JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.86/2019
Khwaja Rauf Segal
Versus
Full Bench, N.I.R.C. and others

Date of Hearing: 09.07.2020
Petitioner by: Mr. Abdul Hafeez Amjad, Advocate
Respondents by: Mr. Momin Ali Khan, Advocate for respondents No.3 to 5/P.I.A.C.

MIANGUL HASSAN AURANGZEB J.- Through the instant writ petition, the petitioner, Khwaja Rauf Segal, impugns the order dated 31.12.2018 passed by the learned Full Bench of the National Industrial Relations Commission **("N.I.R.C.")** whereby his appeal against the order dated 08.08.2017 passed by the learned Member, N.I.R.C., was dismissed. Vide the said order dated 08.08.2017, the learned Member, N.I.R.C., had dismissed the petitioner's petition under Section 33 of the Industrial Relations Act, 2012 **("the I.R.A.")** challenging the show cause notice dated 28.09.2014 issued to him by the Pakistan International Airlines Corporation **("P.I.A.C.")**. Through the said notice, the petitioner was called upon to show cause as to why disciplinary action should not be initiated against him for having committed misconduct by submitting a bogus intermediate certificate.

FACTUAL BACKGROUND:-

2. The facts essential for the disposal of this petition are that on 28.12.2001, P.I.A.C. issued a circular inviting applications from workers who had been engaged in P.I.A.C. on daily wages basis, to determine their suitability for deployment in P.I.A.C. on contract basis against different positions including cargo assistants. In the said circular, it was clearly mentioned that the candidates for the position of cargo assistants must possess a graduation degree from a recognized university. In response to the said circular, the petitioner applied for the position of cargo assistant. In his application form, the petitioner mentioned that he was a graduate. He also submitted a Bachelors of Arts **("B.A.")** degree bearing Roll No.33767 issued by the University of the Punjab.

3. Vide the letter dated 09.06.2003 issued by the Human Resources Division of P.I.A.C., the petitioner was appointed as cargo assistant on contract basis for a period of one year with effect from 01.05.2003 to 30.04.2004. It is an admitted position that the duration of the petitioner's employment contract was extended from time to time. The petitioner's services were regularized pursuant to a decision taken by the Cabinet Sub-Committee on Regularization of Contract / Daily Wages Employees in the Ministries / Divisions / Attached Departments / Autonomous Bodies / Organizations.

4. On 08.02.2007, the University of the Punjab informed P.I.A.C. that the petitioner's B.A. degree, bearing Roll No.33767, was bogus.

5. The Employees Leadership Team of P.I.A.C., in its 64th meeting held on 28.11.2007, decided to immediately terminate the services of all employees in the Management Cadre (i.e. PG-V and above) including cockpit crew/cabin crew, whose degrees had been found to be bogus. Furthermore, it was decided that as regards the employees in Non-Management Cadre (i.e. PG-IV and below) including cabin crew, whose degrees had been found to be bogus, they would be given a two-year period to submit their degrees/certificates in question to P.I.A.C., and that in case an employee fails to submit the degree/certificate by 31.12.2009, his or her services would be terminated immediately. It is an admitted position that the said deadline was extended to 30.06.2010.

6. Vide the letter dated 23.10.2008, P.I.A.C. informed the petitioner that the B.A. degree submitted by him at the time of his induction in the service of P.I.A.C. had been found to be bogus. Furthermore, the petitioner was called upon to submit his genuine graduation degree by 30.06.2010, failing which his services would be terminated. Vide letter dated 30.04.2010, P.I.A.C. once again called upon the petitioner to submit his genuine graduation degree by 30.06.2010. Since the petitioner did not submit his genuine graduation degree by 30.06.2010, P.I.A.C., vide letter dated 01.07.2010, terminated his services with immediate effect.

