

**Stereo. H C J D A-38.**

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT AT LAHORE**  
JUDICIAL DEPARTMENT

**ICA No. 602 of 2011**

**J U D G M E N T**

Date of hearing **02.11.2011**  
Appellant by Hafiz Tariq Nasim Advocate  
Respondents by. Dr. Muhammad Akmal  
Saleemi Advocate and Mr.  
Naseem Kashmiri, DAG.

NASIR SAEED SHEIKH,J:- This judgment will dispose of two connected I. C. A Nos. 602 and 617 of 2011, preferred against the judgment dated 28.09.2011, passed by a learned Single Judge in Chamber of this Court in Writ Petition No.3035-2010. ICA No.602 of 2011 has been filed by Farrukh Shakeel Malik, who was the respondent No.4 in the Writ Petition No.3035-2010, whereas ICA No.617-2011 has been filed by Lahore Cantonment Board Executive Officer, who was respondent No.3 in the writ petition.

2. The facts of the case are that Cantonment Board, Lahore through an advertisement dated 18.03.2009, published in Daily 'Dawn', Lahore invited applications for various posts from eligible/suitable candidates. One vacancy

was that of a Garden Supervisor in BPS-13, and the required qualification of the candidates was Matric (2<sup>nd</sup> Division) with at least one year Diploma in Horticulturist/Floriculturist/Landscaping from a recognized institution. In pursuance to the said advertisement as per parawise comments submitted by respondents No.1, 2 and 3, six applications of candidates were received by the Executive Officer, Cantonment Board, Lahore and the respondent No.3, of the writ petition forwarded those applications to the Director, Military Lands and Cantonments, Lahore region, Lahore, the respondent No.2. The said respondent No.2, Director issued call letters to all the six candidates for written test on 8.10.2009. Out of these six candidates, four applicants appeared in the written test. The writ petitioner Gul Rehman initially **failed** in the written test by securing only **32/100** marks as stated in para.3 of parawise comments to the writ petition. However, taking lenient view, the petitioner of the writ petition alongwith other three candidates was called for the interview held on 7.12.2009. Out of these four applicants, three candidates namely M/s Mustansar Billah Khan, Gul Rehman (writ petitioner) and Farrukh Shakeel Malik, the present appellant appeared in the said interview. The

appellant Farrukh Shakeel Malik secured highest of marks i.e. 371 and all the above three candidates were accordingly declared as successful for recruitment. The parawise comments of the respondents No.2 and 3 further disclosed that in pursuance to direction issued by respondent No.1, Director General Defence, Military Lands & Cantonments, Ministry of defence, Rawalpindi, who is the overall Supervisory Authority of the Cantonment Boards of Pakistan, the existing vacancies for the post of Garden Supervisor for two other Cantonment Boards of Gujranwala and Kharian in addition to that of Lahore Cantonment Board were filled in the manner stated above. In pursuance to the said process vide order dated 26.12.2009, the Director, Military Lands & Cantonments Lahore, Lahore Region, Lahore, offered appointment to Farrukh Shakeel Malik, the present appellant, to the post of Garden Supervisor in Cantonment Board, Lahore, whereas Gul Rehman, writ petitioner, through a separate letter dated 26.12.2009 was offered appointment of Garden Supervisor at Gujranwala Cantonment Board.

3. The writ petitioner Gul Rehman assailed the order dated 26.12.2009 through W.P.No.3035/2010, on the grounds that the Cantonment Board invited applications

through the advertisement dated 18.03.2009 in Daily 'Dawn', Lahore, against only one vacancy of Cantonment Board, Lahore and that he applied for the said post to be posted at Lahore and instead he has been offered appointment of Garden Supervisor at Cantonment Board Gujranwala. It was also contended by the writ petitioner Gul Rehman that the appellant Farrukh Shakeel Malik, who has been recommended for appointment to the post of Garden Supervisor at Lahore through a separate order dated 26.12.2009, was not even eligible to apply for the said post as per criteria specified in the advertisement as he lacked the necessary qualification of the holder of one year Diploma in the Horticulturist/Floriculturist/Landscaping from a recognized institution.

