

IN THE HIGH COURT OF SINDH, KARACHI

Present:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

1. C.P. No.D-3472/2012

Muhammad Afzal Kousar Petitioner

V E R S U S

Federation of Pakistan and others Respondents

2. C.P. No.D-3019/2012

Hayat Khan & 4 others Petitioners

V E R S U S

Federation of Pakistan and others Respondents

3. C.P. No.D-3898/2012

Sabir Hussain & 5 others Petitioners

V E R S U S

Federation of Pakistan and others Respondents

4. C.P. No.D-3600/2013

Muhammad Afzal Kausar Petitioner

V E R S U S

Federation of Pakistan and others Respondents

Date of hearing: 10.02.2018

Mr. Muhammad Arshad Khan Tanoli, Advocate for Petitioner in all Petitions.

Mr. Shahzad Mehmood, Advocate in C.P. No.D-3019/2012 and C.P. No.D-3600/2013, for Respondent/KPT.

Mr. Muhammad Rizwan Saeed, Advocate for Respondent/KPT in C.P. No.D-3019/2012

.....

JUDGMENT

ADNAN-UL-KARIM MEMON-J. The above referred Constitutional Petitions are being disposed of vide this single judgment as common question of law and facts are involved therein.

2. Brief facts of the case are that the Petitioners in response to the advertisement dated 15.05.2012 published in "The News" (daily newspaper) applied for the post of Assistant Sub-Inspector (BPS-09) and Security Guard in Karachi Port Trust/ Respondents No. 1 and 2. They being ex-service men with domicile of their respective region had fulfilled the prescribed qualification and eligibility under the Rules to the posts of Assistant Sub Inspector and Security Guard. After due process the Petitioners were short listed and issued call letters for appearing in written test held on 28.07.23012, 30.07.2012, 31.07.2012, 01.08.2012, 04.08.2012 and 09.08.2012 respectively. Petitioners have further averred that the Respondents completed the process of recruitment on the aforesaid posts by appointing un-qualified and blue eyed person by misusing their powers/authority and flouted the principle of law as laid down by the Hon'ble Supreme Court on the identical issue. Petitioners through the petitions have impugned the process of such appointments, which according to them is a result of favoritism and nepotism to deprive meritorious candidates. It is further added by the Petitioners that the post of A.S.I. and Security Guard can only be filled as per recruitment rules framed by KPT and not otherwise,

for which certain experience of the post is mandatory requirement, which has been bypassed while filling the posts. Learned counsel for the Petitioners relied upon statement dated 3.5.2015 and argued that this court vide judgment dated 17.2.2011 had declared all the actions of chairman or board of KPT without approval of Federal Government.

3. Upon notice, Respondents have filed para wise comments, Counter Affidavit and statement dated 03.11.2016.

4. Earlier, these petitions were heard and reserved for announcement of judgment, but on certain points learned counsel for the parties were issued notices to address. And on 10.02.2018, learned counsel for the parties were heard and all these matters were reserved for judgment.

5. Mr. Arshad Khan Tanoli, learned counsel for the Petitioners has contended that the Petitioners applied in the security department against the post of A.S.I and Security Guard but the Respondent KPT ignored the petitioners and appointed their favorites in place of petitioners against the post related to the security of KPT; that there was a dispute created due to filing of petitions before the Honorable Supreme Court, though the case of the Petitioners was covered by the judgment passed by the Honorable Supreme Court. Per learned counsel on all the vacancies, the Petitioners meet the criteria of security relates posts as they are ex-service man of Armed forces whereas those who were illegally appointed/ adjusted against the post of Petitioners have

