

IN THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

(Appellate Jurisdiction)

Present

Justice Syed Hasan Azhar Rizvi

Justice Syed Arshad Hussain Shah

C.P.L.A. No. 3119, 3905, 4824, 4825, 4826 & 4827 of 2025

and

C.M.A. No. 18040/2025 IN C.P.L.A. No. 3119/2025 &

C.M.A. No. 7173/2025 IN C.P.L.A. No. 3905/2025

(against judgment dated 22.05.2025 passed by the Peshawar High Court, Bannu Bench, passed in W.P. Nos. 1267-B, 1220-B, 883-B of 2020 and Nos. 10-B and 154-B of 2021)

Muhammad Bilal and others (in other cases)

Shah Jee Ullah and others (in CPLA 3905/25)

.....Petitioner(s)

Versus

*Government of Khyber Pakhtunkhwa,
through the Secretary Health, Peshawar, and
others*

(in CPLAs 3119, 3905/25)

(in CPLA 4824/25)

Inayat Ullah and others

(in CPLA 4825/25)

Rizwan Ullah and others

(in CPLA 4826/25)

Nadir Rahman and others

(in CPLA 4827/25)

Said Khan and others

.....Respondent(s)

For the Petitioner(s)

: Mr. Afnan Karim Kundi, ASC
(in all cases except CPLA 3905/25)

Mr. Muhammad Asif Yousafzai, ASC
(in CPLA 3905/25)

For the Respondent(s)

: Mr. Shah Faisal Ilyas, Addl. AG KPK
Dr. Ali Asghar, MS DHQ Hospital, Karak
Dr. Nasir Jamal, Litigation Officer
Dr. Sohail Khattak, Litigation Officer
(in all cases)

Mr. Abdullah Khattak, ASC
(in CPLA 3119/25)

Date of Hearing

: 18.02.2026 (Judgment Reserved)

J U D G M E N T

Syed Hasan Azhar Rizvi, J.- Dr. Fakhar-e-Alam, the then Medical Superintendent ('**M.S.**') of the District Headquarters ('**DHQ**') Hospital, Karak, issued a public notice dated 02.02.2020 in a local daily newspaper inviting applications from eligible candidates

domiciled in District Karak for appointment to the posts of Class-IV employees at the DHQ Hospital, Karak. Through an office order dated 10.02.2020, he constituted a Departmental Selection Committee (**'first Committee'**), comprising himself (Dr. Fakhar-e-Alam) as Chairman, the Section Officer, Health Department, Khyber Pakhtunkhwa, and Dr. Khalid Zamir, Deputy M.S. DHQ Hospital, Karak, as the Members. The meeting of the Committee was scheduled for 25.02.2020 and 26.02.2020 to carry out the process of the recruitment. The Committee, vide its Minutes of the Meeting dated 26.02.2020, made certain recommendations in respect of the eligible candidates; however, the appointing authority abstained from issuing appointment orders to the recommendees in view of the restraining order dated 12.06.2019 passed by the Peshawar High Court, Bannu Bench (**'High Court'**) in W.P. No. 625-B of 2019. Later on, he (Dr. Fakhar-e-Alam) was transferred vide Notification dated 04.03.2020 and was succeeded by Dr. Jamil Anwar, the new M.S. DHQ Hospital, Karak vide another Notification of the same date. In the meantime, the above-noted writ petition was disposed of vide order dated 08.09.2020, with a direction to the respondents therein (the appointing authority) to act in accordance with the law, rules, and policy governing the subject, and to afford a fair opportunity to the deserving candidates.