4. In the writ petition, which came up for hearing before a learned Single Judge of this Court, vide order dated 17.02.2010, pre-admission notices were issued to the respondent No.1 (Director General, Military Lands & Cantonments, Ministry of Defence, Rawalpindi), respondent No.2 (Director , Military Lands & Cantonments, Lahore Region, Lahore) and respondent No.4 (Farrukh Shakeel Malik), the present appellant for 9.03.2010. The respondents

No.1 and 2 noted above were also directed by the learned Single Judge to submit their parawise comments within a fortnight. It is a matter of record that parawise comments available on record submitted vide diary No.4361 dated 10.03.2010, are reflected to be submitted by the respondents No.1, 2 3 and 4 under the signatures of Cantonment Legal Advisor Ch. Rashid Ahmad, Advocate, who submitted his power of attorney dated 9.3.2010, which also bears the signatures of respondent No.4, i.e. Farrukh Shakeel Malik, the present appellant. Another important order of the learned Single Judge is the one dated 5.7.2011, which is reproduced as under:-

*Dr. Muhammad Akmal Saleemi, Advocate for petitioner.  
Mr. Muhammad Tahseen Butt, Advocate for respondents No.1 to 3.  
Mr. Abrar Ahmad, Advocate for respondent No.4.*

*“The advertisement dated 18.3.2009 by the office of respondent No.3 shows that the qualificational requirement for the post of Garden Supervisor is Matric (2<sup>nd</sup> Division) with at least one year Diploma in Horticulturist/Floriculturist/Landscaping from a recognized institution.*

*2. Respondent No.4 does not have the requisite diploma. This fact has been admitted by the learned counsel for respondent No.4, as well as, counsel for the respondents/Cantonment, still respondent No.4 was appointed.*

*3. Let respondent No.2 appear in person alongwith relevant documents/policy to explain how respondent No.4 was appointed and how petitioner who applied for a post with the Lahore Cantonment was appointed in Gujranwala Cantonment.*

4. *To come up on 12.7.2011.*

5. The perusal of the next order dated 12.7.2011 reflects that the respondent No.2 did not appear on the said date and deputed an Additional Director Military Lands & Cantonments, Lahore Region, Lahore to tender appearance in the matter and the case was adjourned to 28.09.2011, by the learned Single Judge and the writ petition was finally heard and decided on the said date. The learned Single Judge of this court passed the following conclusive orders upon the matter in paragraphs No.9, 10 and 11:-

*“9. As far as appointment of respondent No.4 is concerned, it is an admitted position that he does not hold the requisite One Year Diploma. Reference to letter dated 10.11.2009 which lays down formula for calculating the merit comes into effect after a candidate crosses the eligibility threshold i.e, of Matric (2<sup>nd</sup> Division) with at least One Year Diploma in the fields given. As, respondent No.4 has hopelessly failed to cross this threshold, he could not have been considered for the post of Garden Supervisor. **Appointment of respondent No.4 is, therefore, declared to be unlawful and is hence cancelled.***

*10. **Respondent No.3 is directed to consider the case of the petitioner for the post of Garden Supervisor at the Lahore Cantonment Board, on the basis of the public advertisement dated 18.03.2009 strictly in accordance with law.***

*11. For the above reasons, this petition is allowed with costs of Rs.25,000/- to be paid to the petitioner by respondent No.3 within a week”.*

6. Aggrieved by the order dated 28.9.2011, the respondent No.4 of the writ petition, Farrukh Shakeel Malik has preferred this ICA, in which notices were issued to all the

respondents of the ICA. The Lahore Cantonment Board also preferred a separate ICA No.617 of 2011, against the order dated 28.9.2011 and both the matters have been heard together by us.

