

IN THE HIGH COURT OF SINDH
CIRCUIT COURT, LARKANA

Present:
Shamsuddin Abbasi, J.
Agha Faisal, J.

CP D 217 of 2024 : Mehboob Ali Channa vs.
District & Sessions Judge, Larkana & Others

CP D 218 of 2024 : Aamir Ali Khoso vs.
District & Sessions Judge, Larkana & Others

For the Petitioners : Nemo

For Respondents : Mr. Abdul Hamid Bhurgri
Additional Advocate General Sindh

Mr. Abdul Waris Bhutto
Assistant Advocate General Sindh

Date of hearing : 21.05.2024.

Date of order : 21.05.2024.

ORDER

Agha Faisal, J. The petitioners seek a declaration from this Court in exercise of its writ jurisdiction that they are eligible to be appointed to “*some post*” in Judicial District Larkana. A *direction* to the District & Sessions Judge Larkana is demanded to appoint the petitioners in the manner sought. The petitioners seek this relief in *mutatis mutandis* application of a recent judgment delivered at this Circuit Bench in the case of *Aslam Kalhoro*^[1]. It is brought to the attention of the court that the numerous subsequent petitions have been allowed in reliance upon the said edict; including without limitation nine (9) petitions, being CP D 51 of 2024, CP D 97 of 2024, CP D 98 of 2024, CP D 101 of 2024, CP D 114 of 2024, CP D 135 of 2024, CP D 161 of 2024 and CP D 194 of 2024, vide order dated 17.04.2024.

2. Since the petitioners had not pleaded or articulated an independent case or cause for the petitioners and had rested their entire claim on *Aslam Kalhoro*, we had required the petitioners’ counsel to take us through the edict on the last date of hearing^[2]. With the assistance of the learned counsel, we had appreciated the judgment in *Aslam Kalhoro* and queried the counsel upon several glaring issues, including without limitation:

- a. Rule 6^[3], of the Roster set by the honorable Chief Justice, requires that any matter in which the Registrar or the MIT(s) is party shall not be fixed before a Division Bench without the directions of the HCJ. Since no such directions are manifest from the respective files, how have these petitions, and more importantly the petitions pertaining to *Aslam Kalhoro* and those wherein it was applied *mutatis mutandis*, entertained and that too at a Circuit Bench, without so much as a demur or objection by the concerned registry.
- b. Paragraph 3 and 4 of *Aslam Kalhoro* state that the respondent no. 1, District & Sessions Judge Larkana, had controverted the maintainability and merit of the petition in the following terms:

“3. Upon service of notices, respondents No.1 and 2 filed their respective Comments. Respondent No.1, learned District and Sessions Judge, Larkana, while submitting his

Comments, raised a legal objection to the maintainability of the petition to the effect that the successful candidates have not been impleaded as party to the proceedings. He denied the facts stated in Para No.3 of the petition that after his retirement, the petitioner submitted application for appointment of his son Adeel Hussain before respondent No.1 on the basis of son quota and it was assured that his son will be considered. He also denied the fact stated in Para No.5 of the petition that in consequence to the advertisement, petitioner's son Adeel Hussain applied but was not considered. Respondent No.1 specifically stated that no such application prior to the retirement of the petitioner, as claimed by the petitioner in Para No.3, was submitted. According to Respondent No.1, 12 posts of Naib-Qasid were lying vacant in Judicial District Larkana for which advertisement was got published in three widely circulated newspapers i.e. Daily Dawn, Daily Jang and Daily Kawish, consequent whereupon total 491 candidates including son of the petitioner namely, Adeel Hussain applied who were interviewed and out of 491, 307 candidates appeared before the Selection Committee, while 184 candidates chose to remain absent. It was further stated that after proper interview 12 candidates were declared to be successful and 295 candidates, including son of the petitioner, were declared to have failed in the interview. Then, after duly completing formalities appointment orders were issued. According to respondent No.1, the record reveals that the appointment process was completed on 17.05.2023 before retirement of the petitioner as Naib-Qasid on 30.06.2023; however, an opportunity was given to his son who after submission of application was interviewed by the selection committee like other candidates but he could not succeed.