2. Later on, Dr. Jamil Anwar, M.S., vide Office Order dated 17.09.2020, constituted a fresh Departmental Selection Committee (**'second committee'**) comprising himself as Chairman, a representative of the Secretary, Health, Khyber Pakhtunkhwa, and Dr. Pio Rehman, Deputy M.S. DHQ Hospital, Karak, as the members. The meeting of the second Committee was scheduled for 18.09.2020 to complete the process of the aforementioned Class-IV appointments. Consequently, on the basis of the recommendations of the second Committee, Dr. Jamil Anwar, M.S., issued separate appointment orders, all dated 19.09.2020, to the recommendees. However, thereafter, the Director General, Health (**'D.G. Health'**), vide two separate letters both dated 22.09.2020 (**'impugned letters'**), first cancelled all the appointment orders issued by the M.S., Hospital, Karak, and subsequently placed the said appointment orders in abeyance until further orders. The aforesaid sequence of events gave rise to a serious and multifaceted

controversy, culminating in the institution of the following five constitutional petitions before the High Court at the instance of the aggrieved persons, and were decided by the High Court through a single consolidated judgment dated 22.05.2025 (**'impugned judgment'**):

Sr. No.	Writ Petitions with Title & No.	Who filed the Petitions?	Decision
1.	M Bilal & 63 others v. Govt. of KPK & 3 others (W.P. No.1267-B/2020)	By the recommendees of the 2 nd Committee whose appointment orders were cancelled or held in abeyance by the then DG Health, KPK.	Dismissed.
2.	Said Khan v. Govt. of KPK & 2 others (W.P. No.1220-B/2020)	By a recommendee of both the 1 st and 2 nd Committee whose appointment order was cancelled or held in abeyance by the then DG Health, KPK.	Partly Allowed.
3.	Inayat Ullah & 7 others v. Govt. KPK & 6 others (W.P. No.883-B/2020)	By the recommendees of the 1 st Departmental Selection Committee, challenging the validity of the appointment orders of the present petitioners. They also prayed that appointment orders be issued to them in accordance with the recommendations of the 1st Committee.	
4.	Nadir Rehman & 5 others v. Govt. KPK & 2 others (W.P. No.10-B/2021)		
5.	Rizwan Ullah & 2 others v. Govt. KPK & 2 others (W.P. No.154-B/2021)		

Being dissatisfied, the petitioners in W.P. No. 1267-B filed the present petitions to impugn the legality of the impugned judgment. Therefore, all these petitions, involving a similar question of law, are being decided through this single judgment.

3. The learned counsel for the petitioners contends that after disposal of the earlier writ petition vide order dated 08.09.2020, the competent appointing authority, i.e., the M.S., DHQ Hospital, Karak, in compliance with the directions of the High Court, constituted the second Committee to complete the selection process strictly in accordance with the law and policy. The second committee was validly constituted, and its recommendations culminated in the issuance of formal appointment orders dated 19.09.2020 to the present petitioners. Upon the issuance of such

appointment orders, the petitioners assumed their duties and thereby acquired a vested right to hold the office, which could not be arbitrarily rescinded or terminated without due process of law. The D.G. Health lacks statutory authority to cancel or suspend appointments made by the competent appointing authority of the DHQ Hospital, Karak. The impugned letters dated 22.09.2020 are, therefore, *coram non judice* and void *ab initio*. The impugned action was taken without affording any opportunity of hearing to the petitioners, thereby violating the settled principles of natural justice. No inquiry was conducted, nor was any finding recorded regarding any illegality, irregularity, or mala fide in the selection process; therefore, the drastic step of cancellation and suspension of the appointment orders is unsustainable under the law. The D.G. Health acted without lawful authority or jurisdiction in cancelling and placing the appointment orders in abeyance, rendering the letters dated 22.09.2020 liable to be set aside. The High Court failed to appreciate this legal position; consequently, the impugned judgment is also liable to be set aside.

4. The learned Addl. A.G., Khyber Pakhtunkhwa, representing the Government of Khyber Pakhtunkhwa (the respondent No.1), filed a concise statement through C.M.A. No.12817/2025 on 22.10.2025 and contended that the respondent No.1 obtained comments from the incumbent M.S., DHQ Hospital, Karak. And, in paragraph 3 of the comments, it was disclosed that although the appointment process was initiated by Dr. Fakhar-e-Alam. The interviews were conducted on 25th and 26th February 2020; however, no recommendations for selection were made due to the restraining order from the High Court. Furthermore, he (Dr. Fakhar-e-Alam) was transferred from the post of M.S., DHQ Hospital, Karak, on 04.03.2020, i.e., almost ten days after the said interviews. However, there is no record of the Departmental Selection Committee meetings held on 25th and 26th February 2020, reflecting any recommendations for the appointment of the alleged appointees, available in the office of the M.S., DHQ Hospital, Karak.