7. It is contended by the learned counsel for the appellant of ICA No.602 of 2011, that the writ petition as decided by the learned Single Judge through the impugned order has been decided in haste. The learned counsel for the appellant elaborated his point after placing reliance upon a reported judgment of the Hon'ble Supreme Court of Pakistan in Punjab Small Industries Corporation vs. Ahmad Akhtar Cheema (2002 SCMR 549) and an unreported judgment of a learned Division Bench of this court in ICA No.170 of 2010, decided on 28.9.2010 that a writ petition cannot be decided without being formally admitted to regular hearing. The learned counsel contended that the instant W.P.No.3035 of 2010 was not formally admitted to regular hearing and the appellant was not given an opportunity to submit the detailed written statement and thus grave prejudice has been caused to him in the decision of the writ petition in the manner hereinabove. The learned counsel further contended that the appellant has been deprived of an opportunity to prove his

eligibility as according to the learned counsel for the appellant, it was admitted by the respondent Cantonment Board in the parawise comments submitted that the appellant was selected as Garden Supervisor and posted in Cantonment Board, Lahore on the basis of criteria of having 11 years experience in the relevant field, written test and interview conducted and in the selection process no irregularity was committed in appointing the respondent No.4 of the writ petition to the post of Garden Supervisor in Cantonment Board, Lahore. Learned counsel for the appellant further submitted that keeping in view the experience of the appellant in the relevant field, the appellant fulfilled the eligibility criteria as required in the advertisement and the learned Single Judge clearly overlooked this aspect of the matter and incorrectly as well as illegally declared the appellant as not eligible to apply for the post in question. Learned counsel next contended that if W.P.No.3035 of 2010 filed by the respondent No.1 of the ICA, could be treated as a writ of quo-warranto, even then as per law declared in the judgment reported as Dr. Azim Ur Rehman Khan MEO vs. Government of Sindh and another (PLD 2004 SC 1142), the learned Single Judge of this court illegally

issued a writ in the nature of quo-warranto by removing the appellant from the public office because the appellant did not suffer any disqualification from being appointed for the post of Garden Supervisor. The learned counsel further argued that the respondent No.1 of the ICA had no locus standi also to institute the writ petition as well and all the above aspects have not been duly attended to by the learned Single Judge while deciding the writ petition through the impugned order dated 28.09.2011.

8. Learned Deputy Attorney General, who appeared to represent the respondents No.2 and 3 solely contended that writ petition should have been decided after its regular admission by the learned Single Judge and the learned Deputy Attorney General also relied upon the two judgments one reported as Punjab Small Industries Corporation vs. Ahmad Akhtar Cheema (2002 SCMR 549) and the other unreported judgment in ICA No.170 of 2010, decided on 28.9.2010 by a Division Bench of this court on the above point. The learned counsel for the respondent-Cantonment Board borrowed the arguments of the learned Deputy Attorney General and only contended that Cantonment Board, appellant of ICA No.617 of 2011 prays for setting

aside of imposition of fine of Rs.25,000/- by the learned Single Judge, through the impugned order. The learned counsel contended that the Cantonment Executive Officer is not the appointing authority; it has only recommended the candidates to the respondent No.3 of the ICA Director, Military Lands & Cantonments, Lahore for consideration of appointment and therefore, the imposition of penalty by the learned Single Judge upon the Executive Officer appellant of ICA No.617 of 2011 was not only unjustified but is also very oppressive.

