(1 Page)
Annex-E (90)

OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. 21 /E-13/South/ PHE,
Dated Peshawar, the 04 /04/2014

To,

The Secretary to Govt of Khyber Pakhtunkhwa,
Public Health Engineering Department,
Peshawar

Subject: **ENQUIRY INTO ILLEGAL APPOINTMENT**

Reference: Your letter No.SO(E)/PHE/8-27/2013/242-2, dated 24-2-2014
This office letter letter No. 04/E-13(S)/PHE dated 27.2.2014

In this regard it is once again submitted that illegal appointments in PHE Department have been made in various times by various officers as under please:

A. The Departmental Selection Committee comprising of the following have recommended approved illegal selection of the appointments of Sub Engineers/Steno typists/Stenographer and Data Entry Operators which were in purview of Public Service Commission by violating all rules.

5.	Mr. Allaudin Khan (Retired) Chief Engineer	Chairman
6.	Mr. Syed Bakar Shah S.O (E=II) W&SD	Member.
7.	Mr. Abdul Bashir ADO (SE HQ)	Member.
8.	Mr. Afsar Ali Qureshi Admn: officer	Secretary.

B. Five No. Sub Engineers were illegally appointed by Mr. Ghulam Mujtaba the then Chief Engineer PHED directly without involvement of A.O or any staff Member. Similarly one Junior Clerk Mr. Farhanullah has also been promoted to the post of Sub Engineer by Mr. Ghulam Mujtaba the then Chief Engineer singed fake promotion letter with fake dispatch number without involvement of any staff member.

Keeping in view the above it is requested that departmental proceedings against the above officer may kindly be initiated in the interest of Govt please.

Chief Engineer (South)

OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

NOTE FOR MINISTER PHE

Subject: **NOTE FOR PERUSAL OF MINISTER PHED REGARDING ACTION POSITION OF PENDING ENQUIRY**

The honourable Minister for PHED has desired to high light and submit position of irregularities/violation of rules committed by officer/official and action taken/required in these cases. The details of such cases are narrated as under:

Sl: No	Description of Irregularities	Action Required against	Remarks
1-	Appointments of 32-Nos Illegal Appointment on the Post of Public Service Commission Preview	Mr. Alla-ud-Din CE (Rd) Mr. Abdul Bashir SE (HQ) Mr. Baqir Shah SO (Rd) Mr. Afsar Ali Qureshi B&AO	Annex-I
2-	Un-lawful appointment of 5-Nos Sub Engineers	Mr. Ghulam Mujtaba SE Kohat	Annex-II
3-	Un-lawful promotion of Farhanullah Junior Clerk to the post of Sub Engineer	Mr. Ghulam Mujtaba SE Kohat	Annex-III
4-	Unlawful promotion of Abdur Rahim Work Superintendent to the Post of Sub Engineer	Mr. Ghulam Mujtaba SE Kohat	Annex-IV
5-	Unlawful promotion of Zahid Ullah Junior Clerk and Zaid Ullah Draftsman to the post of Sub Engineer.	Mr. Alla-ud-Din Mr. Afsar Ali Qureshi B&AO	Annex-V
6-	Unlawful abolishing the post of Work Superintendant and conversion/adjustment Malik Ayaz as Accounts Clerk on wrong cadre post.	Mr. Afsar Ali Qureshi B&AO	Annex-VI
7-	Un-lawful appointment of Mist Beena Rani as J/Clerk and giving salary without performing duty resulting loss to Govt of about Rs.600000/-	Mr. Alla-ud-Din Mr. Afsar Ali Qureshi B&AO	Annex-VII

Secretary PHE Deptt:
Diary No. 1038
Dated: 03-10-2014.

8-	Involvement in standardization of fake Firms M/S KB and Bismillah for supply of Voltage stabilizer to facilitate M/S Itehad & Co, just to fulfill the formalities of existing of 3-Nos Firm, required for competition of bids.	Mr. Alla-ud-Din Mr. Afsar Ali Qureshi B&AO	Annex-VIII
9-	Creation of post against fake WSS in District Lakki	Mr. Qadirullah SDO Mr. Afsar Ali Qureshi B&AO	Annex-IX
10-	Illegal appointment of Mr. Murtaza Qureshi S/O Afsar Ali Qureshi (B&AO) Data Entry Operator (BPS-12) and then subsequently unlawfully conversion/appointment to the rank of Assistant (BPS-14) and facilitated/posted at Head Clerk in PHE Division Mardan while drawing pay from C.E Office Peshawar on higher salary rates. How also involving in irregularities in tendering etc. in PHE Division Mardan.	Mr. Afsar Ali Qureshi B&AO	Annex-X

2. Submitted for favour of initiating punitive action against above named officers for violating rules and giving great financial loss to Govt Exchequer by making payment to illegal appointees/promotes and standardization of fake firms.

Chief Engineer (South)

Secretary PHED

3. Order is solicited to the proposal contained at Para-2 above.

Para-2 is approved initiate action through NAB & Estt: Deptt: for recovery/Disciplinary action.

Minister for PHE

31/X/14

Secretary PHED.

(SHAH FARMAN)
MINISTER FOR INFORMATION, CULTURE
PHED KHYBER PAKHTUNKHWA
10/10/14

(50)

ANNEXURE I

MINUTES OF THE MEETING OF D.S.C (PHED) HELD ON 13/08/2008 AT 10.00 A.M. REGARDING SELECTION OF SUB ENGINEER / STENOTYPISTS & DEO UNDER THE CHARIRMANSHIP OF CHIEF ENGINEER PHE DEPARTMENT NWFP.

A meeting of the DSC was convened on 13.08.2008 at 10.00 A.M in this office for selection of the candidates for the posts of Sub Engineer / Stenotypists & DEO. The following attended the meeting:-

1)	Mr. Allauddin Khan Gandapur Chief Engineer PHE	Chairman
2)	Syed Baqir Shah Section Officer (E-II) W&S Department.	Member
3)	Mr. Bashir Ahmad ADO PHE Peshawar	Member
4)	Mr. Afsar Ali Qureshi Administrative Officer PHE	Secretary

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The Chairman of the Committee after welcoming the participants highlighted the objective of the meeting and stated that the Department is having a number of vacant posts of Sub Engineer / Steno typist & DEO etc; where, as per procedure these posts are to be filled in through PSC. But due to implementation of Devolution Plan, the Commission is not clear as to whether appointments against such posts come under the domain of District or Provincial Governments. The posts therefore, are running unfilled since long for want of clarification..

The Honourable Chief Minister NWFP, taking notice of the situation has provided a list of applicants through his Political Secretary (Annex-I) for their appointments against these posts by the Departmental Authority which is placed before the Committee for consideration & selection of the applicants containing in the said list.

The Chairman further reiterated that the matter was also discussed by him with worthy Secretary Works & Services Department who giving the reference of a Notification issued by his office bearing No.E&A/W&S/11-23/2001, dated 30.04.2008 (Annex-II) where-under all the appointments, transfer & postings of employees from BPS-01 to BPS-16 have been assigned to the Chief Engineer PHE, therefore the orders of Honourable Chief Minister NWFP, may be complied with by the Chief Engineer at his level.

The Committee examined the applications / documents made available by the Chief Minister's House in detail & found the same other wise eligible, hence unanimously recommended the applicants for their appointments against the relevant existing and future vacacies as under:-

S.No.	Name of Applicant	Name of Posts
1.	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu.	Sub Engineer
2.	Mr. Muhammad Sajjad S/O Banut Khan District D.I.Khan.	-do-
3.	Mr. S.M. Ihsan Shah S/O S.M.Hassan Shah District D.I.Khan	-do-

(1)

	Name of Applicant	Name of Posts
	Mr. S.M Ali Sajjad S/O S.Abid Hussain Shah District D.I.Khan.	-do-
	Mr. Abdul Samad S/O Abdul Mueed District Malakand.	-do-
	Mr. Shaukat Ali S/O Ghulam Qadir District Karak.	-do-
	Mr. Muhammad Ali Noor S/O Noor Muhammad District D.I.Khan	-do-
	Mr. Irshad Elahi S/O Shah Nawaz District D.I.Khan	-do-
	Mr. Hussain Zaman S/O Syed Zaman District Malakand.	-do-
	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan.	-do-
	Mr. S.Ashfaq Ahmad S/O S.Jamil ud Din District Malakand.	-do-
12.	Mr. Murtaz Ali S/O Abdul Haq District Malakand.	-do-
13.	Mr. Sahar Gul S/O Abdul Jalil District Lakki Marwat.	-do-
14.	Mr. Samiullah S/O Khuda Baksh District D.I.Khan.	-do-
15.	Mr. Abdul Shahid Sadiqui S/O Abdul Azim District Dir Upper.	-do-
16.	Mr. Asfaq Ahmad S/O Muhammad Shuiab District Malakand.	-do-
17.	Mr. Kashif Raza S/o S.Abid Hussain District D.I.Khan.	Sub Engineer
18.	Mr. Waqas Ali S/O Farznad Ali District Nowshera.	-do-
19.	Mr. Muslim Shah S/O Mehmood Shah District Mardan.	-do-
20.	Mr. Ishtiaq Ahmad S/O Tahmeed Ullah District Chursadda.	-do-
21.	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan.	-do-
22.	Mr. S. Hassan Ali S/O S.Ajmal Shah District Charsadda.	-do-
23.	Mr. Mohsin Ali S/O Muhammad Pervez District D.I.Khan.	-do-
24.	Mr. Muqtada S/O Afsar Ali District Peshawar.	-do-
25.	Mr. Iftikhar S/O Chainar Gul District Mardan.	Stenotypiest
26.	Mr. Noor Muhammad /O Jamroz Khan District Peshawar.	-do-
27.	Mr. Aziz Ullah SD/O Abid Ullah District Bannu.	-do-
28.	Mr. Farhan Ullah S/o Aziz Ullah District Bannu.	-do-
29.	Mr. Murtaza S/O Afsar Ali District Peshawar.	D.E.O

A-1

(ALLAUDDIN KHAN GANDAPUR)
Chief Engineer PHE (Chairman)

(SYED BAQIR SHAH)
Section Officer (E-II)
W&S Deptt: (Member)

(ABDUL BASHIR)
ADO PHE (Member / Representative)

(AFSAR ALI QURESHI)
Administrative Officer PHE
(Secretary)

Subject :- APPOINTMENTS AGAINST THE VACANT POSTS OF SUB ENGINEER / STENOTYPIST& DEO.

It has come in to the notice of Honourble Chief Minister, NWFP, that a number of posts of Sub Engineer / Stenotypists & DEO are lying vacant in PHE. While discussing the matter of appointments against these posts with Chief Engineer PHE, on more than one occasions, it was told that the posts of BPS-10 and above are to be filled-in through PSC. Where on the other hand due to implementation of Devolution Plan, the Commission is not clear as to whether appointments against these posts, is the prerogative of the respective District or Provincial Governments.