5. On the strength of these comments, the learned Addl. A.G., argued that it has been established from both the inquiries conducted by the Director Public Health and the District Health Officer that, after the final judgment of the High Court dated

08.09.2020 in Writ Petition No. 625-B/2019, Dr. Fakhar-e-Alam forwarded the said judgment, along with the minutes of the meeting containing the recommendations of the purported committee allegedly held on 25th and 26th February 2020, to the then Medical Superintendent, Dr. Jamil Anwar. It is further noteworthy that no lawful authority has been shown under which he retained the minutes of the meeting in his personal custody for more than six months after his transfer. These facts, therefore, lend support to the department's contention that no lawful meeting of the Departmental Selection Committee was ever conducted. Rather, it is alleged that the then Medical Superintendent, Dr. Fakhar-e-Alam, produced the so-called minutes from his personal custody in an unauthorized, illegal, and fraudulent manner, actuated by mala fide motives.

6. We have heard the submissions of the learned counsel for the parties and, with their able assistance, have carefully perused the material available on record. Upon such consideration, it becomes evident that the case in hand exposes a deeply disquieting state of affairs in the realm of public appointments, giving rise to competing claims over the same public posts and leaving the fate of two distinct groups of individuals in a state of uncertainty. On the one hand, there are individuals who were allegedly recommended for appointment as Class-IV employees by the first committee through the minutes of its meeting dated 26.02.2020, but whose appointment orders could not be issued due to the restraining order passed by the High Court. On the other hand, there are those individuals (the present petitioners) who were subsequently recommended and appointed against the same posts by the second committee vide appointment orders dated 19.09.2020. They (the present petitioners) continued to serve on those posts by virtue of the interim order dated 23.12.2020 passed by the High Court, whereby the operation of the impugned letters dated 22.09.2020 was suspended, and they remained in service until their formal removal on 08.07.2025 in compliance with the impugned judgment.

7. It is evident from the record that the petitioners, after the issuance of their respective appointment orders dated 19.09.2020, joined the services and started performing their official duties. However, their appointment letters were first cancelled and

then held in abeyance by the DG Health Services, vide the impugned letters. The reason assigned in the first letter, whereby the appointment orders were cancelled, was that the same had been issued in clear violation of the direction of the competent authority, which had directed the appointing authority not to issue any such order. In the very next letter of the same date, the appointment orders were held in abeyance, and Dr. Ikram Ullah, Director Public Health, was appointed as an Inquiry Officer to conduct a detailed inquiry into the process of the appointments of the petitioners in order to ascertain whether they had been made in accordance with the existing rules or otherwise. After a detailed inquiry, the Inquiry Officer submitted his report accordingly. The conclusion and recommendations made by him are as follows:

Conclusion

1. *Recruitment process was conducted by Dr. Fakhr-e-Alam, i.e., letter to employment exchange/ advertisement, notification of DSC, meeting minutes of DSC etc. but appointment orders were not issued due to Honorable High Court directions, and he was transferred from the hospital before final court judgement or vacation of court status quo.*
2. *Dr. Fakhr-e-Alam Ex-Medical Superintendent shared all the relevant record including minutes of DSC and final court decision with Dr. Jamil Anwar, Medical Superintendent of the hospital.*
3. *Dr. Jamil Anwar, instead of carrying forward the previous recruitment process, re-initiated the process due to reason **that more than 06 months was lapsed in the previous process and several complaints were lodged against the already conducted recruitment process.** To ensure deserving candidates are recruited, in accordance with the directions of the honorable Peshawar High Court, recruitment process was re-initiated **from the same old list,** acquired from district employment exchange.*
4. *Due to frequent changes in hospital management record was not provided to the Enquiry Officer which resulted in delayed submission of inquiry report.*

Recommendations

As the appointees have already served the department for more than 01 year and their probation period is over, they may be retained on their position on humanitarian basis to avoid further litigation and disruption of services in the best interest of public.'

Emphasis is added.

