JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

J.S.A. No.01 of 2016
Muhammad Shabbir
Versus
Registrar, Islamabad High Court and others

Date of Hearing:	01.06.2023
Appellant by:	Mr. Taimoor Aslam Khan, Advocate.
Respondents by:	Hafiz Farmanullah, Advocate for respondent No.2. Mr. Qaisar Sarwar, Advocate for respondent No.6. Mr. Asif Iqbal, Departmental Representative, Islamabad High Court.

MIANGUL HASSAN AURANGZEB, J:- Through the instant judicial service appeal the appellant, Muhammad Shabbir, who is presently serving as Senior Civil Judge in the Islamabad Judicial Service, impugns (i) order / notification dated 27.06.2012 (ii) the final seniority list for the Senior Civil Judges issued on 25.07.2014 and (iii) final seniority list for the Civil Judges issued on 10.09.2014. The appellant also seeks a direction to the Registrar of the Islamabad High Court (**"IHC"**) to issue a seniority list for six Civil Judges (i.e., the appellant and respondents No.2 to 6) on the basis of marks obtained in interview which according to him would be in accordance with Rules 6 and 21(1)(a) of the Islamabad Judicial Service Rules, 2011 (**"the 2011 Rules"**). Additionally, the appellant seeks an order for his promotion as Senior Civil Judge with all back benefits with effect from the date when his juniors were promoted to the said post on the basis of seniority-cum-merit in accordance with Rules 10(1)(b) and 13(1) of the 2011 Rules.

2. The appellant's case as gathered from the pleadings in his appeal is that in the year 2011, he along with respondents No.2 to 6 participated in the competitive process for appointment as Civil Judges / Judicial Magistrates in the Islamabad Judicial Service. After they were interviewed by the Selection Board, they were appointed to the said positions vide notifications dated 15.10.2011.

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3. The appellant asserts that the notifications were to take effect from the date of the assumption of the charge of the said posts by the incumbents. He asserts that out of six Civil Judges that had been appointed, he had reported for joining his duties before the rest of them and therefore, on this basis he should rank as senior to them. He claims to have reported for the assumption of charge on 27.10.2011 but was told that all the selected judicial officers would collectively report for duty. He asserts that Mr. Aamir Aziz (respondent No.3) and Mr. Nasruminallah (respondent No.4) reported for duty a day later, *i.e.* 28.10.2011, and that at the instance of the Registrar, IHC, the appellant also inserted 28.10.2011 as his date of joining duty. He asserts that this was done on account of *"undue influence and misuse of authority by the then Registrar."* He wants to take advantage of the fact that Rasool Bukhsh Mirjat (respondents No.5) and Muhammad Sohail (respondent No.6) were relieved by their parent departments on 31.10.2011 but had been shown to have joined their duties at Islamabad on 14.11.2011. He accuses them of receiving a salary from their parent departments at a time when the appellant had already joined his duties at Islamabad.

4. The appellant has drawn a comparison between himself and respondent No.6 as regards their length of service in their parent departments and has asserted that his length of service as on 27.06.2012 was 18 years and 09 months whereas that of respondent No.6 was 07 years and 11 months. The appellant has attributed arbitrariness to the competent authority for promoting respondent No.6 through notification dated 27.06.2012 and not the appellant.

5. The appellant has also voiced his grievance against the promotion of respondents No.2 and 6 as Senior Civil Judges vide notification dated 27.06.2012, which according to him could not have been issued without first issuing a merit list and a seniority list. These promotions, according to the appellant, are in violation of Rules 10(1)(b) and 13(1) of the 2011 Rules. Aggrieved by these promotions, the appellant filed representation before the competent

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authority on 23.07.2012. It was not until 28.04.2014 that provisional seniority lists of Civil Judges and respondents No.2 and 6, who had been promoted as Senior Civil Judges, were issued. The appellant filed objections to these lists on 05.05.2014.