In view of above, the Honourble Chief Minister NWFP, has been pleased to direct to consider the application of the following personnels for their appointments against the vacant posts by the Departmental Authority to bridge the gap of the staff & to ensure smooth working of the newly separated / established PHE Department. Necessary sanction to the condonation of the requisite codal formalities if any will be accorded by the competent authority at due course of time separately:-

S.No.	Name of Applicant	Name of Post
1.	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu.	Sub Engineer
2.	Mr. Muhammad Sajjad S/O Banut Khan District D.I.Khan.	-do-
3.	Mr. S.M. Ihsan Shah S/O S.M.Hassan Shah District D.I.Khan	-do-
4.	Mr. S.M Ali Sajjad S/O S.Abid Hussain Shah District D.I.Khan.	-do-
5.	Mr. Abdul Samad S/O Abdul Mueed District Malakand.	-do-
6.	Mr. Shaukat Ali S/O Ghulam Qadir District Karak.	-do-
7.	Mr. Muhammad Ali Noor S/O Noor Muhammad District D.I.Khan	-do-
8.	Mr. Irshad Elahi S/O Shah Nawaz District D.I.Khan	-do-
9.	Mr. Hussain Zaman S/O Syed Zaman District Malakand.	-do-
10.	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan.	-do-
11.	Mr. S.Ashfaq Ahmad S/O S.Jamil ud Din District Malakand.	-do-
12.	Mr. Murtaz Ali S/O Abdul Haq District Malakand.	-do-
13.	Mr. Sahar Gul S/O Abdul Jalil District Lakki Marwat.	-do-
14.	Mr. Samiullah S/O Khuda Baksh District D.I.Khan.	-do-
15.	Mr. Abdul Shahid Sadiqui S/O Abdul Azim District Dir Upper.	-do-
16.	Mr. Asfaq Ahmad S/O Muhammad Shuiab District Malakand.	-do-
17.	Mr. Kashif Raza S/o S.Abid Hussain District D.I.KLhan.	-do-
18.	Mr. Waqas Ali S/O Farznad Ali District Nowshera.	-do-
19.	Mr. Muslim Shah S/O Mehmood Shah District Mardan.	-do-
20.	Mr. Ishtiaq Ahmad S/O Tahmeed Ullah District Charsadda.	-do-
21.	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan.	-do-
22.	Mr. S. Hassan Ali S/O S.Ajmal Shah District Charsadda.	-do-
23.	Mr. Mohsin Ali S/O Muhammad Pervez District D.I.Khan.	-do-
24.	Mr. Muqtada S/O Afsar Ali District Peshawar.	-do-
25.	Mr. Iftikhar S/O Chainar Gul District Mardan.	-do-
26.	Mr. Noor Muhammad /O Jamroz Khan District Peshawar.	Stenotypiest
27.	Mr. Aziz Ullah SD/O Abid Ullah District Bannu.	-do-
28.	Mr. Farhan Ullah S/o Aziz Ullah District Bannu.	-do-
29.	Mr. Murtaz S/O Afsar Ali District Peshawar	-do-
		D.E.O

Political Secretary to
Chief Minister NWFP

MINUTES OF THE MEETING OF D.S.C (PHED) HELD ON 02/12/2009 AT 10.00 A.M. FOR SELECTION OF SUB ENGINEER & STENOTYPISTS UNDER THE CHARIRMANSHIP OF CHIEF ENGINEER PHE DEPARTMENT NWFP.

A meeting of the DSC was held on 2.12.2009 at 10.00 A.M in the office of the Chief Engineer PHE for selection of the applicants against posts of Sub Engineer & Stenotypists. The following participated in the meeting:-

1) Mr. Allauddin Khan Gandapur — Chairman
Chief Engineer PHE

2) Syed Baqir Shah — Member
Section Officer (E-II)
W&S Department.

3) Mr. Bashir Ahmad — Member
ADO PHE Peshawar

4) Mr. Afsar Ali Qureshi — Secretary
Administrative Officer PHE

The Chairman highlighting the background of the case stated that appointments of following applicants have since been made, out of the list provided by the Chief Minister's House (Annex-I) duly recommended by the D.S.C in its meeting held on 13.08.2008 (Annex-II):-

S#	Name	Name of Post
1	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu	Sub Engineer
2	Mr. Muhammad Sajjad S/O Banut Khan District D.I.Khan	-do-
3	Mr. S.M.Ihsan Shah S/O S.M. Hassan Shah District D.I.Khan	-do-
4	Mr. S.M. Ali Sajjad S/O S. Abid Hussain Shah District D.I.Khan	-do-
5	Mr. Abdul Samad S/O Abdul Mueed District Malakand	-do-
6	Mr. Shaukat Ali S/O Ghulam Qadir District Karak	-do-
7	Mr. Muhammad Ali Noor S/O Noor Muhammad District D.I.Khan	-do-
8	Mr. Irshad Elahi S/O Shah Nawaz District D.I.Khan	-do-
9	Mr. Hussain Zaman S/O Syed Zaman District Malakand	-do-
10	Mr. Murtaza S/O Afsar Ali District Peshawar	D.E.O

The Chairman further elaborated that due to creation of new PHE Offices at Lakki Marwat, Tank, Bannu, Hangu & Nowshera, the new posts are required to be filled-in by this office, as the PSC is still un-cleared about the issue of appointments. Therefore, the rest of the applicants already recommended by the DSC have been placed before the Committee again to consider & recommend the same for appointments against the vacant posts, afresh, to comply with the orders of Honourble Chief Minister NWFP, in toto.

The Committee, therefore, once again examined the case and recommended the applicants for their appointments on the posts noted against each, as under:-

Sr.	Name	Name of Post
1	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan	Sub Engineer
2	Mr. S.Ashfaq Ahmad S/O S. Jamil ud Din District Malakand	-do-
3	Mr. Murtaza Ali S/O Abdul Haq District Malakand	-do-
4	Mr. Sehar Gul S/O Abdul Jalil District Lakki Marwat	-do-
5	Mr. Saniullah S/O Khuda Baksh District D.I.Khan	-do-
6	Mr. Abdul Shahid Sadiqui S/O Abdul Azim District Dir Upper	-do-
7	Mr. Ashfaq Ahmad S/O Muhammad Shujab District Malakand	-do-
8	Mr. Kashif Raza S/O S. Abid Hussain District D.I.Khan	-do-
9	Mr. Waqas Ali S/O Farzand Ali District Nowshera	-do-
10	Mr. Muslim Shah S/O Mehmood Shah District Mardan	-do-
11	Mr. Ishtiaq Ahmad T/O Tahmeed Ullah District Charsadda	-do-
12	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan	-do-
13	Mr. S. Hassan Ali S/O S.Ajmal Shah District Charsadda	-do-
14	Mr. Moshin Ali S/O Muhammad Pervez District D.I.Khan	-do-
15	Mr. Muqtada S/O Afsar Ali District Peshawar	-do-
16	Mr. Muhammad Qaisar Khan S/O Babu Jan District Mardan	-do-
17	Mr. Muhammad Iftikhar S/O Chainar Gul District Mardan	Stenotypist
18	Mr. Noor Muhammad S/O Jamroz Khan District Peshawar	-do-
19	Mr. Shah Khalid S/O Waffadar Khan District Swabi	-do-
20	Mr. Aziz Ullah S/O Abid Ullah Khan District Bannu	-do-
21	Mr. Farhanullah S/O Aziz Ullah District Bannu.	-do-

(SYED BAQIR SHAH)
Section Officer (E-II)
W&S Deptt: (Member)

(ALLAUDDIN KHAN GANDAPUR)
Chief Engineer PHE (Chairman)

(AFSAR ALI QURESHI)
Administrative Officer PHE
(Secretary)

(ABDUL BASHIR)
ADO PHE (Member / Representative)

Annex-B

Ph: 9082235
Fax:9220406

REGISTERED
Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 16/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

Subject: **CIVIL PETITION NOs. 2026 & 2029 OF 2013.**
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar & others ...in both cases

On appeal from the Judgment/Order of the Peshawar High Court, Peshawar dated 02.10.2013 in W.P. 271-P & 663-P/2013

Dear Sir,

I am directed to enclose herewith a certified copy of the Order of this Court dated 15.01.2014 **dismissing** the above cited civil petitions **with directions** for information and further necessary action.

I am also to invite your attention to the directions of this Court contained in the enclosed Order.

Please acknowledge receipt of this letter along with its enclosure immediately.

Yours faithfully,

Encl: Order

(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Copy with a certified copy of the Order of this Court dated 15.01.2014 is forwarded to Mr. Sikandar Khan, Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar for immediate necessary action and report compliance.

Encl: Order

ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE EJAZ AFZAL KHAN

C. Ps. No. 2026 and 2029 of 2013.
(On appeal against the judgment dt. 2.10.2013 passed by the Peshawar High Court, Peshawar in W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another. (in CP. 2026/13)
Muhammad Nasir Ali and others. (in CP. 2029/13)
....Petitioners

Versus:

Government of KPK through Chief Secretary, Peshawar and others. (in both cases)
....Respondents

For the petitioners: Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: (on court notice) Sikandar Khan, Chief Engineer, PHEK, KPK.

Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments of the learned ASC for the petitioners and careful perusal of the case record particularly the reasons assigned in the impugned judgment, we are satisfied that no case for grant of leave to appeal is made out, including the plea of discrimination raised by the petitioners, as one wrong or any number of wrongs, cannot be made basis to justify an illegal action under the garb of Article 25 of the Constitution. Both these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering, Department, KPK is present in Court, he states that

ATTESTED

Superintendent
Supreme Court of Pakistan

although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/ Anwar Zaheer Jamali J
Sd/ Ejaz Afzal Khan J

Islamabad,
15.01.2014

SUPREME COURT OF PAKISTAN

Certified to be True Copy

16-1-14

Superintendent
Supreme Court of Pakistan
Islamabad

(100)

Annex-A

GOVT: OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

No.SO(Estt)/PHED/1-55/2010
Dated Peshawar, the October 05, 2011

To

1. The Chief Engineer (South),
   PHE Department Peshawar
2. The Chief Engineer (North),
   PHE Department Peshawar

Subject: **DISTRIBUTION OF WORKS/DUTIES.**

I am directed to refer to the subject noted above and to state that the competent authority has been pleased to approve the distribution of works/duties amongst the Chief Engineers of PHE Department as under:

Posting/Transfer:

The Chief Engineer (South) and Chief Engineer (North) PHED shall make postings/transfers of the employees from BPS-1 to BPS-15 including Sub Engineers in BPS-16, within their respective jurisdictions whenever so required in the best public interest. In case of Postings/Transfers of **Inter-Territorial** jurisdiction i.e. from South to North vice versa, the Chief Engineer (South) PHED shall make such postings/transfers in consultation with the Chief Engineer (North) PHED. In case of any disagreement amongst both the Chief Engineers, the issue will be brought into the notice of Secretary PHED in writing for his prior approval. Substitute will be provided in case of transfer of any official from the jurisdiction of Chief Engineer (North) PHED & vice versa. However, copies of all posting/transfer orders will invariably be endorsed to the other Chief Engineer for his office record. The service record/personal files of all officials shall be maintained by the Chief Engineer (South) PHED.

