

2. The brief facts revealed from the petition are that the Petitioner is an Advocate of High Court and is visually impaired and blind. The Petitioner is registered with Provincial Council for Rehabilitation of Disabled Persons. He has also been issued with a disability certificate from the said Department. In pursuance of an advertisement for the post of Deputy District Public Prosecutor (**DDPP**) issued by the Respondent No.2 on 03.01.2016 in the Department of the Respondent No.3 reserving two posts for disabled persons, the Petitioner applied in disable quota and cleared all the tests and stood at Sr. No.1 in the list of the successful candidates. Subsequently, the Petitioner also passed the interview and his name was included in the list of disable candidates at Sr. No.14. The Respondent No.2 also issued letter dated 18.05.2016 recommending the names of all the successful candidates including the Petitioner in which a condition was imposed by the Respondent No.2 that all the disabled candidates must be required to appear before a Special Medical Board to re-examination their disability. Thereafter, the Respondent No.2 also issued another letter dated 09.11.2016 recommending the name of the Petitioner against disable quota. However, despite repeated requests the Petitioner was not issued appointment letter whereas all the other selected candidates were issued joining letters.

3. Feeling aggrieved thereby the Petitioner filed W.P. No.27195/2016 which was withdrawn by the Petitioner on the undertaking given by the Respondents to appoint the Petitioner. Thereafter, an offer letter was issued to the Petitioner on 21.12.2016

imposing condition as mentioned in letter dated 18.05.2016 to get a clearance from Medical Board. Subsequently, the Respondents also wrote a letter dated 26.12.2016 to the Petitioner for his re-examination before the Special Medical Board to determine his disability and suitability against any suitable post. In pursuance of which the Petitioner appeared before the Special Medical Board, constituted on the instructions of the Respondents comprising six senior doctors including eye specialist, which unanimously gave a report dated 04.01.2017 that the Petitioner be adjusted against the disable quota in the Prosecution Department. But on refusal to be appointed the Petitioner filed a representation on 06.07.2017 which was decided by the Respondent No.3 through impugned order dated 17.10.2017, on the directions of this Court passed in W.P. No.64050/2017 vide order dated 30.08.2017. Hence, this petition.

4. Learned counsel for the Petitioner submitted that the impugned order is misconceived and against the actual facts of the matter; that in view of condition mentioned in letters dated 18.05.2016 and 21.12.2016 issued by the Respondents, the Medical Board has already cleared the Petitioner through report dated 04.01.2017 whereas directing the Petitioner to appear before the Special Medical Board thereafter for re-examination is based on *mala fide*; that the said report of the Medical Board has never been challenged by the Respondents; that the impugned order is based on *mala fide* just to deprive the Petitioner from his fundamental right; that a vested right has been accrued in favour of the Petitioner and the Respondents

cannot deviate from the same; that a discriminatory attitude is being adopted towards the case of the Petitioner; that all the citizens are equal before the law and are entitled to equal protection of law; that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of a human being; that after issuance of offer letter to the Petitioner and fulfilling all its requirements the Respondents are now estopped by their words and conduct; that under the principle of *locus poenitentiae* the Respondents cannot deny the Petitioner their right of appointment against the said post. To fortify his contentions, the learned counsel for the Petitioner has placed reliance on the case titled **Hafiz Junaid Mahmood Versus Government of Punjab and others** (PLD 2017 Lahore 1), **Muhammad Yousaf and another v. Chairman Federal Public Service Commission and 4 others** (PLD 2017 Lahore 406), **Bashir Ahmed Solangi v. Chief Secretary, Government of Sindh, Karachi and 2 others** (2004 SCMR 1864), **Mst. Basharat Jehan v. Director General** (2015 SCMR 1418), **Mst. Saima Hameed v. Executive District Officer (Health) Pakpattan Sharif and 2 others** (2011 PLC (C.S) 351), **Zakir Muneer v. Executive District Officer (Health) Abbottabad and 3 others** (2011 PLC (C.S.) 1651), **Munawar Hassan v. Chief Secretary, Government of Balochistan and 3 others** (2017 PLC (C.S.) 81) & **Jawad Ali and others v. Superintendent Jail and others** (2017 PLC (C.S.) 587).

5. On the other hand, learned counsel for the Respondents vehemently controverted the arguments advanced by the learned

counsel for the Petitioner and submitted that the impugned order has rightly been passed; that no discrimination has been made to the Petitioner rather the Petitioner was required to appear before the Special Medical Board for re-verification of his disability and suitability; that the earlier Board was not a Special Medical Board for re-verification of the Petitioner's disability and determination of suitability to perform his job related duties/functions; that in the earlier Board which was not a Special Medical Board, there was no finding regarding suitability to perform his job related duties/functions; that the merit list or offer letter do not create any vested right in favour of the Petitioner; that inspite of repeated letters dated 22.08.2017 and 13.09.2017, the Petitioner did not appear before the Special Medical Board which is a pre-condition, as such he is not entitled to be issued appointment letter; that even now if the Petitioner appears before the Special Medical Board, the Respondents may deal with him in accordance with law.