been scrapped off, therefore, the Petitioners are entitled to be appointed as per KPT Rules and Regulations. The learned counsel relied upon the case of Muhammad Yasin vs. Federation of Pakistan through Secretary (PLD 2012 SC 132) and argued that considerations based on nepotism, favoritism and personal whims and fancies have been eliminated by the KPT Act 1886 and Rules framed there under. He further relied upon in the case Irfan Naseer Baig and others Vs. Province of Punjab and others (2011 PLC C.S. 1537) and argued that Petitioners cannot be non-suited on account of being over age for the post applied for as the KPT Act and Rules provide relaxation in upper age limit for initial appointments in KPT as the Petitioners have such experience for Security related post in KPT. He further relied upon the case Mushtaq Ahmed Mohal and others Vs. The Hon'ble Lahore High Court, Lahore & others (1997 SCMR 1043) and argued that the Petitioners qualified for the security related post in KPT therefore they are entitled to be appointed as per KPT Act and Rules framed there under. He lastly relied upon the case of Dr. Naveeda Tufail & others Vs. Government of Punjab & others (2003 SCMR 291) and argued that considering others on the post of the Petitioners tantamount to curtailment of the legitimate rights of deserving petitioners which is against the of law. He lastly prayed for allowing the petitions.

6. At the very outset, learned counsels for the Respondents No.2 and 3 sated at the bar that the Respondent-KPT has scrapped off the whole process of recruitment made in pursuance of the advertisement dated 15.05.2012, published in daily newspaper

“The News” under the directives of the Prime Minister, because a number of allegations were observed in that process therefore, the petitioners have no cause of action to file the captioned petitions. However they argued that the Petitions are not maintainable on merit and more so the Petitioners were not found qualified for selection in the appointment process. Not only they were over age being beyond age limits as maximum age limit was mentioned 35 years, which was illegally amended up to 40 years in violation of KPT rules and regulations. However, learned counsel endorsed the statement made before this court on 15.5.2017; that petitioners may apply in the fresh process of selection and they will be considered on merits and in accordance with the rules relating to age relaxation; that Secretary Ministry of Ports and Shipping Government of Pakistan, Islamabad vide U.O No. 1 (2)/2010- P&S-1 dated 17.07.2013 conveyed the decision of the Ministry of Ports and Shipping with a direction to the KPT board through its Chairman, who immediately constituted a three member committee to review all the appointments and orders passed by Mr. Rauf Akhtar Farooqi, who was on deputation with KPT and had no powers to make recruitments on the subject posts; that the Board of Trustees of Port of Karachi constituted a high level fact finding inquiry committee and as per directives of Ministry of Ports & Shipping, inquiry committee scrutinized the whole process of appointments / recruitments, postings, inductions, absorptions, promotions, etc. with effect from 23.062010 to 23.04.2014 on individual basis at each level/grade/billet are forged that the same had been done/made in violation of regional/provincial quota,

merit, qualifications, rules, regulations, prescribed procedures and recommended remedial actions/measures including disciplinary proceedings/action against responsible officer of KPT. The above said report of fact finding inquiry committee was forwarded to the Secretary of Ministry of Ports and Shipping Government of Pakistan and the Secretary referred the case to the Prime Minister's Secretariat for appropriate approval/decision. That the Ministry of Ports & shipping vide letter No. F. No. 1(2)/2010- P&S-1 dated 06.001.2016 conveyed Prime Minister's direction to KPT through Secretary Ministry of Ports & Shipping, Islamabad to proceed to undo the illegal appointments/ regularization of services in KPT. Pursuant thereto Ministry of Ports & shipping vide letter No. F. No. 1(2)/2010 P&S-I91), Islamabad, dated 22.03.2016 with reference to KPT's Inquiry Committee Report and direction issued by the Prime Minister's Office, directed KPT to immediately implement the recommendations of Inquiry Committee in letter and spirit; that to implement the recommendations of facts finding inquiry committee at first instance 877 show cause notices have been issued to the officials/officers, who have approached this Court against above mentioned act and filed number of petitions, which are still subjudice.

7. We have considered submissions of the learned counsel for the Parties along with case law and have also gone through the entire record carefully with their assistance.