The above orders shall be implemented with immediate effect in the best public interest.

(SHABBIR AHMAD AWAN)
SECTION OFFICER (ESTT)

Endst: No & Date as above:

Copy of the above is forwarded for information to the:

1. Special Assistant to Chief Minister Khyber Pakhtunkhwa Peshawar.
2. P.S. to Secretary PHE Department Peshawar.

SECTION OFFICER (ESTT)

ANNEXURE-J (31)

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

2- Fort Road Peshawar Cantt:
Website: www.nwfppsc.gov.pk
Tele: Nos. 091-9214131, 9213563, 9213750, 9212897

Dated: 07.04.2011

ADVERTISEMENT NO. 02 / 2011.

Applications, on prescribed form, are invited for the following posts from Pakistani citizens having domicile of **Khyber Pakhtunkhwa / F.A.T.A** by **07.05.2011** (candidates applying from abroad by **21.05.2011**). Incomplete applications and applications without supporting documents required to prove the claim of the candidates shall be rejected without intimation to the candidates.

AGRICULTURE, LIVESTOCK & CO-OPERATIVE DEPTT:

1. FIVE (05) POSTS OF FEMALE LIVESTOCK PRODUCTION OFFICER (HEALTH) IN L&DD DEPTT:

QUALIFICATION: (i) B.Sc (Hons) Animal Husbandry from a recognized University; OR (ii) Doctor of Veterinary Medicine (DVM) or equivalent qualification in veterinary sciences from a recognized university and registered with Pakistan Veterinary Medical Council.

AGE LIMIT: 22 to 35 years. PAY SCALE: BPS-17 ELIGIBILITY: Female. ALLOCATION: Two to Zone-1 and One each to Zone-2, 3 and 5.

2. THREE (03) POSTS OF SOIL CONSERVATION ASSISTANT

QUALIFICATION: (a) M.Sc Agriculture (Soil Science) from a recognized University, OR (b) B.Sc (Hons) Agriculture with Soil Science as major subject obtained after four years of academic instructions after F.Sc from a recognized university; OR (c) B.sc Agriculture Engineering from a recognized university.

AGE LIMIT: 21 to 35 years. PAY SCALE: BPS-17 ELIGIBILITY: Both Sexes. ALLOCATION: One each to Merit, Zone-1 and 5.

3. ONE (01) POST OF BIO-CHEMIST

QUALIFICATION: Doctor of Veterinary Medicine (DVM) or equivalent qualification in veterinary sciences with M.Sc in Biochemistry or M.Sc (Hons) in Animal Nutrition recognized by Pakistan Veterinary Medical Council.

AGE LIMIT: 25 to 32 years. PAY SCALE: BPS-17 ELIGIBILITY: Both Sexes. ALLOCATION: Merit.

C & W DEPARTMENT

4. THIRTEEN (13) POSTS OF JUNIOR SCALE STENOGRAPHER.

QUALIFICATION: (i) Intermediate or equivalent qualification from recognized a Board. (ii) A speed of 60 words per minute in Shorthand in English and 35 words per minute in typewriting in English and knowledge of Computer in using MS Word and MS Excel.
AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-12 ELIGIBILITY: Both Sexes ALLOCATION: Three to Zone-1, Five each to Zone- 3 and 5.

2/2011

69.	**EIGHT (08) POSTS OF MALE SERVEYOR IN MINES AND MINERALS DEPTT:** QUALIFICATION: F.SC Pre Engineering or equivalent qualification from recognized Board of Intermediate and Secondary Education with (a) Mine Surveyor Competency Certificate under Mines Act 1923 and (b) Certificate in Auto cad from a recognized institute AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: Two each to Zone-1,2,3 and One each to Zone-4 & 5.
70.	**THREE (03) POSTS OF COMPUTER OPERATOR IN DIRECTORATE GENERAL OF TECHNICAL EDUCATION AND MANPOWER TRAINING** QUALIFICATION: (a) Bachelor Degree from a recognized University and (b) Diploma of one year duration in Information Technology from a recognized Institute. AGE LIMIT: 20 to 32 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: One each to Zone-1, 2 and 3.
	PUBLIC HEALTH ENGINEERING DEPTT:
71.	**TWO (02) POSTS OF RESEARCH OFFICER/ HYDRO-GEOLOGIST.** QUALIFICATION: Second Division M.Sc (Hydro-Geology) OR B.Sc (Civil/ Agriculture Engineering) with two years relevant experience Or Second Division M.Sc (Water Resources/ Civil Engineering) from a recognized University. AGE LIMIT: 21 to 32 years. PAY SCALE: BPS-17 ELIGIBILITY: Both Sexes ALLOCATION: One each to Merit and Zone-1.
72.	**EIGHTEEN (18) POSTS OF ASSISTANT SOCIAL ORGANIZER.** QUALIFICATION: Second Class Master Degree in Social Sciences from a recognized University. AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Both Sexes ALLOCATION: Five to Merit, Three each to Zone-1, 2, 3 and Two each to Zone-4&5.
73.	**TWO (02) POSTS OF ASSISTANT SOCIAL ORGANIZER (WOMEN QUOTA).** QUALIFICATION: Second Class Master Degree in Social Sciences from a recognized University. AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Female ALLOCATION: Merit.
74.	**SEVEN (07) POSTS OF ASSISTANT RESEARCH OFFICER (WATER QUALITY).** QUALIFICATION: Second Division B.Sc (Microbiology or Chemistry) from a recognized University. AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Both Sexes. ALLOCATION: One each to Merit, Zone-2, 3, 4, 5 and Two to Zone-1

75. **EIGHT (08) POSTS OF JUNIOR SCALE STENOGRAPHER.**

QUALIFICATION: (i) 2ND Class Intermediate/ D.com or equivalent qualification from recognized a Board; and (ii) A speed of 50 words per minute in English Shorthand and 35 words per minute in English Typing.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-12 ELIGIBILITY: Both Sexes ALLOCATION: Two each to Zone-1, 2 & 3 and One each to Zone-4 and 5..

76. **EIGHTEEN (18) POSTS OF SUB ENGINEER CIVIL.**

QUALIFICATION: Three years Diploma of Associate Engineering Civil from a recognized Institute.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: Four each to Zone-1, 2, 3 and Three each to Zone-4 and 5.

77. **TWO (02) POSTS OF SUB ENGINEER CIVIL (WOMEN QUOTA).**

QUALIFICATION: Three years Diploma of Associate Engineering Civil from a recognized Institute.
AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Female ALLOCATION: Merit.

78. **FOUR (04) POSTS OF DRAFTSMAN.**

QUALIFICATION: (i) Second Division Secondary School Certificate from a recognized Board and (ii) Two years duration Certificate Course in Civil Draftsmanship from a recognized Board of Technical Education.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Both Sexes ALLOCATION: One each to Zone-1, 2, 3 and 4.

PROVINCIAL PUBLIC SAFETY AND POLICE COMPLAINT COMMISSION

79. **ONE (01) POST OF FEMALE JUNIOR SCALE STENOGRAPHER CUM COMPUTER OPERATOR**

QUALIFICATION: **(i)** FA/ F.SC in second division from recognized Board **(ii)** One year diploma in Computer Science from an institute recognized by the Board of Technical Education. (iii) A speed of 60 words per minute in English Shorthand and 35 words per minute in English Typewriting.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-12 ELIGIBILITY: Female ALLOCATION: Merit

SPORTS, TOURISM, CULTURE, ARCHAEOLOGY & MUSEUMS DEPARTMENT

80. **ONE (01) POST OF ADMINISTRATOR**

QUALIFICATION: Bachelor Degree from a recognized university with at least five years experience in management / administration.

AGE LIMIT: 21 to 35 years. PAY SCALE: BPS-17 ELIGIBILITY: Male ALLOCATION: Zone-1

Detail Marks Certificates for all the examinations shall necessarily be required and these should be attached with the application forms.

(iii) Ex-armed Forces Personnel must send copy of Discharge Certificate with their applications. Govt. / Semi Govt. / Autonomous / Semi Autonomous Bodies employees may apply direct but their Departmental Permission Certificates should reach within 30 days of the closing date.

(iv) Applications should be on the prescribed application form obtainable from the listed below branches of the NATIONAL BANK OF PAKISTAN. Application Fee is Rs.285/- (Rupees Two Hundred Eighty Five only) for all the candidates. In addition to the application fee, the candidates will have to pay Rs.15/- (rupees fifteen only) on account of Bank Charges. Separate application form will be required for each advertised category of posts. Application forms obtained other than the specified branches of the National Bank will be considered invalid and such applications will not be entertained. The applications on plain paper or Photostat shall not be accepted. Incomplete and late applications shall also be ignored.

(v) Applications must be submitted within time as no extra time is allowed for postal transit. The applications if submitted on the last date for receipt of applications must reach the Commission's office by the closing hours.

(vi) Applicants married to Foreigners are considered only on production of the Govt: Relaxation Orders.

(vii) No applicant shall be considered in absentia on paper qualifications unless, he/she possesses exceptionally higher qualifications than the minimum prescribed qualification for a particular post(s).

(viii) Govt. reserves the right not to fill any or fill more or less than the advertised post(s).

(ix) Candidates who have already availed three chances by physical appearance before the Commission and have failed for the post(s) having one and the same qualifications and scale of pay shall be ineligible.

(x) Experience wherever prescribed shall be counted after the minimum qualifications for the post(s), if not specifically provided otherwise against the advertised post(s).

(xi) In case the number of applications of candidates is disproportionately higher than the number of posts, short listing will be made in anyone of the following manner: -

(a) Written Test in the Subject.
(b) General Knowledge or Psychological General Ability Test.
(c) Academic and/or Professional record as the Commission may decide.

SPECIFIED BRANCHES OF THE NATIONAL BANK OF PAKISTAN.

(1) Main Branches of:
Parachinar, Mardan, Swabi, Malakand, Shangla, Chitral, Timargara, Daggar, D.I.Khan, Bannu, Karak, Kohat, Hangu, Lakki Marwat, Abbottabad, Haripur, and Mansehra

(2) Saddar Road Branch, Tehkal Payan Branch, and G.T Road (Nishtar Abad) Branch Peshawar.

(3) Tehsil Bazar Branch Charsadda, Nowshera Cantt: Branch, Bank Square Branch Mingora and City Branch Tank

Note: -The candidate who apply for the post(s) are advised to make sure that they are eligible for the post in all respects because eligibility of the candidate will be determined strictly according to the rules after conduct of all essential tests.

(ATTA-UR-REHMAN)
Secretary
Khyber Pukhtoonkhwa
Public Service Commission
Peshawar

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ANNEXURE J (1)

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:
Mr. Justice Anwar Zaheer Jamali
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Mushir Alam

Constitution Petition No.6 of 2011, C.M.A. No.5216 of 2012 and H.R.C. No.49012-P of 2010

Constitution Petition No. 6 of 2011
(Against illegal appointments and corruptions in EOBI)

Syed Mubashir Raza Jaffri, etc.

