

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 7254 of 2017 (O&M)

Date of Decision: 23.08.2017

Abdus Shakoor

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Jagmohan Singh Bhatti, Advocate
for the petitioner.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab
for respondents No. 1 and 2.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Karajveer Singh, Advocate
for respondents No. 3 and 4.

S.S. Saron, ACJ.

The petition has been filed by Abdus Shakoor-petitioner seeking a writ in the nature of *quo warranto* declaring the office of Estate Officer held by Rashid Mohammad (respondent No.5), to be vacant. A further prayer has been made for quashing the order dated 31.3.2017 (Annexure P-4) passed by the Chief Executive Officer, Punjab Waqf Board (respondent No.4), by which the term of Rashid Mohammad (respondent No.5), as Estate Officer, has been extended for a period of one year in anticipation, subject to approval of the Board/Chairperson/Administrator and further subject to the condition that he would submit a medical fitness

fifteen days. Besides, as and when the competent authority would take charge, the file would be submitted to him for ratification and for necessary approval. The decision of the competent authority would be final and binding on the applicant i.e. Rashid Mohammad (respondent No.5).

Mr. P.P.S. Thethi, Addl. Advocate General, Punjab, has submitted a copy of notification dated 18.8.2017 issued by the Government of Punjab, Department of Home Affairs and Justice (Civil Defence Branch), whereby the Governor of Punjab by invoking sub Section (3) of Section 14, apart from other nominations as contemplated by Clause (b) of Section 14 (1) of the Waqf Act, 1995, as amended by Waqf Amended Act, 2013 (for short - 'the Waqf Act'), has been further pleased to appoint/nominate the persons as mentioned in the said notification as members of the Punjab Waqf Board. The notification dated 18.08.2017 is taken on record.

According to the learned counsel appearing for the respondents, with the Constitution of the Punjab Waqf Board by the aforesaid notification dated 18.08.2017, the present petition has been rendered infructuous and is liable to be disposed of as such.

Sh. Kanwaljit Singh, Sr. Advocate, appearing for respondents No. 4 and 5 has further submitted that the petitioner in fact has no *locus-standi* to file the petition. He is an ex-employee of the Punjab Waqf Board and is not espousing any public interest or cause.

We have given our thoughtful consideration to the contentions of learned counsel for the parties and with their assistance gone through the records of the case.

The Governor of Punjab in pursuance of order dated 3.1.2017 (Annexure-P1) appointed Sh. Latif Ahmed, Sub Divisional Magistrate,

Maur and Secretary Regional Transport Authority, Bathinda to hold the charge of Chief Executive Officer of Punjab Waqf Board.

The said appointment of Sh. Latif Ahmed as Chief Executive Officer of the Punjab Waqf Board has been assailed on the ground that the appointment of Chief Executive Officer and his term of office and other conditions of service are provided for in terms of Section 23 of the Waqf Act, which has been amended by the Waqf Act, 2013. The same inter alia provides that there shall be a full time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to State Government, and in case of non-availability of a Muslim Officer of that rank, a Muslim Officer of equivalent rank may be appointed on deputation. Sub-Section (2) of Section 23 provides that the term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed. Sub-Section (3) thereof envisages that the Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

Section 24 of the Waqf Act relates to officers and other employees of the Board. It is provided in terms of Sub-Section (1) that the Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under the Waqf Act, details thereof shall be determined by the Board in consultation with the State Government. In terms of Sub-Section (2) the appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by Regulations.

Section 25 of the Waqf Act relates to the duties and powers of Chief Executive Officer. In terms of Sub-Section (1) it is provided that subject to the provisions of the Waqf Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include - (a) investigating the nature and extent of auqaf and waqf properties and calling whenever necessary, an inventory of waqf properties and calling, from time to time, for accounts, returns and information from mutawallis; (b) inspecting or causing inspection of waqf properties and accounts, records, deeds or documents relating thereto; (c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of auqaf. In terms of Sub-Section (2) it is provided that in exercising the powers of giving directions under sub-section (1) in respect of any waqf, the Board shall act in conformity with the directions by the waqf in the deed of the waqf, the purpose of waqf and such usage and customs of the waqf as are sanctioned by the school of Muslim law to which the waqf belongs. Sub-Section (3) provides that save as otherwise expressly provided in the Waqf Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under the Waqf Act.