6. Arguments *pro and con* heard and record perused.

7. From the record it is evident that in the advertisement two seats were reserved for disable persons. The Petitioner after passing all the tests was declared successful candidate in disable quota and duly recommended alongwith other candidates, as per letter dated 18.05.2016. The recommendations of the Punjab Public Service Commission (the "**Commission**") were subject to passing such medical test of the candidates as may be required under the Rules. As per paragraph 8 of the said letter *the recommendation of the*

Commission is subject to the condition that in case of disabled candidate, he/she should reappear before special medical board who should re-verify his/her disability and determine suitability to perform his/her job related duties/functions. Meaning thereby that the condition was that the disable person has to (i) reappear before Special Medical Board (ii) who should re-verify his/her disability and (iii) determine suitability to perform his/her job related duties/functions. Subsequently, the Petitioner was issued offer letter dated 21.12.2016 mentioning clause-xi that *the appointment is subject to verification of your antecedents from Local Police/Special Branch and subject to clearance of medical board.* In pursuance of which the Petitioner submitted his acceptance letter mentioning therein that *with due respect I have the honour to submit that I accept the offer of appointment as Deputy District Public Prosecutor (BS-18) in accordance with the terms and conditions contained in letter No.SO(C)PPD/7-4/2014(Vol-III) dated 21.12.2016.* The Petitioner has placed on record letter dated 26.12.2016 through C.M. No.3/2017, written by the Respondent No.3 to the Medical Superintendent, Services Hospital, Lahore requesting as under:

“It is, therefore, requested that special Medical Board may be constituted for medical examination of the officer at the earliest and report regarding his fitness be submitted to this Department before his joining as Deputy District Public Prosecutor (BS-18) in Public Prosecution Department.”

8. It is clear from the record that the Special Medical Board was constituted in pursuance of letter dated 26.12.2016 written by the

Respondent No.3 to the Medical Superintendent, Services Hospital, Lahore which conducted his medical examination with the finding that “*adjusted against disable quota*”. The said Board prepared report on 04.01.2017. It is very much apparent from the said letter that the request was made therein that Special Medical Board may be constituted for medical examination of the officer at the earliest and report regarding his fitness be submitted to this Department before his joining as Deputy District Public Prosecutor (BS-18) in Public Prosecution Department, which was duly conducted in favour of the Petitioner; meaning thereby that except the report of the said special medical board (dated 04.01.2017) nothing was required before joining of the Petitioner as DDPP.

9. The record also reveals that the Petitioner has attached with the petition copy of disability certificate as Annexure-B. Thereafter he got conducted his medical examination from the Special Medical Board constituted in pursuance of letter dated 26.12.2016 of the Respondents. The contention of the learned counsel for the Respondents that the Medical Superintendent Services Hospital, Lahore was issued letters dated 22.08.2017 and thereafter dated 13.09.2017 for re-examination of the Petitioner by the Special Medical Board to determine his suitability to perform his/her job related duties/functions but the Petitioner did not appear before the said Board, as such his representation was dismissed, is not instructive. Because, the earlier Special Medical Board was constituted in pursuance of letter dated 26.12.2016 and thereafter

when the Petitioner was not appointed and he started litigation the Respondents issued the said letters dated 22.08.2017 and 13.09.2017 after a considerable delay of about 9 months which smells *mala fide* on the part of the Respondents and as counter blast of litigation. This clearly shows that the Respondents were judicially estopped from writing the letters again because already on 26.12.2016 specific instructions for constitution of Special Medical Board were issued. Reliance in this regard can be placed on the case titled **JDW Sugar Mills LTD. and others v. Province of Punjab and others** (PLD 2017 Lahore 68) wherein it has been held as under:

“Fundamental duty of court to protect the integrity of the judicial process and a party could not approbate and reprobate at the same time. When a party took an inconsistent position in the same case or in a prior case, the principle of judicial estoppel should be applied. Judicial estoppel was an equitable doctrine, which precluded a party from taking inconsistent positions before the court and protected the integrity of the judicial system and not of the litigant. Principle of judicial estoppel sought to ensure respect for judicial proceedings and to avoid inconsistency and abuse of process. Under the doctrine of judicial estoppel, court could stop a party from taking up contradictory stances if it was clearly inconsistent with the previous position taken by that party before another Court. Application of judicial estoppel depended upon the facts and circumstances of each case and when a party put forth a position, as a matter of fact in one case and was successful in such an assertion, then that party was estopped from asserting a different position on the same

facts in a second case. Party, who was to be estopped in the second case had to be the same party in the earlier case meaning thereby the party is the same in both cases. Issue for which the party was estopped from asserting its facts must have had some nexus in both proceedings and it was imperative that such equitable principle be applied so that a judicial process functions properly and effectively. Litigants must approach the Court in a truthful manner especially if the litigant party was the government. Party could always vigorously assert its position, but could not misrepresent the facts in order to gain some advantage in the process. When a party had formally asserted a certain version of the facts in litigation, he or she could not later change those facts because the initial version no longer suits him or her. For application of the principle of judicial estoppel, the Court must ascertain that a party had asserted a contradictory position before another Court which position was accepted by that Court. Party's later position must be clearly inconsistent with its earlier position, and the courts should inquire whether the party had succeeded in persuading a court to accept its earlier position and it had to be determined whether the party seeking to assert the inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. Party's change in its factual or legal position threatened to produce inconsistent decisions by the courts and therefore, the doctrine of judicial estoppel was necessary to protect the integrity of the court from the harm caused when a litigant engaged in cynical gamesmanship, achieving success on one position yet arguing a different position in another case to satisfy an exigency of the moment. Allowing a litigant to adopt contradictory positions in

different courts would mean that one court was misled or perhaps defrauded.”