Petitioners

Versus

Employees Old Age Benefits Institutions (EOBI) through its President of Board, Board of Trustees, & others

Respondents

Petitioners No.1 & 2:	In person.
For respondents No. 1 & 3:	Mr. Saiful Malook, ASC Mr. M. S. Khattak, AOR
On behalf of Federation:	Mirza Waqas Rauf, DAG Mr. Pervaiz Khan, D.G., H.R.
On Court Notice:	Mr. Abdul Latif Yousafzai, Advocate General, KPK Malik Faisal Rafique, Addl. A.G, Punjab.
Other respondents:	N.R.

AND

C.M.A. No. 5216 of 2012 in Constitution Petition No. 6 of 2011
(Against appointment of Raja Azeemul Haq as Executive Director of the World Bank)

For the Federation:	Mirza Waqas Rauf, DAG Mr. Pervaiz Khan,DG,HR,EOBI.
On behalf of Raja Azeemul Haq:	Ch. Afrasiab Khan, ASC Mr. M. S. Khattak, AOR *a/w applicant.*

AND

H. R. C. No. 48012-P of 2010
(Application by Tajamal Hussain against illegal appointments and massive corruption in EOBI)

For the applicant:	In person.
For appointed officials:	Sardar M. Aslam, ASC
For Chairman EOBI:	Mr. Saiful Malook, ASC Mr. M.S. Khattak, AOR
For Raja Azeemul Haq:	Ch. Afrasiab Khan, ASC Mr. M. S. Khattak, AOR *a/w applicant*
For applicants Mutali Khan, etc:	Mr. Athar Minallah, ASC Mr. M. S. Khattak, AOR
For applicants/Intervener:	Mr. Abdul Hafeez Pirzada, Sr. ASC Mian Gul Hassan Aurangzeb, ASC
For applicants in CMA 1720/2011:	Nemo.
Date of hearing:	11.12.2013

Judgment

Anwar Zaheer Jamali, J – On 2.2.2011, the petitioners brought Constitution Petition No.6 of 2011, under Article 184(3) of the Constitution of Islamic Republic of Pakistan 1973 ("the Constitution"), for agitating their two fold grievances against the Employees Old Age Benefit Institution ("EOBI"), a body established under the Employees Old Age Benefit Act XIV of 1976 ("the Act 1976"), and its management, arraying EOBI, the Federation of Pakistan through Ministry of Labour and Manpower, M/s Zafar Iqbal Gondal, Chairman, EOBI, Mushtaq Samoo, Director, EOBI/Secretary Board of Trustees, Kanwar Waheed Khursheed, Director General

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(Investment)/Convener of Selection Committee-2, Muhammad Hanif, Officiating Director General/ Convener of Selection Committee-I and Mirza Imtiaz Ahmed, Acting Director General (Finance & Accounts), Convener of Selection Committee-3, as respondents. The averments made in the petition reveal that the first grievance of the petitioners is regarding appointment of more than 213 persons in BPS-16 to BPS-20, as detailed in the petition, in a patently illegal manner on the basis of political influence, nepotism and cronyism, under the chairmanship of respondent No.3 (Zafar Iqbal Gondal), in league with respondents No.4 to 7, while the other grievance is as regards large scale financial corruption and mismanagement of funds of the EOBI, as detailed in the petition. Based on such allegations, reliefs prayed for in the petition read as under:-

"i) Declare that all the impugned appointments made in the Respondent No.1/EOBI are unlawful, illegal and void ab initio and in violation of prescribed recruitment procedure/ operating manual.

ii) Declare that EOB Fund cannot be utilized or invested in contravention and violation of EOB Act 1976 and EOB (Investment) Rules, 1979.

iii) Declare that any amount utilized in corrupt practices by the EOBI Management/Respondents and others are without lawful authority and the same may be recovered from the Respondents.

iv) Direct that the respondents that any Fund invested against the sprit of EOB Act 1976 and EOB (Investment) Rules 1979 shall be disinvested.

v) Grant any other relief which as deemed appropriate, just and proper by this Hon'ble Court in very circumstances of the case.".

2. Since thereafter, during the proceedings of this petition, several orders of interim nature have been passed by the Court, primarily, to find out the substance of these allegations against the respondents, whereupon several miscellaneous applications/concise statements/replies and documents have been submitted and brought on record by the respondents in an attempt to justify such appointments and to explain their position as regards mismanagement of funds of the EOBI. In addition to it, in response to our order dated 12.9.2013, directing publication of general notice regarding the present proceedings in some newspapers of wide circulation from Islamabad and Karachi, for information of the appointees of EOBI whose appointments have been challenged or who are likely to be affected with the outcome of these proceedings, many miscellaneous applications for impleadment as party to these proceedings have been received from various groups/individuals, who, according to their claim are such appointees or are likely to be affected from any final outcome of these proceedings, which have been entertained and allowed.

3. Another human rights case on the same subject and relating to similar grievances, bearing No.48012-P of 2010, which is based on the complaint dated 30.9.2010, made by

one Tajamul Hussain has also been tagged with this petition, in terms of order dated 20.4.2011, which has thus proceeded along with this petition. In the said human rights case, inter alia, illegal appointments allegedly made in EOBI have been brought to the Court's notice and challenged on the basis of facts detailed in the said complaint.

4. It seems that while proceedings in these two cases were sub-judice before the Court, with reference to a programme aired through some T.V. channel on 27.6.2013, titled as "corruption scandal of more than forty billion rupees in the EOBI" on 29.6.2013, a detailed note was submitted by the Registrar of the Court before the Honourable Chief Justice of Pakistan, unfolding therein the attributions of the participants of the said programme against EOBI with specific reference to the (i) purchase of plots in DHA, (ii) purchase of Crown Plaza in F-7 Markaz, Islamabad, (iii) purchase of two controversial plots in Sukkur, (iv) development of cricket ground in Islamabad, (v) purchase of several plots from CDA, (vi) purchase of forty kanals sixteen marlas land in Lahore, (vii) purchase of four floors of plaza/hotel in Lahore, (viii) construction of seven star hotel in front of Lahore Airport, (ix) construction of M-9 motorway by EOBI, (x) purchase of twenty acres land near Karachi Airport in billions and (xi) purchase of two 4300 cc parado jeeps for personal use of the Chairman, EOBI. Taking notice of such allegations contained in the note

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of the Registrar, per order of the Honourable Chief Justice dated 29.6.2013, it was converted into Constitution Petition No.35 of 2013, which is now separately proceeding to probe into the allegations of financial corruption and misuse of funds allegedly made in the EOBI by its management and other high ranking Government officials involved in the said scam. Since the issue of financial corruption and misuse of funds etc. in EOBI has now been taken up separately in the said Constitution petition of which this Court is seized, and proceedings are pending, we deem it appropriate to proceed further and adjudicate the present petition alongwith HRC No.48012-P of 2010 and CMA No.5216 of 2012, only to the extent of the case of the petitioners/complainant regarding illegal appointments in EOBI, leaving the other aspects relating to the financial corruption, misuse of funds and mismanagement etc. in EOBI to be exclusively dealt with in other Constitution petition No.35 of 2013.

5. Reverting to the facts and the grounds stated in Constitution Petition No.6 of 2011 and HRC No.48012-P of 2010 in this context and for their proper understanding, it will be useful to summarize the same as under:

6. The petitioners in Constitutional Petition No.6/2011 have called in question the manner in which more than 213 appointments were made in EOBI (which is said to form almost 40% of the total strength of its Officer cadre)

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alleging that as such appointments were made in flagrant violation of the prescribed recruitment procedure set out, *inter alia,* in Clause No. 02.05.2 of the EOBI Operating Manual Chapter 2, they are therefore unlawful, illegal and liable to be set aside.

7. It has been contended that in April 2009, EOBI advertised vacancies inviting applications to fill a large number of posts from grades 16 to 20 against which 23648 applications were received and from which suitable applicants were to be shortlisted. It was alleged that even before commencement of the normal recruitment procedure, appointments against 132 vacancies were already finalized and made on the basis of political pressure, nepotism and cronyism, while some other persons managed their appointments on deputation basis against regular posts for which vacancies had already been advertised. Many of whom were later absorbed as Regular Officers in violation of the quota earmarked for different provinces, they did not belong to. The petitioners have also submitted that some lists of names were sent by the Personal Secretary to the Federal Minster of Labour and Manpower, which were then forwarded to the then Deputy Director General (HRD) Javed Iqbal and these persons were later appointed in Grade 16 and above, as opposed to those individuals who had applied through the advertisement. Moreover, as per the regulations, shortlisted candidates were

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to be called for a written test on the basis of the requirement of Operating Manual as well as the resolutions passed by the Board of Trustees, but this procedure was completely ignored. The petitioners have been further aggrieved by the purported act of the respondents for allegedly issuing back-dated appointment letters to various handpicked persons in order to avoid being in contempt of an interim order of the Peshawar High Court passed in Writ Petition No. 209/2010 whereby the respondents were restrained from issuing any appointment letters till the disposal of the said petition.

8. The petitioners in this case have further raised their finger towards the manner in which appointments were fast-tracked; the committees established to interview applicants concluded their interviews on 1st June 2010 and appointment letters were issued on 2nd June 2010, indicating that the committee's recommendations were approved by Respondent No. 3 within one day, after which appointment letters were sent to all within the span of one working day. The petitioners have also been aggrieved by the fact that these unlawful appointees did not provide any documents proving their educational qualifications etc. that had to be attached with each candidate's application, subject to verification by the HEC. Indeed, there were apparently many appointees who claimed to have completed their education in 2010, whereas

the selection process called for all applications that fitted the requisite educational criteria in the year 2009.

9. In Human Rights Case No. 48012/P-2010, nearly identical allegations regarding irregular appointments have been levelled against the respondents (EOBI). It has been forcefully alleged that the recruitments were made in a *mala-fide* manner whereby those individuals who had links with politically influential persons within the then ruling PPP government were appointed. The petitioner reiterated and drew court's attention towards the fact that all posts had been filled without completion of the requirement of written tests which is against the EOBI recruitment procedure. Moreover, the then Chairman EOBI, Mr. Zafar Iqbal Gondal, was also accused of making a large number of appointments from the elected constituencies of his elder brother, Mr. Nazar Muhammad Gondal, former Federal Minister of Food and Agriculture, District Mandi Bahauddin and Mr. Nadeem Afzal Chann, MNA (NA 64 Sargodha) sitting Chairman, PAC, on the basis of nepotism and corruption.