4. Respondent No.1 further asserted that although the petitioner has claimed that he has been deprived of his right of son-quota but the office record shows that during his service tenure, his another son Aadil Hussain was appointed as watchman by his learned predecessor Mr. Iqbal Hussain Metlo, vide Appointment Order dated 10.12.2019, therefore the petitioner has already exhausted the right of son quota, as entire family of an employee cannot be accommodated on the basis of son-quota. He further stated that the appointments were made purely on merits through Departmental Promotion and Selection Committee after observing due formalities and the Rules were strictly followed. He added that Ali Mardan Khokhar was appointed as Naib Qasid on the basis of deceased quota as his father Ghulam Shabir Khokhar being reader of the Court, took his last breath while performing duty in the Court of learned Senior Civil Judge-II Larkana during office hours, therefore the petition filed by the petitioner is absolutely devoid of merits, thus he prayed for its dismissal."

The respondent no. 2, Registrar High Court, had categorically adopted the contrarian position adopted by the respondent no. 1, as is evident from paragraph 5 of *Aslam Kalhoro*.

"5. Respondent No.2, Registrar, High Court of Sindh, Karachi, in his parawise comments stated that the comments submitted by Respondent No.1, i.e. District and Sessions Judge, Larkana, may be treated as the comments of Respondent No. 2 being Proforma Respondent as it directly pertains to the acts and actions taken by Respondent No.1 and instant Petition has been filed by the Petitioner in respect of appointment of his son on son-quota basis in Judicial District, Larkana for which Respondent No.1 is the appointing authority. It was further asserted that the relief is sought against Respondent No.1, whereas Respondent No. 2 has no role in the entire process. Respondent No.2 by reiterating the contents of the Comments submitted by Respondent No.1, has fully supported and corroborated the same. However, he has annexed with his Comments photocopies of approved policy letters relating to appointment on son quota basis, in respect of deceased, retired and serving employees of District and Subordinate Courts in Sindh issued by this Court (High Court of Sindh) from time to time."

It was painfully apparent that in the absence of any deliberation on maintainability, disputed questions of fact requiring inquiry or evidence were entertained and adjudicated in writ jurisdiction; contrary to settled principles of law^[4].

c. It has been noted from the edict that there is no statutory backing for the claim of son quota sought to be enforced in the judicial establishment. The pertinent rules, including the Sindh Judicial Staff Service Rules 1992, also contain no provision for such dispensation.

d. The edict relies upon three letters manifestly issued on the administrative side, dated 03.03.2010, 23.07.2012 and 04.03.2013, referring to a proposal for

giving *preference* to employees' children in appointment and record keeping in so far as such children are concerned. There is no reference to any policy ever having been framed or enacted in such regard.

e. *Aslam Kalhoro* seeks to place reliance upon two judgments of a non-binding nature as pertinent to other High Courts, however, notwithstanding the applicability thereof or otherwise primary reliance is placed upon a judgment of a Division Bench of this Court in *Taqi Shah*^[5]. Notwithstanding the fact that *Taqi Shah* did not pertain to *son quota* and delved with the issue of *deceased quota* appointments in *BPS-17* per interpretation of a statutory provision, the Court appeared not to have been assisted with the fact that *Taqi Shah* had been overruled the very same year by the Supreme Court in the judgment reported as *2018 SCMR 1607*^[6].

f. The mere employment of a parent in a public sector institution could not be demonstrated to confer a vested right, on the touchstone of *Shahnawaz*^[7], upon progeny to perpetuate such employment from generation to generation.

3. Learned counsel remained unable to satisfy the court on either count. Consequently, the following order was passed:

“The petitioner seeks appointment on son quota in the Judicial District of Larkana.

