JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.479 of 2024
Dr. Muhammad Shafique Arshad
Versus
Federation of Pakistan and others

Date of Hearing:	25.06.2024
Petitioners by:	Mr. Zulfiqar Khalid Maluka, Advocate.
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General along with Mr. Yasin, Assistant Director, PIMS and Mr. Qumer Mahmood Ch., Deputy Director (Legal), Ministry of NHSR&C. Raja Khalid Mehmood, Advocate for respondent No.3.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Dr. Muhammad Shafique Arshad, who is serving as Professor of Cardiology at the Cardiac Centre in the Pakistan Institute of Medical Sciences (**"PIMS"**), seeks the issuance of a writ of *quo warranto* qua the appointment of respondent No.3 as Professor of Cardiology on contract basis for a period of two years and as the Head of the Cardiology Department at PIMS.

2. Learned counsel for the petitioner submitted that respondent No.3 retired from service on 11.04.2023 and has been re-appointed vide impugned notification dated 17.04.2023 on contract basis for a period of two years as Professor of Cardiology in PIMS; that vide letter dated 08.05.2023, respondent No.3 has also been assigned the duties of Head of the Cardiology Department, PIMS; that respondent No.3's appointment after his retirement is in violation of Section 14 of the Civil Servants Act, 1973 (**"the 1973 Act"**); that since respondent No.3 is a contractual employee, he does not have the status of a civil servant; that the impugned appointment of respondent No.3 has blocked the promotion prospects of the Professors in the Cardiac Centre, PIMS, who have legitimate

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expectation to be appointed as the Head of the Cardiology Department at PIMS; and that respondent No.3's appointment after retirement could only have been made by the President of Pakistan and not by the Prime Minister. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned Deputy Attorney-General submitted that respondent No.3's appointment on contract basis after his retirement had been made with the approval of the Prime Minister; that the said appointment had been made strictly in accordance with Section 14 of the 1973 Act; and that respondent No.3 was entrusted with the charge of the Head of the Cardiology Department at PIMS with the approval of the Secretary, Ministry of National Health Services, Regulations and Coordination ("Ministry of NHSR&C"**). Learned Deputy Attorney-General prayed for the writ petition to be dismissed.**

4. Learned counsel for respondent No.3 submitted that Section 14 of the 1973 Act provides for the concept of re-employment of a retired government servant; that the said power is to be exercised in the public interest; that what constitutes public interest is to be decided by the authority vested with the power to make such an appointment; that the petitioner does not have the *locus standi* to question respondent No.3's appointment after his retirement; that the petitioner has failed to point out any defect in the process leading to respondent No.3's appointment; that there is no restriction in law to make respondent No.3 the Head of the Cardiology Department; that respondent No.3's re-employment after retirement is based on *"his exceptional credentials, experience and expertise"*; that the remarkable services rendered by respondent No.3 are listed in paragraph 6 of the written comments; that the petitioner cannot question the wisdom of the Prime Minister to make respondent No.3's appointment; and that respondent No.3's appointment has not been made on the basis of

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any extraneous considerations. Learned counsel for respondent No.3 also prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. It is an admitted position that respondent No.3 retired from service on 11.04.2023. At that time, he was serving as Professor of Cardiology and Head of the Cardiology Department at PIMS. After his retirement, respondent No.3 was appointed as Professor of Cardiology for a period of two years vide notification dated 17.04.2023. Furthermore, vide notification dated 08.05.2023, respondent No.3 was given the responsibility of Head of the Cardiology Department at PIMS. Aggrieved by respondent No.3's employment after his retirement, the petitioner has filed the instant writ petition.

