

جناب عنایت اللہ صاحب، رکن صوبائی اسمبلی، صوبہ خیبر پختونخوا۔

نمبر شمار	سوال	جواب
(الف)	کیا وزیر صحت ارشاد فرمائیں گے کہ:- آیا یہ درست ہے کہ ہیلتھ کیئر کمیشن خیبر پختونخواہ میں غیر قانونی بھرتیاں عمل میں لائی گئی ہیں؟	خیبر پختونخواہ ہیلتھ کیئر کمیشن میں کسی قسم کی غیر قانونی بھرتیاں عمل میں نہیں لائی گئی۔ مذکورہ بھرتیاں ہیلتھ کیئر کمیشن کے قواعد و ضوابط کے مطابق کی گئی ہیں۔
(ب)	اگر الف کا جواب اثبات میں ہو تو مذکورہ کمیشن غیر قانونی بھرتیوں سے متعلق کی گئی انکوائری کا کیا نتیجہ نکلا ہے؟ اسکی تفصیل فراہم کی جائے۔	اس سلسلے میں عرض ہے کہ مذکورہ بھرتیوں کے بارے میں جو انکوائری محکمہ صحت میں کی گئی ہے اس کو انکوائری کمیٹی نے closed کیا ہے۔ مذکورہ لیٹر (الف) ہے مزید برآں عرض ہے کہ مذکورہ بھرتیوں میں چیف ایگزیکٹو آفیسر کی آسامی کے خلاف ایک امیدوار نے پشاور ہائی کورٹ پشاور میں رٹ داخل کیا گیا تھا، جو کہ ہائی کورٹ میں زیر سماعت رہ کر پشاور ہائی کورٹ پشاور نے خارج کر دیا ہے اور ہیلتھ کیئر کمیشن میں بھرتی کی گئی چیف ایگزیکٹو آفیسر کی بھرتی کو درست قرار دیا گیا (ہائی کورٹ کے فیصلے کے نقل لف ہے جس کے بابت سپریم کورٹ آف پاکستان میں اپیل دائر کی گئی ہے جو کہ سپریم کورٹ میں زیر سماعت ہے۔



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

No.SOH-I/HD/7-53/Misc/16

Dated Pesh: the 10<sup>th</sup> January 2018.

To

*MZ*  
*15.1.18*

The Chairman, *ICED*  
Health Care Commission,  
Peshawar.

SUBJECT:- ENQUIRY INTO THE ALLEGED IRREGULARITIES IN THE APPOINTMENT OF CHIEF EXECUTIVE, DIRECTORS AND ADDITIONAL DIRECTORS IN KHYBER PAKHTUNKHWA, HEALTH CARE COMMISSION (KPHCC)

I am directed to refer to the subject noted above and to state that an enquiry committee comprising of Special Secretary and Additional Secretary Health was constituted (copy attached) to probe into the above cited allegations and the officers concerned conducted the enquiry and submitted report to Health Department/Secretary Health. After detailed examination of enquiry report it is stated that the said enquiry stands closed at Health Department level.

Encl: As above

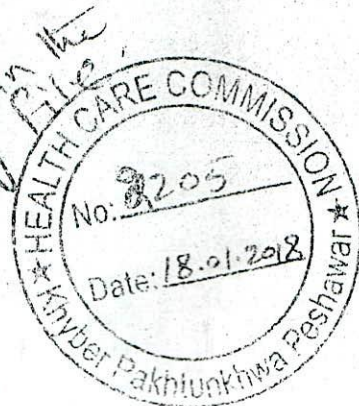
*[Signature]*  
Section Officer-I

Endst No and date even

- C.C
1. PS to Secretary Health Department.
  2. PA to Addl. Secretary Health Department.

*[Signature]*  
Section Officer-I

*Abbas!*  
*To file*  
*18/1*





9  
IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 318 / 2017

TITLE:

Hafiz Muhammad Abdul Hayee, Son of Haji Ghulam Muhammad,  
Garhi Atta Khan, House No. T-903, Kohat City

.....Petitioner

VERSUS

1. The Province of Khyber Pakhtunkhwa, through the Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
3. The Khyber Pakhtunkhwa, Health Care Commission, through its Chairman, 25-D, Circular Road, University Town, Peshawar,
4. The Selection Committee through its Chairman, the Khyber Pakhtunkhwa, Health Care Commission, 25-D, Circular Road, University Town, Peshawar.
5. The Chief Executive officer, Khyber Pakhtunkhwa, Health Care Commission, 25-D, Circular Road, University Town, Peshawar.
6. Mr. Asrar Sardar, Chief Executive Officer, 25-D, Circular Road, University Town, Peshawar.