7. The Board of Directors of P.I.A.C. in its 328th meeting held on 28.10.2010, further extended the deadline for the submission of the genuine educational certificates to 31.12.2010. Prior to the said

deadline, the petitioner had submitted a *"genuine provisional certificate from recognized university issued on 26.11.2010."* The petitioner had produced the detailed marks certificate of his B.A. issued by Al-Khair University (AJK). Consequently, vide letter dated 07.12.2010, P.I.A.C. permitted the petitioner to re-join his duties. The period between the termination of the petitioner's services and re-joining his duties was to be treated as leave without pay. For the purposes of clarity, the said decision of the P.I.A.C.'s Board of Directors is reproduced herein below:-

> ***"83. Board while providing concession/condonation on humanitarian grounds to only those employees who were terminated on July 01, 2010 on account of non-submission of degrees/certificates upto June 30, 2010 as specified by PIA Board in its 325th Meeting held on April 29, 2010, decided that they may be allowed to submit, upto December 31,2010, their degrees/certificates issued upto October 31, 2010. Upon doing so, they may be allowed to re-join their duties on the same position/mode of employment that they had before termination. The intervening period from July 01, 2010 till the date of resumption of duties will be treated as leave without pay and without any financial benefits, whatsoever."***

8. It may be mentioned that the Board of Directors of P.I.A.C. in the 363th meeting held on 30.12.2014 rescinded the earlier decision taken in the 328th meeting held on 28.10.2010.

9. In 2011, P.I.A.C. again started the process for the verification of the educational testimonials of its employees. This was done after the Ministry of Defence, vide letter dated 16.03.2011, called upon the departments/organizations under the Ministry of Defence, including P.I.A.C., *"to get degrees/certificates/other documents of their employees (BPS-17 to BPS-22 or equivalent) verified by making a reference to the Universities/Institutions concerned which issued those degrees/certificates."*

10. Along with his application for appointment as cargo assistant on contract basis, the petitioner had also submitted his intermediate certificate dated 22.02.1988 (bearing Roll No.7454) purportedly issued by the Board of Intermediate and Secondary Education("B.I.S.E."), Rawalpindi. Vide the letter dated 15.09.2014, the B.I.S.E., Rawalpindi informed P.I.A.C. that the petitioner's intermediate certificate was bogus. Consequently, P.I.A.C. issued the show cause notice dated 28.09.2014 to the petitioner wherein it was alleged that by submitting a bogus intermediate certificate, the latter had committed misconduct

as defined in Section-II Clause 75(aj) of the P.I.A.C. Employees (Service and Discipline) Regulations, 1985 ("the 1985 Regulations").

11. On 14.10.2014, the petitioner invoked the jurisdiction of N.I.R.C. by filing a petition under Section 33 of the I.R.A. challenging the said show cause notice. On 03.08.2015, P.I.A.C. issued a notice of personal hearing to the petitioner. Thereafter, on 19.05.2017, P.I.A.C. issued another show cause notice to the petitioner. Vide order dated 08.08.2017, the learned Member, N.I.R.C. dismissed the said petition. The learned Member, N.I.R.C. held that an employer had a right to serve his employee/worker with a show cause notice or a charge sheet alleging misconduct against the employee, and that such a right cannot be curtailed by filing a petition before N.I.R.C. It was also held that the initiation of inquiry proceedings against a worker was a routine matter and cannot be termed as an unfair labour practice.

12. Against the said order, the petitioner preferred an appeal before the learned Full Bench of N.I.R.C. Since the Full Bench of N.I.R.C. was not available in Islamabad, the petitioner filed writ petition No.2960/2017 before this Court. In the said petition, the petitioner had sought interim relief until his appeal was taken-up for hearing by the learned Full Bench, N.I.R.C. Vide the order dated 10.10.2017, this Court restrained P.I.A.C. from passing an order for the petitioner's dismissal/removal from service without conducting a proper inquiry. For the purposes of clarity, the operative part of the said order is reproduced herein below:-

> ***"3. Since the learned Full Bench of the N.I.R.C., is presently non-functional, I am inclined to dispose of this petition, without the necessity of issuing notices to the respondents, by restraining respondent No.3 from passing an order of removal/dismissal from service against the petitioner without conducting a proper inquiry. This restraint shall automatically come to an end on the date on which the petitioner's appeal is fixed for hearing before the learned Full Bench of the N.I.R.C."***