8. The matter did not rest there. Subsequently, the Government of Khyber Pakhtunkhwa, vide notification dated 11.10.2023, appointed Dr. Fazal Maula, District Health Officer, to

probe into a complaint against Dr. Jamil Anwar, received from the National Accountability Bureau, Khyber Pakhtunkhwa, concerning the subject appointments of the Class-IV employees made by him. He conducted the inquiry and submitted his inquiry report on 01.12.2023, wherein he highlighted certain important irregularities and violations in the recruitment process and recommended stern action against Dr. Jamil Anwar. For ease of reference, the same are reproduced below:

Irregularities and violations

1. *While the DSC's constitution was purportedly renewed to the extent of Dr. Jamil Anwar, which he specifically denied, the first recruitment's advertisement was carried out. **It is also a fact that the third DSC member's signature could not be proven-to-be forged, and the second member rejected his signature.** Dr. Jamil Anwar's signature on the appointment orders deemed him guilty of misconduct in the absence of a dubious DSC.*
2. *Irregularities found in the recruitment process: a) the appointment of male candidates to eight Dai posts; b) the filling of tube-well operator, driver and electrician (In spite of a court stay) posts without advertising; c) the previous appointment of two Dhobi with the promise of regularization that was later on ignored; d) recruitment of four Muslim Sweepers (already ban on Muslim sweepers).*
3. ***It was discovered that almost 15 candidates were older than the legal age limit,** which is against the terms of the July 24, 2006, Notification No. SOR.VI (E&AD)1-10/2005- Vol: IV, which states that the upper age limit is 32 years rather than 28 years as stated in Notification No. SORI(S&GAD)4-1/80-Vol-III, dated 12-6-1999.*
4. *The specific anomalies identified in the aforementioned findings provide ample proof that the hiring procedure was unfairly conducted, with the Departmental Selection Committee and the appointed authority taking the brunt of the blame.*
5. *The confession of Dr. Jamil Anwar regarding the confirmed irregularities in the hiring process indicates that the incomplete Departmental Selection Committee (DSC), and in particular the appointing authority, Dr. Jamil Anwar, was inefficient, as demonstrated by the aforementioned irregularities.*
6. *No doubt, the irregularities made in the recruitment process make Dr. Jamil Anwar guilty of misconduct and liable for legal proceedings.*

Emphasis is added.

9. Both inquiries were conducted by the senior officers of the health department, Khyber Pakhtunkhwa; however, their conclusions stand in stark contrast. A careful and critical appraisal of their respective reports reveals that the first Inquiry Officer, without adverting to the applicable rules or undertaking a meaningful examination of the record, almost endorsed and justified

the recruitment process of the petitioners and proceeded to recommend their retention in service on so-called humanitarian grounds, an approach wholly alien to service jurisprudence, where appointments must stand or fall on legality rather than sympathy. He, however, failed to take note of the irregularities subsequently pointed out by the second Inquiry Officer in his report. Undoubtedly, the irregularities identified in the recruitment process by the second Inquiry Officer were such as could readily be verified from the official record. Furthermore, Dr. Jamil Anwar, in his written statement before the second Inquiry Officer, took the categorical stance that one Dr. Farooq Jamil, the then Special Secretary, Health Department, had summoned him to his office and compelled him to sign the appointment orders of the petitioners in the presence of Inayat Nazim and Mr. Shahid Khattak, former MNA; he further asserted that he, therefore, signed the same only upon an assurance that all codal formalities would subsequently be fulfilled. More strikingly, he disowned his signatures on the minutes of the meeting of the second committee and expressly denied having prepared the same, thereby casting a serious shadow over the transparency and authenticity of the entire proceedings.

10. It is further important to note that the second committee did not issue any public notice or advertisement in any newspaper, as was required under the law, i.e., Rules 10 and 11 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. When confronted with this position, the learned counsel for the petitioners explained that the second committee deliberately refrained from issuing any public notice or advertisement on the ground that it had conducted the recruitment process from the same list of aspiring candidates who had already been invited through the District Employment Exchange, after due publication, and was under consideration before the first committee. Upon verification of the list candidates filed by the respondent No.1 vide the C.M.A. No.274/2026, the stance taken by the learned counsel for the petitioners has been found to be correct. Above all, one aspect stands consistently established in both inquiries that the second committee did not lack the competence or lawful authority to make the appointments in question, although certain procedural irregularities were pointed out with respect to the recruitment

process undertaken by it. Furthermore, it was not found that the petitioners were deficient in qualifications or eligibility for the advertised posts, nor that they exerted any external pressure or employed any unlawful means to secure their appointments.