..... Respondents

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC  
REPUBLIC OF PAKISTAN, 1973

Respectfully Sheweth:

The Petitioner very humbly dares to seek permission to plead for redressal of his grievances through the instant Writ Petition as follows:

- BRIEF FACTS WARRANTING INTERFERENCE OF THIS AUGUST COURT**
1. That the Respondent No. 03, a public sector corporate body (Incorporated through Khyber Pakhtunkhwa, Health Care Commission Act, 2016) advertised in the Print and Electronic Media in April, 2016, to hire persons of the qualification and experience as shown in the advertisement for a number of vacant posts.



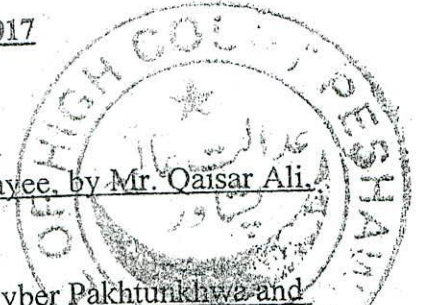
IN THE PESHAWAR HIGH COURT,  
PESHAWAR,  
(Public Department).

Writ Petition No.318-P/2017

Date of hearing:- 14.06.2017

Petitioner(s):- Hafiz Muhammad Abdul Hayee, by Mr. Qaisar Ali,  
Advocate.

Respondent (s):- Chief Secretary Govt. of Khyber Pakhtunkhwa and  
other officials of the Provincial Government by Mr.  
Moeen ud Din Hamayoun, AAG and Mr. Shumail  
Ahmad Butt, Advocate, for respondent No.6.



JUDGMENT

ROOH-UL-AMIN KHAN, J:- By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), petitioner Hafiz Muhammad Abdul Hayee, seeks issuance of the following writ:-

- i) *To declare the recommendations/ approval of respondents No.3 and 4, regarding appointment of Mr. Aazar Sardar (respondent No.6), as the Chief Executive Officer of the Khyber Pakhtunkhwa Health Care Commission, as illegal, discriminatory, arbitrary devoid of merit and based on favouritism, and*
- ii) *By declaring the recommendations of respondent No.4 to the extent of petitioner as legal and based on merit, the respondents be directed to appoint the petitioner as Chief Executive Officer of KP Health Care Commission.*
- iii) *To grant any other remedy/relief, which this Court considers deem fit and appropriate, not specifically prayed by the petitioner.*

2. In essence, the grievance of the petitioner is that the Khyber Pakhtunkhwa Health Care Commission (Public Sector Corporate Body), incorporated through the Khyber

*As per Sec 1*

TESTED  
[Signature]



Fakhtunkhwa Health Care Commission Act, 2015, advertised some vacant posts in various disciplines, including the post of the Chief Executive Officer, in April, 2016. Applications were invited from suitable candidates having domicile of Khyber Pakhtunkhwa/FATA and possessing the requisite qualifications and experiences as described in the advertisement against each post. The petitioner, having the requisite qualification and experience, amongst others competed for post of the Chief Executive Officer. The petitioner was short-list and called for interview held on 4<sup>th</sup> October, 2016, whereafter merit-list was prepared wherein the petitioner with securing 68.7 marks was placed at second position while respondent No.6 with 82.7 marks, was figured at first position. Petitioner alleged that apart from the post of the Chief Executive Officer, respondent No.6 had also applied for the post of the Director Business Support and Operation in the respondents' Organization, carrying lower pay scale and experience, who during interview obtained 74 marks only, resultantly, he could not be selected, but for higher slot he was awarded 82.7 marks, which shows the mala fide on the part of Appointing Authority. The official respondents were required to apply uniform scoring criteria for assessment of the candidates for both the posts, but he by virtue of favouritism, sheer violation of merit and application of double standard criteria, they appointed

100 marks

ATTESTED  
EXAMINER  
PERSONNEL HIGH CA  
15.09.2017



respondent No.6 against post of the Chief Executive Officer. Petitioner put much emphasis on the argument that besides awarding low and discriminatory marks to his credentials and experiences as compared to respondent No.6, no marks of National Management Course (NMC) has been awarded to him by the respondents. Had the marks of NMC been awarded to the petitioner, the situation would have been entirely different as then he would have been on top of the merit list. He has also objected the marks of interview awarded to him and respondent No.6 alleging the same to be the result of discrimination. He further alleged that the recommendations of the respondent No.4 with regard to appointment of respondent No.6 as the Chief Executive Officer, being violative, unconstitutional, illegal, discriminatory and arbitrary, liable to be struck down.

