

**P L D 2002 Supreme Court 68**

**Present: Sh. Riaz Ahmed, Syed Deedar Hussain Shah and Javed Iqbal, JJ**

**SHAMAS-UL-BAHADUR --- Petitioner**

**versus**

**NISAR AHMED and another---Respondents**

Civil petition for Special Leave to Appeal No.96 of 2000, decided on 12th July, 2001.

(On appeal from the judgment and order of the N.-W.F.P. Service Tribunal dated 27-11-1999 in Service Appeal No.537 of 1998)

**(a) Service Tribunals Act (LXX of 1973)---**

----S. 4---Constitution of Pakistan (1973), Art. 212(3)---Reinstatement in service---Cancellation of appointment order ---Appointment of civil servant was in accordance with law---Competent Authority cancelled the appointment order of the civil servant to accommodate some other person---Service Tribunal allowed the appeal and set aside the cancellation order---Validity-- Competent Authority could always amend/modify or cancel the order passed by it subject to condition that the same suffered from any legal infirmity or cancellation was in the interest of exigency of service or public interest-- Where the appointment was cancelled for certain obvious reasons and on extraneous consideration, the question of cancellation of any lawful order did not arise---Service Tribunal, in the present case, had examined the entire record with diligent application of mind and the conclusion as derived was in accordance with law---Supreme Court declined to interfere with the judgment passed by the Service Tribunal---Leave to appeal was refused.

Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 ref.

**(b) Public functionaries---**

----Good governance is dependent upon an upright, honest and strong, bureaucracy---Mere submission to the will of superior is not a commendable trait in a bureaucrat.

Jehanzaib Rahim, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Date of hearing: 12th July, 2001.

**ORDER**

**JAVED IQBAL, J.--**This petition for leave to appeal is directed against the judgment dated 27-11-1999 passed by the N.-W.F.P. Service Tribunal, Peshawar, whereby the appeal of Nisar Ahmed (respondent. No. 1) has been accepted and order dated 20-12-1997, cancelling his appointment has been set aside.

2. Briefly stated the facts of the case are that petitioner was appointed against the post which fell vacant on the retirement of his father and subsequently he was promoted to the post of Ward Ardali by the competent Authority after completion of necessary formalities and the services of Nisar Ahmed (respondent No. 1) were terminated as his

appointment was found illegal by the Competent Authority. The learned Service Tribunal accepted the appeal tiled by Nisar Ahmed (respondent No. 1), hence this petition.

3. It is mainly contended by Mr. Jehanzaib Rahim, learned Advocate Supreme Court on behalf of petitioner that the learned Service Tribunal has no jurisdiction to interfere in the initial appointment of petitioner as he got appointment against the post which fell vacant on retirement of his father being qualified for the job. It is urged emphatically that Competent Authority can always amend/modify and cancel any order passed by it on account of any legal infirmity or irregularity and accordingly appointment order dated 20-12-1997 of Nisar Ahmed (respondent No.1) was cancelled and which could not have been interfered by the learned Service Tribunal as this aspect of the matter does not fall within their domain of jurisdiction. It is argued that the petitioner was appointed as Ward Ardali by the Competent Authority on merit and Service Tribunal is not empowered to make subjective assessment regarding fitness and therefore, the question of promotion being outside the purview of learned Tribunal could not have been decided.

4. We have carefully examined the view-point as canvassed by Mr. Jehanzaib Rahim, learned Advocate Supreme Court on behalf of petitioner in the light of relevant provisions of law and record of the case: We have minutely perused the impugned judgement. We have also scrutinized the case of Nisar Ahmed (respondent No. 1) to determine as to whether his appointment was made in accordance with law and prescribed procedure or otherwise? It transpires from the scrutiny of record that the application of Nisar Ahmed (respondent No. 1) was processed in accordance with the prescribed procedure and he was recommended by Divisional Director, Health Services in pursuant to the standing instructions issued by the Provincial Government, and he was appointed against the vacancy which fell vacant after the retirement of his father namely Ghulam Muhammad, who retired on 8-8-1995 after attaining the age of superannuation. It is an admitted fact that Nisar Ahmed (respondent No. 1) is son of an ex-employee and being found fit and qualified was appointed as Ward Ardali on 1-11-1997. There is no denying the fact that on 17-11-1997 his services were dispensed with at the directions of the then Minister concerned but amazingly he was appointed again on 4-12-1997 but his appointment was cancelled once again on 16-12-1997 at the instance of Minister concerned and petitioner was appointed as Chowkidar and subsequently promoted to the post of Ward Ardah. We have no doubt in our mind that no illegality whatsoever has been committed in the appointment of Nisar Ahmed (respondent No. 1). being qualified and son of an ex-employee whose appointment was cancelled without any rhyme and reason in an arbitrary and whimsical manner at tie directions of the then concerned Minister who was not supposed to pass such an illegal .direction which was not only in violation of the relevant provisions of law, but can be cited as classic example of abuse and misuse of authority. The Director Health and District Health Officer concerned should have resisted such an unlawful directions in view of the dictum as laid down in case titled Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 which is reproduced hereinbelow for ready reference:--

"Tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed as incharge of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order or direction of such elected functionaries without bringing to their notice, the legal infirmities in such orders/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. A

Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a Superior Authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action."

After having a careful scrutiny of the entire record we are of the view that no illegality whatsoever has been committed by the learned Service Tribunal. There is no cavil to the proposition that Competent Authority can always amend/modify or cancel the order passed by it subject to condition that it suffers from any legal infirmity or cancellation whereof is in the interest of exigency of services or public interest. The Competent Authority has cancelled the appointment order of Nisar Ahmed (respondent No. 1) to accommodate the blue-eyed chap namely Shamas-ul-Bahadur for certain obvious reasons and on such extraneous consideration the question of cancellation of any lawful order does not arise. The learned Service Tribunal has examined the entire record with diligent application of mind and the / conclusion as derived by the learned Service Tribunal is strictly in accordance with law and being unexceptionable does not call for any interference. The petition being devoid of merit is accordingly dismissed

Q.M.H./M.A.KJS-139/S Petition dismissed.