6. The final seniority list of Senior Civil Judges was issued on 25.07.2014. The appellant's grievance is that without deciding his objections, the final seniority list could not have been issued. The appellant's application for deciding his pending representation was not decided.

7. The final seniority list of Civil Judges was issued on 10.09.2014 showing the appellant as junior to respondents No.3 to 5. He asserts that since he had obtained the highest marks in the interview, he should have been placed at the top of the seniority list.

8. The appellant's grievance regarding the notifications dated 15.10.2011 (whereby the appellant along with respondents No.2 to 6 were appointed as Civil Judges) is that the marks obtained by the selected candidates in the interview were altogether ignored and in this way Rule 6(5) and (6) of the 2011 Rules were violated. The appellant asserts that he was able to obtain the consolidated final result / mark sheet of the Civil Judges from the Hon'ble Supreme Court as it had been annexed to the report submitted by the Registrar, IHC during the proceedings in C.P.L.A. No.2125/2014. His grievance regarding the final result / mark sheet was that marks had been given illegally on the basis of Annual Confidential Reports ("ACRs"**) and the length of service when they should have been given marks on the basis of interview only. On coming to know about the final result / mark sheet, the appellant submitted an application dated 29.02.2015 for the correction of the *inter-se* seniority amongst the first six Civil Judges (i.e. the appellant and respondents No.2 to 6) appointed in the Islamabad Judicial Service. He wanted the seniority to be re-fixed on the basis of marks obtained in the interview only.**

9. We have heard the learned counsel for the appellant, who made submissions in reiteration of the pleadings in the appeal. We

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have also gone through the replies submitted by respondents No.1 to 6.

10. We propose to first deal with the question of whether there is any merit in the appellant's contention that since he had reported for duty prior to all the other Civil Judges selected in the process for *"first time appointment,"* he should rank senior to all the other Civil Judges, who reported for duty after the appellant. It is not disputed that the appellant and four other Civil Judges from the Balochistan Judicial Service were appointed in the Islamabad Judicial Service vide IHC's notification No.F.No.(6)Admn/IHC/4867 dated 15.10.2011. It may also be mentioned that vide notification No. F.No.(6)Admn/IHC/4869 dated 15.10.2011 issued by the IHC, two Civil Judges from the Sindh Judicial Service were appointed in the Islamabad Judicial Service. The matter had to be placed before the Chief Justice of the IHC for orders allowing them to join the Islamabad Judicial Service at the earliest. Notification dated 22.11.2011 issued by the IHC shows that the date of joining of the Civil Judges from the Balochistan and Sindh Judicial Service are as follows:-

S.#	*Name of the Officer*	*Date of Joining*
1	*Mr. Muhammad Amir Aziz*	*28.10.2011*
2	*Mr. Abdul Ghafoor*	*29.10.2011*
3	*Mr. Nasrumminallah*	*28.10.2011*
4	*Mr. Muhammad Shabbir*	*28.10.2011*
5	*Mr. Muhammad Sohail*	*12.11.2011*
6	*Mr. Rasool Bakhsh*	*12.11.2011*

11. The above table shows that the appellant's date of joining his duties in the Islamabad Judicial Service was 28.10.2011. The appellant asserts that the correct date of the joining of his duties was 27.10.2011. Although the appellant's joining report is undated, even if it is assumed that the appellant reported for duty on 27.10.2011, given the fact that the Civil Judges, who were first time appointees, went through the same competitive process and were subjected to an interview by the same Selection Board and were appointed though notifications of even date, *i.e.* 15.10.2011, we are of the view that the date of joining their duties becomes