At the very onset it is noted that while the Registrar High Court is impleaded as a respondent herein, yet the matter has been entertained at the Circuit Court in prima facie violation of Rule 6 of the Roster set by the honorable Chief Justice. The learned Registrar is directed to file a specific reply as to how such petitions are being entertained in apparent disregard of the directives of the honorable Chief Justice.

The learned Registrar will also place on record, under separate statement, any policy with respect to appointment on son quota in Courts under jurisdiction of the High Court and also whether any restraint has been placed in such matters pursuant to orders of the competent authority.

The respective replies from the learned Registrar may be placed on record within one week from the date hereof. Adjourned to 21.05.2024. A copy hereof may be communicated immediately to the learned Registrar at the Principal seat at Karachi.”

4. Despite a fixed date having been given the petitioners have opted to remain unrepresented today. Moreover, we are constrained to observe that the Registrar High Court of Sindh appears to have flouted the aforesaid orders; as despite the passage of two weeks no response has been filed before this Court. This aspect shall be considered later in this order.

5. It is settled law that recruitment in the public sector ought to be undertaken through an advertised competitive process, essential to maintain transparency in the process of induction and to ensure merit. Recourse to parallel processes of recruitment has consistently been deprecated by the superior courts. The petitioners seek to make public sector employment an inheritable right; at the manifest cost of merit and fairplay. Reserved quotas in any event are a policy matter and *admittedly* there is no policy in vogue to facilitate the relief sought herein.

6. Article 175(2)^[8] of the Constitution mandates that no court shall have any jurisdiction save as that conferred by law. Article 189 of the Constitution enunciates that a decision of the Supreme Court, to the extent that it decides a question of law or is based upon or enunciates a principle of law, shall be binding on all other courts in Pakistan and certainly this diktat includes the High Courts. The rendering of judgments in apparent indifference to Supreme Court authority has been deprecated most recently by the apex court in *Pervez Musharraf*^[9]. *Syed Mansoor Ali Shah J* observed that failing

to adhere to the judgments and orders of the Supreme Court undermines the credibility and effectiveness of the entire judicial system established by the Constitution. It was stressed that such judgments are binding on all judicial and executive authorities of the country per Articles 189 and 190 of the Constitution. The judgment accentuated that disregard of Supreme Court judgments *inter alia* unsettles the integrity and sanctity of the Supreme Court and renders inconsistent High Court pronouncements not only without jurisdiction but also unconstitutional. On the touchstone of the aforesaid, this Court is, respectfully, constrained to express its inability to treat *Aslam Kalhoro*^[10] as good law.

7. There is yet another aspect to consider while appreciating the gravity of the matter under scrutiny. The claim is against officers of the judicial service *prima facie* under the dominion and control of the High Court. There is very little precedent of orders in such matters having been escalated by the relevant office before the Supreme Court. Therefore, utmost caution is merited in such instances so as to preserve the sanctity of the law.

8. *Muhammad Junaid Ghaffar J* reiterated in *Imad Samad*^[11] that it is settled law that an earlier judgment of a Division Bench is binding on a subsequent Division Bench, and in case if any contrary view is being taken, then the matter has to be referred to the honorable Chief Justice for constitution of a larger Bench to resolve the controversy; as laid down by the Supreme Court in the case of *Multiline Associates*^[12] and reiterated in the case of *Amir Khan*^[13].

9. In view hereof and as reiterated by the recent order of a five member bench of the Supreme Court in *SSGC case*^[14], the office is instructed to place these petitions before the honorable Chief Justice for formation of a larger bench to consider the matter and adjudicate issues including the those identified per paragraphs 2 and 5 supra.

