

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.4837/2018

Nadeem Akhtar, etc.

Versus

Federation of Pakistan, etc.

Petitioners:

Mr. Khurram Mehmood Qureshi and
Mr. Zahid Hussain Mughal, Advocates.

Respondents by:

Barrister Mumtaz Ali, AAG.
Mehmood Khan Lakho, Section Officer
(Lit-V), Establishment Division, Islamabad
Afzal Mehmood Butt, Director, Cyber
Crime Wing, FIA.
Ali Sher Jakhrani, Additional Director/
Establishment, FIA Headquarters.
Qaiser Masood, Additional Director Law/
Deputy Legal Advisor, FIA Headquarters.
Abdul Rauf, Additional Director Admin,
Cyber Crime Wing, FIA.
Haroon Rasheed, Dy. Director (Legal)
Muhammad Arshad, Assistant Director.

Date of Hearing: 30.08.2019

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioners have prayed for the following relief:-

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That recruitment process initiated by respondent No.5 to 8 through respondent No.9 via advertisement dated 02.12.2018 may kindly be declared as illegal, unlawful, void ab-initio which may also be struck down immediately.

That respondent No.1, 2 & 4 may kindly be directed to take up the matter of recruitment immediately and channelize the same as per dictum laid down by this Honorable Court in ICA No.340/2017 and Honorable Supreme Court of Pakistan in numerous judgments. It is further prayed that appropriate directions may kindly also be passed to the respondents to recruit all the officials from BPS-16 & above through respondent No.3 in a fair and transparent manner so that competent, energetic, experienced, honest and dedicated officers/officials may be brought in the system.

That respondent No.5 may also be directed to strictly observe and implement the directions passed by this Honorable Court in ICA No.340/2017 titled "Imran Ahmed & others Vs. Federation of Pakistan & others" and submit its compliance report to this Honorable Court. It is further prayed that the respondent No.5 to 7 may kindly be directed to adopt to recruit officials from BPS-1 to 15 by strictly adopting the criteria/policy laid down by this Honorable Court in ICA No.340/2017.

That respondent No.5 to 7 may kindly also be directed to forward the cases of illegal regularization of officers from BPS-16 to BPS-18 of different wings of FIA i.e. Cyber Crime, IBMS and other wings FIA made by so-called Cabinet Sub Committee under the Chairmanship of Former Federal Minister Khurshid Shah to Federal Service Public Commission immediately as observed by this Honorable Court vide judgment passed in ICA No.340/2017 and Notification No.F.53/I/2008-SP dated 11.02.2017 of Establishment Division in the interest of justice.

That the respondents may also be directed to process and advertise total number of 415 posts for appointment in FIA in fair and transparent manner and recruit officials in BS 16 and above through FPSC instead of 407 posts.

2. Brief facts referred in the instant matter are that FIA has been established under the FIA Act 1974, which is under the control of Ministry

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of Interior, Government of Pakistan, with jurisdiction to investigate different crimes, whereas the officials of FIA are to be dealt under the FIA (Appointment, Promotion and Transfer) Rules, 2014 and all the posts available with FIA fall within the purview of federal posts. The FIA has established a new wing by the name of National Response Centre for Cyber Crimes (NR3C) to deal with high-tech crimes in terms of the Prevention of Electronic Crimes Act, 2016, for which posts of BPS-1 to BPS-18 purely on contract basis have been published. The petitioners are aggrieved thereof, who are working on different positions in FIA on permanent basis. The main grievance of petitioners is that FIA

authorities are engaging the services of different individuals in violation of judgment passed by this Court in ICA No.340/2017 (Imran Ahmad vs. FOP), reported as 2019 PLC(CS) Note 19 Islamabad.

3. Learned counsel for petitioners contends that the recruitment initiated by NR3C FIA on civil posts from BPS-16 and above is in violation of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, FPSC Ordinance, 1977 as well as in contravention with the principles laid down in ICA No.340/2017 (Imran Ahmad vs. FOP); that respondents are not allowed to recruit any person in any project as it amounts to create further complications after completion of project and newly recruited persons will claim regularization of their services in future; that concept of project post has not been used in Civil Servants Act, 1973, but if the project is executed by the Government department and the category of civil post is in connection with affairs of Federation, the same falls within the purview of FPSC in terms of Section 7 of the FPSC Ordinance, 1977; that the FIA authorities have not, yet sent up the cases of their contract employees to the FPSC as directed in judgment passed in the case of ICA No.340/2017 (Imran Ahmad vs. FOP) for the purpose of regularization and

