

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, HCJ  
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL APPEAL NOS.414 & 817 OF 2021**

(Against the judgment dated 10.02.2021 and  
24.11.2020 passed by Lahore High Court, Lahore in  
W.P.Nos.6661 & 14121/2019)

Government of the Punjab, through Secretary,  
Schools Education Department, Lahore etc.

...Appellants  
(In both cases)

**VERSUS**

Abdur Rehman & others  
Muhammad Iqbal

(In C.A.414/2021)  
(In C.A.817/2021)

...Respondents

For the Appellants:

Mr. Shaukat Rauf Siddique, Addl.A.G.Pb.  
(in both appeals)

For Respondent No.1-3  
& 5-7  
(In CA.414/2021)

Mr. Naveed Ahmed Khawaja, ASC  
(Via video link at Lahore)

For Respondent No.4  
(In C.A.414/2021)

Nemo

For the Respondent:  
(In CA.817/2021)

Mr. Muhammad Ozair Chughtai, AOR/ASC  
(Via video link at Lahore)  
Along with Respondent present in Court at  
Islamabad.

Date of Hearing:

18.11.2021

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.** These Civil Appeals are directed against the judgments dated 10.02.2021 and 24.11.2020, passed by Lahore High Court, Lahore, in W.P.Nos.6661 & 14121/2019, respectively whereby the aforesaid Writ Petitions filed by the respondents were allowed.

2. The transitory facts of the case are that the Government of Punjab, School Education Department announced a Recruitment Policy for Educators on 19.05.2016. The required academic qualification for the post of AEOs (Assistant Education Officer) was 2nd Division in Master Degree in any subject whereas the

professional qualification B.ED/M.ED/M.A (Education) with at least 2<sup>nd</sup> Division with further rider that BBA (Honors-4 years) BA (Honors 4 Years) B.Sc. (Honors 4 years) BS (Honors 4 years) in prescribed subjects/Master in any (Honors 2 years). The respondents applied for the posts of AEOs but they were not considered for appointment as AEOs allegedly on the ground that their qualifications were not at par. The respondents filed complaint before the Complaint Redressal Cell which was accepted vide order dated 18.09.2017. The Appellant No.3/Chief Executive Officer/District Education Authority, Okara filed an appeal before the Secretary, Schools Education Department, Lahore which was allowed vide order dated 21.12.2018. The respondents filed aforesaid Writ Petitions which were allowed with the directions to the respondents to implement the order of CRC.

3. Leave to Appeal was granted in CPLA 669-L/2021 (Civil Appeal No.414/2021) on 20.4.2021 in the following terms:

“The learned Additional Advocate General, Punjab contends that the High Court has non-suited the petitioners on the ground that instead of filing a review petition before the Complaint Redressal Cell, directly an Appeal has been filed. He further contends that the very Appeal could have been considered as a review and decided accordingly and the High Court was not justified in setting aside the order passed in the Appeal by the Complaint Redressal Cell on the ground that review petition ought to have been filed.

2. The contentions raised by the learned Additional Advocate General, Punjab need consideration. Leave to appeal is therefore granted to consider inter alia the same. Let appeal stage paper books be prepared on the available record. However, the parties are free to file additional documents, if any within a period of one month. As the matter relates in service, the Office is directed to fix the same for hearing in Court expeditiously, preferably after three months.

3. In the meantime, status quo shall be maintained by the parties”.

Since the learned counsel for the appellants invited attention of this Court that in CPLA 669-L/2021 (Civil Appeal No.414/2021) leave to appeal was granted on 20.4.2021, therefore in connected CPLA 116-L/2021 (Civil Appeal No.817/2021) leave to appeal was also granted on 13.8.2021 on the same terms with the directions to the office to club the matters and fix in Court.

4. The learned counsel for the appellants argued that the impugned order is based on wrong interpretation of Clause 21 (c) and (d) of the Recruitment Policy 2016-17. The combined reading of the above clauses does not restrict the appellants to file direct

appeal before the Secretary, Education against the order passed by the Complaints Redressal Cell. It was further averred that the remedy of review petition was an additional remedy/option before the Complaints Redressal Cell which by no means restricted the filing of appeal before the Secretary. It was further contended that while passing the impugned order, the High Court ignored the word "may" used in Clause 21 (c) of the Recruitment Policy 2016-17 which was directory and not mandatory. It was further contended that the respondents are holding degrees of different disciplines of Engineering, DVM and D-Pharmacy, which was not prescribed qualification for the post of AEOs.