13. Vide the order dated 31.12.2018, the said appeal was dismissed by the learned Full Bench, N.I.R.C. On the very same day on which the petitioner's appeal was dismissed, P.I.A.C. issued a notice of inquiry to the petitioner. In the said notice, the petitioner was informed that the inquiry was to be conducted under the provisions of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance,

1968 (“the 1968 Ordinance”) read with the 1985 Regulations. The purpose of the inquiry was to inquire into the allegations/charges leveled against the petitioner in the show cause notice dated 28.09.2014. The petitioner was called upon to appear and defend himself before the Inquiry Officer on 03.01.2019, and to produce documentary evidence if any in his defence. Vide the letter dated 02.01.2019, the petitioner requested the Inquiry Officer to hold the inquiry on 02.01.2019 instead of 03.01.2019 on the ground that he was in Karachi, and his mother was in the Intensive Care Unit. As per the contents of the inquiry report dated 04.01.2019, the petitioner appeared before the inquiry officer on 02.01.2019, but refused to record his statement or to cross-examine the two prosecution witnesses. The inquiry officer found the petitioner guilty of the charges /allegations levelled against him.

14. The concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C. have been assailed by the petitioner in the instant petition, which was filed on 09.01.2019. Since this Court had passed a *status quo* order dated 10.01.2019, P.I.A.C. has not taken a final decision on the basis of the said inquiry report.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-

15. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that in the judgments reported as Pakistan International Airlines Corporation Vs. Tanweer-ul-Islam (PLD 2010 SC 676), Nighat Yasmin Vs. Pakistan International Airlines Corporation (2004 SCMR 1820), Anisa Rehman Vs. P.I.A.C. (1994 SCMR 2232), and Zafar Iqbal Vs. Pakistan International Airlines (2011 PLC (C.S.) 259), the 1985 Regulations had been declared as non-statutory; that since P.I.A.C. did not have any statutory rules, the petitioner could not have filed a writ petition before the High Court against the show cause notice issued to him; that the only remedy available to the petitioner was to have invoked the jurisdiction of N.I.R.C.; that since the petitioner was alleged to have secured appointment in P.I.A.C. on the basis of bogus educational certificates, it was essential for P.I.A.C. to have conducted a regular inquiry against the petitioner in accordance with the provisions of the

1968 Ordinance; that the petitioner could not have been proceeded against under the non-statutory 1985 Regulations; that in the order dated 21.08.2015 passed in the case titled *"Tanveer Riaz Abbasi etc. Vs. Pakistan International Airlines Corporation, etc.,"* the learned Member, N.I.R.C. had held that a regular inquiry under the provisions of the 1968 Ordinance cannot be dispensed with where the allegation against the employee is that he had submitted a bogus degree in order to secure employment; and that the learned Member, N.I.R.C. did not take the import of the said order dated 21.08.2015 into account while dismissing the petitioner's petition under Section 33 of the I.R.A.

16. Furthermore, it was submitted that the learned Member and the learned Full Bench of N.I.R.C. erred by not appreciating that the petitioner's services were regularized after the verification of his educational testimonials; that the petitioner was victimized by the management of P.I.A.C. on account of being an active member of a trade union; that the petitioner could not have been proceeded against after he had submitted a genuine provisional certificate from a recognized university within the extended grace period fixed by the Board of Directors of P.I.A.C. in its 328th meeting; that after the petitioner had been permitted to rejoin his duties, the allegation against him regarding the submission of bogus educational certificates had become a closed chapter; that P.I.A.C. subjected the petitioner to double jeopardy by proceeding against him after he had been permitted to rejoin his duties; that in the order dated 04.12.2015 passed by this Court in writ petition No.3258/2015, it was observed that P.I.A.C. could re-employ the employees who had submitted bogus educational certificates if their services were beneficial to P.I.A.C.; that the petitioner was condemned unheard since he was not afforded an adequate opportunity by the inquiry officer to defend himself; and that the petitioner had not submitted any bogus educational certificates in order to gain employment in P.I.A.C. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C. to be set-aside.