10. From the above, it can safely be held that a vested right has been accrued in favour of the Petitioner which cannot be deviated from by the Respondents. Furthermore, the Petitioner filed representation when he was declined appointment which was dismissed vide the impugned order. The perusal of the impugned order reflects that the above facts have not been taken into consideration by the Respondents while deciding the representation, as such the impugned order is liable to be set aside.

11. This Court recently passed judgment in a similar issue in Muhammad Yousaf's case *supra* in which it has been held as under:

“Fundamental rights under the Constitution do not distinguish between a person with or without disabilities. It recognizes the inherent and inalienable dignity of all human beings as the foundation of freedom, justice and peace. Right to life and right to dignity are the epicenters of our constitutional architecture. Right to life recognizes the importance of accessibility to physical, social, economic and cultural environment, to health and education and to information and communication. Such a right enables persons with disabilities to fully enjoy all human rights and fundamental freedoms. Every human being has the inherent right to life and to ensure its effective enjoyment, this includes persons with disabilities, at par with the others. Right to life and right to dignity are deeply interwoven”

12. Moreover, this Court in Hafiz Junai Mahmood case *supra* has held that this constitutional construct creates an obligation on the State and other institutions of the State to make all possible endeavours to mainstream persons with different abilities and to embrace the diversity in the society. The State and its institutions are under a

constitutional obligation to go the extra mile and ensure, within the means available, that person with disabilities get reasonable accommodation in order to enjoy their fundamental rights in the same manner as enjoyed by other citizens of Pakistan. It is for the State and its institutions to provide the architecture, the structure, the assistive and adaptive technology, the system, the equipment and the facilitative support to persons with disabilities, so they can actualize their constitutional rights and freedom. In the present case, the department should have considered the possibility of providing necessary technical and human support to ensure that the petitioner was able to perform as an educator and was not discriminated on the ground of disability.

13. Pursuant to the Office letter dated 21.12.2016 a vested right has been created in favour of the Petitioner which now cannot be taken away by not issuing the appointment letter. It is also submitted by the learned counsel for the Petitioner that the Petitioner was selected for the post of Assistant Director Legal in the Office of Anti-Corruption Establishment Punjab on disability quota as well but he did not join the same because he was assured by the Respondents that he will be issued an appointment letter by them. It is settled principle of law that once a decisive step has been taken by the relevant authority the same cannot be retracted since it has vested valuable rights. The offer letter was issued to the Petitioner and the Petitioner in consequence thereof fulfilled all the terms and conditions of the offer letter by having his degrees verified and

having a fresh medical examination. The Respondents under the principle of *locus poenitentiae* cannot deny the Petitioner the post as valuable rights had accrued to the Petitioner and the same could not be recalled.

14. In another case titled ***Bashir Ahmed Solangi v. Chief Secretary, Government of Sindh, Karachi and 2 others*** (2004 SCMR 1864) it has been held by the Hon'ble Supreme Court of Pakistan that it is settled principle of law that if in consequence to an order passed by an authority competent to pass such an order, certain rights are created in favour of a person, the said order cannot be subsequently undone or withdrawn. The authority being responsible of passing of an order creating certain rights would not be legally justified to take a turn and retrace the steps to undo the said order on the ground that it was passed in violation of rules or was a wrong order.

15. Moreover, in similar case Mst. Basharat Jehan *supra* it has been held that once a person is appointed after fulfilling all the codal formalities, appointment letter is issued, it was held that a vested right is created and appointment letter could not be withdrawn. Reliance is also placed on the case titled ***Mst. Saima Hameed v. Executive District Officer (Health) Pakpattan Sharif and 2 others*** (2011 PLC (C.S) 351), ***Zakir Muneer v. Executive District Officer (Health) Abbottabad and 3 others*** (2011 PLC (C.S.) 1651), ***Munawar Hassan v. Chief Secretary, Government of Balochistan***

and 3 others (2017 PLC (C.S.) 81) & Jawad Ali and others v. Superintendent Jail and others (2017 PLC (C.S.) 587).

16. On the touchstone of the above discussion, I am of the firmed view that the impugned order has been passed against the actual facts and is misconceived. Resultantly, the same is hereby set aside and the instant petition is allowed. The Respondents are directed to allow the Petitioner to submit his joining into service as DDPP within ten days from the receipt of certified copy of this judgment with intimation to the Deputy Registrar (Judicial) of this Court.

(JAWAD HASSAN)
JUDGE