JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.4105 of 2016
Uzair Ashfaq
Versus
Federal Board of Revenue and another

Date of Hearing: 25.05.2017
Petitioner by: Mr. Riffat Hussain Malik, Advocate.
Respondents by: Malik Shakeel-ur-Rehman, Advocate,
Mr. Ahsan Mehmood Satti, learned Deputy Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Uzair Ashfaq, impugns the letter dated 18.10.2016, issued by respondent No.2, whereby the offer of appointment issued to the petitioner on 08.09.2016, was cancelled.

2. The facts essential for the disposal of this petition are that through advertisement dated 12.09.2015, the respondents had invited applications for appointment of posts, including five posts of Steno Typist (BPS-14). Applicants with a minimum typing speed of 40 words per minute, and shorthand speed 80 words per minute could apply for the posts of Steno Typist. In response to the said advertisement, the petitioner applied for appointment against the post of Steno Typist. Vide letter dated 08.09.2016, respondent No.2 offered appointment against the posts of Steno Typist on temporary basis to the petitioner. One of the conditions of the said appointment was that if in the opinion of respondent No.1, the petitioner's work and conduct is found to be unsatisfactory, he would be discharged from service on a notice of not less than fourteen days, without assigning any reason. On 15.09.2016, the petitioner joined his duties as a Steno Typist. As per the medical fitness certificate dated 16.09.2016, the petitioner was found to be fit for government service. Vide impugned letter dated 18.10.2016 issued by respondent No.2, cancelled the offer of appointment issued to the petitioner on 08.09.2016. Thereafter, the petitioner submitted an undated representation to respondent No.2 against the cancellation of

the offer of appointment. In the said representation, the position taken by the petitioner was that as per the test result intimated by the National Testing Service to the respondents, the petitioner's typing speed was 38.49 words per minute, whereas his shorthand speed was 71.00 words per minute. Having received no response to his representation, the petitioner on 08.11.2016, instituted the instant writ petition praying for the impugned letter dated 18.10.2016 to be set-aside.

3. Learned counsel for the petitioner after narrating the facts leading to the filing of the instant petition submitted that before cancelling the offer of appointment made to the petitioner, the respondents did not afford an opportunity of hearing to the petitioner; that the impugned letter dated 18.10.2016 is not supported by reasons, and is therefore violative of the requirements of Section 24-A of the General Clauses Act. Learned counsel for the petitioner prayed for the impugned letter dated 18.10.2016 to be set-aside. In making his submissions, the learned counsel for the petitioner placed reliance on the law laid down in the case of Muhammad Rafi Vs. Federation of Pakistan (2016 SCMR 2146). The learned counsel for the petitioner also relied on the law laid down in the unreported judgment dated 20.06.2016, passed by the Hon'ble Peshawar High Court in W.P. No.840-D of 2015 titled "Mst. Unzla Zafar Vs. Government of Pakistan, etc.".

4. On the other hand, learned counsel for the respondents submitted that the petitioner, in his representation to respondent No.1, had admitted that his typing speed was 38.49 words per minute, whereas his shorthand speed was 71.00 words per minute; that the petitioner's typing and shorthand speed falls short of the minimum requirements set out in the advertisement issued by the respondents; that an extract of the said advertisement has been annexed by the petitioner along with the writ petition; that since the petitioner's typing and shorthand speed was below the required threshold, he could not have been issued an offer of appointment by the respondents; that the offer of appointment given to the petitioner was not lawful and the

officers of the respondents responsible for this aberration will be taken to task; that no vested right was created in the petitioner's favour by the said offer of appointment because he had not fulfilled the criteria for appointment as a Steno Typist set out in the advertisement. Learned counsel for the respondents 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. The facts leading to the filling of the instant petition have been set out in sufficient detail in paragraph 2 above, and need not be recapitulated.

6. It is not disputed that as per the advertisement published at the instance of the respondents, the minimum shorthand and typing speed required for appointment against the post of Steno Typist was 80 and 40 words per minute, respectively. In response to the said advertisement, the petitioner participated in the test conducted by the National Testing Service. Admittedly, the petitioner's typing speed was 38.49 words per minute, whereas his shorthand speed was 71.00 words per minute. Even though the petitioner failed to meet the required threshold for appointment against the post of Steno Typist, respondent No.1 vide letter dated 08.09.2016, issued an offer for appointment to the petitioner. Not just that, the petitioner joined his duties on 15.09.2016. After serving for about a month, respondent No.2 vide impugned letter dated 18.10.2016 cancelled the offer of appointment that had earlier been issued to the petitioner. The ground for cancellation of the offer for appointment taken by respondent No.1 was that the petitioner's typing and shorthand speed was less than the minimum speed set out in the advertisement. Since the petitioner in his representation had admitted that his typing and shorthand speed was below the minimum required speed set out in the advertisement, he could not be said to have acquired a vested right for appointment as a Steno Typist. Regardless of this, respondent No.2 gave an offer for an appointment to the petitioner. The respondents in paragraphs-4 of the written comments have pleaded that the

Departmental Selection Committee, considering the shortage in the cadre of Steno Typist, recommended the best of the best candidates out of the available candidates. Furthermore, it is pleaded on the recommendation of the Departmental Selection Committee, the petitioner along with four other candidates were issued offers for appointment against the five vacant posts of Steno Typist. It appears that the respondents subsequently awoke to the illegality in making the offers for appointment in derogation of the requirements in the advertisement.

7. Since the offer for appointment issued by respondent No.2 to the petitioner was clearly in violation of the advertisement, the said offer was clearly illegal and could not operate to create any vested right in the petitioner's favour. It is well settled that the principle of *locus poenitentiae* is attracted to legal and valid orders passed without any jurisdictional errors. No perpetual rights could be gained on the basis of an illegal order, and an authority having passed an illegal order could recall, withdraw or revoke the same. The principle of *locus poenitentiae* can be invoked only in respect of an order which is legal and not an order which, as in this case, is a clear derogation of the requirements of the advertisement.

8. As regards the case law relied upon by the petitioner, in the case of Muhammad Rafi (*supra*), the Hon'ble Supreme Court set aside the decision of the Civil Aviation Authority to scrap appointments on the ground that the appointees "*had passed through the proper recruitment process*". In the case at hand, the offer for appointment issued to the petitioner cannot be said to be proper since it was in derogation of the conditions for the appointment of Steno Typist set out in the advertisement. As regards the case of Mst. Unzla Zafar, the Hon'ble Peshawar High Court directed the respondent to allow the petitioner to join her service, because she had participated in a test and interview after which her appointment order was issued. The Hon'ble High Court did not go into the question of the petitioner's eligibility for appointment against the post of a Scientific Officer, but allowed the writ petition simply on the ground that she had been

permitted by the respondents to participate in a competitive process after which an appointment order was issued to her. I am afraid I cannot bring myself to take the same view as the Hon'ble Peshawar High Court, because the matter of eligibility and requisite qualification is of pivotal importance in making appointments, and simply because an appointment order of an ineligible applicant or an applicant lacking the requisite qualification has been issued, would not make the appointment immune from revocation or recall.

9. Now, it bespeaks of a sorry state of affairs at the respondents' end for issuing offers of appointment in derogation of the requirements of the advertisement. Public functionaries who manage and control public asset, are trustees of the people and should be made accountable for their negligence and indolence. The illegality committed by issuing an offer for appointment to the petitioner is not attributable to just one public functionary but to several persons including the ones on the Departmental Selection Committee on whose recommendations the said offers for appointment were made. I am satisfied with the submissions of the learned counsel for the respondents that this lapse will not be left unattended.

10. In view of the above, this writ petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

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