7. Section 14 (1) of the 1973 Act provides for a mechanism for employment of retired government servants. The said provision reads thus:-

> ***"14. Employment after retirement. (1) a retired civil servant shall not be re-employed under the Federal Government, unless such re-employment is necessary in the public interest and is made with the approval of the authority next above the appointing authority:***
>
> ***Provided that, where the appointing authority is the President, such re-employment may be ordered with the approval of the President."***

8. Section 14(1) of the 1973 Act came up for consideration and interpretation by the Hon'ble Supreme Court, in its judgment in *Suo Motu* Case No.24/2010 (regarding Corruption in Hajj Arrangements in 2010) reported as *PLD 2011 SC 277*. Paragraph 5 of the said report is reproduced herein below:-

> ***"5. Learned Attorney General has also placed on record summary of some of the Police Officers who are re-employed on contract basis. A perusal whereof indicates that prima facie while they were re-employed, the provisions of law i.e. section 14 of the Civil Servants Act, 1973 as well as instructions contained in Esta Code in Volume-I, Edition 2007 under the heading "Re-Employment" and the judgments of the superior courts on the subject were not considered/adhered to. It is to be noted that for establishing rule of***

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law and Constitutionalism, it is necessary that the relevant provisions should be followed strictly in letter and spirit otherwise it would not be possible to provide an effective machinery in law particularly in Police Department to ensure law and order, so the peace in the country, at the same time to avoid violation of the relevant provisions of law noted hereinbefore, which is tantamount to blocking the promotion of the Officers who have also served in the Forces and are waiting for their promotion but they are not getting chance because of the re-employment/contract awarded to the retired Officers. This is not only in the Police Department but for the purpose of achieving good governance the same principle should be followed and strictly applied in other Departments as well. Be that as it may, we are adjourning this case and in the meanwhile learned Attorney-General shall take up the matter with the Government/Competent Authority so it may take necessary steps to rectify if any omission has been committed, before the next date of hearing. Similarly, the learned Attorney-General shall convey this order to the Secretary, Establishment Division and the Chief Secretaries of the Provinces to ensure that if any Civil Servant or other person who has been re-employed, his case be also examined in terms of the provisions of law and both Federal and Provincial Governments should take necessary steps to ensure that re-employment or employment on contract basis are not made in violation of the relevant law."

9. Section 14(1) of the 1973 Act is couched in negative and prohibitory terms. It opens with the words *"a civil servant shall not be re-employed..."* In the case of Aziz ur Rehman Vs. Federation of Pakistan (PLD 2014 Islamabad 53), this Court has held *inter alia* that *"when statutory conditions are couched in negative terms they are almost invariably held to be mandatory*." The strong language in which Section 14(1) is worded is indicative of the legislative command that re-employment after retirement of a civil servant shall not be made unless it is *"necessary in the public interest."* The word 'necessary' means what is indispensible, needful or essential.[1] As per the Advanced Law Lexicon (3rd Edition), necessary means indispensible, essential, unavoidable etc. The word 'necessary' however must be construed in connection in which it is used.

10. After the enactment of the 1973 Act, the Establishment Division considered it necessary to issue a policy providing for the

[1] J. Jayalalitha Vs. Union of India (AIR 1999 SC 1912)

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procedure for re-employment after superannuation. This was done through letter No.7/3/89-OMG-II, dated 28.01.1989 (contained at Sr. No.7, Chapter 5 of the ESTA Code, Edition-2015) which notes that Ministries / Divisions had initiated proposals for re-employment of government servants after superannuation as a routine measure. It was emphasized that re-employment beyond superannuation should be an exception and not a rule. It was recommended that only in cases where government considers that the experience gained by the retiring person is of vital importance and can be gainfully utilized, particularly in the fields where suitably qualified and experienced persons are not available, that re-employment after superannuation could be made. The said letter dated 28.01.1989 also shows that the government had framed a policy for re-employment of government servants and that cases for re-employment would in future be considered in accordance with the following criteria:-

> **"*i. non-availability of suitably qualified or experienced officers to replace the retiring officer;***
> ***ii. the officer is a highly competent person with distinction in his profession / field;***
> ***iii. the re-employment does not cause a promotion block and;***
> ***iv. retention of the retiring officer, for a specified period, is in the public interest."***

11. The above-mentioned policy requires a proposal for re-employment to be accompanied with the following documents / information:-

> ***"a) the proposal duly signed by Secretary or Additional Secretary Incharge of the Ministry concerned to be received in the Establishment Division 6 months before the officer is due to attain the age of superannuation and has the approval of the Minister Incharge.***
> ***b) the steps taken to train the substitute, if any;***
> ***c) PERs with photograph, ICP chart and bio-data on prescribed proforma; and***
> ***d) certificate that the officer is medically fit."***