3. Respondents have filed their Para-wise comments, wherein they have raised variety of objections, legal as well as factual. Controverting the stance of the petitioner, they have asserted that merits and transparency were ensured in accordance with the scoring criteria notified electronically at the time of advertisement for appointment against the questioned post. The petitioner and respondents No.6 have been dealt with in accordance with said criteria without any discrimination. The petitioner has been given full marks for his Master Degree, (which was

*See below*



required/eligibility), additional courses and experiences, NMC and NIPA despite of the fact that he had not provided any evidence with regard to grades in case of National Management & NIPA. The petitioner himself seeks refuge for 06 marks in lieu of National Management Course, probably thinking that he has received (B) grade. In this view of the matter, if 04 marks are deducted from him and on the same analogy 02 marks from the marks of NIPA course given to him, he will be dropped to 5<sup>th</sup> position. While in case of simple correction of minor clerical mistake ie. deducting 03 marks out of 10 given to him for NMC, as the ceiling limit under this head is 17 marks, he will drop to 3<sup>rd</sup> position of the merit list, in the following manner:-

Upper limits of marks under column of courses: 17.

i. Marks received by petitioner for courses : 10

Marks received for NMC course: 10

Total Marks received: 20

According to version of the respondents 03 marks still need to be deducted from the petitioner which will be over and above if the benefit of "A" grade given to him is also rationalized/corrected. Respondents alleged that performance and understanding of respondent No.6 with regard to topics relevant to the position of the Chief Execution Officer was much better in comparison to his competitors. Besides, he has background in Health Sector, while the petitioner did not have any such experience. The Chief Executive Officer post requires a person to be

*See the 5th*

ATTE  
110



visionary, possessing strong leadership qualities and strategic planning skills while the post of Director is mainly related to monitoring operation and general administration. Though, respondent No.6 had applied for both positions i.e. The chief Executive Officer and Director Business Support/Operations, but he showed least interest for the latter position. Respondent No.6 besides procurement supply chain management had experience of working as Chief Executive Officer and consultant in USA, Canada and Pakistan Air Force. In comparison to petitioner (Specialization in accountancy), he is equipped with the degree in management and International certification in project management along with other courses in allied disciplines from Canada, USA and Pakistan. They sought dismissal of the instant writ petition.

4. We have given our anxious consideration to the exhaustive submissions of learned counsel for the parties and perused the record with their able assistance.

5. It appears from the record that, besides, other vacant positions, post of the Chief Executive Officer, was advertised by the Khyber Pakhtunkhwa Health Care Commission, (herein after referred to as KP HCC) on 20.04.2016. Six candidates including the petitioners being eligible were duly short-listed and interviewed on 04.10.2016 and respondent No.6 was notified as selected candidate on 24.10.2016. It is to be noted that total 70

*As per record*

ATTEST  
*[Signature]*



215

marks were allocated to "Qualification and experience" and 30 marks for "Interview". As per prescribed scoring criteria, the following marks were given to the petitioner and respondent No.6 in the aforesaid two categories of marks-

**A. Qualification and Experience (Marks: 70): (a)**

S. #	Name	Father's name	Required degree 10 marks	Add. Experience 12 marks	Higher qualification 10 marks	Add. qualification relevant to post 10 marks	Add. Courses 17 marks	Any Sr. Position Held SR/Mid 11 marks	Total Level
1	Aazar Sardar (Respdt No. 6)	Sardar Ali	8	12	-	10	17	11	58
2	Hafiz M. Abdul Haye (Petr)	Haji Ghulam Muhd.	10	12	-	10	10	11	53

**B. Interview (Marks: 30): (b)**

S. No.	Name	Father's Name	Communication Skills 5 Marks	Present ation Skills 5 Marks	General Knowledge/ Islamiyat 5 Marks	Skills and procedures 5 Marks	Tech. 10 Marks	Total
1	Aazar Sardar (Respdt No.6)	Sardar Ali						24.7
2	Hafiz M. Abdul Haye (Petr)	Haji Ghulam Muham mad						15.7

A look over the aforesaid table reveals that petitioner has been awarded marks of the requisite Degree, additional experiences, additional qualification relevant to the post, additional courses etc in accordance with scoring criteria notified at the time of advertisement, without any

*Look over*

ATTESTED  
 EXAMINER  
 11.11.11



discrimination and similar to the position in case of respondent No.6. Admittedly, Respondent No.6 has been given 17 marks of Additional courses and the petitioner as 10 and rightly so because respondent No.6 had more additional courses in his favour. It appears from the record, that respondent NO.6 besides procurement supply chain management has experience of working as the Chief Executive Officer and consultant in USA, Canada and Pakistan Air Force. In comparison to the petitioner, respondent No.5 is also equipped with a degree in management and International Certifications in Project Management along with other courses in allied disciplines from Canada, USA and Pakistan. We do not see any discrimination or mala fide on the part of respondents No 1 to 5 in awarding the marks to the petitioner and respondent No 6 under the head of "Qualification and Experience".