5. The learned counsel for the respondents argued that against the order of CRC, a review petition was required to be filed first and the appeal before Secretary was only maintainable against the decision on review petition. It was further contended that respondents appeared in the entry test and declared successful by NTS. After conducting interviews, the Recruitment Committee issued a tentative merit list in which the names of the respondents were included but in the second list, their names were included in the rejected candidates, therefore a complaint was filed and CRC directed the appellants to consider the cases of respondents.

6. Heard the Arguments. The Recruitment Policy 2016-17 meant for the School Specific Educators & Assistant Education Officers, depicts and envisions that in order to achieve 100% enrolment of school going children of age three years and above and for ensuring quality education to meet the requirements enshrined under Article 25-A of the Constitution of Islamic Republic of Pakistan, 1973, the competent authority had approved the SNE for 46374 posts of Elementary School Educators with the provision of at least four teachers in standalone Primary Schools.

7. In order to redress the grievance and ventilate the suffering in case of any compliant lodged against the recruitment process, a CRC was also established. Relevant Paragraphs No.21 and 22 of the Recruitment Policy are reproduced as under:-

**"21. COMPLAINTS REDRESSAL CELL (CRC)**

A Complaints Redressal Cell at Divisional Level for redressal of complaints will be constituted by the Department comprising the followings:

- Retired Judge of High Court or Sessions Court. Chairman
- One nominee of the School Education Department not below Grade-19. Member
- Commissioner or his nominee not below the rank of Additional Commissioner. Member/Secretary

#### TORs

- a) The complaints shall be processed and considered by the CRC.
- b) The Chairman will forward recommendations of CRC to the concerned Chairman Recruitment Committee/DCO for further necessary action.
- c) The EDO (Edu) or complainant may also file review petition before the Complaints Redressal Cell within 30 days. [Emphasis Applied]
- d) The EDO (Edu) or complainant against the decision of Complaints Redressal Cell on review petition may also file appeal before the Secretary Scholl Education within thirty days. [Emphasis Applied]
- e) The nominee of the School Education Department shall forward monthly report by 10<sup>th</sup> of each month to the Additional Secretary (Schools), School Education Department.
- f) At least one meeting shall be convened by the Complaints Redressal Cell in a month.

22. The EDOs (Edu) and Appointing Authorities shall ensure implementation of the policy in letter and spirit. However, if any direction contrary to the policy is passed by the Complaints Redressal Cell at Divisional level or any legal forum, review petition shall be filed within the stipulated period. [Emphasis Applied] The Provisional Government's Representative/ Member of Complaints Redressal Cell, Departmental Representative of DRC and EDO (Edu) shall play pivotal role in defending and implementing the policy".

8. The aforesaid Recruitment Policy had provided comprehensive and self-sufficient mechanism for achieving relief against any inappropriate, inequitable and erroneous action of the concerned authority during recruitment process. The raison d'être of setting up a window for lodging complaints by means of Complaints Redressal Cell was to facilitate the resolution of grievances in a fair and impartial manner with the sole idea to check and test out whether in the recruitment process, transparency and fairness has been maintained and the recruitment has been made on pure merit or favoritism, nepotism and or some injustice or wrong has been done with any applicant who has been deprived of

recruitment, regardless of having required academic qualifications, credentials/antecedents commensurate to the Policy. The forum of CRC was conferred the powers to decide the complaint and also render decision on review petition, if any, filed before it to revisit or retrace its earlier findings on the same complaint if found contrary to the mandate of Recruitment Policy. After exhausting these remedies, the hierarchy of appellate forum was provided and role of appellate authority was assigned to the Secretary who could entertain the appeal of an aggrieved party. In essence, the powers conferred to CRC and the Secretary in appeal are indeed quasi-judicial in its pith and substance. The term "quasi-judicial" is employed to expound and spell out the persons or authorities, though not part of judiciary but under the bounds of given powers, exercising the functions and tasks of judicial nature. Further, this term is used to describe functions of governmental officers, boards and agencies which perform functions of a judicial character, although they are not part of the judiciary. *Adolph v. Elastic Stop Nut Corp. of America*, 87 A.2d 736, 737, 18 N.J Super, 543. It is applied to action, discretion, etc., of public administrative officers required to investigate or ascertain existence of facts and draw conclusions therefrom as basis for official action and to exercise judicial discretion. *U.S. Steel Corp. Vs. Stokes*, 76 S.E.2d ,474, 477, 478, 138 W.Va. 506. It is generally used to describe acts of public boards and municipal officers as the result of investigation and rational judgment, based upon evidentiary facts in a matter within the discretionary power of the board or officers. A "quasi-judicial power" is one involving judgment and discretion and which may be conferred upon an executive or administrative board as an incident to its duties. *Hoyt v. Hughes County*, 142 N.W.471, 473. 32 S.D.117. **Ref: Words and Phrases (Permanent edition), Volume 35A. (West Pub. Co.)** In the case of Dr. Zahid Javed.Vs. Dr. Tahir Riaz Chaudhary & others. (PLD 2016 SC 637), this Court held that the word "Quasi" is defined 'as if', as though, as it were, in a manner, in a certain sense or degree, seeming, seemingly, analogous to and it may mean resemblance. The quasi-judicial power is a duty conferred by words or by implication on an officer to look into facts and to act on them in the exercise of discretion and it lies in the judgment and discretion of an officer other than a judicial officer. A quasi-judicial power is not