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inconsequential for the purposes of their *inter-se* seniority. Learned counsel for the appellant did not refer to any law which makes an appointee, who rushes and reports for duty prior to the other appointees in the same batch, senior to all others who report for duty at a subsequent point in time. The Civil Servants (Seniority) Rules, 1993 have no provision to the effect that whoever in a batch of initially appointed civil servants joins his duty first, will rank as senior to all those who join their duties later. Chapter – XI in Section–I of the Fundamental Rules ("FR") deals with *"Joining Time."* FR 105(a) provides that joining time may be granted to a government servant to enable him to join a new post to which he is appointed while on duty in his old post. There is no rule in the said Chapter which provides that a government servant who joins his duty prior in time to his other batch mates will rank senior to them. Therefore, the appellant's contention that since he had reported for duty prior in time to his peers, he should be treated as senior to them has no legal force.

12. It may also be mentioned that the appellant, in his first representation dated 23.07.2012 submitted to the Registrar, IHC, has not brought any claim to seniority on the ground that he had reported for duty prior to his peers appointed through notifications dated 15.10.2011. In the said representation dated 23.07.2012, it is asserted that this was his third representation *"for seniority list."* There is no representation on the record prior to 23.07.2012 submitted by the appellant seeking seniority over his peers.

13. Rule 21(1)(a) of the 2011 Rules provides that the *inter se* seniority of the first time appointees shall be determined in accordance with the order of merit assigned on the basis of interview by the Selection Board. The appellant's claim of seniority over his peers appointed through notifications dated 15.10.2011 is based on the assertion that he had obtained 37 marks in the interview which were the highest. Now, Rule 21(1)(a) of the 2011 Rules is to be read in conjunction with Rule 6(6) of the said Rules, which provides that the suitability of a candidate for the service shall

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be determined with reference to the marks obtained by a candidate in interview *"and giving due regard to his service record, knowledge, ability, character, personality and health."* Although it is not disputed that in the interview, the appellant had obtained 37 marks which were the highest amongst the Judges, who are parties to this appeal but the final result / mark sheet also has marks for attributes such as service record, knowledge, ability, character, personality and health as required by Rule 6(6) of the 2011 Rules. When the marks regarding the said attributes are added with the marks given to each candidate in the interview, the appellant's marks are not the highest. For the purposes of clarity, the marks given to the Judges, who are parties to this appeal are as follows:-

Sr. No.	Name of Judicial Officer	Marks obtained from Judicial Service and ACRS	Marks obtained in Interview	Total	Remarks
1	Mr. Muhammad Aamir Aziz, Civil Judge, Harnai	27	35	62	Qualified
2	Mr. Abdul Ghafoor, Judicial Magistrate, Pishin	26	36	62	Qualified
3	Mr. Nasruminallah, Judicial Magistrate, Barkhan	20	36	56	Qualified
4	Mr. Muhammad Shabbir, Judicial Magistrate, Killa Saifullah	18	37	55	Qualified
5	Mr. Muhammad Sohail, Civil Judge / Judicial Magistrate, Khipro	26.4	32	58.4	Qualified
6	Mr. Rasool Bukhsh, Civil Judge / Judicial Magistrate, Karachi West.	20.1	34	54.1	Qualified

14. What the appellant wants this Tribunal to do is to disregard the marks given to each candidate for attributes such as service record, knowledge, ability, character, personality and health and only to take into consideration the marks given in the interview for determining the *inter se* seniority between the appellant and respondents No.2 to 6. If this Tribunal were to accede to the appellant's desire, it would lead to an absurd and ridiculous result