9. Learned counsel for the respondent No.1 Gul Rehman of ICA No.602 of 2011 fully defended the order passed by the learned Single Judge. He forcefully contended that Farrukh Shakeel Malik appellant of ICA No.602 of 2011 appeared in the court on 5.7.2011 and his learned counsel admitted the facts noted by the learned Single Judge in the said order of the ineligibility of the respondent No.4 as being not possessed with the requisite Diploma. The learned counsel further contended that in view of the admission recorded in the order sheet dated 5.7.2011 of the learned Single Bench in paragraph No.2, there was no further necessity of any opportunity to be granted to the respondent

No.4 of the writ petition i.e., the appellant to submit any further written statement as this admission itself was a sufficient material for the learned Single Judge to decide the matter. The learned counsel for the respondent No.1 further contended that the respondent No.1 of the ICA was fully eligible for the post announced through the advertisement and applied for the same, which post was specifically for Cantonment Board, Lahore and therefore, the learned Single Judge rightly passed the impugned order of recommending the name of respondent No.1, while disposing of the writ petition, for his appointment as a Garden Supervisor at Lahore. Learned counsel further contended that the appointment of the appellant Farrukh Shakeel Malik has also been rightly set aside by the learned Single Judge of this court, through the impugned order as admittedly the appellant Farrukh Shakeel Malik did not fulfill the eligibility criteria as published in the newspaper dated 18.3.2009. The learned counsel for respondent No.1 thus prayed for the dismissal of the ICA No.602 of 2011 instituted by Farrukh Shakeel Malik, the appellant.

10. **We have considered the arguments of the learned counsel for the parties and have perused the record with their able assistance.**

11. We would like first of all to attend to the preliminary point raised by the learned counsel for the appellant of the ICA No.602 of 2011, whereby the learned counsel has expressed the causing of prejudice to the appellant by non-admission formally of the W. P. No.3035 of 2010 by the learned Single Judge and its disposal in the manner through the impugned order dated 28.9.2011.

12. The perusal of the record of the writ petition points out that the writ petition came up for preliminary hearing first on 17.2.2010 and the following order was passed by the learned Judge:-

*“Dr. Muhammad Akmal Saleemi, Advocate for the petitioner.*

*The counsel submits that the petitioner applied for the post of Garden Supervisor with the Lahore Cantonment Board. However, vide letter dated 26.12.2009 he has been posted at the Cantonment Board, Gujranwala. He further submits that respondent No.4, who does not qualify for the post of Garden Supervisor as per the qualifications mentioned in the advertisement, however, has been appointed and posted at Lahore.*

*2. Let pre admission notices be issued to respondents No.1, 2 and 4 for 9.3.2010. Respondents No.1 and 2 will also file their parawise comments within a fortnigh from today.”*

13. Then the matter came up for hearing on 5.7.2011 and the order reproduced in para.3 above was passed .In pursuance to the notices issued by the learned Single Judge of this court, which although is described as pre-admission notice the respondent No.4 of the writ petition Farrukh Shakeel Malik, who is the present appellant engaged a counsel Mr. Muhammad Rashid Khan, Advocate and signed a power of attorney dated 9.3.2010 in his favour, which is a part of the record of the writ petition. Parawise comments on behalf of all the respondents were also filed by the learned Legal Advisor of the official-respondents under the signature of the said learned counsel. These parawise comments contain full defence to be taken by the official respondents as well as the respondent No.4 of the writ petition. An admission has been specifically made by the said learned counsel before the learned Single Judge as noticed in the order dated 5.7.2011 that the respondent No.4 did not fulfill the eligibility criteria as mentioned in the advertisement. In the memorandum of the appeal of ICA No.602 of 2011, the making of admission by the appellant as the respondent No.4 of the writ petition as recorded in the interim order dated 5.7.2011, has not been denied. It has also been not denied

that the appellant did engage Mr. Muhammad Rasheed Ahmad, Advocate as his learned counsel and duly executed power of attorney in his favour dated 9.3.2010 to represent him in the writ petition. In view of the above circumstances available on the record it cannot be validly argued by the learned counsel for the appellant that the appellant had not been afforded a reasonable opportunity to defend the writ petition and to represent his defence/point of view in the writ petition. Final order passed by the learned Single Judge dated 28.9.2011 also records that another counsel Mr. Abrar Ahmad, Advocate represented the appellant before the learned Single Judge and arguments were addressed on his behalf alongwith the other respondents of the writ petition and it is only then that the writ petition was disposed of by the learned Single Judge.