CONTENTIONS OF THE LEARNED COUNSEL FOR P.I.A.C.:-

17. On the other hand, learned counsel for P.I.A.C. submitted that the petitioner has failed to comply with the mandatory requirement of serving a grievance notice on P.I.A.C. before filing a petition before N.I.R.C.; that since the petitioner was found to have committed misconduct by submitting bogus educational certificates in order to gain employment in P.I.A.C., he does not deserve any indulgence in the Constitutional jurisdiction of this Court; that P.I.A.C. has not violated any law by conducting an inquiry against the petitioner; and that the concurrent orders passed by the learned Member and the learned Full Bench of N.I.R.C. do not suffer from any illegality or jurisdictional error.

18. Furthermore, he submitted that on 01.07.2010, the petitioner's services were terminated since he was unable to submit a genuine B.A. degree by the initial deadline of 30.06.2010; that the letter dated 08.02.2007 from the University of the Punjab whereby the petitioner's B.A. degree had found to be bogus has not been recalled at any stage; that the petitioner was permitted to rejoin his duties after he had submitted a provisional certificate dated 26.11.2010 from a recognized university; that in 2011, P.I.A.C. started the process of the verification of its employees' educational certificates after directives had been issued in that regard by the Federal Government; that in that process the B.I.S.E., Rawalpindi, vide letter dated 15.09.2014 had informed P.I.A.C. that the petitioner's intermediate certificate was bogus; that the petitioner instead of replying to the show cause notice dated 28.09.2014 filed a petition before N.I.R.C. and obtained interim relief; that the petitioner has abused the process of the Court in an attempt to perpetuate an illegality; that a notice of inquiry under the provisions of the 1968 Ordinance was issued to the petitioner on 31.12.2018; that during the inquiry, the petitioner chose not to record his statement or to cross-examine the witnesses against him; and that the inquiry officer, in his report dated 04.01.2019, has found the petitioner guilty of committing misconduct but due the injunctive order passed by this Court a final order has not been passed by P.I.A.C. Learned counsel for P.I.A.C. prayed for the writ petition to be dismissed.

19. 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 14 above, and need not be recapitulated.

20. The petitioner is seeking the issuance of a writ of *certiorari* under Article 199(1)(a)(ii) of the Constitution with respect to the impugned orders passed by the learned Member and the learned Full Bench of N.I.R.C. *Certiorari* is an order which brings up to the High Court a decision of an inferior Court or Tribunal for it to be quashed. A decision of an inferior Court or Tribunal may be quashed by issuing a writ of *certiorari* where that Court or Tribunal acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable, or where there was an error of law on the face of the record, or a decision is unreasonable in the *Wednesbury* sense. However, this Court will not, in exercise of writ jurisdiction, act as a Court of appeal from the Court or the Tribunal concerned. This Court cannot substitute its decision for the one taken by the inferior Court or Tribunal. Where this Court quashes a decision, it has the power to remand the matter to the Court, Tribunal or the authority concerned with a direction to reconsider it and to reach a decision in accordance with the judgment given by this Court while deciding a writ of *certiorari*. In the case of Chief Constable of North Wales Police Vs. Evans [1982] 3 All ER 141, Lord Hailsham L.C. held that it is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. Additionally, in the said case, Lord Brightman held that if the Court were to attempt itself the task entrusted to that Court or Tribunal or authority by the law, the Court would, under the guise of preventing the abuse of power, be guilty itself of usurping power.

21. Bearing the above referred principles in mind, what this Court needs to determine is whether the concurrent orders of the learned

Member and the learned Full Bench, N.I.R.C. were such as would justify the issuance of a writ of *certiorari*. These Tribunals had concurrently dismissed the petitioner's challenge to the notice dated 28.09.2014 issued by P.I.A.C. calling upon the petitioner to show cause as to why disciplinary action should not be taken against him for committing misconduct by violating Section II Clause 75(aj) of the 1985 Regulations. The said clause is reproduced herein below:-

> ***"75(aj): Giving false information regarding name, age, father's name, educational or professional qualification, previous service or experience or anything relating to record of service at the time of joining of the service or at any other time during service of the corporation."***

22. The said show cause notice was issued to the petitioner after the B.I.S.E., Rawalpindi, vide letter dated 15.09.2014, informed P.I.A.C. that his intermediate certificate was bogus and not issued by the said Board. In the said show cause notice, it was clearly mentioned that the petitioner's intermediate certificate, bearing Roll No.7454, had been found to be bogus. The petitioner did not submit a reply to the said show cause notice. Instead, he filed a petition under Section 33 of the I.R.A. wherein it was pleaded *inter-alia* that he had lost his educational testimonials and the relevant record in a flood, and that he intended to collect the record from the relevant institutions in order to prove his innocence.