11. In this backdrop, an important legal question arises: whether the petitioners can now be made to suffer for any mis-exercise or unlawful exercise of power, if any, by the competent authority. It is a settled principle of service jurisprudence that where appointments are made through a process initiated by the competent authority itself, pursuant to a duly published advertisement, and the appointees possess the prescribed qualifications, they ordinarily cannot be penalized for procedural lapses or administrative irregularities attributable to the competent authorities, particularly in the absence of any allegation of fraud, misrepresentation, concealment, or active connivance on their part. In this regard, on a number of occasions, the Supreme Court of Pakistan has held that, instead of removing such employees from service, action should have been taken against the authority that had misused or improperly exercised its powers. Reference, if required, may be made to the case of Muhammad Akhtar Shirani v. Punjab Text Book Board and others (2004 SCMR 1077), Abdul Hafeez Abbasi v. Managing Director, Pakistan International Airlines Corporation, Karachi, and others (2002 SCMR 1034), and Secretary to the Government of N.W.F.P. Zakat/Social Welfare Department, Peshawar v. Sadullah Khan (1996 SCMR 8413). We see no reason to differ from the above view of the Supreme Court and, therefore, respectfully subscribe to the same as being legally sound. It is further added that to hold otherwise would amount to shifting the burden of institutional impropriety onto individuals who had neither control over the process nor any role in the decision-making hierarchy, and who merely responded to a public advertisement in good faith.

12. The above principle, *stricto sensu*, would not be applicable in the present case in view of its peculiar facts and circumstances. Besides the present petitioners, there exists another category of individuals who had earlier been recommended for the same posts by the first committee through the minutes of its meeting dated 26.02.2020; however, their appointment orders could

not be issued due to the restraining order passed by the High Court, and that too without any fault on their part. Thus, two sets of individuals, both acting in good faith and neither attributable with any wrongdoing, stand affected by the same recruitment process. If relief is granted exclusively to one category while ignoring the legitimate expectations of the other, it may result in manifest inequity and further litigation. The Court, therefore, is required to adopt an approach that balances the competing rights and equities of both categories of individuals. Such an approach must ensure that no undue advantage is conferred upon one group at the expense of another, that the sanctity of the recruitment process is preserved to the extent possible, and that fairness, transparency, and equal treatment, hallmarks of public employment, are duly maintained. The ultimate objective should be to harmonize the rights of all affected persons in a manner consistent with law, equity, and good conscience.

13. The High Court, however, failed to advert to the aforementioned material legal and factual aspects of the case and proceeded on an erroneous premise that the second committee was not properly constituted, thereby declaring the appointments of the present petitioners illegal and void *ab initio*. This conclusion, reached without addressing the essential findings emerging from the inquiries, resulted in the dismissal of the petition filed by the present petitioners. Simultaneously, the petitions filed by the recommendees of the first meeting were partly allowed, and the respondents therein were directed to issue appointment orders strictly in accordance with the recommendations of the first committee, but only in respect of those candidates who fulfilled all the prescribed requirements, including age, qualification, and character verification. The High Court also failed to take into consideration the material fact that the minutes of the meeting dated 26.02.2020 of the first committee were not available in the official record of DHQ Hospital, Karak, until 11.09.2020, as also confirmed by the incumbent MS, DHQ Hospital, Karak, while submitting comments to the Government of Khyber Pakhtunkhwa. It was only on that date, i.e., 11.09.2020, that Dr. Fakhr-e-Alam, the then Medical Superintendent and Chairman of the first committee, forwarded the said minutes, along with the final

judgment dated 08.09.2020 passed by the High Court in W.P. No. 625-B of 2019, to his successor-in-office, Dr. Jamil Anwar, for the issuance of appointment orders to the recommendees.

