamza Wazir, regarding the inaction on the part of the petitioner / F.B.R. to appoint him to the post of Assistant (BS-15) against the quota reserved for employees from the areas that were formerly part of Federally Administered Tribal Areas (**"FATA"**).

2. The record shows that vide advertisement dated 19.09.2021, the F.B.R. invited applications for the appointment to different posts, including the post of Assistant (BS-15) in the F.B.R. The candidates for appointment to the said post were required to possess a bachelor degree from a University recognized by the Higher Education Commission (**"HEC"**). The last date for the submission of applications was stated to be 11.10.2021. Respondent No.3 submitted his application for appointment against the said post on 07.10.2021.

3. Respondent No.3 participated in the competitive process by sitting in the written test on 07.04.2022 after which he was interviewed on 16.06.2022. He passed the written test as well as the interview. Subsequently, respondent No.3's candidature for appointment to the

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said post was rejected on the sole ground that by the cut-off date i.e. 11.10.2021, he was not in possession of a bachelor's degree.

4. Aggrieved by the inaction on the part of the F.B.R. to offer him an appointment to the said post, respondent No.3 filed a complaint before the Wafaqi Mohtasib. The proceedings pursuant to the said complaint resulted in the closure of findings on 10.10.2022. Subsequently, respondent No.3 filed a review petition which was rejected by the Wafaqi Mohtasib on 24.11.2022. Respondent No.3's representation to the President of Pakistan resulted in the order dated 03.02.2023, whereby F.B.R. was directed to reconsider respondent No.3's grievance regarding F.B.R.'s failure to offer him employment to the post of Assistant (BS-15). Perusal of the order dated 03.02.2023 passed by the President of Pakistan shows that the sole ground on which respondent No.3's complaint was allowed was that a letter had been issued by the Quaid-e-Azam University (**"QAU"**) stating that the federal examinations had been delayed due to Covid-19 pandemic and that respondent No.3 should be considered as eligible for admission in any University or employment during the period with effect from June – July 2021.

5. Learned counsel for the petitioner submitted that the said letter from the QAU cannot override the conditions of the advertisement dated 19.09.2021 which clearly provided that candidates must possess a bachelor's degree by the cut-off date of 11.10.2021 in order to apply for appointment to the post of Assistant (BS-15) in the F.B.R.; that the mere fact that respondent No.3 participated in the competitive process for appointment as Assistant (BS-15), did not create any vested right in his favour as in the advertisement, it was clearly mentioned that *"the candidates will be provisionally allowed to appear in the test / interview subject to detail scrutiny of their eligibility during recruitment process;"* that in his application, respondent No.3 had stated that he had passed the Associate Degree program from the Islamabad Model Postgraduate College (**"IMPC"**) but did not provide any supporting documentation which was the requirement under the advertisement; that during respondent No.3's interview conducted on 16.06.2022, he did not produce his Bachelor's degree which was an essential requirement under the advertisement; that respondent No.3 did not even produce the detail marks certificate of his Bachelor's

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degree issued prior to the cut-off date of 11.10.2021; that the order dated 31.08.2022 passed by the Wafaqi Mohtasib does not suffer from any legal or jurisdictional infirmity; that pursuant to the said order, the Chairman, F.B.R. reconsidered the matter and came to the conclusion that respondent No.3 was not eligible by the cut-off date of 11.10.2021 to be appointed as Assistant (BS-15); that respondent No.3's review application was turned down by the Wafaqi Mohtasib vide order dated 24.11.2022; that respondent No.3's representation to the President of Pakistan was disposed of vide order dated 03.02.2023 with the direction to the F.B.R. to reconsider respondent No.3's application for appointment to the post of Assistant (BS-15) against the quota reserved for candidates from ex-FATA; that respondent No.3's case was considered once again and vide order dated 24.03.2023, respondent No.3's request for appointment as Assistant (BS-15) was again turned down; and that the proceedings initiated by the Wafaqi Mohtasib for the implementation of the President of Pakistan's order dated 03.02.2023 are without lawful authority inasmuch as the President of Pakistan had issued no direction to the petitioner / F.B.R. to appoint respondent No.3 as Assistant (BS-15). Learned counsel for the petitioner / F.B.R. prayed for the writ petition to be allowed and for the proceedings being conducted by the Wafaqi Mohtasib to be declared without lawful authority.