6. So far as the marks of interview are concerned, out of total 30 marks, respondent No.6 has been awarded 24.7 and the petitioner 15.7 marks. It was argued by petitioner that respondent No.6, besides the post of Chief Executive Officer, had also applied for the post of Director Business Support/Operations in the same Organization, who secured 17 marks in Interview, conducted by the same Committee but in the Interview for the post in question, he was awarded 24 marks, which shows the colourable exercise discretion by the members of the Committee. The objection

*Handwritten signature*

*Handwritten signature*  
ATM/SS  
17 JUL



of the learned counsel for the petitioner that as to on what ground and criteria respondent No.6 was awarded higher marks in an interview against the post of Chief Executive Officer when he had obtained only 17 marks in an interview for the Post of Director Business Support, which is lower in scale, is misconceived, hence, repelled, because when both the positions were different in nature, the Committee might have confronted respondent No.6 with different questions in respect of the two posts. It is manifest from the comments that respondent No.6 was more interested in the questioned post, therefore, it does appeal to a prudent mind that he would have well prepared himself for the said post and might have answered the questions correctly as compared to the other position for which he was least interested. Even otherwise, as per stance of the respondents, performance of respondent No.6 in relevant topics to the questioned post was much better in comparison to his competitors. He had also background of working in Health Sector while the petitioner had no such previous history. Respondent No.6 besides procurement supply chain management had experience of working as Chief Executive Officer and consultant in USA & Canada and Pakistan Air Force. In comparison to petitioner respondent No.6 had a Degree in management and International Certification in Project Management along with other courses in allied disciplines from Canada USA

*Handwritten signature*

*Handwritten signature*  
ATTORNEY  
GENERAL  
PUNJAB  
11/11/11



and Pakistan. In this view of the matter, respondent No.6 might have impressed the members of Interview Committee by ~~giving~~ more authentic replies as compared to petitioner. Even otherwise, Interview is subjective test and it is not possible for a Court of law to substitute its own opinion for that of Interview Committee, in order to give relief to the petitioner. What had transpired at interview and what persuaded the members of the Committee to award more marks to respondent No.6 and less to the petitioner, is something which a court of law is not equipped to probe as held by the Honble Supreme Court in case titled, "Muhammad Ashraf Sangri Vs Federation of Pakistan and others" (2014 SCMR 157), in the following words:-

"Essentially an interview is a subjective test and it is not possible of a Court of law to substitute its own opinion for that of the Interview Board in order to give the petitioner Relief. What transpired at the interview and what persuaded one member of the Board to award him only 50 marks is something which a Court of law is certainly not equipped to probe and to that extent we cannot substitute our own opinion with that of the Interview Board."

Same view has been re-affirmed by the worthy Apex Court in case, titled, "Arshad Ali Tabassum Vs the Registrar Lahore High Court, Lahore" (2015 SCMR 112).

7. For the reasons discussed above and deriving guidance from the judgment of the Apex Court, the argument of learned counsel for the petitioner with regard to the marks in interview is repelled.

*Arshad Ali Tabassum*  
TESTED  
A. H.



8. Adverting to another limb of arguments learned counsel for the petitioner that respondent No.6 is not domiciled in Quetta Bakhankwa and that the Chairman of the KP HCC was his relative, suffice it to say that in the list of eligible candidates/short listed candidates, in the relevant column respondent No.6 has been shown as domiciled in Peshawar while an iota of evidence is not available on file to prove respondent No.6 to be the close relative of the petitioner.

9. As regards the arguments of learned counsel for the petitioner that at the time of interviewing the candidates, the Chairman HCC had resigned, therefore, he was not competent to deal with the process of interview. No doubt, on 01.06.2016, the Chairman HCC submitted his resignation but the same was not accepted, therefore, he being the Chairman HCC was competent to act as a Chairman.

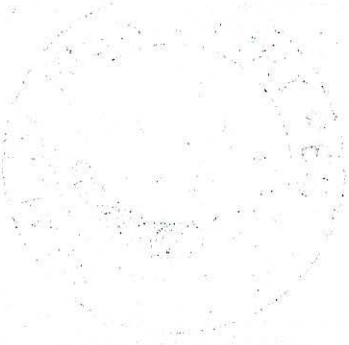
10. For what has been discussed above, we are firm in our view that the petitioner has not been discriminated nor his any right much less fundamental has been infringed in the process of appointment against the post of the Chief Executive Officer KP HCC. Accordingly, this petition being meritless is hereby dismissed and the writ sought by the petitioner is thus refused.

Announced:  
14.06.2017  
Sriji Afridi P.S.

*Handwritten signature*  
JUDGE

*Handwritten signature*  
JUDGE

CERTIFIED TO BE TRUE COPY  
*Handwritten signature*



*Handwritten notes and signatures:*  
44-01  
11/7/12  
11/7/12