

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

Criminal Petition No. 713-L/2020

(Against the judgment of Lahore High Court dated 02.06.2020, passed in I.C.A. No.196 of 2019)

CHIEF EXECUTIVE OFFICER, MULTAN ELECTRIC POWER COMPANY LTD,

KHANEWAL ROAD, MULTAN---Petitioner

Versus

MUHAMMAD ILYAS and others---Respondents

Criminal Petition No. 714-L/2020

(Against the judgment of Lahore High Court dated 02.06.2020, passed in I.C.A. No.201 of 2019)

D.G HR AND ADMIN MEPCO, MULTAN ELECTRIC POWER COMPANY LTD.

KHANEWAL ROAD MULTAN---Petitioner

Versus

MUHAMMAD ILYAS and others---Respondents

Criminal Petitions Nos. 713-L and 714-L of 2020, decided on 22nd March, 2021.

(a) Civil service---

---Appointment against vacancy---Directions for appointment issued by the High Court not complied with by the petitioner-company---Whether contempt of court---Judicial overreach---Scope---In the present case the entire recruitment process for the posts in question was cancelled---As a result not a single appointment was made to the said posts as per the public advertisement on the basis of which respondent-candidate had applied---Since the entire recruitment process for the posts was scrapped, respondent could not lay any claim to the said post---Consequently the contempt proceedings initiated (by the High Court) on the basis of order to issue appointment letter to the respondent also came to an end---Petitions for leave to appeal were converted into appeals and allowed, and the constitutional petition filed by the respondent before the High Court was dismissed with the observations that the (High Court) Judge in the present case, instead of deciding the case on merits, passed the final order of appointment of respondent without adjudicating the issue in hand and then executed the order by directing the petitioner-company that the appointment letter be issued by the next date of hearing; that by assuming the role of the Executive the judge disregarded his core function of adjudication, in accordance with law; that ignoring the constitutional boundaries of separation of powers could easily equip a judge with a false sense of power and authority, and that this was a dangerous tendency and must be guarded against to ensure that the judicial role continued to remain within its constitutional limits.

(b) Constitution of Pakistan---

---Art. 199---Judicial review---Scope---Judicial review was the power of the court to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions were consistent with the Constitution and the law---Actions judged inconsistent were declared unconstitutional or unlawful and, therefore, rendered null and void---Court entrusted with the power to judicially review an executive action could only declare it to be right or wrong but could not take over the functions that belonged to another organ of the State.

(c) Administration of justice---

---Judge must always stay within the four corners of the law and must not be swayed by emotions or his own understanding of justice, because in doing so he failed to decide the case in accordance with law.

(d) Constitution of Pakistan---

---Art. 199---Judicial overreach---Scope---When judiciary encroached upon the domain of the Executive, it was said to commit judicial overreach - which occurred when a court acted beyond its

jurisdiction and interfered in areas which fell within the Executive and/or the Legislature's mandate--- Through such interference the court violated the doctrine of separation of powers by taking on the executive functions upon itself---Such judicial role imperiled the separation of powers, jeopardized the legitimacy of the judicial institution and undermined constitutional democracy---Thus, it was imperative that the courts did not derogate from their constitutionally mandated oversight function of judicial review.

R Suttner "The Question of 'Judicial Overreach'" Polity (22 May 2017) available at <http://www.polity.org.za/article/the-question-of-judicial-overreach-2017-05-22> ref.

Mian Muhammad Javaid, Advocate Supreme Court along with Ikram ul Haq, CEO, MEPCO and Nasar Hayat, Director HR MEPCO for Petitioners (in both cases).

Respondents in person (in both cases).

Date of hearing: 22nd March, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---Brief facts of the case are that Respondent No.1 applied for the post of Assistant Line Man ("ALM") in pursuance to a public advertisement issued by Multan Electric Power Company ("MEPCO"). Respondent No.1 applied and sat the written test but was not called for the interview and as a result not selected for the post. Aggrieved, Respondent No.1 challenged MEPCO's failure to select and appoint him to the post. On merits the post of ALM was advertised and the last candidate who was selected for interview had a score of 66 marks in written examination, whereas Respondent No.1 had 50 marks. In this background the High Court passed the following order dated 14.11.2018:

"Despite the fact that the petitioner obtained 50 marks in written test as per report submitted by learned counsel for the respondents and his name was placed at Sr. 269 of the successful candidates, the petitioner was not called for interview and on account of his non-participation in such process, he was not appointed.

2. Assistant Director appearing for MEPCO has confirmed that 1000 vacancies of ALM are still lying vacant. The petitioner who was qualified against the said post and is liable to be appointed as ALM in BS-7 has been deprived of his such right in an unauthorized and illegal manner.

3. Assistant Director, MEPCO, is directed to appear along with Appointment Letter duly signed and issued by the Competent Authority in favour of the petitioner as ALM before the Court on the next date of hearing.