10. In addition to it, another action regarding the purported irregular appointment of Mr. Raja Azeem-ul-Haq Minhas, as Executive Director, World Bank has been challenged through CMA No 5216/2012 in Constitutional Petition No.6/2011. In this regard, notice was taken by the Court after certain news reports highlighting the issues

surrounding his appointment, promotion, deputation etc. It was contended that he did not have the requisite experience or qualifications for the job and was appointed Executive Director in the World Bank due to political pressure as he was son-in-law of the then Prime Minster, Raja Pervez Ashraf at the time of his appointment to the World Bank. A look at his service record reveals that Mr. Minhas was serving as Senior Joint Secretary on a grade 21 post because of out of turn promotions received by him due to his personal affiliations with persons who held high political offices, otherwise he was an officer of the income tax group, working in grade 18 when the PPP government came into power. He left this post and was hired by the EOBI in grade 20 on 2.6.2010 and then went on to hold the Acting Charge of the post of Director General on BS 21 from 15.02.2012 till 23.05.2012, after which he assumed the post of Senior Joint Secretary on deputation basis at the Prime Minster Secretariat. To examine these aspects, on 21.2.2013 notices were ordered to be sent to the Establishment Division, Federation of Pakistan to furnish details regarding his appointment to the World Bank. However, during the course of such proceedings on 6.6.2013 he resigned from the post of Executive Director, World Bank. Nevertheless, his appointment in EOBI pursuant to the aforesaid advertisement or otherwise is to be examined like other cases of appointment in order to

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see whether there was any illegality or irregularity attached to it or it was made in a transparent manner on merit criteria.

11. It will be pertinent to mention here that in their detailed reply earlier submitted by respondent No.1, though they conceded to certain material illegalities/ irregularities committed in the process of appointments by the management of EOBI, still they attempted to defend and justify these appointments on the pretext that all individuals were appointed on the basis of recruitment procedure laid down in the relevant rules and regulations. However, due to the qualifications of some candidates and urgency in the matter regarding filling up the vacant seats, candidates were only called for interviews, without written test. Such a decision, it was submitted, was not contrary to rule regulation or earlier practice of the EOBI and that it was settled law that a practice followed persistently by a department itself takes the place of a 'rule'. Furthermore, according to the 'Investment Personnel (Contract Appointment) Regulations, 2007 issued by the Board of Trustees u/s 45 of the Act, it allows selection committees to conduct "interviews *or* tests". Moreover the respondents strongly challenged the maintainability of the petition, protesting that the petitioner had neither pointed towards any fundamental right that was being adversely affected, nor the core requirement of "public interest" was fulfilled as the issue

revolved around a restricted group of persons appointed in the EOBI and not in respect of the nation or the public at large.

12. We have heard the arguments of learned ASCs, who are representing different parties to these proceedings as well as for the interveners, and with their assistance carefully perused the bulky case record of these proceedings. As called upon by the Court, the petitioner Syed Mubasshar Raza Jaffery in Const. P. No.6 of 2011 and Mr. Tajammal Hussain in HRC No.48012-P of 2010 made their respective submissions only to the extent of allegations of illegal appointments in EOBI, which are in line with the contentions raised in their respective petitions. In this regard, they further made reference to several documents as well as applicable service/ appointment rules and regulations of EOBI, which were daringly and dishonestly circumvented and violated by the officials of EOBI, at the helm of the affairs at the relevant time. The pith and substance of their arguments was that whatever grievances they have voiced in the present proceedings, those has been fully substantiated and corroborated from the documents produced by them and the report of fact finding committee on recruitment/appointments constituted by the present management of EOBI, has remained undisputed/ uncontroverted, rather conceded by the learned ASC for the official respondents Mr. Saiful Malook, Mirza Waqas Rauf, D.A.G. for the Federation of Pakistan and even learned ASCs

for the interveners have not ventured to say much to the contrary regarding the authenticity of such report, except that all this has happened due to change in the management of EOBI.

13. Mr. Abdul Hafeez Pirzada, learned Sr. ASC for the interveners during his arguments firstly stressed upon the humanitarian aspect of the case. According to him it will be highly unjust, unfair and harsh that in case these petitions are allowed so many appointees in the EOBI, who have been performing well to the satisfaction of the institution for many years, for no fault on their part, will now be removed from service and rendered jobless. More particularly, in the circumstances when already percentage of unemployment in the country has reached at a very high level, which is resulting in sheer frustration amongst the educated class of the country. He, however, seriously questioned the maintainability of the petition and H.R.C. within the ambit of Article 184(3) of the Constitution. According to him, such course, if followed by the Court, will negate the vested rights of the appointees with reference to Articles 4 and 10A of the Constitution, which ensures that every citizen is to be dealt with in accordance with law and has a right to fair trial. In support of his submissions, he placed reliance on the cases of Managing Director, SSGC Ltd. Versus Ghulam Abbas **(PLD 2003 S.C. 724)** and All Pakistan Newspapers Society versus Federation of

Pakistan **(PLD 2004 S.C. 600)**. In the **1st** case the apex Court dealt with hundreds of petitions of the employees of Sui Southern Company Limited in relation to their service dispute and in that context also considered the question of discrimination on the yardstick of Article 25 of the Constitution and scope of review under Article 188 of the Constitution. As a result the review petitions were allowed and cases were remanded to the Federal Service Tribunal for decision of their dispute afresh. In the **2nd** case, broad principles for invoking jurisdiction of the Supreme Court under Article 184(3) of the Constitution were discussed. It was held that it provided an expeditious and inexpensive remedy for protection of fundamental rights from legislative and executive interference, particularly, in a situation when there is no other adequate remedy and that question of public importance with reference to enforcement of fundament rights was involved. With these observations, the petition under Article 184(3) of the Constitution, challenging the vires of 7th Wage Board Award was held not maintainable, as the said award was only valid to the extent of working journalists and did not affect the public at large qua fundamental right of speech under Article 19 of the Constitution.

14. In the end Mr. Abdul Hafeez Pirzada reiterated his submission that for the sake of smooth functioning of the institution (EOBI) and to save the families of such appointees

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from starvation, a lenient view of the matter may be taken as regards the purported irregularities in their appointments. However, those responsible for such illegalities may be separately taken to task in accordance with law.

15. We have given due consideration to the submissions of the learned Sr. ASC, relating to exercise of our jurisdiction under Article 184 (3) of the Constitution, but are in disagreement with him for the reason that the controversy involved in the present petition and connected human rights case is clearly within the domain of public interest litigation qua violation of fundamental rights of citizens at large by a public body (EOBI) in the matter of selection and appointments. In such circumstances, it is the respondent No.1 EOBI, whose affairs are being probed and looked into by the Court and not the individual grievance by or against the appointees, who may be the affectees of the ultimate decision of the Court in these proceedings. As a matter of fact, on 12.9.2013 order for publication of general notice regarding the pendency of these proceedings was passed by this Court in order to afford an opportunity of hearing to the appointees of EOBI, whose appointments are under challenge in these proceedings or who are likely to be affected with the outcome of these proceedings. It was for this reason that office was directed to publish a general notice in few newspapers of wide circulation from Islamabad and Karachi, apprising all such

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employees of EOBI about the pendency of these proceedings so that in case, anyone of them has any interest in the fate of these proceedings, may appear and contest the matter. Thus, it was in the larger interest of justice and for the above reason that all the applications of interveners, who are more than 190 in number, were entertained and opportunity of hearing was allowed. Otherwise, they had no independent right to participate in the proceedings of this case or to allege violation of Articles 4 & 10A of the Constitution in their individual cases. If any case law is needed to fortify this view, reference can be made to the case of Sindh High Court Bar Association versus Federation of Pakistan **(PLD 2009 S.C. 879)**, wherein the Court while expounding upon the ambit of Article 184 (3) settled the law by stating that it is now a well-entrenched principle that the breach of fundamental rights of a *"class of persons, who collectively suffer due to such breach, and there does not seem to be any possible relief being granted from any quarter due to their inability to seek or obtain relief, ... are entitled to file petition under Article 184(3)"*. Such a view lends full support to the maintainability of the petition as the grievance in hand concerns the rights of more than 23,127 applicants whose applications were passed over due to nepotism and political pressure, in contravention of their fundamental rights enshrined under the Constitution, which in turn also affects the public at large as it calls into question

the manner in which the bureaucratic system is being abused by the ruling elite. Such a view is also supported by another case of Syed Mahmood Akthar Naqvi v. Federation of Pakistan, **(PLD 2013 SC 195)** wherein the Court held that as the issue under examination concerned political pressure placed on the civil service by the executive, the petition was maintainable under Article 184(3) as it relates to the infringement of fundamental rights of civil servants under Article 9, 14 and 18 of the Constitution. It was recognized as being an issue of public importance as the civil service is deemed to be an essential component of the executive arm of the state. Yet another judgment of five member Bench of this Court, which supports the maintainability of this petition under Article 184(3) of the Constitution, is in H.R.C. No.40927-S of 2012 regarding pensionary benefits of the Judges of Superior Courts **(PLD 2013 S.C. 829),** wherein combined effect of Articles 184(3), 187 and 188 of the Constitution has been dilated with the observation that the apex Court has unlimited jurisdiction to set the law correct, to cure injustice, save it from becoming an abuse of the process of law and the judicial system and for this pass any order to foster the cause of justice; eliminating the chances of perpetuating illegality and to save an aggrieved party from being rendered remediless. Thus we have no doubt about the maintainability of this petition and the human rights case and the arguments of learned Sr. ASC Mr. Pirzada as

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regards the limited scope of Article 184(3) of Constitution are devoid of force.

16. M/s Sardar M. Aslam and Athar Minallah, two other learned ASCs for some other appointees/respondents in these proceedings, have adopted the arguments of Mr. Pirzada with their additional submissions that in case an adverse order is passed against the appointees, whose appointments have been assailed in these two cases, their future will be ruined, therefore, a via media may be sorted out to accommodate them at their jobs or atleast in the fresh process of selection and appointments in the EOBI.

17. Ch. Afrasiab Khan, learned ASC for Raja Azeem-ul-Haq Minhas has made reference to various replies submitted on his behalf in response to C.M.A. No.5216 of 2012, which has been heard together with these petitions and contended that since during the pendency of these proceedings on 6.6.2013 he has resigned from his post in the World Bank, therefore, any further action against him would not be justified. However, as regards the irregularities highlighted by the petitioners in the appointment of Raja Azeem-ul-Haq Minhas in the EOBI qua his rapid promotions and deputation etc., he insisted that there is no such procedural lapse in this regard, which can be termed as illegal or mala-fide. Mere fact that he is son-in-law of the then Prime Minister Raja Pervaiz Ashraf cannot be taken as his disqualification to hold such

high posts or get rapid promotions as it was done solely on merit criteria. However, he did not argue much as to the manner of his appointment and frequent promotions in the EOBI as mentioned in the report of fact finding committee, which also forms part of this judgment.

18. Conversely, Mr. Saiful Malook, learned ASC for respondents No.1 to 3, has uprightly supported the case of petitioners as regards hundreds of illegal appointments made in the EOBI during the period from January, 2009 to May 2012 and onwards, which are now under challenge in these two petitions or subject matter of contempt proceedings regarding other appointments made in EOBI during the pendency of these proceedings. He candidly stated that the earlier reply to these petitions submitted on behalf of EOBI was based on concocted facts and managed at the behest of the then Chairman, EOBI, who thought that he was above all laws of the land. He made reference to several documents, particularly, the lists of illegal appointees given in the memo of these petitions and the detailed report of fact finding committee on recruitment/appointments to show that how the practice of nepotism, corruption and political exigencies was rampantly followed in a *mala-fide* manner for making such illegal appointments. To sum up, he stated that all illegal appointments challenged in these proceedings or otherwise made during the pendency of these proceedings may be set

aside and directions be issued to the management of EOBI for undertaking this exercise afresh in a transparent manner strictly in accordance with the rules and regulations of appointment and on merits.