14. Although there is no legal statutory provision about the concept of issuance of pre-admission notice either in the Civil Procedure Code or under the Rules and Orders of the High Court but the issuance of pre-admission notices, which is the prevailing practice of some of the honourable Judges in the High Court for the last so many years, cannot be termed as an incomplete intimation or opportunity to the

respondents to represent their point of view in these days of heavy bulk of litigation in the Superior Courts, particularly in the High Court, where the Hon'ble Judges of the High Court follow a practice of allowing an opportunity to the respondents to contest the case at an early stage by applying a methodology of issuing a pre-admission notice to them. However, this issuance of a pre-admission notice is a notice for all practical purposes to the other side to appear in the case and to put up his point of view/defence in the writ petition and if the respondent elects to engage a counsel and submits written parawise comments through his learned counsel and addresses full fledged arguments at that stage, the necessary requirement of affording a sufficient opportunity of hearing to such a respondent is fulfilled. It is noticed that there was no request made by the respondent No.4 of the writ petition before the learned Single Judge that some further opportunity be allowed to him for submitting any further documents. It is also not the case of the appellant that any preliminary objection legal or factual was further to be raised by the appellant, as the case may be, against the maintainability of the Writ Petition. Therefore, we are of the considered view that there is no substance in the arguments

raised by the learned counsel for the appellant in ICA No.602 of 2011 that the absence of a formal order of the admission of the writ petition to regular hearing in the peculiar facts and circumstances of the instant case has caused any prejudice to the appellant so as to call for any interference on this ground by this court at the appellate stage. It is also to be noted that no preliminary objection against the maintainability of the writ petition has been raised either of the official respondents of the I.C.As on the ground that the writ petition as instituted was barred under Article 199 of the Constitution. It may also be pointed out that the formal order of admission of writ petition or of a civil appeal in the High Court only has some consequence on the administrative side so as to classify the cases for record purposes. The writ petition instituted by the respondent No.1 of the ICA before the learned Single Judge raised the objections qua the eligibility of and the methodology used by the official respondents in appointing respondent No.4 of the writ petition to the post of Garden Supervisor in Cantonment Board, Lahore, before the learned Single Judge and the said point so raised was duly contested by the respondent side of the writ petition and the matter was decided by the learned Single Judge of this court ultimately

through the order dated 28.9.2011. The case law cited by the learned counsel for the appellant about the necessity of passing a formal admission order in writ petitions is therefore, distinguishable from the peculiar facts and circumstances of the instant case and cannot be allowed to be used so as to render the order passed by the learned Single Judge suffering from such an illegality that it be set aside on this ground alone.

15.. The perusal of the publication made in the Daily “Dawn” dated 18.3.2009 for initiating process to fill up a vacancy of Garden Supervisor in Lahore Cantonment Board points out that through the said process only one vacancy in the Lahore Cantonment Board was sought to be filled and there was a specific required qualification mentioned against that vacancy of Garden Supervisor at Serial No.2 of the published notice, which is reproduced below:-

<i>Post</i>	<i>BPS</i>	<i>Age</i>	<i>Vacancies</i>	<i>Qualification</i>
<i>Garden Supervisor</i>	<i>13</i>	<i>28 years</i>	<i>01</i>	<i>Matric (2<sup>nd</sup> Division) with at least 01 year Diploma in Horticulturist/ Floriculturist/ Landscaping from a recognized Institution.</i>

16. The appellant has himself placed on record a policy letter dated 11.8.2007, issued by the Government of Pakistan, Ministry of Defence (ML&C Deptt.) Rawalpindi for the recruitment/promotion and selection of transferable posts in Cantonment Boards, in which at serial No.F, item No.23-A was added with the following requirements:-