23. It ought to be borne in mind that the proceedings before the learned Member and the learned Full Bench, N.I.R.C. had been pending for more than four years. Nothing was brought on record by the petitioner to show that in this four-year period, he had applied either to the B.I.S.E., Rawalpindi or the University of the Punjab to verify that an intermediate certificate bearing Roll No.7454, and a B.A. degree bearing Roll No.33767 had indeed been issued to the petitioner. The petitioner did not even apply to the B.I.S.E., Rawalpindi or the University of the Punjab for the issuance of a duplicate certificate/degree. Such omissions on the part of the petitioner cast a serious doubt on his assertion that the said educational testimonials were destroyed in a flood.

24. It is not disputed that in terms of P.I.A.C.'s circular dated 28.12.2001, an applicant for the appointment against the post of a

cargo assistant on contract basis was required to have the qualification of graduation from a recognized university. The petitioner in his application form claimed to be a graduate having been awarded a B.A. degree on 29.08.1991 by the University of the Punjab. After the B.I.S.E., Rawalpindi in its letter dated 15.09.2014 informed P.I.A.C. that the petitioner's Intermediate certificate was bogus, P.I.A.C. was fully justified to have issued the show cause notice dated 28.09.2014 to the petitioner.

25. Admission for an undergraduate course is given on the basis of a student's result in his intermediate examination. In the event, after getting admission for an undergraduate course, the student's intermediate certificate is found to be bogus, his admission for an undergraduate course or if he has completed the course, the undergraduate degree, would be rendered invalid. In the case of Ishtiaq Ahmed Mirza Vs. Yasir Raza Malik (2010 CLC 1716), it was held *inter alia* that when the intermediate certificate issued to a person by the F.B.I.S.E., Islamabad was found to be a result of impersonation, then the Bachelor's degree in favour of such person would also lose its value. In the case of Mohsin Sajjad Vs. University of Peshawar (2015 YLR 590), it was held *inter alia* that the University of Peshawar was correct in cancelling the admission of a student for Bachelors in Business Administration on the ground that the student's detailed marks certificate from B.I.S.E., Peshawar had been found to be bogus.

26. P.I.A.C. cannot be said to have acted without lawful authority by carrying out a process for the verification of its employees' educational certificates, especially if such certificates were relied upon by the employees in order to gain employment or any other service benefit in P.I.A.C. Additionally, after being informed by the B.I.S.E., Rawalpindi that the petitioner's Intermediate certificate was bogus, it was nothing but just and reasonable for P.I.A.C. to have issued the show cause notice dated 28.09.2014 to the petitioner. The issuance of the said show cause notice in such circumstances cannot be termed as an unfair labour practice. In the case of Saeed Ahmad Vs. Chairman O.G.D.C.L. (2020 PLC 27), this Court had the occasion to hold as follows:-

> ***"23. The Management of any Organization is well within its rights to issue such a circular, and to verify the authenticity and genuineness of the educational testimonials of all its employees whether such testimonials were submitted by the employees in order to gain employment or subsequently in order to gain service benefits. In the event after such a verification process it is found that the educational certificates submitted by the employee to the employer, were not genuine, the employer can proceed departmentally against such an employee. The initiation of such a departmental/disciplinary process by an employer against an employee can hardly be termed as an unfair labour practice. Even the N.I.R.C. in numerable cases have taken the view that initiation of disciplinary proceedings is a routine matter for an industrial or a commercial establishment and it does not lead to any presumption of unfair labour practice. An employer is duty bound to initiate disciplinary proceedings in cases of delinquencies because the maintenance of discipline is the sole responsibility of the employer. Even if there is an illegality or an irregularity in the charge sheet or a show cause notice or an explanation letter, it would come within the ambit of an unfair labour practice. The N.I.R.C. has also consistently held that if an action is taken against a defaulting worker on account of his misconduct, he cannot take shelter under the trade union activities."***

