JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 3004 of 2024

Syed Nabi Shah
Vs.
Ministry of Federal Education & Professional Training (FE&PT)
through its Secretary and 5 others

Petitioner by	:	M/s Shafqat Abbas Tarar, Faisal Nawaz, Malik Qatadah Jamal, Javeria Warraich and Raja Muhammad Zubair, Advocates.
Respondents by	:	Mr. Usman Rasool Ghumman, Assistant Attorney General. Dr. Agha Ghulam Haider Director (Legal), for Respondent No.1. Mr. Abdul Rahim Bhatti, Advocate for Respondent No.5. Mr. Qaiser Rahim Bhatti, Advocate for Respondent No.6.
Date of Hearing	:	**11-9-2026.**

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SHAHRUKH ARJUMAND, J.-

1. Through instant petition, Syed Nabi Shah ("**Petitioner**") has sought directions to Respondents to complete the process of appointment of Chairman, Federal Board of Intermediate & Secondary Education **("FBISE")**, Islamabad, on merit, which, according to him, was postponed without assigning any reason and further to declare appointment of Respondent No.6 as *null and void*.

2. Brief facts, as narrated in memorandum of petition, are that Petitioner is serving as Professor at Government Postgraduate College, Swat, Khyber Pakhtunkhwa and has also served as Chairman, BISE Swat for four years. Respondent No.1 advertised the post of Chairman, FBISE through daily "Dawn" dated 05.07.2024, pursuant to which Petitioner applied and was duly shortlisted for interview scheduled on 11.9.2024. However, on 10.9.2024, Petitioner was informed telephonically that interview had been postponed till further orders without assigning any reason. Subsequently, Petitioner came to know through reliable sources and print/electronic media that a proposal was being processed for appointment of Respondent No.6 [Dr. Ikram Ali Malik] as Chairman, FBISE, although he was not among the shortlisted candidates. Petitioner, being shortlisted candidate, is aggrieved by aforesaid action and apprehends that advertised recruitment process is being bypassed to facilitate Respondent No.6; hence, Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of Constitution of Islamic Republic of Pakistan, 1973 **("Constitution")**.

3. Learned counsels for Petitioner contended that impugned conduct of Respondents was illegal, arbitrary, *malafide* and contrary to law, having adversely affected the rights of Petitioner and other eligible candidates. He submitted that Respondent No.6, having been repatriated to his parent department on 31.7.2023, was required to complete prescribed period of three years' service therein before being considered for deputation again, in terms of Office Memorandum dated 11.4.2000 issued by Establishment Division. He further contended that Respondent No.6 had also exceeded the prescribed age limit for deputation. It was argued that Respondents, instead of completing the competitive recruitment process pursuant to advertisement and issue interview call to shortlisted candidates, were attempting to facilitate Respondent No.6, which would be unlawful and

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prejudicial to Petitioner. Learned counsel maintained that such action was violative of Petitioner's fundamental rights and principles of fair and transparent recruitment. He therefore, prayed that Respondents be directed to complete the recruitment process strictly in accordance with law and prescribed criteria. The learned counsel relied upon *Atta Ullah Khan vs. Ali Azam Afridi and others* (2023 PLC (C.S.) 182), *Jawad Ahmed Mir vs. Prof. Dr. Imtiaz Ali Khan and others* (2023 PL C (C.S.) 813), *Malik Munsif Awan vs. Federation of Pakistan* (PLD 2021 SC 379), *Atta Ullah Khan vs. Ali Azam Afridi and others* (2021 SCMR 1979), *Selling of National Assets Including PIA at throwaway Price* (2019 SCMR 1952).