Mr. Rashid Mohammad (respondent No.5) has been working as Executive Officer of the Board and post held by him is a Class-II post. The Chief Executive Officer of the Punjab Waqf Board on 31.3.2017 passed the impugned order (Annexure P-4) whereby the services of Mr. Rashid Mohammad, Estate Officer (respondent No.5) were extended in anticipation, subject to approval of the Board/Chairperson/Administrator, for one year with the condition that the applicant (Rashid Mohammad)

would submit medical fitness certificate issued by not below the rank of Chief Medical Officer within 15 days. Besides, as and when the competent authority would take charge, the file would be submitted to him for ratification and for necessary approval. The decision of the competent authority, it is mentioned, would be final and binding on the applicant i.e. Rashid Mohammad (respondent No.5).

Sh. Jagmohan Singh Bhatti, Advocate appearing for the petitioner, submits that in terms of Section 23 (1) of the Waqf Act there is to be a full time Chief Executive Officer of the Board. However, according to the order dated 29.12.2016 (Annexure P-1), Sh. Latif Ahmed has been given the additional charge of Chief Executive Officer of the Punjab Waqf Board while he continues to perform the duties of Sub-Divisional Magistrate, Maur and Secretary, Regional Transport Authority, Bathinda. Therefore, he cannot be said to be a full time Chief Executive Officer of the Board and his appointment is in violation of Section 23 (1) of the Waqf Act and is subject matter of challenge in CWP No.2242 of 2017. Therefore, the order dated 31.03.2017 (Annexure P-4) extending the services of Sh. Rashid Mohammad (respondent No.5) is arbitrary and suffers from impropriety.

Sh. PPS Thethi, Additional Advocate General, Punjab appearing for respondents No.1 and 2 and Sh. Kanwaljit Singh, Senior Advocate appearing with Sh. Karajveer Singh, Advocate for respondents No.3 and 4 submit that such an order of extension could be passed by the Chief Executive Officer as he is also Secretary of the Board by virtue of Section 23 (3) of the Waqf Act. Sub-Section (3) of Section 23 envisages that the Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

A reference has been made to Regulation 24 of the Punjab Waqf Regulations, 1966 which relates to 'appointing authority'. The same reads as under:

24. Appointing Authority - Section 68(2) (e):-

(1) Appointments to posts under the Board shall be made by the authorities specified below:-

<u>Posts</u>	<u>Appointing Authority</u>
Class I	Chairman
Class II	Secretary with the approval of the Chairman
Class III	Secretary

Therefore, the Chief Executive Officer, who is the Secretary of the Board, it is stated, is the competent authority to make appointments to the post of Estate Officer which is a Class-II post of the Board. The same, however, is to be with the approval of the Chairman. Since, there was no Chairman, an extension was granted to Rashid Mohammad (respondent No.5) for one year in anticipation, subject to approval of the Board/Chairperson/Administrator with the condition that he would submit medical certificate not below the rank of Chief Medical Officer within fifteen days. Besides, it was ordered that as and when the competent authority would take charge, the file would be submitted to him for ratification and for necessary approval and that the decision of the competent authority would be final and binding on the applicant i.e. Rashid Mohammad (respondent No.5).

It is also submitted by learned counsel for the respondents that the order extending the term of Rashid Mohammad (respondent No.5) in any case could be passed in terms of Regulation 30 (2) of the Punjab Waqf Regulations 1966 which relates to 'compulsory retirement'. The said

Regulation 30 may also be noticed, which reads as under:

30. Compulsory Retirement - Section 68 (2) (e):-

(i) The date of compulsory retirement of an employee of the Board is the date on which he attains the age of 60 years. He may be retained in service after that date in exceptional circumstances with the sanction of the Board on public grounds which must be recorded in the resolution of the Board; provided he is medically fit, but he must not be retained after the age of 65 years.

(2) No extension shall be granted for more than a period of one year at a time and in the case of extension of a Class I and Class II employee beyond the age of 60 the medical fitness as aforesaid shall be certified before such extension.

Regulation 30 provides for compulsory retirement. Sub Section (2) thereof envisages that no extension shall be granted for more than a period of one year at a time and in the case of extension of a Class I and Class II employee beyond the age of 60, the medical fitness as aforesaid shall be certified before such extension.

As already noticed, a new Board has been constituted and in case the Board does not further extend and in case the order extending the tenure of Rashid Mohammad (respondent No.5) as Estate Officer of the Board is not ratified by the Board or the Chairman, the petition would be rendered infructuous and in case it is so ratified, the petitioner would have a right to assail the same in accordance with law.

The writ petition is accordingly disposed of.

The question of *locus-standi* of the petitioner to file a petition is kept open to be considered in a subsequent petition, if any, filed by the petitioner.

(S.S. SARON)
ACTING CHIEF JUSTICE

23.08.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No