

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Amin-ud-Din Khan

Civil Petition No. 407-K of 2019

(Against the judgment dated 15.03.2019 passed by the Sindh Service Tribunal at Karachi in Service Appeal No. 815/2017)

Province of Sindh and others. ... *Petitioners*

Versus

Mir Shahzad Hussain Talpur. ... *Respondent*

For the Petitioners: Mr. Saulat Rizvi,
Additional Advocate-General, Sindh.
Mr. Ghulam Rasool Mangi, AOR
Mr. Ali Gul Sanjrani, Deputy Secretary.
Mr. Abdul Latif Qazi, Deputy Registrar.

For the Respondent: Mr. Mukesh Kumar G. Karara, ASC.
a/w respondent.
Mr. M. Iqbal Ch., AOR (absent)

Date of Hearing: 30.12.2021.

JUDGMENT

Qazi Faez Isa, J. This petition has been filed challenging the judgment of the Sindh Service Tribunal at Karachi (**'the Tribunal'**), which allowed the respondent's appeal and set aside the order dismissing him from the position of *Special Auditor* in the 'Cooperation Department'. The learned Additional Advocate-General, Sindh (**'AAG'**) says that the 'Cooperation Department' is another name for the Cooperative Department. However, he states that the Sindh Government Rules of Business, 1986 refers to the department as the Cooperative Department. The petitioners are well advised to refer to departments by the names mentioned in the said Rules, and not to cause needless confusion.

2. The learned AAG states that the respondent was terminated from service because he was illegally selected and appointed to the post of *Special Auditor* by the Secretary of the department. This post could only be filled-in by inviting applicants through advertisements which set out the eligibility criteria and testing their abilities/competence by the Sindh Public Service Commission (**'the Commission'**). The Commission would

then recommend the candidate who had attained the highest marks for appointment. Referring to the Sindh Public Service Commission (Functions) Rules, 1990¹ (**'the Commission's Rules'**) he states that the position of *Special Auditor* is a grade 17 position and as per the Commission's Rules the selection to a grade 17 position can only be done by the Commission. To support his contention that the position of *Special Auditor* is a grade 17 position the learned AAG has referred to the Budget Books of the two years preceding the respondent's appointment which show that *Special Auditor* is a grade 17 position. The learned AAG states that the respondent was appointed by Mr. Ijaz-ul-Haq Talpur (**'the Secretary'**). However, before appointing the respondent the Secretary downgraded the position of *Special Auditor* to a grade 16, which he did because a Secretary is authorised to make grade 16 appointments, as provided in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974² (**'the Appointment Rules'**). The learned AAG submits that, even if it be conceded that the position of *Special Auditor* was a grade 16 position then too selection to this post had to be made by the Commission in terms of Rule 3(1)(i) of the Commission's Rules.

3. The petitioners initially contended that the Secretary was the respondent's brother but in the absence of such proof the learned AAG withdrew this allegation. However, the learned AAG points out that the Secretary and the respondent resided together at the same address which was E-92, Block-II, Pakistan Employees Cooperative Housing Society, Karachi (as confirmed by their identity cards) and there was a close nexus between them. Therefore, the Secretary had a conflict of interest and should not have appointed the respondent, but he did not disclose his connection and resultant conflict, and did not obtain permission to appoint the respondent. He submits that the respondent was appointed *vide* notification dated 10 May 2013 (**'the Notification'**) as *Special Auditor* and this was done by concealing the identities and the connection between the Secretary and the respondent. To appreciate this contention the Notification appointing the respondent is reproduced hereunder:

¹ Gazette of Sindh, Extraordinary, Part I, 6th September, 1990 also published in PLD 1991 Sindh Statutes 33.

² Gazette of Sindh, Extraordinary, Part IV-A, 28th March, 1974 also published in PLD 1974 Sindh Statutes 74.

COOPERATION DEPARTMENT
GOVERNMENT OF SINDH

Karachi dated the 10th May, 2013

NOTIFICATION

N.O.S.O.(C-II)1-112/2013. On the recommendation of the Departmental Selection Committee and with the approval of the competent authority, Mr. Shahzad Hussain S/O Ghulam Rasool is hereby appointed as Special Auditor, Cooperative Societies in Cooperation Department (BS-16) i.e. Rs.10000-800-34000 on regular basis with immediate effect.