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they are creating another set of employees in FIA through a backdoor

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4. Conversely, learned AAG along with FIA officials, FPSC and Establishment Division's representatives contend that advertisement published by NR3C FIA was published in the daily newspapers after completion of codal formalities and the Planning Commission has given approval for the appointment of these officials of project of 36 months and as such, the services of the newly recruited persons will not be converted or regularized in any manner after completion of 36 months; that the posts have been announced in daily newspapers and recruitment process has

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been conducted in a manner prescribed under the law as well as under the guidelines settled by this Court in the case of ICA No.340/2017 (Inray Ahmad vs. FOP); that the apprehension set out by petitioners is just presumption and as such, the petitioners are not covered under the term aggrieved person as referred in Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973; that high powered selection committee was nominated in this matter and all the candidates were examined on the basis of written test and interview as well as on merits while following the quota prescribed under the law as well as notified by the Government; that FIA officials present before the Court argued that project posts do not fall within the parameters of FPSC unless the same are converted from development to non-development projects and the posts were declared permanent posts by Federation of Pakistan, where the FPSC Ordinance, 1977 is applicable and as such, at present, the FPSC has no jurisdiction to deal with the project posts.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioners being FIA officials have challenged advertisement dated 02.12.2018, got published by respondents No.5 to 8 NR3C FIA for recruitment of different positions from BPS-1 to BPS-15 in the said cyber crime wing. The main grievance of petitioners is the recruitment process initiated by NR3C FIA, especially for the posts of BPS-16 and above on the ground that the civil posts of BPS-16 and above could only be filled through FPSC in terms of the FPSC Ordinance, 1977.

7. While dealing with proposition in question, I have gone through the record placed by respondent side and observed that there are 45,000 complaints pending in the entire country in terms of Prevention of Electronic Crimes Act, 2016, which include offences of unauthorized

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access to information of data, cyber terrorism, hate speeches, electronic fraud, unauthorized inception, offences against modesty of natural person and minors, children pornography, cyber stalking, spamming, spoofing, etc., and as such, only 15 officers of FIA are available to deal with such hefty numbers of complaints. In order to cater such situation of electronic crimes, the Prevention of Electronic Crimes Act, 2016 was promulgated along with Prevention of Electronic Crimes Investigation Rules, 2018, which provides a new cyber crime wing to deal with such kinds of crimes in a more specialized manner, therefore, the appointment of all the officials of cyber crime wing falls within the purview of Rule 16 of the Prevention of Electronic Crimes Investigation Rules, 2018, where a separate cyber crime wing/specialized cadre has to be established on the basis of qualification and criteria specified in Schedule-I. Furthermore, Rule 16(3) puts emphasis on the appointment, promotion and transfer of personnel of cyber crimes under the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, therefore, I have gone through Civil Servants Act, 1973 which deals with appointment of persons, its terms & conditions of service in Service of Pakistan, whereby Section 25 Chapter IV deals with the rules.

8. In terms of Rule 25 the President or any person authorized by the President in this behalf may make such rules as appear to him to be necessary or expedient for carrying out the purpose of Civil Servant Act, 1973, whereas in terms of Section 25 of Civil Servant Act, 1973, Civil Servant (Appointment, Promotion and transfer) Rules, 1973 were notified which were duly referred in the Prevention of Electronic Crimes Investigation Rules, 2018, therefore, there is no exception that the Civil Servant Act, 1973 or APT Rules, 1973 are not applicable for the recruitment against any position in the FIA as the positions advertised by

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NR3C Cyber Crime FIA fall within the concept of post of Federation of Pakistan, which are meant to deal with the affairs of the State, however, the main grievance of the petitioners' side is the method of appointment which is presently conducted by NR3C FIA themselves under Prevention of Electronic Crimes Act, 2016 read with its rules.