14. The record is conspicuously silent as to why Dr. Fakhr-e-Alam retained the minutes of the meeting in his personal custody for a period exceeding six months, and why he did not forward the same through the proper channel to the higher authorities for information and record before or at the time of his transfer on 04.03.2020. Such unexplained retention of official records raises serious questions regarding transparency, procedural propriety, and institutional regularity. In the absence of the minutes forming part of the official record during the relevant period, the administrative authorities could not reasonably be expected to act upon recommendations that were neither formally communicated nor duly placed on record. This omission assumes greater significance in light of the competing claims of two sets of candidates, as discussed in the preceding paragraph, and warrants careful judicial scrutiny. The failure to consider this material aspect amounts to both misreading and non-reading of the record. The High Court appears to have proceeded on the assumption that the recommendations of the first committee were duly available and properly placed on record at the relevant time, which, in fact, was not the case. Such an omission has materially affected the proper appreciation of the factual and legal controversy involved. Consequently, the impugned judgment, having been rendered without due consideration of material available on record, cannot be sustained in law and is liable to be set aside.

15. In view of the foregoing discussion, and upon a comprehensive reappraisal of the peculiar facts and circumstances of the case, we hold, declare, and direct as under: --

- a) that the recommendations made by the first committee, as well as the appointment orders issued in favour of the present petitioners by the appointing authority based on the recommendations of the second committee, are hereby set aside, being void *ab initio* and a nullity in the eyes of the law;
- b) that the Government of Khyber Pakhtunkhwa, respondent No. 1, is directed to re-initiate the recruitment process for the same posts, strictly in

accordance with the law on the subject. However, the newly constituted Departmental Selection Committee shall not advertise these posts afresh; rather, the selection process shall be conducted on the basis of the list of candidates already invited by the first committee and available on record.

- c) that the newly constituted committee shall examine the eligibility and suitability of each candidate in accordance with the prescribed requirements for the respective post, including age, qualification, and character verification. However, no candidate shall be disqualified solely on the ground of age, provided that he meets the maximum age requirement on the date of the advertisement, i.e., 02.02.2020, and is otherwise qualified for appointment to the post;
- d) that the entire recruitment process shall be completed within a period of sixty (60) days from the date of this judgment, and compliance shall be reported to this Court through the Deputy Registrar (Judicial); and
- e) that the Government of Khyber Pakhtunkhwa, the Respondent No. 1, is further directed to initiate departmental proceedings against the delinquent officers and officials in accordance with the relevant laws and rules, to ensure that such irregularities are not repeated in the future.

All the petitions are converted into appeals and partly allowed, and the impugned judgment is modified in terms noted above. All the pending CMAs are disposed of accordingly.

16. Before parting with the judgment, we feel it imperative to observe here that the process of public appointments is anchored in the fundamental rights guaranteed under the Constitution. Notably, Article 18 enshrines that: '*Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.*' This constitutional provision encompasses the right of every citizen to compete for appointment to posts in any Federal or Provincial Government department, including attached departments, autonomous bodies, or corporations, on the basis of open competition. Such a right, however, can only be effectively exercised when the process of appointment is conducted in a transparent, fair, and just manner, free from any bias or complaint

regarding its integrity. Any departure from these standards not only violates the constitutional mandate but also undermines public trust in the fairness of government employment, which forms the backbone of an accountable and equitable administrative system. It is further emphasized that public appointments, particularly to lower posts such as Naib Qasid, Sweeper, and Chowkidar, etc., demand the utmost care, diligence, and integrity. Such appointments constitute a sacred trust, for in respect of these posts, no stringent qualifications are prescribed, leaving the appointing authorities with wide, though not unlimited, discretion. However, this discretion is not unfettered in a moral or ethical sense; the authorities must remind themselves that they are ultimately answerable to *Allah Almighty* for any mala fide or improper exercise of these powers. The individuals so selected are paid not from the private funds of the appointing authorities but from the public exchequer. Consequently, failing to select the most suitable candidates also constitutes a serious breach of public trust and an affront to the public, who have the right to be served by the best.

Judge

Judge

Announced on 12.03.2026.
at Islamabad

APPROVED FOR REPORTING

*Ghulam Raza/**