4. Learned Assistant Attorney General assisted by learned counsels for respondents opposed the petition and submitted that appointment of Respondent No.6 as Chairman, FBISE was made by competent authority, i.e. Prime Minister of Pakistan, strictly in accordance with amended statutory provisions. He contended that Respondent No.6, being a highly qualified and experienced educationist and a BS-21 government servant, fulfilled the prescribed eligibility requirements for appointment on deputation and possessed extensive relevant experience. It was further argued that petitioner had no vested right to appointment and lacked *locus standi* to challenge the suitability of appointed candidate. Learned counsel maintained that no illegality, *malafide*, violation of law or infringement of any legal or fundamental right had been established and that petition was misconceived and liable to be dismissed. The learned counsels relied upon *The General Manager, Punjab Provincial Cooperative Bank, Ltd, and others v. Ghulam Mustafa and others* (2024 SCMR 1458), *Muhammad Shahid Akram v. Government of Punjab through Chief Secretary and 3 others* (2016 PLC (C.S) 1335), *Jawad Ahmad Mir v. Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi, District Swabi, Khyber Pakhtunkhwa and others* (2023 SCMR 162), *Hidayat Khan v. The State*

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and another (2023 SCMR 172), *Muhammad Liaquat Munir Rao v. Shams-ud-Din* (2004 PLC (C.S) 1328), *Muhammad Arif v. Uzma Afzal* (2011 SCMR 374), *Zulfiqar Hussain and another v. The State* (2011 SCMR 379), *Dr. Azim-ur-Rehman Khan Meo v. Government of Sindh and another* (2004 SCMR 1299), *Habib Bank Limited through Attorneys v. Muhammad Abdul Samad Khan and another* (2004 SCMR 1305), *Dr. Mir Alam Jan v. Dr. Muhammad Shahzad and other* (2008 SCMR 960) and *Mir Alam and others v. Registrar of Trade Unions and others* (2008 SCMR 962).

5. I have heard the arguments advanced by both the sides and have also perused the record.

6. The controversy, in essence, is neither as to whether Petitioner possessed the requisite qualifications for the post of Chairman, FBISE, nor does this Court, in exercise of constitutional jurisdiction, sit as a recruiting authority to determine the comparative suitability of candidates. The principal question requiring determination is whether, after issuance of advertisement dated 05.07.2024, shortlisting of candidates and scheduling of interviews for 11.09.2024, the Respondents were legally bound to conclude the said recruitment process, and whether appointment of Respondent No.6, allegedly without his being amongst the shortlisted candidates, was contrary to the governing statutory framework?

7. Record shows that the Petitioner had responded to the advertisement issued for the post of Chairman, FBISE and was shortlisted for interview. The interview was subsequently postponed on 10.09.2024. The Petitioner thereafter apprehended that the recruitment process was being abandoned in order to facilitate appointment of Respondent No.6. However, an important subsequent development has intervened. Respondent No.6 was appointed as Chairman, FBISE by the competent authority through

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Notification dated 11.12.2024, and his tenure is stated to expire on 09.12.2027.

8. Respondent No. 6 has been appointed by the competent authority i.e. the Prime Minister of Pakistan in exercise of powers conferred under Sections 11(1) and 11(2) of the FBISE (Amendment) Ordinance, 2024 which are reproduced hereunder:

> *" **Section 11(1) - Appointment:***
> *The Chairman is appointed by the Prime Minister either directly on terms and conditions determined by the Prime Minister or on a deputation basis from a government servant of at least Basic Scale 20 (BS-20).*
>
> ***Section 11(2) - Term of Office:***
> *The Chairman serves a three-year term and remains eligible for reappointment upon its completion."*

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9. The challenge to the appointment of Respondent No.6 loses its force when examined in the light of the amended statutory scheme. Sections 11(1) and 11(2) of the FBISE (Amendment) Ordinance, 2024 expressly recognize and confer the power of appointment of the Chairman upon the Prime Minister. The appointment of Respondent No.6 was, accordingly, an exercise of a power expressly vested by the statute in the Prime Minister and was, therefore, within the four corners of the statutory authority and well within his lawful domain. This Court cannot disregard an appointment made by the designated statutory authority merely because Petitioner had earlier been shortlisted pursuant to an advertisement. Shortlisting in an advertised process does not create a vested right in favour of any candidate so as to fetter the statutory power of the appointing authority. Unless the exercise of such power is shown to be in excess of jurisdiction, contrary to an express statutory prohibition, or actuated by proved *malafide,* the same cannot be interfered with in constitutional jurisdiction. The appointment of Respondent No.6, having been made by

the Prime Minister in exercise of the specific authority conferred by Sections 11(1) and 11(2) *ibid*, therefore, cannot be termed *coram non judice*, without lawful authority or *null and void* merely on the ground that the earlier interview process was not completed.