19. Detailed facts recorded in the preceding paragraphs of this judgment, particularly, with reference to the undisputed documents gain full support from the report of fact finding committee on recruitment/appointments submitted by respondent No.1 before the Court on 28.8.2013. Therefore, before proceeding further it will be useful to reproduce the same as under:-

> **"Report of Fact Finding Committee on Recruitment/Appointment**
>
> Recruitments made in the Institution (EOBI) since 2009 are under judicial scrutiny of the Hon'able Supreme Court of Pakistan in constitutional petition No.6 of 2011 and Human Rights Case No.48012-P of 2010.
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> 2. In order to firm-up its position in the matter subjudice before the apex court and to examine the process of recruitment adopted in the Institution during the last three years, the new management of EOBI decided to carry out a fact finding exercise. A Committee comprising of the following officers was constituted to ascertain the facts of the recruitment made by the Institution during these years commencing from January 2009 vide Office Order No.259/2013 dated 25.7.2013 **(Annex-I).** The Committee was required to indicate irregularities/ violation of codal formalities of the prescribed procedure/ process of recruitment.
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> | | | |
> |---|---|---|
> | i. | Pervaiz Ahmed, DG (Audit) | Convener |
> | ii. | Javed Iqbal DG (HR &GAD) | Member |
> | iii. | M. Meraj Nezamuddin, DDG (HR) | Member/ Secretary |
> | iv. | Ch. Abdul Latif, Director (Law) | Member |

v. Ferozuddin Sheikh, AD (Recruitment) Member

Mr. Ayaz Ahmed Uqaili DDG, IT has been co-opted as member vide Office Order No.286/2013 dated 26.8.2013.

3. EOBI (Employees' Service) Regulations, 1980 having been framed under Section 45 of EOB Act, 1976 and notified vide S.R.O. 413(1)/81 of Ministry of Labour, Manpower and Overseas Pakistanis (Labour Division) dated 9th May, 1981 published in the Gazette of Pakistan (Extra ordinary), EOBI Recruitment Procedures framed under Regulations-10 of EOBI (Employees' Service) Regulations, 1980 and relevant provisions of the Operating Manual (clause 02.4.3) approved in 64th meeting of the Board of Trustees held on 09.05.2003 regulate Recruitment in EOBI.

4. History of recruitment in EOBI reveals that whenever appointments to the posts of Executive Officer (Grade-6/BPS-16) & Assistant Director (Grade-07/BPS-17) had been made, written tests of the shortlisted candidates had been done. In 2007 written tests were held to short list the applicants even for the post of Deputy Director (Finance) in view of the large number of applications received for the posts so advertised.

5. From the records maintained in HR Department, EOBI Head Office, Karachi, it was observed that following recruitments had been carried out during the relevant period.

A. Recruitment of 132 officers in June 2010 as per advertisement of 16.4.2009 (Annex-II)

B. Recruitment by Absorption of seven (07) deputationist in March 2010 (Annex-III).

C. Contract Appointment of 238 officials and their subsequent regularization by the Cabinet sub-committee from Sept 2011 to May 2012.

A. <u>Recruitment of 132 Officers:</u>

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6. It has been observed that the Institution (EOBI) called for applications through public notice published in leading newspapers on 16.4.2009 to fill up 213 vacant posts of officers and staff. Applications for the advertised posts were called through a Web-Portal specifically hosted for the purpose besides through P.O Box as per convenience of the applicants. **(Annex-II).**

7. As per record of the IT Department, which was managing the data of applicants, 23,137 applications (officers-19,195), staff-3,942) were received through post and e-mail. 17,979 applications were received by the cut-off date **(15.5.2009)** by web portal, whereas data entry of 5,158 applications received by post was completed by 14th July, 2009. After necessary filtration, data of 21,236 (officers-17,569 and staff-3,667) (Annex-IV) emerged to be referred as the **"Original List"** in the report subsequently. Post wise break-up of the applications received is detailed as under:-

i.	Dy. Director General	124
ii.	Director (Ops)	158
iii.	Director (Law)	48
iv.	Dy. Director (Ofc)	157
v.	Dy. Director (Ops)	411
vi.	Assistant Director (Ofc)	2502
vii.	Assistant Director (Ops)	4345
viii.	Assistant Director (Finance)	3925
ix.	Assistant Director (Law)	197
x.	Assistant Director I.T (Net Working)	1646
xi.	Assistant Director I.T (Software)	491
xii.	Assistant Director I.T (S&C)	542
xiii.	Executive Officer (Office)	3023
	Total (Officers)	17569
	Staff	3667
	Total (Officers and Staff)	**21236**

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8. While the HR Department in close liaison with IT Department **(Annex-V)** was gearing up to further process the recruitment against 132 posts of Officers, the EOBI management was changed. Mr. Mushtaq Ahmed Samo assumed additional charge of the Head of H R Department in addition to his own duties as Secretary BoT. Complete data file was handed over to Mr. Mushtaq Ahmed Samo who under supervision of Dr. Imtiaz, then Special Assistant to the Chairman further processed the recruitment. Short-listing of the candidates were not done by the relevant Departmental Selection Committees. Three different Selection Committees were notified for conducting interviews for the posts of Executive Officers, Assistant Directors and Deputy Directors for all cadres viz. Operations, Office, Finance, IT and Law on geographical basis. Whereas, EOBI Recruitment Procedures prescribe one standing Departmental Selection Committees for each Cadre. **(Annex-VI).** Therefore, seven selection committees were required to be constituted for conducting interviews for the posts of Executive Officer, Assistant Director & Deputy Director in Operation/Office, Finance, I.T. and Law Cadres and for Director (Law), Director (Operations) and Deputy Director General (Operations).

9. Written Test for short listing of the large number of applications as detailed above should have been held as per practice and as required under clause 02.5.2.1(b) of the Operating Manual **(Annex-VII).** However, the recruitment process was finalized without any such written tests for the positions of Dy. Director/Assistant Director/Executive Officer and offers of appointment were issued **(Annex-VIII).** The whole process was completed by 01.06.2010.

10. Number of applications at the time of interview subsequently risen to 23,648 **(Annex-IX).** No record of call letters issued was maintained and original evaluation sheet (grade assessment) filled by the members of the Selection Committees were not preserved and placed on records to scrutinize/authenticate average marking prepared for appointments. Similarly police verification and medical tests of the appointed persons were not carried out in most of the cases.

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11. Scrutiny of the records reveal that 132 appointment letters were issued on 02.06.2010 to various persons across Pakistan on 01.06.2010 perhaps to escape from the injunctive order dated 02.06.2010, passed by the Peshawar High Court, Abbottabad Bench in writ petition No.209/2009 **(Annex-X)** restraining EOBI to issue appointment letter to any person. These appointment letters had been sent without any dispatch numbers and entering into the register for record maintenance and tracking.

12. Scrutiny of the records, relevant files and data submitted by IT Department during the process of recruitment, the Committee observed that a number of discrepancies/irregularities in the process of recruitment were carried out in these appointments. Defective short-listing owing to which candidates having un-matched/irrelevant qualifications, acquiring qualification after appointment, deficient post qualification experience, over-age and without required domiciles were entertained as indicated below:

i. Unmatched/irrelevant qualifications: 21 cases

ii. Acquiring qualifications after appointments: 29 cases

iii. Deficient post qualification experience: 8 cases

iv. Over age: 21 cases

B. <u>Recruitment by absorption of seven (07) deputationists in March 2010.</u>

13. Seven officials working on deputation in Grade-03, 06 & 07 as Assistant, Executive Officer and Assistant Director respectively were absorbed in EOBI w.e.f. 30th March 2010 vide Office Order No.53/2010 **(Annex-III).** It was observed that while absorbing these deputationists requirement of provincial/regional quota was not observed. It was also noted that in one case qualification prescribed for the post was also not observed.

C. <u>Contract Appointment of 238 officials on contract/daily wages/contingent basis/internee & their subsequent regularization by the Cabinet sub-committee from September 2011 to May 2012:</u>

14. The appointments of 238 employees ranging from Grade 01 to Grade 09 on contract basis were carried out in violation of the rules and procedures. In certain cases of appointments there were **no vacant position/post at the time of appointment as well as at the time of regularization.** Besides observance of prescribed quota and required qualification as per rules had also been compromised.

15. Recruitment rules/procedures **(Annex-XI)** empowers the Chairman EOBI to create temporary posts for a period of six (06) months only, however, filling up of these post needed observance of procedure prescribed by the rules. It has been observed that these temporary posts were meant for a period of six months only but these were extended beyond six months till their regularization by the Cabinet sub-committee vide its notifications **(Annex-XII).** However, it is to be further examined whether the infirmities as indicated above were cured/regularized by Cabinet Sub-Committee's decision or otherwise.

Conclusion:

16. In view of the above findings it is concluded that prescribed rules and procedures were not followed while making the above recruitment/appointment in EOBI. Equal opportunities were not provided to all aspirants for the appointments in EOBI by not holding were test, not constituting appropriate selection committees and making compromises on qualifications etc. Thus, principles of fair play, transparency and rules of natural justice/equity were compromised.

sd/- sd/- sd/-
Ferozuddin Sheikh M. Meraj Nizamuddin Abdul Latif Ch.

sd/- sd/- sd/-
Ayaz Ahmed Uqaili Javed Iqbal Pervaiz Ahmad"

20. The above unanimous report prepared by a six Member high powered committee, constituted by the

management of EOBI speaks volumes about the mismanagement, corruption, nepotism and politicising of the disputed appointments in a mala-fide manner, thereby crushing the merit criteria in a public owned establishment of the Government. It is extremely sad that despite the guidelines given by the apex Court in a series of judgments with reference to fundamental rights guaranteed to each citizen of this country in terms of Articles 4, 9 & 25 of the Constitution, qua selection and appointments in government service and public owned corporations and institutions, many persons like the then Chairman, did not realize or adhere to the reality of merit criteria and were adamant to play with the future of the younger generation for their own good and to achieve their nefarious designs. Though there is ample material available on record, *inter alia*, in the form of detailed list of hand picked appointees, reproduced in paragraph 14 of the memo of petition No.6 of 2011, and several others such lists placed on record of connected human rights case, containing large number of names of politicians, elected members of the National and Provincial Assemblies, Ministers and other persons of so called elite class in the country, however, we have purposely refrained from reproducing such lists to avoid exposing these persons at this stage as it may scandalize them or otherwise cause prejudice to their interest. But as a test case, to demonstrate how persons belonging to one political

group and from two constituencies/areas (Mandi Bahauddin/Sargodha) from where Mr. Nazar Muhammad Gondal, brother of Chairman, EOBI Mr. Zafar Iqbal Gondal, was the elected M.N.A. (N.A. 109 Mandi Bah-u-din) and sitting Minister of Food & Agriculture/CADD from the ruling party, while Mr. Nadeem Afzal Chann, M.N.A. (N.A. 64 Sargodha) and sitting Chairman, PAC, nephew of Mr. Zafar Iqbal Gondal, Chairman, EOBI, were out of way, in an illegal manner obliged and accommodated in the matter of their appointments in bulk, and for the sake of ready reference, a chart prepared and produced by the petitioners, which remained uncontroverted, is reproduced as under to fortify this position:-