23-A	<i>Garden Supervisor (BS-08) 50% by Promotion.</i>	<i>Garden Supervisor (BS-05)</i>	<i>Matric (2<sup>nd</sup> Div.) with at least 06 month Diploma in Horticulture /Floriculture/Landscaping from a recognized institution or 10 years satisfactory service as Garden Supervisor (BS-5) and qualification of departmental test is mandatory.</i>
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17. During the arguments learned Deputy Attorney General has placed on record the order dated 29.8.2007, issued by Government of Pakistan, Ministry of Defence (ML&C Deptt.) Rawalpindi, which reads as follows:-

*To*

*The Director, ML&C  
Lahore Region, Lahore Cantt.*

*Subject: APPOINTMENTS AGAINST VACANT POSTS-LAHORE REGION*

*“The undersigned is directed to refer to RHQ letter No.26/298/B/RD/LR/47, dated 26.06.2007 on the above subject and to convey approval of the Competent Authority (DGML&C) for recruitment of various categories in the Cantt., Boards of Lahore Region. List indicating categories, qualification and mode of recruitment duly approved is enclosed herewith.*

2. *Please take further necessary action accordingly.*”

18.. Alongwith this letter there is a list of 50 categories of vacancies. The required qualification for applying against each vacancy and the other conditions for recruitment have been detailed. In this list at serial No.30 the post of Garden Supervisor is enumerated and all the three columns against the said posts highlight the following aspects.

30	<i>Garden Supervisor</i>	08	<i>Matric (2<sup>nd</sup> Division) with at least 06 months Diploma in Horticulturist/ Floriculture /Landscaping from a Recognized institution.</i>	28	<i>Written /Practical test &amp; Interview</i>
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19. Another letter dated 10.11.2009 issued by the Government of Pakistan, Ministry of Defence (ML&C Deptt.) Rawalpindi is also annexed herewith, in which the recruitment procedure against the vacancies in all the Cantonment Boards is mentioned and the same also is reproduced:-

*CONFIDENTIAL/BY REGD.  
No.92/944/ADG(Est.)/ML&C/  
Government of Pakistan,  
Ministry of Defence, ML&C Deptt Rawalpindi,  
the 10<sup>th</sup> Nov,2009.,*

*To*

*All DsML&C.*

*Subject:- RECRUITMENT AGAINST VACANT POSTS IN CANTONMENT BOARDS*

*I am directed to enclose herewith marked answers sheets in the following categories of posts.*

- i) Sanitary Inspector*
- ii) Garden Supervisors*
- iii) Cantt. Overseers.*
- iv) S/D, Man*

*I am further directed to convey that final selection of candidates may be completed at Regional HQs by DML&Cs as Competent Appointing Authority as per following policy for working out merit of the applicants:-*

<i>Total marks</i>	<i>=100</i>
<i>Weightage to written examination</i>	<i>=40%</i>
<i>Interview/Viva voce</i>	<i>=20%</i>
<i>Experience</i>	<i>=20%</i>
<i>Academic performance</i>	<i>=20%</i>

*3. The marks allocated for experience shall be awarded @ 2 Marks for each completed year in any Govt/Semi Govt/Autonomous Organization in the relevant field. Experience outside Govt/Semi Govt/Autonomous Organization shall not be considered.*

*4. The bifurcation of marks for performance in Academic career shall be as under:-*

<i>Qualification</i>	<i>Maximum Marks</i>	<i>Method of Awarding marks.</i>
<i>Basic Qualification For the post</i>	<i>10 Marks</i>	<i>Marks should be awarded to the candidates according to his/her percentage of marks Obtained for the said Qualification divided by 10</i>
<i>Higher Qualification.</i>	<i>10 Marks</i>	<i>05 marks for each higher qualification</i>

*5. I am further directed to convey that further necessary action may be taken immediately as per above policy. Answer sheets in rest of the categories shall also be forwarded to Regional HQs as and when the same are received.*