necessarily judicial, but one in the discharge of which there is an element of judgment and discretion; more specifically, a power conferred or imposed on an officer or an authority involving the exercise of discretion, and as incidental to the administration of matters assigned or entrusted to such officer or authority.

9. The bone of contention is that the respondents appeared in the Aptitude Test conducted by the NTS and declared successful. After clearing the Aptitude Test, they were called upon to appear in the interview. The District Recruitment Committee (DRC) issued a tentative merit list of the candidates, in which the names of the respondents were mentioned but on 19.06.2017, a second merit list was displayed in which the candidature of respondents was rejected. The respondents throughout the proceedings maintained that they fulfilled the threshold of academic qualification and while allowing them to sit in the Aptitude Test as well as calling for interview, their academic qualifications were properly considered, otherwise they could not have been allowed to join the recruitment process.

10. According to paragraph No.21 of the TORs incorporated in the Recruitment Policy, a channel/venue of CRC was constituted with the powers to forward the recommendations to the concerned Chairman of the Recruitment Committee/DCO. In the same TORs, right to file review petition was also extended to the EDO or the complainant within thirty days and in Clause (d), it was further provided that the EDO or the complainant against the decision of CRC on the review petition may also file appeal to the Secretary School Education within thirty days. In paragraph No.22 of the Recruitment Policy, further emphasis were made that if any direction contrary to the Policy is passed by the CRC at Divisional level or any legal forum, the review petition shall be filed within the stipulated period. The composite effect of Clauses (c) & (d) of TORs jot down in Paragraph No.21 read with Paragraph No.22 makes it quite discernible without any ambiguity that before invoking appellate remedy, filing of review petition was mandatory before the CRC. In our comprehension and understanding, the right of filing of review petition was in fact allowed before the CRC for expeditious disposal of the matter and if some wrong recommendations were made by them, an opportunity was

provided by way of review petition before CRC to revisit the decision as the matter pertained to the Recruitment of educators which could not be left unattended, dragged or uncompleted for an unlimited period of time. Unless the review petition was filed and CRC arrived at decision, no appeal could have been filed before the Secretary, School Education. The remedy of appeal before the Secretary was not provided against each and every order but for all intents and purposes, this right was available to invoke only to challenge the decision of review petition which could have filed by the CEO if in his understanding, some errors were apparent on the face of the record or the recommendations of CRC were beyond the scope of Recruitment Policy but he failed to fulfill the elementary requirement of the Policy.

11. The renowned Latin maxim *Ubi jus, ibi remedium*, articulates in well-defined terms that where there is a right, there is a remedy. In the command of jurisdictional prudence, the courts generally show the restraint with the directions to the parties to first take recourse of an alternate and or equally efficacious mechanism and framework of remedy provided rather than to take departure in order to surpass or circumvent such remedy. The appellate authority in this case could not be approached bypassing the remedy of review petition. The differentiation between lack of jurisdiction and the wrongful exercise of the available jurisdiction was rightly taken into consideration by the learned High Court. The order passed by the appellate authority suffered from vice of *coram non iudice* which axiom is particularly applied to the court or authority that devoid of jurisdiction in the matter or before a Judge not competent or without jurisdiction to deal with the matter.