10. The fact that *Aslam Kalhoro*^[15] and CP D 51 of 2024, CP D 97 of 2024, CP D 98 of 2024, CP D 101 of 2024, CP D 114 of 2024, CP D 135 of 2024, CP D 161 of 2024 and CP D 194 of 2024 were entertained at a Circuit Bench, without any manifest directions from the honorable Chief Justice and in *prima facie* derogation of Rule 6, of the Roster set by the honorable Chief Justice, without even an objection by the concerned Additional / Deputy Registrar is disturbing. This practice would defeat the administration of justice and upset the integrity and sanctity of the Court. Therefore, this matter may be placed before the competent authority / honorable Senior Puisne Judge to consider the likelihood and severity of disciplinary proceedings against officers concerned.

11. The final aspect to dwell upon herein is the issue of *prima facie* contempt. As observed in paragraph 4 supra, the Registrar of the High Court of Sindh appears to have flouted orders of the Division Bench of this Court. In view hereof, a notice be issued to *Mr. Suhail Muhammad Leghari (Registrar)* to show cause as to why contempt of court proceedings may not ensue there against for having flouted the orders of this Court dated 07.05.2024. The alleged contemnor shall be present in Court in person on 28.05.2024 to answer the charge so leveled. A copy of this order and the consequent show cause notice shall be placed in the service file of *Mr. Suhail Muhammad Leghari (Registrar)* forthwith. The office is instructed to excise a separate file in so far as this contempt matter is concerned, containing the orders dated 07.05.2024 and the contempt notice issued, and the said file shall be numbered and listed for hearing before the Division Bench at Larkana on 28.05.2024.

12. The office is instructed to place copies hereof before the honorable Chief Justice and the honorable Senior Puisne Judge (competent authority) at the principal seat at Karachi; copies may also be communicated to the Assistant Registrars at Sukkur, Hyderabad and Mirpurkhas.

Judge

Judge

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- ^[1] Per *Muhammad Saleem Jessar J* in *Muhammad Aslam Kalhoro vs. District & Sessions Judge Larkana & Others* (CP D 670 of 2023) dated 10.01.2024.
- ^[2] 07.05.2024.
- ^[3] Any matter in which Learned Registrar and Learned MIT(s) of High Court of Sindh is a party; such cases will be fixed before the Division Bench as per directions of the Honorable Chief Justice.
- ^[4] 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.
- ^[5] Per *Nazar Akbar J* (*Muhammad Saleem Jessar J* being the other member of the bench) in *Muhammad Taqi Shah vs. Secretary Education & Others* reported as 2018 PLC CS Note 92.
- ^[6] *Sajjad Ali Shah J* speaking for a 3 member bench of the Supreme Court.
- ^[7] Per *Munib Akhtar J* in *Shahnawaz vs. Pakistan* reported as 2011 PTD 1558.
- ^[8] Article 175(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.
- ^[9] Per *Syed Mansoor Ali Shah J* in *Taufiq Asif vs. General (retired) Pervez Musharaf & Others* (Civil Petition 3797 of 2020) and connected matters; yet unreported judgment dated 10th January 2024.
- ^[10] Per *Muhammad Saleem Jessar J* in *Muhammad Aslam Kalhoro vs. District & Sessions Judge Larkana & Others* (CP D 670 of 2023) dated 10.01.2024.
- ^[11] *Imad Samad vs. Pakistan* (CP D 5430 of 2020); judgment dated 31.03.2021.
- ^[12] *Multiline Associates vs. Ardeshir Cowasjee* reported as 1995 SCMR 362 / PLD 1995 SC 423; *Province of East Pakistan vs. Dr. Aziz ul Islam* reported as PLD 1963 SC 296.
- ^[13] *Muhammad Amir Khan vs. Govt. of KPK* reported as 2019 SCMR 1021.
- ^[14] *SSGCL vs. Toto & Others* and connected matters (*Civil Petition 6164 of 2021* and connected petitions); order dated 01.12.2022 ("SSGC case").
- ^[15] Per *Muhammad Saleem Jessar J* in *Muhammad Aslam Kalhoro vs. District & Sessions Judge Larkana & Others* (CP D 670 of 2023) dated 10.01.2024.