On his appointment he is posted as Special Auditor, Cooperative Societies Hyderabad against an existing vacancy with immediate effect.

SECRETARY TO THE GOVERNMENT OF SINDH

The learned AAG says that the Notification refers to 'Shahzad Hussain', however, the respondent's name (or complete name) was 'Mir Shahzad Hussain Talpur', which was also the name under which he had filed the appeal before the Tribunal. He further submits that the Secretary himself was the designated *competent authority* in respect of making appointments to grade 16 positions but the Notification did not disclose this and the Secretary also did not disclose his name under his signature. Structuring the Notification in this manner, and by concealing the designation and name of the *competent authority*, enabled the Secretary to illegally appoint the respondent.

4. The learned AAG next contends that the respondent was dismissed from service on 10 February 2014 and the respondent belatedly filed departmental appeal on 2 November 2017. Therefore, since the departmental appeal was filed well beyond the prescribed thirty days period the Tribunal should have dismissed the appeal filed before it on this ground alone. However, the belated filing of the departmental appeal was condoned by categorizing the notification dismissing the respondent from service as a *void order* and that such a *void order* could be assailed at any time. The learned AAG submits that the order dismissing the respondent from service was passed in accordance with the law and could not be categorised as a *void order*. And, having entertained the appeal the Tribunal held that since in an identical case the same relief was granted it could not be denied to the respondent, which the learned AAG says was not correct because the referred case was in respect of lower grade employees who were not required to be selected by the Commission.

5. The learned Mr. Mukesh Kumar Karara represents the respondent and supports the impugned judgment. He states that the respondent and the Secretary were not brothers and it was a coincidence that they were living at the same address. He submits that the respondent met the requisite criteria mentioned in the advertisement issued by the Cooperative Department and he could not be penalized because of any alleged illegalities committed by the Department in appointing the respondent.

6. We have heard the learned counsel and with their assistance also examined the documents on record. We had directed the petitioners (*vide* order dated 20 December 2021) to produce the original file and documents pertaining to the appointment of the respondent to ascertain how he came to be appointed as *Special Auditor*. Such file/documents have been examined by us and the learned counsel for the respondent and contain only the Notification appointing the respondent. There is nothing therein regarding the number of persons who had applied for the position of *Special Auditor*, how many had participated in the test and interview, the results of such test and interview, and culminating in a seriatim listing of the applicants in the order of merit – *the merit list*. It is clear that the respondent was pre-selected and appointed by the Secretary and this was done without making him take any test and/or interview.

7. The Secretary issued the Notification dated 10 May 2013 appointing the respondent by using the ubiquitous term *competent authority*, without disclosing the designation and name of the *competent authority*. The Secretary also did not disclose that he himself was the *competent authority* in respect of appointments to a grade 16 position. To enable himself to appoint the respondent, the Secretary illegally downgraded the position of *Special Auditor* from grade 17 to grade 16. And, to ensure that the nexus between him and the respondent went unnoticed the Secretary did not mention the full name of the respondent in the Notification and left out the names shared between them - *Mir* and *Talpur*.

8. The respondent was terminated from service *vide* notification dated 10 February 2014, which is reproduced hereunder:

COOPERATION DEPARTMENT
GOVERNMENT OF SINDH

Karachi dated the 10thFebruary, 2014

NOTIFICATION

No. SO(C-II)1(16)/2008. With the approval of the competent authority the services of Mr. Shahzad Hussain, Special Auditor Cooperative Societies (BS-16) Hyderabad are hereby terminated with immediate effect on the grounds that the post of Special Auditor Cooperative Societies (BS-16) is to be filled through Sindh Public Service Commission and the above said post has not taken from the purview of Sindh Public Service Commission at the time of appointment of Mr. Shahzad Hussain by the Competent Authority i.e. Chief Minister Sindh.

(ALI AHMED LUND)
SECRETARY TO THE GOVERNMENT OF SINDH

The reason given for terminating the respondent from service was that only a person selected by the Commission could be appointed to the position of *Special Auditor* and that the Secretary was not the *competent authority* to appoint the respondent. Therefore, since the selection and the appointment of the respondent was illegal he was terminated from service.