*(Muhammad Ishaque Malik)*  
*Assistant Director General (Est.)*

20. It has been noted by the Court that the parawise comments submitted by the respondents of the writ petition before the learned Single Judge point out in reply to paragraph No.3 that Gul Rehman the petitioner of the Writ Petition No.3035 of 2010 initially failed in the written test. The first portion of the reply to paragraph No.3 of the writ petition is relevant in that respect and is reproduced below:-

*“3. Admitted. The facts of the case are that Respondent No.3 forwarded applications of six candidates to the Respondent No.2 for the post of Garden Supervisor. The respondent No.2 issued call letters to all the six candidates for written test on 08.10.2009, out of six, 04 candidates appeared in the written test. As a matter of fact, the petitioner initially failed in the written test by securing only 32/100 marks. However, being taken lenient view, the petitioner alongwith the other 03 candidates were called for the interview held on 07.12.2009. Out of 04 applicants 03 candidates namely M/s Mustansar Billah Khan, Gul Rehman (the petitioner) and Farrukh Shakeel Malik appeared in the said interview and secured the following marks:-*

Roll #	Name of Candidates	Marks obtained		
		Written test	Interview Average	Total Marks
3 (TPC)	Mr. Mustansar Billah Khan S/o Imam Ullah Khan	56.5	93	149.5
5 (TPC)	Mr. Gul Rehman S/o Dil Mir Khan	32	279	311
6 (TPC)	Mr. Farrukh Shakeel Malik s/o Muhammad Willayat.	49	322	371

*Consequently, the above named individuals were declared as successful for recruitment. The proceedings of the Selection*

*Interview Committee are enclosed as "Annex-A" with the parawise comments of respondents No.1 to 4.*

21. It is also observed that although applications were invited only for one vacancy declared through the publication in the newspaper for the post of Garden Supervisor at Lahore but strangely enough two more vacancies at Gujranwala Cantonment Board and Kharian Cantonment Board were secretly filled by the official respondents without making any publication in the newspaper calling applications for the said two vacancies allowing all those, who could be interested, a fair and transparent opportunity for applying and competing in the test and interview next conducted. All these facts available on the record create a very serious doubt about the transparency of the selection method adopted by the official respondents in making the appointments against all the three posts of Garden Supervisors at Lahore, Gujranwala and Kharian. In the first instance the publication dated 18.3.2009 does not specify the qualification as per policy of the Government of Pakistan, Ministry of Defence (ML&C Deptt.) Rawalpindi, which only required a six month Diploma of Horticulturist /Floriculturist /Landscaping from a recognized Institution. For departmental promotion purposes

10 years satisfactory service as Garden Supervisor in BPS-5 and qualification of departmental test for the purposes was specified in the policy letters referred to above. The advertisement dated 18.3.2009 made in the daily "Dawn" Lahore, thus is inherently defective and illegal when it called the applications from the persons having at least one years Diploma in Horticulturist/Floriculturist/Landscaping from a recognized institution. There is no rule or policy prescribing the qualification for recruitment as mentioned in the advertisement dated 18.3.2009. The petitioner of the writ petition, Gul Rehman, as per reply submitted in the parawise comments of the writ petition, initially failed in the written test conducted by the Cantonment Board. It is very unusual to note as to how and why such a failed candidate was shown a leniency by the Cantonment Board for being called for in the interview conducted later on for the said post. Though there was no publication made for the two posts of Garden Supervisors at Gujranwala and Kharian, yet the appointments were made by the official respondents against the said two vacancies on the basis of newspaper publication against the post of Garden Supervisor at Lahore only, which publication was even defective and illegal with respect to the required

qualification mentioned therein. This entire process adopted and followed by the official respondents cannot be described as transparent and unquestionable.