6. On 10.05.2023, this Court had issued notices to the respondents. As per the office report, all the respondents have been served. The report of the Process Server shows that respondent No.3 had been served through his father namely, Aftab Zaman. Since neither on 11.12.2023 nor today i.e. 22.12.2023 did anyone tender appearance for respondent No.3 therefore, he is being proceeded against *ex-parte.*

7. Learned counsel for Wafaqi Mohtasib / respondent No.4 submitted that although the Wafaqi Mohtasib through order dated 24.11.2022 had closed the case, however the President of Pakistan vide order dated 03.02.2023 directed the petitioner / F.B.R. to reconsider the matter regarding the appointment of respondent No.3 to the post of Assistant (BS-15); and that since the QAU, with which the IMPC is affiliated, had taken a clear position before the President of Pakistan that respondent No.3's Bachelor's degree is to be

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considered as having been issued with effect from June – July, 2021, the petitioner / F.B.R. could not have denied the appointment to respondent No.3 on the ground that he did not possess a Bachelor's degree on 11.10.2021, i.e. the last date for the submission of applications for appointment against the advertised posts. Learned counsel for Wafaqi Mohtasib prayed for the writ petition to be dismissed.

8. 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 to 4 above and need not be recapitulated.

9. The admitted position is that the advertisement dated 19.09.2021 published by the petitioner / F.B.R. required candidates applying for appointment to the post of Assistant (BS-15) to possess a bachelor's degree from a University recognized by the HEC. In the said advertisement, the last date for the submission of applications was 11.10.2021. Applications submitted after the said closing date could not be entertained by the petitioner / F.B.R. This was clearly mentioned in the said advertisement. Furthermore, the candidates were required to attach *inter alia* all the relevant documents with their application forms.

10. It is also an admitted position that by the closing date of 11.10.2021, respondent No.3 had not been issued either the detail marks certificate or the Bachelor's degree.

11. Apparently, respondent No.3 had filed a complaint before the Wafaqi Mohtasib against QAU with respect to the delay in the conduct of the examinations and the issuance of the examination results caused by the Covid-19 pandemic. The proceedings in the complaint went up to the President of Pakistan before whom the representative of the QAU took the position that respondent No.3's Bachelor's degree may be considered as effective from June – July, 2021 and that respondent No.3 could be considered for appointment to the post of Assistant (BS-15). A letter in this regard is said to have been issued on 03.06.2022.

12. I do not see how the petitioner / F.B.R. can be held to be bound by an order passed by the President of Pakistan in the proceedings

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between respondent No.3 and the QAU. An order passed by the President of Pakistan in such proceedings could not over-ride the terms of the advertisement issued by the petitioner / F.B.R.

13. True, the delay caused in the conduct of the examinations or the issuance of the examination results due to the Covid-19 pandemic could become a cause of concern for students or candidates but neither a Court nor the office of the Wafaqi Mohtasib can cause an agency to make its examination results effective from a date much earlier than the date on which it is actually issued.

14. A curious aspect in the case at hand is that respondent No.3's Bachelor's degree is being required to be made effective from June-July, 2021 when he had not even sat in the terminal examination which was conducted in December, 2021 and January 2022, and its result announced on 30.03.2022. The delay in the conduct of the examination could have been due to the Covid-19 pandemic, but the fact remains that in June – July 2021, respondent No.3 had not even sat in all the examinations which were required for the issuance of a Bachelor's degree. Since respondent No.3 was not in possession of a Bachelor's degree by the cut-off date of 11.10.2021, the petitioner/F.B.R. did not commit any act of maladministration by not appointing respondent No.3 to the post of Assistant (BS-15). Respondent No.3's result was declared by the QAU on 30.03.2022 and the detail marks certificate was issued on 02.06.2022, which dates are way beyond the cut-off date of 11.10.2021, respondent No.3 had no legal basis to allege maladministration against the petitioner / F.B.R.

15. The President of Pakistan through his order dated 03.02.2023 had simply required the petitioner / F.B.R. to reconsider the matter regarding respondent No.3's appointment to the post of Assistant. The President of Pakistan neither issued nor could have issued a direction to the petitioner / F.B.R. to appoint respondent No.3. With the order dated 24.03.2023 passed by the petitioner / F.B.R. on respondent No.3's grievance, the matter stood concluded. I have gone through the said order dated 24.03.2023 and find that it does not suffer from any legal infirmity let alone constituting an act of maladministration. With the passing of the said order nothing further remained to be implemented. Consequently, the proceedings being conducted by the

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Wafaqi Mohtasib are not just perverse but irrational having no legal basis.

16. In view of the above, the instant petition is allowed and the proceedings being conducted by the Wafaqi Mohtasib which have been questioned by the petitioner / F.B.R. in the instant petition are quashed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in an open Court on 29.12.2023

JUDGE

Sanaullah*

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