10. It is settled that a candidate who merely applies for a post or is shortlisted for interview does not acquire a vested or indefeasible right to appointment. Shortlisting only enables a candidate to consideration in accordance with the applicable rules; it does not create an enforceable right to be appointed against the post, unless the selection has been approved by the competent authority. The Supreme Court of Pakistan in the case of Secretary Finance and others v. Ghulam Safdar (2005 SCMR 534) has held that:-

> *"10. Be that as it may, it is difficult to sustain the prayer of the respondents since mere selection in written examination and interview test would not, by itself, vest candidates with a Fundamental Right for enforcement as such in the exercise of Constitutional jurisdiction of the High Court. "*

Reliance is also placed on Judgment dated 26.7.2024, passed by the Supreme Court of Pakistan, in *Waheed Gul Khan and another vs. Province of Sindh and others,* Civil Petitions No.154-K of 2022 & 166-K of 2022.

11. Likewise, the constitutional jurisdiction of this Court cannot ordinarily be invoked merely to question the comparative suitability or preference accorded by the competent authority to one eligible candidate over another. Nevertheless, where the appointment is shown to have been made in disregard of the statutory scheme, prescribed eligibility conditions or in a manner actuated by *malafide*, arbitrariness or discrimination, the constitutional jurisdiction of this Court is undoubtedly attracted.

12. The case law relied upon by learned counsel for Petitioner principally underscore the requirement that appointments to public offices

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must conform to the governing law, prescribed criteria and principles of transparency and fairness. The said authorities, however, do not lay down an absolute proposition that once an advertisement has been issued, the competent authority is invariably precluded from adopting another mode of appointment, provided such mode is otherwise sanctioned by the applicable statutory provisions. Conversely, the case law cited on behalf of the Respondents support the broader principle that constitutional courts do not ordinarily interfere with administrative decisions relating to appointment, selection and suitability unless a patent illegality, violation of the governing law, *mala- fide* or infringement of an enforceable legal right is established.

13. The objection raised by Petitioner regarding the alleged ineligibility of Respondent No.6 on account of his previous repatriation/deputation and the prescribed period of service also requires examination in the light of the applicable rules and the actual terms of his appointment. A general assertion that Respondent No.6 was required to complete three years in his parent department, or had crossed the prescribed age for deputation, cannot by itself invalidate the appointment unless the said requirements were demonstrably applicable to the particular mode of appointment and had the effect of creating a statutory disqualification. Constitutional relief cannot be granted on the basis of apprehensions or assumptions separated from the applicable legal regime.

14. It is equally significant that Petitioner has not demonstrated any vested right to appointment to the office of Chairman, FBISE. His grievance that he was shortlisted for interview may entitle him to complain of unlawful exclusion if such exclusion is established, but shortlisting does not confer upon him a right to insist that the post must necessarily be filled from amongst the shortlisted candidates, particularly where the competent

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authority is shown to possess statutory power to make the appointment through another permissible mode.

15. This Court is conscious that public appointments must be made fairly, transparently and in accordance with law. At the same time, judicial review is directed against the legality of the decision-making process and not against the wisdom, preference or subjective assessment of the competent appointing authority. Unless Petitioner establishes that the appointment of Respondent No.6 was beyond the competence of the appointing authority, contrary to a mandatory statutory provision, or otherwise tainted by *malafide* or arbitrariness of a legally cognizable nature, the Court would not be justified in substituting its own view for that of the competent authority.

16. In the circumstances, Petitioner has failed to establish any enforceable legal right requiring Respondents to revive and conclude the recruitment process initiated through advertisement dated 05.7.2024, nor has he been able to demonstrate that the appointment of Respondent No.6 through Notification dated 11.12.2024 is *void* for want of jurisdiction or for violation of any mandatory statutory requirement. The mere fact that the Petitioner was shortlisted for interview does not confer upon him a vested right to appointment or an indefeasible right to insist upon completion of the earlier recruitment process.

17. In view of above discussion, no case for interference under Article 199 of the Constitution has been made out. Instant petition, being devoid of merit, is **dismissed**.

(SHAHRUKH ARJUMAND)
JUDGE

Approved for reporting.

Tanveer Ahmed/*

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