9. The record appended with this writ petition by the respondents' side clarifies the position that present recruitment process is phase-III project, FIA Cyber Crime Wing in continuation of phase-II project, FIA NR3C, 2016, whereby the competent authority, Ministry of Planning, Development and Reforms vide their O.M. dated 30.04.2018 submitted working paper to the Ministry of Interior, Government of Pakistan for approval of cost, procurement of vehicles and staff from Ministry of Finance to establish a task force for dealing with the future Cyber Crime infrastructure, letter dated 03.05.2018, issued by Ministry of Interior expresses the approval of the reference of Ministry of Planning, Development and Reforms and finally Establishment Division, Cabinet Secretariat, Government of Pakistan vide O.M. dated 09.08.2018, issued

NOC for filling up 415 vacant posts of different cadres from BPS-01 to 19

in the NR3C. On 11.09.2018 Establishment Division address the Press

Information Department of Pakistan for necessary advertisement in daily

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allowed Director General, FIA to hire a testing agency through open bid in

order to ensure merit based recruitment against 415 posts.

10. Learned AAG under the instructions of FIA officials has drawn the

attention of this Court towards O.M. dated 30.04.2018, which is as under:-

Islamabad, the 30th April, 2018

No.30/110/PIA-III/PC/2017

OFFICE MEMORANDUM

Subject: AUTHORIZATION: NATIONAL RESPONSE CENTRE FOR CYBER CRIME (NR3C) (PHASE-III)

on the above subject, Islamabad's letter
was meeting held on 19th March, 2018 wherein following decision was
taken:

"The CDWP approved the project with the conditions that:

- i) Establishment cost will be rationalized;
- ii) NOC for procurement of vehicles and staff will be obtained from Ministry of Finance;
- iii) A Task Force will be created on future cyber-crime infrastructure in consultation with the Planning Commission."

2. The approved cost of the project is given as under:

(Rs. In Million)

Sr. No.	Item	Approved Cost
1	Capital Expenditure	454.702
2	Establishment Expenditure	466.464
3	Operational Expenditure	207.440
Total Cost		1128.606

3. The sponsoring agency may issue administrative approval of the project in accordance with the above stated decision of the CDWP and a copy of the same may inter-alia be endorsed to this Ministry. The implementation period of the project is 36 months which may be reflected in administrative approval accordingly.

4. The receipt of this letter may kindly be acknowledged.

11. The above referred O.M. confers that the administrative approval has been given for the National Response Centre for Cyber Crime (NR3C) (Phase-III) as a project for 36 months only and as such these positions shall not be allowed to continue after 36 months under any circumstance.

12. Learned counsel for the petitioners has drawn attention of this Court towards framing of recruitment rules of project posts as provided at S.No.2.9 of the ESTA Code whereby term project post has been explained

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3. The term "project posts" has not been used in the Civil Servants Act, 1973 and the rules made thereunder. The Civil Servants Act, 1973 uses the expression "civil posts in connection with the affairs of the Federation". Thus the formulation of the question referred to in para 1 is flawed. Projects are executed by the Ministries/Divisions/Attached Departments/Subordinate Offices, as well as autonomous bodies. If a project is executed by a government department, i.e. Division/Attached Department or Subordinate Office, project posts shall fall in the category of civil posts in connection with the affairs of Federation and fall within the purview of the FPSC in terms of section 7 of the FPSC Ordinance, 1977 and

recruitment rules for these posts require the approval of the Commission. Where a project is being executed by an autonomous body, project posts would be outside the purview of the Commission.

13. While considering the above background, it is made clear by the Establishment Division as well as by the ESTA Code that project post is outside the purview of the Commission in terms of FPSC Ordinance, 1977, unless project posts were declared to be the permanent post after its conversion from development to non-development side by Ministry of Planning with concurrence of Ministry of Finance and approval of Establishment Division, Federal Government after the completion of the project, therefore, the jurisdiction of the FPSC has to be seen under FPSC Ordinance, 1977, whereby Commission in terms of Section 3 has been constituted and the function has been elaborated in Section 7 and the jurisdiction of Commission has been explained in terms of Section 7(a)(b) & (c), wherein FPSC can conduct test and examination for recruitment of person to all Pakistan Service, the Civil Service of Federation and Civil post in connection with the affairs of Federation in basic pay scale 16 and above or equivalent, however, certain positions have been excluded from the purview of the Commission in terms of Section 7(2) of the Ordinance.

As per the specific provision referred in the Ordinance is as under:-

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Section 7. Functions of the Commission:

(2) Recruitment to the following posts shall be outside of purview of the commission:

- (ii) filled by appointing a person on contract for specified period.

14. Keeping in view the above background and legal position, it is made clear that the advertisement give by the FIA NR3C for BPS-1 to 19 does not fall within the purview of FPSC under any stretch of imagination.

and as such the respondents have also ensured that these posts will not be regularized in any manner under the law after completion of 36 months.