27. Another crucial feature of this case is that if the petitioner is to be believed that the University of the Punjab had issued a B.A. degree to him on 29.08.1991, why did the petitioner produce the detailed marks certificate for his B.A. from Al-Khair University (AJK) issued in the year 2010 so as to enable him to rejoin his services in P.I.A.C. during the extended grace period? No explanation was presented by the learned counsel for the petitioner for not producing the petitioner's original or the duplicate B.A. certificate issued by the University of the Punjab on 29.08.1991. After all, the petitioner had initially obtained employment on the basis of the B.A. certificate issued by the University of the Punjab.

28. No benefit can be gained by the employees of P.I.A.C., who had secured appointments in P.I.A.C. for themselves on the basis of forged educational certificates or lack of the requisite qualifications, by the decision taken either by the Board of Directors or the Employees Leadership Team of P.I.A.C. to grant two years to such employees to come up with genuine educational certificates. This is because this Court in its order dated 12.06.2015 passed in writ petition No.4064/2014 titled "Mansoor Khan Vs. Pakistan International Airlines" deprecated the practice adopted by P.I.A.C. of allowing employees who had submitted forged degrees/certificates to re-join their service, and termed it as an illegality. This Court had also issued directions to

P.I.A.C. to initiate departmental proceedings against the employees who had been accommodated by illegal exercise of power. For the purposes of clarity, paragraphs 5 and 6 of the order dated 12.06.2015 are reproduced herein below:-

> ***"5. The petitioner on the basis of similar relief granted to others requested for issuing direction to replace the degree of the petitioner. Admittedly, the petitioner was employed in the year 2008 whereas degree he wants to replace was obtained in the month of January, 2014. The petitioner moved such application which was turned down. He has also claimed relief on the basis of discriminative conduct. It is explicitly clear from the record referred by the learned counsel for the petitioner that those who submitted forged degrees/certificates were allowed to re-join PIA service. Two wrongs or many wrongs cannot create a reason for another wrong. If some one has been favoured, it does not mean that on the same pattern the petitioner must be accommodated considering it as a discrimination. The very requirement of the article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 relates to legality of such process or relief claimed on the basis whereof. If any order or favour is provided to anybody based upon illegality, the petitioner cannot claim such a relief as justifiable or equality. Hence the petition being meritless is dismissed.***
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> ***6. The above conduct, which is continuing since many years by the authorities of respondents appear to be an offence. Office is directed to refer all those letters to the Chairman PIA with specific direction to initiate departmental proceedings against the officials/officers those accommodated and were accommodated by exercising their powers illegally. The matter pertains to conduct of public servants which is committed conjointly are required be referred to the concerned agency for registration of criminal case. The Chairman PIA may look into the matter personally, who is also required to issue direction to the respective departments for verification of degrees of all concerned officials/officers. Criminal cases as defined by section 5(2) of the Prevention of Corruption Act which is scheduled offence is required to be registered against all the responsible officials/officers."***

29. The fact that the petitioner obtained the prescribed qualification of graduation for appointment as cargo assistant several years after his appointment does not improve his case in any way. The vital question that needs to be determined is whether the petitioner had the prescribed qualification of graduation at the time when he was appointed as a cargo assistant on 09.06.2003. If he did not have the said prescribed qualification, his appointment would be rendered *non-est*. Reference in this regard may be made to the following case law:-

(i) The Hon'ble Supreme Court in the judgment passed in *Suo Motu* Case No.13/2016 - Action against illegalities, contraventions and violations in appointments within NAB (2017 SCMR 838), held *inter alia* as follows:-

> ***"27. The contention that a person can obtain the requisite***

qualifications subsequently, that is after he had already joined the service of NAB is unsustainable. If this concept or principle is accepted it would render meaningless the stipulated qualification for a particular job."

(ii) In the case of International Islamic University Vs. Dr. Shamim Tariq (2018 PLC (C.S.) Note 201), I had the occasion to hold as follows:-

"13. Now, it is well settled that a person who does not have the prescribed qualifications for appointment to a particular post, cannot be appointed to such a post. Such qualifications can be prescribed in the advertisement issued by the appointing authority or in the relevant rules of the establishment where the appointment is to be made. In the event, the candidate obtains the prescribed qualifications after his/her appointment would not make the appointment valid."