Sr. No	Name of Employee	Designation	Personal No	District / Domicile
1	Mutalli Khan Gondal	Director	924345	Mandi Baha-u-din
2	Muhammad Tahir	Asstt Director	924583	Mandi Baha-u-din
3	Pervez Iqbal Mughal	Asstt Director	927844	Mandi Baha-u-din
	Amir Shoaib	Asstt Director	924572	Mandi Baha-u-din
5	Shehzad Aleem	Asstt Director	925906	Mandi Baha-u-din
6	Wajid Waseem	Asstt Director	924629	Mandi Baha-u-din
7	Sheraz Tanveer	Asstt Director	925315	Mandi Baha-u-din
8	Faisal Shehzad	Asstt Director	925622	Mandi Baha-u-din
9	Imtiaz Ahmad	Asstt Director	928007	Mandi Baha-u-din
10	Khawaja Zulqarnain	Asstt Director	925166	Mandi Baha-u-din
11	Waqas Noor	Asstt Director	925984	Mandi Baha-u-din
12	Hafiz Qamar Abbas	Asstt Director	924594	Mandi Baha-u-din
13	Zaman Gondal	Asstt Director	924801	Mandi Baha-u-din
15	Sarfraz Ahmad Gondal	Executive Officer	925995	Mandi Baha-u-din
16	Imran Gondal	Executive Officer	924618	Mandi Baha-u-din
17	Syed Asad Ali	Executive Officer	926001	Mandi Baha-u-din

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18	Zaheer Abbas	Executive Officer	925600	Mandi Baha-u-din
19	Aftab Gondal	Executive Officer	925224	Mandi Baha-u-din
20	Gulzar Ahmad Tulla	Superindent	924083	Mandi Baha-u-din
21	Mudassar Shehzad Gondal	Asstt.	926669	Mandi Baha-u-din
22	Muqaddas Shehzad Gondal	Asstt.	927402	Mandi Baha-u-din
23	Muhammad Nawaz	Asstt.	927377	Mandi Baha-u-din
24	Muhammad Bux Tahir	Asstt.	926976	Mandi Baha-u-din
25	Muhammad Arshad	Asstt.	927479	Mandi Baha-u-din
26	Mukhtar Ahmad	Asstt.	928018	Mandi Baha-u-din
27	Naeem Abbas	Asstt.	927004	Mandi Baha-u-din
28	Nadeem Akhtar	Asstt.	927162	Mandi Baha-u-din
29	Sumera Yaseen	Asstt.	926987	Mandi Baha-u-din
30	Muhammad Razzaq	Asstt.	926692	Mandi Baha-u-din
31	Rizwan Farooq	Asstt.	927275	Mandi Baha-u-din
32	Sajjad Akbar	Asstt.	926307	Mandi Baha-u-din
33	Irfan Ali	Asstt.	926921	Mandi Baha-u-din
34	Qamar Zaman	Asstt.	928041	Mandi Baha-u-din
35	Muhammad Bashir	Asstt	928030	Mandi Baha-u-din
36	Iqbal Hussain	Asstt.	926829	Mandi Baha-u-din
37	Syed Qasim Raza	Asstt.	926512	Mandi Baha-u-din
38	Shama Mughees	Asstt.	926998	Mandi Baha-u-din
39	Tahira Najaf	Asstt.	928029	Mandi Baha-u-din
40	Aoon Raza	Asstt.	927048	Mandi Baha-u-din
41	Maryam Noreen	Asstt,	926830	Mandi Baha-u-din
42	Umer Draz	Asstt.	927991	Mandi Baha-u-din
43	Nisar Ahmad	Asstt.	927037	Mandi Baha-u-din
44	Muhammad Shoaib	Asstt.	926614	Mandi Baha-u-din
45	Shahwez Ahmad	Driver	926545	Mandi Baha-u-din
46	Malik Ahsan Sajjad	Driver	928074	Mandi Baha-u-din
47	Imran Nazeer	N.Q	926272	Mandi Baha-u-din
48	Naveed Hayder	N.Q	927151	Mandi Baha-u-din
49	Umair Ul Hassan	NQ	926374	Mandi Baha-u-din
50	Safdar	NQ	928198	Mandi Baha-u-din
51	Nasar Abbas	NQ	927140	Mandi Baha-u-din
52	Mohsan Raza	NO.	927071	Mandi Baha-u-din
53	Adnan Raza	NQ	927082	Mandi Baha-u-din
54	Umer Draz	N.Q	927297	Mandi Baha-u-din
55	Kashif Nawaz	N.Q	927300	Mandi Baha-u-din
56	Sajid Naeem	NQ	926750	Mandi Baha-u-din
57	Amjad Farooq	N.O.	927184	Mandi Baha-u-din

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58	Sajid Mehmood	N.Q	927322	Mandi Baha-u-din
59	Nadeem Hayat Gondal	Asstt Director	925939	Sargodha
60	Anees Ul Hassan Naqvi	Asstt Director	926636	Sargodha
61	Rizwan Ajmal Bhatti	Asstt Director	924641	Sargodha
62	Abdul Hafeez	Asstt Director	924607	Sargodha
63	Shoaib Harral	Asstt Director	925597	Sargodha
64	Qaisar Zaman	Asstt Director	925326	Sargodha
65	Muhammd Farman	Executive Officer	926896	Sargodha
66	Imran Faisal	Executive Officer	924709	Sargodha
67	Amjad Umer	Asstt.	927264	Sargodha
68	Muhammad Arshad	Asstt.	926965	Sargodha
69	Aoon Abbas Shah	Asstt.	927253	Sargodha
70	Ejaz	Asstt.	927311	Sargodha
71	Faisal Nadeem	Asstt	926910	Sargodha
72	Abdul Ghaffar	Asstt.	927286	Sargodha
73	Junaid Hassan	Assn.	926681	Sargodha
74	Muhammad Imran	Asstt.	927106	Sargodha
75	Muhammad Saqlain	Asstt.	927242	Sargodha
76	Liaquat Ali	N.Q	924141	Sargodha
77	Azhar Abbas	NQ	928187	Sargodha
78	Muhammad Ijaz	NQ	927311	Sargodha
79	Mumtaz Ahmad	NQ	927446	Sargodha
80	Punan Khan	NQ	928085	Sargodha
81	Tauseef Ahmad	NQ	927435	Sargodha
82	Nadeem Akhtar	Asstt.	927162	Sargodha

Thus, to cut the long story short, the respondents and the interveners have nothing with them to defend these palpable illegalities in the process of appointments.

21. A careful examination of the whole record appended with these petitions, in particular the detailed order dated 25.3.2011, thereby taking cognizance of these allegations of corruption in the matter of appointments in EOBI, under Article 184(3) of the Constitution, and various subsequent orders passed in this case, go to show that ample opportunity was allowed to the respondents to defend their misdeeds in

this regard, but to no avail, rather in the form of the report of the fact finding committee on recruitment/appointment, as reproduced above, eventually the respondents have conceded to the case of the petitioners in this regard, we, therefore, need no further deliberations and reasons to undo such wrongs and illegalities. If any case law is needed to fortify our view, a reference can be made to the following cases:-

(1) Muhammad Yasin versus Federation of Pakistan **(PLD 2012 S.C. 132)**

(2) Muhammad Ashraf Tiwana versus Pakistan **(2013 SCMR 1159)**

(3) Tariq Aziz-ud-Din: in re **(2010 SCMR 1301)**

(4) Mahmood Akhtar Naqvi versus Federation of Pakistan **(PLD 2013 S.C. 195)**

(5) Contempt proceedings against Chief Secretary, Sindh and others **(2013 SCMR 1752).**

22. In the **1st** case of **Muhammad Yasin** *(supra)* the appointment of Chairman Oil and Gas Regulatory Authority (OGRA) was declared illegal. In the **2nd** case of **Muhammad Ashraf Tiwana** *(supra)* the appointment of the Chairman Securities and Exchange Commission of Pakistan (SECP) was held to be in contravention to statutory requirements. Both these cases reiterated the principle that appointments made in a statutory body or Corporation under the control of Provincial or Federal Government in an arbitrary and capricious manner cannot be allowed to hold the field. In the **3rd** case of **Tariq Aziz-ud-Din** *(supra)* this Court

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underscored the integral link between good governance and a strong and honest bureaucracy. It was stated that this could only come about if appointments made were based on a clear merit criterion, in accordance with the relevant laws and rules as opposed to favouritism and nepotism. In the **4th** case of **Syed Mahmood Akthar Naqvi** *(supra)* the Supreme Court, examining the issue of political pressure placed on the civil service by the executive, held that the matter was one of public importance as such undue influence by political powers infringed the fundamental rights under Articles 9, 14, 18 and 25 of the Constitution. In the **5th** case, which is a more recent judgment of this Court, relating to **contempt proceedings against the Chief Secretary Sindh and others** (2013 SCMR 1752), wherein, *inter alia,* vires of certain legislative instruments introduced by the Sindh Government regarding regularization and absorption of civil servants (particularly, in the police department) was under scrutiny/challenge, the Court examined all the relevant aspects of the case in detail and expressed its views about the maintainability of petitions, absorption, deputation, out of turn promotions and reemployment in Government service qua their subsequent validation through some legislative instruments; principle of locus poenitentiae and effect of such legislation attempting to nullify the effect of the judgments of the Superior Courts. In this regard, while striking down these pieces of legislation,

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being contrary to the spirit of Articles 240 and 242 of the Constitution and various provisions of Sindh Civil Servants Act 1973, it laid down several guiding principles. The principle of law propounded in this judgment, with reference to many other earlier judgments of the Apex Court, lend full support to the case of the present petitioners, as regards illegal appointments, contract appointments, absorptions and their regularization etc., particularly, when these acts are motivated to frustrate and nullify some earlier judgments/orders of the Superior Court in a dishonest, colourful and *mala-fide* manner, as discussed in the earlier part of this judgment and hereinafter. All the cases discussed above reveal that the jurisprudence of this Court has been clear and consistent with regard to the manner in which appointments to public offices are to be made strictly in accordance with applicable rules and regulations, without any discrimination and in a transparent manner. Thus, it is essential that all appointments to public institutions must be based on a process that is palpably and tangibly fair and within the parameters of its applicable rules, regulations and bye-laws. But conversely, it is a sad fact of our bureaucracy that it can be so susceptible to the whims and wishes of the ruling elite class etc, which results in an obvious weakening of state institutions such as the EOBI, whereby the general public, whose interest such establishments have been

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charged with protecting, are adversely and heavily affected in different ways.