15. I have also gone through judgment of this Court passed in ICA No.340/2017 (Imran Ahmad vs. FOP), reported as 2019 PLC(CS) Note 19 Islamabad which was further upheld by the Apex Court vide order dated 13.03.2019 passed in C.P No.2792/2018 and others, therefore, this Court is bind by the ratio settled in the said judgment wherein following order has been passed in Imran Ahmed supra case:-

i. No one is allowed to hire any person on daily wages, contract basis, in any project, organization, office, ministries, divisions and others, except in accordance with law.

ii. All persons have to be appointed on permanent posts only and appointment on Ad hoc basis could not be considered for regularization and no individual could any claim legal right for regularization under any consideration while appointed on Ad-hoc basis.

iii. All project employees who are appointed in BPS-16 and above on project could not claim regularization of their services unless their projects have been converted from development to non-development phase by the Government of Pakistan. In such eventuality, all those employees who are working on those projects shall continue to work and if their initial appointments in the project have been made through a transparent manner i.e. advertisement, test, and interview, then their cases be sent to FPSC in terms of Section 11(b) of the Civil Servants Act, 1973 read with the powers referred in Rules 4 and 5 of the FPSC (Functions) Rules, 1978. Their posts and their appointments shall be considered regularized subject to decision of the FPSC on the question of their eligibility, qualification and fitness merely on the basis of opinion of FPSC or conducting test and interview within a period of six Months.

iv. All project employees of BPS-1 to BPS-15 working in projects, which have been converted from development to non-development, shall be considered for the purpose of their regularization of services by their competent authorities while considering their qualification, eligibility, and fitness on case to case basis within the period of six (06) months (as one time exercise), subject to the condition that their initial selection was made through transparent manner i.e. advertisement, test and interview.

16. The above referred principles left no stone unturned or create exception for the present recruitment process, therefore, in addition to

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above this Court feels necessary to pass certain direction to the respondents.

- (a) FIA NR3C will notify each and every person recruited under the present recruitment process that their services will not be extended, regularized, converted into permanent posts under any stretch of imagination and they shall leave their positions by efflux of time when period of 36 months elapsed.
- (b) The persons recruited in NR3C could not be transferred or posted to any other wing or department of FIA or to any other autonomous, semi-autonomous, or any other Government department on deputation or could be adjusted against any other post, nor these persons will be hired against some other project post under the garb of present recruitment process.
- (c) NR3C, FIA is a specialized cadre in terms of Rule 16(i) of the Prevention of Electronic Crime Rules, 2018, therefore, any person who has been hired in this wing, has to serve in this cadre only. Similarly, the persons who have been hired in other FIA Hierarchy i.e. Immigration, Crime, Terrorism, etc. will not be posted in Cyber Crime Wing unless extreme exigency of service is required subject to qualification and other eligibility criteria to be fulfilled as provided under the law.
- (d) If the above referred recruited positions under Phase-III Project will be converted from development to non-development side by the Government of Pakistan within 36 months the process laid down in Imran Ahmed case in Para 123(iii) shall apply. However, in that eventuality the FPSC shall re-examine each and every individual of BPS-16 and above under the law and select every individual on merit.
- (e) The NR3C FIA Authorities will observe quota i.e. women, disable and regional quota in strict manner and shall also give equal opportunity to women.

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Islamabad Court
1984

17. Keeping in view the above background, present petitioners who are permanent employees of FIA and presently posted in other wings of FIA in their own cadres, do not fall within the concept of aggrieved persons in terms of Article 199(1)(a) of the Constitution of Islamic Republic of Pakistan, 1973 as FIA authorities ensures that the persons recruited on projects will not be considered for the purposes of promotion, seniority against permanent employees of FIA who are already in service on permanent basis.

18. Even otherwise, petitioners who are permanent employees of FIA have not made any claim that they are already serving in NR3C (specialized cadre), therefore, there is no eventuality in future that the rights of the petitioners will be jeopardized or their existing inter-se seniority and other service benefits will be effected, therefore, instant writ petition is misconceived and the same is hereby dismissed. However, observations made by this Court in the preceding paragraphs have to be

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Followed by the FIA in letter & spirit.*

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SW
(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 4th September, 2019.

SW
(MOHSIN AKHTAR KAYANI)
JUDGE