(iii) In the case of Muhammad Muneer Malik Vs. Allama Iqbal Open University (2016 PLC (C.S.) 896), this Court has held as follows:-

"14. It is, therefore, axiomatic that the eligibility criterion and conditions, once unambiguously mentioned in an advertisement published in the Press, cannot be ignored, altered or deviated from during the selection process, particularly after the deadline for the submission of applications has expired. Appointments made in violation of the principles of transparency and fairness are illegal and not sustainable in law."

(iv) In the case of Muhammad Waqas Gul Vs. Water and Power Development Authority (2015 PLC (C.S.) 144), the Hon'ble Lahore High Court dismissed the writ petition filed by the petitioners who did not have the prescribed qualifications of advertised posts on the date when the advertisement was published and on the last date for submitting applications. The mere fact that the petitioners had obtained the requisite qualifications after their appointment could not save their writ petitions from being dismissed.

(v) In the case of Mst. Shugafta Vs. Chairman, Federal Public Service Commission, Islamabad (2015 PLC (C.S.) 819), the Division Bench of the Hon'ble Balochistan High Court held that it was the prerogative of the government to prescribe the requisite qualification for a particular post. Furthermore, it was held that the eligibility of a candidate is to be determined in accordance with the advertisement for the post keeping in view the stipulated requirements. A petitioner, who did not have the requisite qualifications prescribed in the advertisement for appointment

against a certain post was held not to be eligible, and therefore could not be termed as an 'aggrieved person'.

(vi) In the case of Mitha Khan Umrani Vs. Federation of Pakistan (2014 PLC (C.S.) 571), the Division Bench of the Hon'ble Balochistan High Court quoted with approval the judgment passed in C.P.No.738/2012 titled "Shazia Vs. Government of Balochistan," wherein it was held that eligibility of a candidate had to be determined in accordance with the advertisement for the post, the service rules governing the appointment and any instructions backed by the law and rules framed thereunder. Furthermore, it was held that a non-qualified person cannot be appointed to a particular post and that appointment could not be made in violation of the requisite qualification.

(vii) In the case of Abdul Latif Vs. Government of Punjab (2003 PLC (C.S.) 975), writ petitions filed by the petitioners who admittedly lacked the required qualifications for the advertised posts were dismissed by the Hon'ble Lahore High Court. In paragraphs 9 and 10 of the said report, it was held as follows:-

> ***"9. The petitioners admittedly do not possess Degree of M.A. or M.Sc. Petitioner No.3, possesses B.A. Degree while the remaining petitioners possess B.Sc. Degree. Although they do possess the requisite professional Degree viz M.A.Ed. but requirement for the post applied by them was also that of an Academic Degree of M.A., M.Sc. which they admittedly do not possess; hence they cannot be deemed to possess the requisite qualification for the post applied for by them i.e. S.S. Educators, basic qualification for which was M.A. or M.Sc. with Additional Qualification of a Professional Degree.***
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> ***10. Direction in writ jurisdiction cannot be, therefore, issued to the respondents to consider the petitioners' qualification fit for the post they have applied for and to interview them."***

(viii) In the case of District Collector Vs. M. Tripura Sundari Devi, (1990 (3) SCC 655), the Indian Supreme Court held that when the advertisement mentions a particular qualification and an appointment is made in disregard thereof, it is not a matter only between the appointing authority and the appointee concerned but the aggrieved are those who had similar or even better qualifications than the appointee.

30. Whether the petitioner gained employment in P.I.A.C. on the basis of the bogus educational certificates is to be determined not by

this Court but in the inquiry proceedings pursuant to the show cause notice dated 28.09.2014. By embroiling P.I.A.C. in lengthy litigation, the petitioner had been able to avoid such proceedings thus far i.e. almost six years.