12. When the words are clear nothing remains to be seen and if the words are ambiguous or uncertain then other aids move in. While applying the rule of plain meaning, the hardship or inconvenience if any cannot become the foundation to modify or alter the meaning. The 'plain meaning rule' verbalizes the interpretation using the ordinary meaning of the language and the starting line is the language itself and if the words are not statutorily defined, the ordinary meanings may be derived from the dictionary. The learned counsel for the appellants made much emphasis that in Clause (c)

of TORs attached to Paragraph 21 of the Recruitment Policy, the words "may also file review petition" have been used which are directory in nature, hence without filing review petition, an appeal could have filed. In our considerate view, there is no issue of any mandatory or directory provision is involved. The word used "may" cannot be read in isolation but the entire provision is to be read wherein the right of filing appeal before the Secretary was based on the decision of CRC on review petition which is significant to understand and no discretion or choice was vested in to surpass or circumvent the mandatory requirement of filing review petition before appeal. In the case of Ibrahim.Vs. Muhammad Hussain (PLD 1975 SC 457), it was held that it is not to be assumed that there is right of appeal in every matter brought before a Court for its consideration. The right is expressly given by a statute or some authority equivalent to a statute such as a rule taking the force of a statute. This Court in the case of Habib Bank LTD.Vs. The State and 6 others (1993 SCMR 1853), held that it must be specified in clear terms that the appeal against an order is competent. This right cannot be supplemented by implications. Whereas in the case of Muhammad Yar Buttar and 4 others. Vs. Board of Governors, Overseas Pakistanis Foundation, Islamabad and another (1999 SCMR 819), it was held that the right of appeal is a statutory right.... No extraneous consideration or matter can be imported in the relevant statute so as to abridge or enlarge scope of appeal. In the case of Syed Masroor Shah and others V. The State (PLD 2005 SC 173), it was held that the right of appeal cannot be availed unless it is conferred in a clear manner by some enactment or statute or the rules having the sanctity of some law.

13. The findings advocated in the appellate order passed by the Secretary, Education are mutually destructive. On one hand, the Secretary held that the respondents had no required qualification though before the Secretary, Education also, the respondents asserted that their degrees are equivalent to master degree and also presented a copy of the Notification issued by the Higher Education Commission of Pakistan. On the other hand, while relying on the statement of the departmental representative, the Secretary observed that the Government of Punjab School Education Department issued a Recruitment Policy 2017-18 that repealed and replaced all earlier Recruitment Policies issued by the



School Education Department and as per the new Policy, all the leftover/vacant posts were to be advertised under the new policy and at present no post of AEO (BS-16) is lying vacant in District Okara. The Policy was issued by the Government of Punjab and the appeal was filed by no other than the CEO/District Education Authority but neither the Secretary noted that without the decision of review petition, no appeal was maintainable nor the CEO, who filed the appeal, took any notice of it regardless of being an important functionary of the education department, i.e. the CEO/District Education Authority who failed to comply with basic requirement accentuated in the Recruitment Policy.

14. The learned counsel for the appellants as a fall back argument contended that the High Court could convert the proceedings and remand the matter to CRC. The lexicons of law provide definition of the legal maxim "Ex Debito Justitiae" (Latin) "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act ex-debito justitiae is an inherent power of courts to fix the procedural errors if arising from courts own omission or oversight which resulted violation of the principle of natural justice or due process. The learned counsel for the appellants referred to the case of Muhammad Salman Vs. Naveed Anjum and others (2021 SCMR 1675), in which the doctrine of "ex debito justitiae" was discussed in the minority view. It was held that the power to convert and or treat one kind of proceeding into another is derived from the doctrine of "ex debito justitiae", wherein, the court owes a debt to the litigant to correct an error in judicial dispensation. The Superior Courts have been treating and/or converting appeal into revisions and vice versa and Constitution Petitions into appeal or revisions. We are sanguine to the well settled doctrine of "ex debito justitiae" entrenched and engrained in the legal system but each case has to be decided in its peculiar facts and circumstances therefore while applying this doctrine, the conduct of the parties is also very relevant and significant which cannot be ignored lightly under its domain and realm. In Halsbury's Laws of England Vol. 11, 3rd Edition, pages 140-141, paragraph 265, it is pointed out that an order for issue of

a writ of certiorari may be granted ex debito justitiae if the conduct of the party applying has not been such as to disentitle him to the relief. The appellant should have pleaded the doctrine of "ex debito justitiae" at very initial stage in the High Court without advocating or adverting the case on merits but neither any such plea was taken by the appellants before the learned High Court that wrong remedy was availed with a bona fide mistake rather in the high court, the appellants insisted and maintained that a direct appeal could be filed without filing review petition before CRC, so much so in this court also, much emphasis were made by the learned Addl. A.G during course of his arguments that filing of review petition was not mandatory and without filing review petition before CRC, an appeal was maintainable before the Secretary which is miscomprehended and misconceived notion.

15. In the wake of above discussion, we do not find any justification for interference in the impugned judgments, therefore, the appeals are dismissed.

Chief Justice

Judge

Judge

ISLAMABAD  
18th November, 2021  
Khalid  
Approved for reporting