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inasmuch as an appointee with lesser cumulative marks will be given seniority over Judges, who had fared better than him in the competitive process. It would also result in this Tribunal ignoring the fact that for the suitability of a candidate, it is not just the marks in the interview that are to be taken into consideration but also attributes such as service record, knowledge, ability, character, personality and health. Rule 6(6) of the 2011 Rules is to be read conjunctively with Rule 6(5) which requires the Selection Board to interview the candidates and prepare a merit list for the first time appointment of *"suitable persons."* The suitability of a person is to be determined not just on the basis of marks obtained by candidates in the interview but also on the basis of the marks obtained for attributes such as service record, knowledge, ability, character, personality and health. It is only when the marks obtained in the interview and the said attributes are taken into consideration that the merit list is prepared. If absurdity is to be avoided, the word *"interview"* in Section 21(1)(a) of the 2011 Rules is to be purposively interpreted such that the *inter se* seniority in case of first time appointment is to be determined in accordance with the merit assigned on the basis of the marks obtained by each of the candidates in the competitive process envisaged by Rule 6(6) of the 2011 Rules, which would include the marks obtained in the interview as well as the marks for attributes such as service record, knowledge, ability, character, personality and health. It is such construction that will bring harmony between Rule 6(5) and (6) on the one hand and Rule 21(1)(a) on the other. Harmonious construction is to be made keeping in view the different provisions of the rules after fully understanding the intention with which the same had been made and the object which was intended to be achieved. The objective of giving seniority to the most meritorious candidate is logical and fair whereas to give seniority on the basis of one of the elements in the competitive process, *i.e.* the interview would be illogical and unfair.

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15. As mentioned above, the provisional seniority list of the Civil Judges in the Islamabad Judicial Service was issued on 28.04.2014. The appellant submitted objections against this list on 05.05.2014. The objections to the effect that the appellant should rank senior to his peers appointed through notifications dated 15.10.2011 on the ground that he had reported for duty prior to the others has already been addressed by this Tribunal herein above.

16. In the said objections, the appellant has taken objection to the effect that the establishment of the IHC had not issued a seniority list before respondent No.2 (Abdul Ghafoor Kakar) and respondent No.6 (Muhammad Sohail) were promoted as Senior Civil Judges. We agree with the appellant that a seniority list should have been issued so that the Departmental Promotion Board could have, while interviewing candidates for promotion, known their seniority. However, we are of the view that in the case at hand, no prejudice was caused to the appellant since the two above named Judges, who were promoted as Senior Civil Judges in the year 2012, were senior to him on the basis of the marks set out in the merit list of the Civil Judges. The notification dated 15.10.2011 mentions the names of Civil Judges from the Balochistan Judicial Service in order of merit. Respondent No.2's marks in the merit list were 62 and respondent No.6's marks were 58.4 whereas the appellant's marks were 55. Since the appellant's marks were lower than those of respondents No.2 and 6, he cannot have any grouse against their promotion simply on the ground that a seniority list was not issued prior to their consideration for promotion.

17. The appellant claims to have a service period longer than respondents No.2 to 6 when they were all appointed as Civil Judges in the Islamabad Judicial Service. This claim of the appellant is belied by the record. The report submitted by the Registrar, IHC before the Hon'ble Supreme Court in C.P.No.2125/2014 shows that the appellant was first appointed as a judicial officer in the Balochistan Judicial Service on 04.11.2008, whereas respondent No.2 was appointed on 05.06.2000 and respondent No.6 on

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11.05.2004. Perhaps the appellant wants the period during which he served as a Stenographer or Private Secretary in the Balochistan High Court to be treated as a part of his judicial service. Since the appellant did not serve in an adjudicating capacity while serving in the Balochistan High Court, his service prior to 04.11.2008 cannot be counted or treated as judicial service.

18. In view of the above, we do not find any merit in the instant appeal which is dismissed. We refrain from imposing costs on the appellant bearing in mind the fact that he is on the verge of retirement.

(TARIQ MEHMOOD JAHANGIRI)
MEMBER / JUDGE

(MIANGUL HASSAN AURANGZEB)
MEMBER / JUDGE

(MOHSIN AKHTAR KAYANI)
CHAIRMAN / JUDGE

ANNOUNCED IN AN OPEN COURT ON 11/07/2023

(MEMBER / JUDGE)

(MEMBER / JUDGE)

(CHAIRMAN / JUDGE)

Qamar Khan*

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