

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD

Rep. No.529/WM/2022
Date of Decision: 01.02.2023

Federal Board of Revenue Vs Ghulam Dastgir

REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST THE ORDER OF THE WAFaqI MOHTASIB IN COMPLAINT NO. WMS-HQR/0008065/2022

Kindly refer to your representation addressed to the President in the background mentioned below:-

2. This representation has been filed by Federal Board of Revenue - FBR (the Agency) assailing the order dated 31.08.2022 of the Wafaqi Mohtasib whereby it has been held as under:-

*"The OM of Establishment Division No.4/1/2005-CP-I dated 13th April 2005 makes no reference to any special dispensation which according to FBR **"it is a 'special dispensation' which means "Special permission that is not permissible under the law". Hence, such discretion can be invoked is deserving cases only and cannot be claimed, as a matter of right, across the board.***

Once a person has been declared medically unfit and permanently disabled during service, as in the case of the complainant, he has only to apply for contract appointment of his child within one year of retirement which he did. Thus, non following the OM of Establishment Division amounts to mal-administration on the part of the Agency. Hence, the FBR is recommended to appoint son of the complainant to a post in BPS-10 or below, as per his qualification.

In view of the foregoing facts, investigation in the complaint is closed under Regulation 23(1)(z) of the Wafaqi Mohtasib (Investigation & Disposal of Complaints) Regulations, 2013.

Compliance report be submitted to this Secretariat within 30 days of the receipt of these findings in terms of Article 11(2) of President's Order No.1 of 1983."

3. Ghulam Dastgir (the complainant) had alleged the has been retired from the Agency on 08.03.2022 on medical grounds and filed application before the Agency for processing the case for appointment of his son against the post of LDC (BPS-9) in the light of Establishment Division's O.M dated 13.04.2005. According to him, his son is graduate and eligible for the appointment and as per report dated 03.08.2022 of the Department Typing Test Committee, his typing speed is 40 words per minute but the Agency has not appointed his son against the post of LDC (BPS-9). Feeling aggrieved, he approached the learned Wafaqi Mohtasib who passed the impugned order, hence the instant representation.

4. The case was fixed for hearing on 19.01.2023. The son of the complainant Ali Dastgir along-with Malik Sarwar Awan advocate whereas Ms. Uzma Munir, Chief (Management) and Shakeel Abbasi, Second Secretary on behalf of the Agency have appeared.

5. The representative of the Agency has contended that the actual date of retirement of the complainant was on 19.05.2022 whereas he got retirement on medical grounds on 08.03.2022 which was notified on 25.03.2022 before less than two months attaining age of his superannuation; that as per Establishment Division's O.M No.4/1/2005-CP-I dated 13.04.2055 special dispensation can be granted in deserving cases only and cannot be claimed by the complainant as a matter of right across the board; that if the Agency implement order of the learned Wafaqi Mohtasib, it will open a flood-gate of such requests and would further encourage large number of employees of the Agency to become medically unfit a few days/ months of their retirement; that the case of the complainant was examined and regretted by the Secretary, Revenue Division/ Chairman FBR; that the contract appointment in each case requires prior approval of the Prime Minister of Pakistan after due examination of cases by the respective administrative Department and that the instant representation may be accepted by setting aside the impugned orders of the Wafaqi Mohtasib.

6. The representative of the complainant has contended that the complainant was retired from the Agency on 08.03.2022 on medical grounds and declared permanently unfit for further government service of any kind by the Central Medical Board (CMB) vide certificate dated 08.03.2022 and also been communicated to the Agency by Dr. Shaista Habibullah, President, CMB; that he applied to the Agency for appointment of his son against any suitable post in the light of Establishment Division's OM No.4/1/2005-CP-I dated 13.04.2005; that his son is graduate and eligible for the appointment and as per report dated 03.08.2022 of the Department Typing Test Committee, his typing speed is 40 words per minute; that he is serious heart patient and underwent open heart surgery on 13.03.2020 and that the learned Wafaqi Mohtasib has rightly passed the impugned order which may be upheld.

7. After perusal of record and hearing the parties, it has been observed that appointment on contract basis of widow/ widower or one child of a serving civil servant is according to the policy issued by the Establishment Division vide O.M. dated 13.04.2005; that there should be no question if a department itself referred the case to Central Medical Board (CBM) and thereafter issued notification of retirement on the recommendation of the CMB; that the Agency did not avail second opinion on the certificate of the CMB if they had any observation and that the learned Wafaqi Mohtasib has rightly recommended to the Agency to appoint son of the complainant to a post in BPS-10 or below, as per his qualification; thus no interference is warranted with the impugned order.

8. Accordingly, the Hon'able President has been pleased to reject the instant representation with direction to the Agency to implement the order dated 31.10.2022 passed by the learned Wafaqi Mohtasib within 30-days.

-Sd-
(Asghar Ali)
Director (Legal)

The Chairman,
Federal Board of Revenue (FBR),
FBR House, Constitution Avenue,
Islamabad.

Mr. Ghulam Dastgir,
R/o House No.244-C, Street No.31,
Sector G-6/2, **Islamabad.**

Copy to:

The Secretary, Wafaqi Mohtasib (Ombudsman)'s Secretariat, Constitution Avenue, Islamabad.