31. As regards the contention of the learned counsel for the petitioner that during the inquiry proceedings, the petitioner was not afforded an adequate opportunity to defend himself, I find the said contention to be premature. Documents have been brought on record which show that the petitioner had been issued a notice on 31.12.2018 to appear before the Inquiry Officer on 03.01.2019. The petitioner requested for the inquiry to be conducted on 02.01.2019. It appears that the said request was acceded to, but the petitioner refused to give a statement or to cross-examine the witnesses that had appeared against him. Till date, the inquiry proceedings against the petitioner have not culminated in a final order. Once the final order is passed, the petitioner would be at liberty to assail the same in accordance with the law before the appropriate forum. I find the petitioner's complaint regarding the inquiry proceedings made at this stage to be premature. In the case of Saeed Ahmad Vs. Chairman O.G.D.C.L.*(supra),* this Court has held as follows:-

> ***"19. Framing of charges, conducting enquiry, issuing show-cause notice and taking action after enquiry are the various stages of continuous process of disciplinary proceedings. Disciplinary proceedings once initiated must reach the finality, culminating in imposing punishment or exonerating the delinquent. Testing each stage of the proceeding as to whether they are in conformity with the norms as laid down would be an unwarranted judicial interference in the domain of disciplinary authority by the N.I.R.C. Compliance of the norms laid down under the disciplinary rules can be examined when the process culminates in a penal action causing injury to the delinquent. Non-observance of norms at various stages may vitiate the ultimate action of imposition of a penalty or exoneration, as the case may be."***

32. Additionally, in the case of Muhammad Aslam Khan Vs. International Industries Limited (2007 PLC 350), it was held by the Hon'ble High Court of Sindh that it could be said with certainty that initiating disciplinary proceedings against a worker on account of misconduct is a legal right of the employer, and that the employer cannot be restrained from exercising his right unless extraordinary exceptional circumstances are placed before the Court. Furthermore,

it was held that the labour laws provide an adequately efficacious remedy to a worker against wrongful, illegal and arbitrary dismissal, and after adjudication he can be reinstated and/or compensated.

33. As for the contention of the learned counsel for the petitioner that in the order dated 04.12.2015 passed by this Court in writ petition No.3258/2015, it was observed that P.I.A.C. could re-employ the employees who had submitted bogus educational certificates if their services were beneficial to P.I.A.C., suffice it to say that said contention is based on a selective reading of the said order. In the said order, this court had held in no uncertain terms that the services of the employees whose educational certificates had been found to be fake could neither be continued nor could their services be regularized. Furthermore, it was held that such employees could not have been given an opportunity to rectify the illegality of submitting fake educational certificates in order to gain employment in P.I.A.C. It was also directed that the salaries of the employees who were appointed on the basis of fake educational certificates should be recovered from them. For the purposes of clarity, paragraphs 10 to 12 of the said order are reproduced herein below:-

> ***"10. However, the authority may by exercising its discretionary powers, if vested in it, under the rules or any other law may re-employ those persons whose certificates were found fake on scrutiny and verification but neither services of those employees can be regularized or continued nor the authority has power to provide them opportunity to rectify such illegality existing in the field. Providing such opportunity to any of the employees is beyond the powers of such authority, hence, not exercisable and cannot be covered as legal under the garb of any stretch of imagination.***
>
> ***11. In view of above discussion, this petition is disposed of with the directions to the authorities to review all those cases and same be treated in accordance with law. The authorities may re-employ them if their services are beneficial to the department but such practice of regularizing services based upon illegal foundation cannot be continued.***
>
> ***12. On the contrary, the authorities or members of the Board who initiated such decision, have committed serious criminal misconduct which should be dealt in accordance with law. The salaries drawn by the employees, appointed on the basis of fake certificates should be recovered from them. The officers who are involved in granting such relaxation by taking a lenient view are clearly liable for such act which is deemed to be an offence provided under the law."***

34. For what has been said above, I find no substance in this petition, which is hereby dismissed. Having regard to the factual circumstances of this case, I am of the opinion that imposition of costs on the

petitioner would sub-serve the interests of justice. Accordingly, it is ordered that the petitioner shall bear P.I.A.C.'s costs throughout. Should the petitioner be aggrieved by the final order that may be passed in the inquiry proceedings, he may avail the remedies provided by law against such an order.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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