4. Adjourned to 15.11.2018."

(emphasis supplied)

2. As MEPCO failed to submit the Appointment Letter on the next date of hearing, respondent No.1 filed a contempt petition against the petitioner company and its officers. Vide order dated 31.05.2019 show cause notice for contempt was issued to the Chief Executive Officer and another officer of the petitioner company and they were also personally summoned. Both the orders dated 14.11.2018 and 31.05.2019 were challenged by MEPCO through an intra court appeal before a Division Bench in the High Court. The said appeal was dismissed vide impugned order dated 02.06.2020. Hence, this petition

3. It is important to underline that the entire recruitment process for the posts of ALM was cancelled, as the post of ALM was upgraded. As a result not a single appointment was made to the post of ALM as per the public advertisement on the basis of which Respondent No.1 applied. Faced with this situation Respondent No.1 referred to certain appointment letters and alleged that inspite of the cancellation of the entire recruitment process for the post of ALM, some persons were appointed as ALM through the backdoor. The Chief Executive Officer, MEPCO who has appeared before us today clarified that the said appointments were not in pursuance to the public advertisement, but instead were under a special quota of the deceased employees and has no nexus with the recruitment process under which Respondent No.1 had applied. Therefore, not only on merits, but even otherwise, as the entire

recruitment process for the post of ALM was scrapped, Respondent No.1 could not lay any claim to the said post. The interference by the High Court vide order dated 14.11.2018, which was subsequently upheld in the ICA vide impugned judgment dated 02.06.2020, was without any legal foundation and therefore, both the orders are set aside and the writ petition of Respondent No.1 stands dismissed. As a consequence the contempt proceedings initiated on the basis of order dated 14.11.2018 also comes to an end.

4. Vide order dated 14.11.2018 the learned judge of the High Court directed the Assistant Director MEPCO to produce the Appointment Letter of Respondent No.1, despite that Respondent No.1 did not qualify for the interview and therefore could not have been appointed under the recruitment policy of the authority. The High Court totally ignored the recruitment process, the policy of the executive and the merit settled by MEPCO and relied on an irrelevant fact that 1000 seats were still lying vacant at MEPCO. This order has left us somewhat disturbed.

5. It appears that the meaning and scope of "judicial review" has perhaps eluded the attention of the learned judge while exercising his power under Article 199 of the Constitution and in passing order dated 14.11.2018. Judicial review is the power of the court to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the Constitution and the law. Actions judged inconsistent are declared unconstitutional or unlawful and, therefore, rendered null and void. The court entrusted with the power to judicially review an executive action can only declare it to be right or wrong but cannot take over the functions that belong to another organ of the State. Under our Constitution, the Legislature, Executive, and Judiciary all have their own broad spheres of operation. It is not permissible for any one of these three organs to encroach upon the domain of another. A judge must always stay within the four corners of the law and must not be swayed by emotions or his own understanding of justice, because in doing so he fails to decide the case in accordance with law.

6. In the instant case, the judge instead of deciding the case on merits, passed the final order of appointment of respondent No.1 without adjudicating the issue in hand and then executed the order by directing the petitioner that the Appointment Letter be issued by the next date of hearing. By assuming the role of the Executive the judge disregarded his core function of adjudication, in accordance with law. Ignoring the constitutional boundaries of separation of powers can easily equip a judge with a false sense of power and authority. This is a dangerous tendency and must be guarded against to ensure that the judicial role continues to remain within its constitutional limits.

7. When judiciary encroaches upon the domain of the Executive, as in this case, where the learned judge disregarded the eligibility criteria and the recruitment policy of the Executive Authority and assumed the function of the Executive, it is said to commit judicial overreach - which occurs when a court acts beyond its jurisdiction and interferes in areas which fall within the Executive and/or the Legislature's mandate.¹ Through such interference the court violates the doctrine of separation of powers by taking on the executive functions upon itself. The instant case is a textbook case of judicial overreach, where a judge directs an authority to issue an Appointment Letter disregarding the recruitment process, merit and the employment policy of the executive authority. Such judicial role imperils the separation of powers, jeopardizes the legitimacy of the judicial institution and undermines constitutional democracy. It is imperative that the courts do not derogate from their constitutionally mandated oversight function of judicial review. Certain values in the Constitution have been designated as foundational to our democracy which means that, as corner-stones of our democracy, they must be scrupulously observed. It is a sure recipe for a constitutional crisis if these values are not observed and their precepts are not carried out conscientiously.

8. For the above reasons, the impugned judgment and order are set aside. These petitions are converted into appeals and allowed. The writ petition filed by Respondent No.1 is dismissed. A copy

of this order shall be dispatched to the learned Hon'ble Chief Justice of the Lahore High Court, Lahore who may place the same before the Hon'ble Judges of the Court for information.

MWA/C-5/SC Petition allowed.