22. We are conscious of the fact that one person Mustansar Billah Khan has been appointed out of the selected candidates as a Garden Supervisor at Kharian and the said appointment of Mustansar Billah Khan has neither been assailed through the writ petition nor is he party therein but as the appointment of the said Mustansar Billah Khan against vacant post of Garden Supervisor was made without due process of law and is lacking transparency as no applications were invited from the persons interested in the said post by the official respondents, therefore, the official respondents are directed to issue show cause notice to Mustansar Billah Khan in this matter on the above grounds and after allowing him full opportunity to participate in the new process to be initiated by the official respondents the matter of making recruitments in all the vacancies in the Cantonment Boards be completed.

23. It is a fundamental principle of law that when the basic order is void ab iniitio, then the entire superstructure raised on it is bound to fall. Reliance in this respect is placed upon

the judgments reported as Yousaf Ali vs. Muhammad Aslam Zia and 2 others and Muhammad Aslam Zia and 2 others vs Yousaf Ali (PLD 1958 SC 104) and Karim Dad vs. Member III, Board of Revenue, Baluchistan and 5 other (PLD 1985 Quetta 252). In another case while elaborating the concept of a void order the honourable Supreme Court of Pakistan after relying upon the judgment PLD 1977 SC 599 in a judgment reported as Messrs Friend Engineering Corporation, The Mall, Lahore vs. Government of Punjab and 4 others (1991 SCMR 2324) made the following observation which is reproduced as quoted from page 2329:-

*“ . . we would observe that a void order or an order without jurisdiction is only a type of an illegal order passed by a Court and the fact that it has been passed and that it may, therefore, create rights cannot be altered by describing it as void or without jurisdiction. And, further, the expressions “void orders” and “orders without jurisdiction ” are overworked expressions.”*

The official respondents, and for that purpose all the autonomous bodies, Public Corporations and local authorities are under legal obligation to publish notices for inviting applications for filling the vacancies with correctly specifying the required qualifications as per the policy, rules and regulations governing such vacancies and holding test and interview also if it is so prescribed. The official

respondents in the writ petition did not comply with this condition preceding the recruitment process and did not act fairly and in a transparent manner in the entire process.

24. Thus in view of the above circumstances, making use of all the enabling powers vested in an appellate court, we set aside the order of the learned Single Judge whereby he directed the consideration of the writ petitioner Gul Rehman for the post of Garden Supervisor at Lahore. We however, uphold the setting aside of the appointment of the appellant Farrukh Shakeel Khan as ordered by the learned Single Judge through the impugned order. We also set aside the imposition of penalty of Rs.25,000/- upon the Executive Officer of the Cantonment Board as he was neither the appointing authority in the instant matter nor had issued any appointment letter and the infliction of the said penalty upon the Executive Officer of the Cantonment Board, who is appellant in ICA No.617 of 2011, is not sustainable in the eye of law. We direct the official respondents to duly publish notice for inviting applications both for recruitment through initial appointment as well as for promotion purposes after duly prescribing the qualifications on both the score, in accordance with the policy of the Government of Pakistan

referred to above in the letters noticed therein and to hold test and interview in the prescribed manner and then fill up the vacancies of Garden Supervisors in all the Cantonments Board. The persons who are eligible be allowed to apply on both the above scores and to participate in the initial recruitment/promotion process and nothing said herein shall debar the private parties before this court or not, to apply again in the process to be initiated afresh by the respondents and their eligibility and suitability be duly considered in accordance with the requirements of the rules, regulations and the governing policy in a transparent manner. The official respondents are further directed to complete this process within a period of two month from the announcement of this judgment. Both the ICAs stand disposed of with above mentioned modifications, observations and directions. The interim injunctive order issued by this court in the matter stand vacated immediately. Parties to bear their own costs.

(Rauf Ahmad Shaikh)  
Judge

(Nasir Saeed Sheikh)  
Judge

Announced in open **on 15-11-2011**

Judge.

Judge

APPROVED FOR REPORTING

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