23. Indeed, if we allow these petitions substantial hardship is likely to be caused to many of the respondents/ appointees who will lose their appointment/jobs because of the illegalities in their respective appointments committed by EOBI, but the fact remains that such ill-gotten gains cannot be defended/protected under any cannon of law or even on humanitarian considerations, as, such gains availed by the illegal appointees were at the cost of other deserving candidates who had applied for these posts, being citizens of this country, with a legitimate expectation that they would be able to seek appointment on the basis of their eligibility-cum-merit criteria to be observed as per the applicable rules and regulations of the EOBI. From the material available on record, it is crystal clear that even the respondents in EOBI against whom allegations of nepotism, corruption and mala-fide have been levelled have offered no legitimate defence except to say that such exercise may be protected for the benefit of appointees. Similar is the position in the case of appointment of Raja Azeem-ul-Haq Minhas, as evident from the material placed on record, which shows that how after his resignation from a post in BS-18 in the Income Tax Group, he jumped in the EOBI, got appointment and promotions from one step to another to reach BS-21 within a short period of three years.

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We have specifically asked Chaudhry Afrasiab Khan, learned ASC to show us any provision of law, whereby an employee of the institution like EOBI can be appointed on deputation in the Prime Minister Secretariat as Joint Secretary (BS-20) and within no time of his coming back, promoted as Director General (BS-21), but he had no plausible answer to such query. As a matter of fact, looking to the material available on record, the discussion about illegal appointments in the EOBI, made in the preceding paragraphs of this judgment is a drop in the bucket what has exactly happened in this whole process during the year 2009 and thereafter from time to time.

24. Having discussed as above, another important aspect of the case, which needs serious consideration is about the fate of the illegal appointees, which is subject matter of consideration in the present proceedings. If we look at this aspect of the case from the angle of those who have succeeded to get appointments in the manner, as discussed above, some of them may claim that since they met the requisite qualifications for the posts and were thus appointed, they cannot be made to suffer due to illegalities committed by the management of EOBI. However, when we place their cases for appointment in juxtaposition to the other applicants, who had applied for these vacancies and are 23648 in number, we find that these candidates having equal right of opportunity as citizens of this country, in terms of Article 25 of the

Constitution were thrown out of the competition despite the fact that they also met the requisite qualifications and might have been more meritorious, but could not exert either political pressure or avail the fruits of nepotism and corruption, forming basis for the selection and appointment of other candidates, many of whom had not even applied for the job in terms of the advertisement for these vacancies made in the month of April, 2009, and in this manner they succeeded in getting entry from the backdoor at the cost of many other *bona-fide* candidates, whose applications were literally thrown in the dust bin in an un-ceremonial manner just for the sake of accommodating the blue eyed ones. All these factors, are over and above the violation of rules, regulation and other codal formalities meant for these appointments, *inter alia,* highlighted by the fact finding committee on recruitment/ appointment in its report, which is a serious subject for the reason that it is based on examination of the entire original record of such proceedings of appointments, right from the date of publication of advertisement regarding these vacancies, and till date none has come forward to question the impartiality of the committee or the authenticity and correctness of such report. In these circumstances, in our opinion, if the appointment of any single appointee during this process is protected on one or the other pretext or for any other consideration it will amount to protecting their ill-gotten

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gains, acquired through unlawful means, and to perpetuate corruption and discrimination under the disguise of sympathetic consideration for such appointees for the sake of their economic well being.

25. In the same context, we have also considered as to whether the appointees in the EOBI, who may be the ultimate affectees of this judgment's fall out, could be allowed to participate in the fresh process of selection and appointments in terms of this order? Our answer to this question is twofold. Firstly, though the appointments of these persons have been challenged under Article 184(3) of the Constitution within the ambit of public interest litigation and none of other applicants, who were more than 23127 in numbers, has come forward to agitate/assert his own individual grievance before the Court, nevertheless, their legal and Constitutional rights have been widely infringed at the hands of the then management of EOBI. Thus, even in their absence their interest is to be equally safeguarded on the principle of justice and fair play; secondly, it may amount to giving a premium to the appointees coming from the backdoor if we allow their participation in the forthcoming process of appointment in the EOBI as a special case. In these circumstances, we deem it proper to leave it open for the management of EOBI to decide the question of participation of the affectees of this judgment in the fresh/new process of

selection and appointments in the affirmative or otherwise. But in case decision of the management of EOBI is in the affirmative, it will be implementable only in the situation when the record of other applicants in response to the earlier advertisement of April, 2009 etc., is intact with them and they are also allowed equal opportunity of participation. To put it in other words, in case the management of EOBI decides to allow all those applicants who have submitted their applications in response to the advertisement made in April, 2009 or thereafter, which as per report of the fact finding committee are more than 23,127 in numbers, then the affectees of this judgment will also be entitled for similar treatment. Needless to observe that for the process of selection and appointments as per criteria fixed by the management of EOBI fresh applications will also be invited and processed in a transparent manner without any discrimination, on requisite merit criteria for each post.

26. Another aspect of the case, which needs further examination, is the appointment of 238 employees/ officials in the EOBI on contract/daily and contingency basis during the period September, 2011 to May, 2012 and their purported regularization. In this regard, apart from the material placed on record by the petitioners alongwith the contempt application in HRC No.49012-P of 2010, duly accompanied with requisite documents in support thereof,

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there is also the report of the fact finding committee on recruitment/ appointment, reproduced above, which goes to show that these 238 employees in Grade-1 to Grade-9 were initially appointed on contract basis and for this purpose procedure prescribed under the rules and regulations of respondent EOBI was again flagrantly and ruthlessly violated. Not only this, subsequently, in a colourable and *mala-fide* manner, for their regularization some summaries were floated and their illegal approval was obtained from the Cabinet Sub-Committee, which otherwise neither figures anywhere in the hierarchy of EOBI nor has any legal authority to rectify such illegal, wrong and corrupt practice of appointments. It is strange to notice that these appointments were made at a time when there were no available posts for these persons and this whole exercise was, on the face of it, undertaken on the basis of nepotism and political pressure in vogue during that period. The learned ASC for the respondent EOBI and the D.A.G. have not defended this action, while the learned ASCs representing some of these appointees have also not been able to satisfy this Court that how the Cabinet Sub-committee can intervene in the functioning of the EOBI and commit such illegality in violation of its rules and regulations to protect these illegal appointments or to bless them with any form of legitimacy. In addition to it, it is also pertinent to mention that all this exercise was undertaken by the respondents despite specific

stay order issued by this Court on 21.1.2011, which reads as follows:-

> "Mr. Tajammal Hussain son of Khadim Hussain, Senior Assistant, EOBI has moved an application to Honourable Chief Justice of Pakistan alleging serious allegations qua fresh recruitments made by the Chairman, EOBI in flagrant violation of the prevalent rules, regulations and policy.
>
> 2. After having gone through the entire record furnished by the complainant as well as press clippings (Daily News & Jang), wherein all the necessary details qua each of the new appointee have been furnished. We are tentatively of the view that prima facie the prescribed procedure was never followed and for the sake of arguments if it is admitted that there is no prescribed procedure, the principles of natural justice have been violated ruthlessly. It is worth mentioning that on 15.5.2009, applications were called against 250 vacant vacancies in EOBI. It is amazing that no short listing could be made, no interview or written test whatsoever was got conducted, but on the contrary the vacant vacancies have been distributed under political pressure and to oblige the people of 'Mandi Bahauddin' which is the constituency of the Chairman.
>
> 3. Chairman, EOBI is present and has attempted to justify his actions but failed to point out that under which provision of the law of Employees' Old Age Benefit Act, 1976 (in short EOBI Act) he was competent to make all such appointments, including appointments on contract basis that too from Mandi Bahauddin. It is conceded that no advertisement was made for contract appointments as the nature whereof was ad-hoc and temporary.
>
> 4. Be as it may, it appears that every appointment has been made in a reckless, careless and irresponsible manner without adhering to the relevant procedure and provisions of law enumerated in the EOBI Act and rules/regulations made there under. The explanation furnished by the Chairman, EOBI and Secretary, Ministry of Labour and Manpower is

> unsatisfactory. However, in the interest of justice matter is adjourned enabling the Chairman, EOBI and Secretary, Ministry of Labour and Manpower to furnish a concise statement indicating all the details qua appointments made pursuant to the advertisement appeared in various newspapers, whereby applications were invited on 15.5.2009 or otherwise. The details regarding appointments made on contract basis shall also be furnished. Entire record regarding above mentioned appointments shall be produced on the next date of hearing. Chairman, EOBI and Secretary, Ministry Labour and Manpower may also furnish additional documents, if need be, before the next date of hearing. Similarly, the complainant is also at liberty to file additional documents. It is, however, directed that till disposal of this human rights case, no more appointment shall be made by the Chairman EOBI, Secretary Ministry of Labour and Manpower and at the direction of concerned Minister. Matter adjourned and shall be treated as part heard. To come up on 8.2.2011.". (underlining given for emphasis)

Obviously, in such circumstances all the appointments made in violation of the directions/order of this Court are nullity in the eyes of law, thus, cannot be blessed with any legitimacy or protection under any canon of law. As a matter of fact, this matter would require further probe into these allegations in the context of violation of the stay order dated 21.1.2011. To sum-up, the 238 appointments, separately referred to and discussed in the report of fact finding committee are also to be struck down, being illegal, void and of no legal consequence, while contempt proceedings against those responsible for this highhandedness and illegality are to be initiated and continued separately, for which the office shall prepare a separate file and issue notices to the concerned officials of EOBI and all others found involved in this scam.

27. As a sequel of above discussion, both these petitions are allowed and disposed of in the following terms:-

(a) All the illegal appointments, deputations and absorptions made in the EOBI, as detailed in the report of fact finding committee on recruitment/ appointment, are declared to be without lawful authority and of no legal effect. Accordingly their services stand terminated forthwith;

(b) All these vacancies and other available vacancies in EOBI shall be advertised and filled afresh strictly in accordance with applicable rules and regulations, subject to prescribed quota, requisite qualifications and merit criteria, for which the Chairman, EOBI shall be personally responsible to ensure transparency;

(c) The matter regarding all the illegal appointments, including the appointment of Raja Azeemul Haq Minhas in the World Bank, shall be investigated by the NAB authorities; the respondents No.3 to 7 and all others directly or indirectly involved in the process of such illegal appointments on the basis of corruption, nepotism and political exigencies shall be proceeded against in accordance with law with intimation regarding compliance of these directions to this Court within two months.

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(d) Office shall prepare and maintain a separate file for initiating contempt proceedings, under Article 204 of the Constitution and other enabling provisions of contempt laws, against all those who are, *prima-facie,* found guilty of violation of order dated 21.1.2011 in H.R.C. No.48012 of 2010, particularly in the process of appointment of 238 employees/ officials during the period September 2011 to May 2012.

In view of the above, other miscellaneous applications filed in the Constitutional Petition No.6 of 2011 and H.R.C. No.49012-P of 2010 also stand disposed of.

Judge

Judge

Judge

Announced at Islamabad
on 17th March, 2014

Judge

Approved for reporting
Riaz