12. As per Sr. No.7.4 in Chapter 5 of the ESTA Code, Edition-2015, the Cabinet, in its meeting held on 12.11.1990, had decided that no re-employment beyond the age of superannuation should be allowed

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"except in very exceptional cases" **for which approval of the Prime Minister would need to be obtained. This decision has also been made applicable to autonomous and semi-autonomous bodies. Additionally, as per Sr. No.8.1 of the ESTA Code, Edition-2015, re-employment of government servants beyond superannuation is allowed in exceptional cases to meet the shortage of experienced and competent persons where replacements from present cadres are not available.**

13. In the case reported as Nusrat Rasheed Vs. Federation of Pakistan (2021 PLC (C.S.) 777), this Court has explained that the ESTA Code is a compendium of laws, rules and administrative instructions pertaining to terms and conditions of service of civil servants, and is said to have served as a standard reference work in officialdom. It was also held that in the interest of official administration, such instructions should be followed rigidly. The government is expected to abide by and follow its own policies made on the subject of re-employment after retirement. This is moreso in cases of re-employment after retirement since the Hon'ble Supreme Court, in the order reported as *2014 SCMR 848*, has observed that *"appointments on contract basis should not be allowed to continue in terms of Section 14 of the Civil Servants Act, 1973, and the Policy unless the conditions specified therein are satisfied."*

14. Re-employment of a retired civil servant is an exception to the rule that a civil servant is to retire upon attaining the age of superannuation. Exceptions to this rule are only in cases of absolute necessity in the public interest. In order to eliminate elements of arbitrariness in re-employing a retired civil servant, the process is to be transparent and the reasons for such necessity must be recorded in writing. It is not for the civil servant who is re-employed after his retirement to glorify himself, as respondent No.3 has done in the instant case through pleadings in paragraph-6 of his written comments, but for the appointing authority to record reasons as to why such re-employment is considered imperative for the public

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interest. In the case at hand, no material has been brought on record to satisfy this Court that respondent No.3's appointment after retirement was a matter of necessity or that the public interest would be at stake had he not been appointed. The purpose behind the issuance of notice to the Federation of Pakistan was that the material necessary to show that the prevailing circumstances in the Cardiology Department at PIMS had made respondent No.3's re-employment after retirement necessary and in the public interest to be brought on record. This, the Federation did not do. There is nothing on the record to indicate the fulfillment of the essential prerequisite of "*non-availability of suitably qualified or experienced officers to replace the retiring officer"* or that the re-employment of respondent No.3 would subserve the public interest.

15. The element of public interest in making respondent No.3's appointment after his retirement is not apparent from the record before this Court. Of significance in the instant case is a letter dated 11.10.2023 from the Executive Director, PIMS whereby the Ministry of NHSR&C was requested to withdraw the notification dated 08.05.2023. In the said letter, it was also mentioned that the said notification was issued without the recommendations of the Executive Director, PIMS. The reason why I attach significance to this letter is that it was for the Executive Director, PIMS to have made out and forwarded a case for respondent No.3's re-employment after retirement. Being the Executive Head of PIMS, he was in the best possible position to determine whether the prevailing circumstances had made it 'necessary' or whether it was in the public interest to make respondent No.3's appointment. The decision-making process by the appointing authority in terms of Section 14 of the 1973 Act is justiciable in exercise of the powers of judicial review under Article 199 of the Constitution. In such process of judicial review, in absence of the material or reasons which make out an exceptional case justifying a civil servant's re-employment

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after retirement, such appointment would be liable to be struck down.

16. Respondent No.3's contention that the petitioner has no *locus standi* to file the instant petition is not on sound footing inasmuch as the petitioner, being the seniormost serving Professor in the Cardiology Department, has legitimate expectation to be appointed as the Head of the Department of Cardiology. Respondent No.3's appointment as the Head of the Department of Cardiology after his re-employment has resulted in the usurpation of the petitioner's right to be considered for being appointed as the Head of the said Department. In the case of Union of India Vs. Hem Ram Chauhan (2010 (4) SCC 290), it was held that the right of eligible employees for promotion is obviously a fundamental right and a guarantee of fair consideration.

17. In view of the above, the instant petition is allowed, the impugned notification dated 17.04.2023 is set-aside. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Qamar Khan**

APPROVED FOR REPORTING

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