9. To determine whether a *Special Auditor* could be selected by the Cooperative Department and whether the person selected could be appointed by the Secretary we need to consider the applicable law and rules. The Sindh Civil Servant Act, 1973³ governs the appointment of those in '*the service of Pakistan in connection with the affairs of the Province of Sindh*'.⁴ Section 5 of the Sindh Civil Servants Act, 1973 states, that:

5. **Appointments.** – Appointments to a civil service or a civil post in connection with the affairs of the Province shall be made in the prescribed manner by Government or by a person authorised by it in that behalf.⁵

Rule 4 of the Appointment Rules,⁶ made pursuant to the Sindh Civil Servants Act, 1973, prescribes, that:

4. (1) The authorities competent to make appointment to the various posts shall be as follows:

S.No.	Posts	Appointing Authority
6.	Posts sanctioned in Basic Scale-16	Secretary concerned.

³Sindh Act No.XIV of 1973, published in the Gazette of Sind, Extraordinary, Part IV, 5thDecember 1973, also published in PLD 1974 Sind Statutes 41.

⁴Ibid, preamble.

⁵Ibid.

⁶Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 published in the Gazette of Sind, Extraordinary, Part IV-A, 28th March 1974, also published in PLD 1974 Sind Statutes 74, and as amended on 23rd October, 2004.

10. The Sindh Public Service Commission Act, 1989⁷ was enacted to establish the Sindh Public Service Commission. The functions of the Commission are stipulated in section 7, the relevant portion whereof, is reproduced hereunder:

7. **Functions of the Commission.** – The functions of the Commission shall be-

- (i) to conduct tests and examinations for recruitment for initial appointment to -
 - (a) such posts connected with the affairs of the Province of Sindh;

Pursuant to the Sindh Public Service Commission Act, 1989 the Sindh Public Service Commission (Functions) Rules, 1990⁸were enacted, rule 3(1)(i) whereof stipulates, that:

- 3. (1) The Commission shall, subject to other provisions of these rules, conduct tests for initial recruitment to-
 - (i) civil posts connected with the affairs of the Province in basic pay scale 11 to 22 except those specified in the Schedule;

11. The abovementioned laws stipulate that in respect of higher grades it is the Commission which selects candidates, and does so after conducting requisite tests. A *Special Auditor* was required to be selected by the Commission. The respondent was not selected by the Commission yet he was appointed as *Special Auditor*. And, it would not make a difference even if it be accepted that the post of *Special Auditor* was in grade 16 because selection to grade 16 posts is also to be done by the Commission.

12. *Special Auditor* was a grade 17 post and the Secretary was not authorized to either select or appoint a person in grade 17. In selecting and appointing the respondent as *Special Auditor* the Secretary had acted illegally. Assuming, for the sake of argument alone, that the Secretary could have selected and appointed a *Special Auditor* it could only be after conducting the requisite departmental test/interview of all applicants, but this too was not done.

13. The appointment of the respondent as *Special Auditor* was patently illegal. The learned Mr. Mukesh Kumar Karara concedes that appointment to the post of *Special Auditor* was to be made after selection of the

⁷Sindh Act No.XI of 1989, published in the Gazette of Sindh, Extraordinary, Part IV, 7thAugust, 1989, also published in PLD 1990 Sindh Statutes 18.

⁸ Gazette of Sindh, Extraordinary, Part I, 6thSeptember, 1990,also published in PLD 1991 Sindh Statutes 33.

candidate by the Commission. In these circumstances it is not understandable how the Tribunal could categorise the respondent's termination order to be a *void order*. The Tribunal overlooked the relevant laws (mentioned above) and disregarded the statutory period within which the departmental appeal had to be filed by the respondent. The Tribunal's impugned judgment is clearly not sustainable and has to be set aside.

14. We are constrained to observe that the Secretary in concealing his designation and name, and by not disclosing that he was *the competent authority*, succeeded in appointing the respondent. The Secretary issued the Notification which shielded himself in the anonymous cloak of *the competent authority* and one which also concealed his connection with the respondent.

15. Whenever the Constitution grants power to an individual it mentions the person's position/designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws, including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning *the competent authority* without disclosing the designation and name of the person who is supposed to be *the competent authority* is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning *the competent authority* cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, *the competent authority*, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term *the competent authority* but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the

government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term – *the competent authority* without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022.

Judge

Judge

Bench-I
Karachi:
30.12.2021

Approved for Reporting
(Amjad PS)