8. First we would address the question of jurisdiction of this Court with regard to maintainability of the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Karachi Port Trust Officers Recruitment, Appointment, Seniority and Promotion Regulations-2011 are statutory rules of service and the same were framed by the Board of Directors of Karachi Port Trust with the prior approval of the Federal Government, pursuant to Section 22 of the Karachi Port Trust Act, 1886. In the given circumstances, the Hon'ble Supreme Court of Pakistan in the case of Pakistan Defence Officers Housing Authority vs. Lt. Col. Jawed Ahmed (2013 SCMR 1707) has laid down that an aggrieved person can invoke Constitutional Jurisdiction of this Court against a public authority. The Petitioners are seeking appointment in the organization i.e. Karachi Port Trust, which has Statutory Rules of service and in terms of Article 199 (5) of the Constitution of the Islamic Republic of Pakistan 1973 the K.P.T is the person. The same principle is also enunciated in the case of Muhammad Rafi and others vs. Federation of Pakistan & others (2016 SCMR 2146). The Hon'ble Supreme Court has already held that Constitutional Petition is maintainable against an organization, which has statutory rules of service. We therefore are of the view that these petitions are maintainable and can be heard and decided on merits.

10. We have perused the enquiry report dated 12.10.2015, which reveals as under:-

“Following actions may be taken by the KPT management to streamline the matter on priority basis:-

- a) **All the appointments on stipend followed by regulations of 55 officers & 928 employees undertaken in the said period be withdrawn, after due consideration of legal aspects.**
- b) **All the appointments of PSF personnel undertaken during the period through advertisement and without following the proper procedure (physical test, written, medical examination etc) of recruitment may also be withdrawn after due consideration of legal aspects.**
- c) **All the appointments of officers & employees (other than para 19 a & b above) undertaken during the period thorough advertisement be scrutinized on case to case basis.**
- d) **All the orders in respelct of promotions undertaken during the period be scrutinized on case to case basis and disposed of on merit.**
- e) **Further, it is also recommended that while these irregularities are being addressed career progression (promotions/confirmations in service etc.) of all those inducted during this period may be held in abeyance.**
- f) **Policy framework/ SOP for H.R Department may be strengthened and institutionalized to avoid such mal practices in future.**

11. On the basis of aforesaid inquiry report, the matter was taken up by the Prime Minister Office. Prime Minster of Pakistan vide order dated 03.12.2015 directed as follows:-

- i. **“Proceed to undo the illegal appointment/ regularization of officials in KPT.”**

12. Government of Pakistan Ministry Port & Shipping vide letter dated 06.01.2016 informed the Chairman Karachi Port Trust to implement the aforesaid direction of Prime Minister’s Office.

13. Since Respondents have taken the policy decision to implement the directives of Prime Minister of Pakistan to undo the illegal appointments/ regularization of services in KPT. Therefore

Petitioners claim that they are entitled for the relief is without any force and cannot be acceded to, particularly so when they admittedly could not qualify for the applied posts. Their case that they have been discriminated against and at their place unqualified persons have been appointed is not borne out of record. No doubt on the whole process of selection, the doubt has been raised but such doubts/questions are over the entire process of selection and are in general terms. But such doubts would not give any validity to the claim of the petitioners that they are qualified for the subject posts. It may be mentioned that KPT has already issued 877 show cause notices to the officials/officers, who as per learned Counsel were illegally appointed, through the said process, therefore, this Court cannot order for appointment of the petitioners pursuant to the same selection process. However, it may be mentioned that if another recruitment process is initiated by KPT in security related posts, the petitioners may apply for the posts and KPT authorities may consider their candidature in accordance with law, subject to all just exceptions.

14. These Petitions, merit no consideration, are dismissed along with listed application(s) with no order as to cost.

Karachi
Dated:-

JUDGE

JUDGE

Shafi Muhammad/PA