

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P. No.D-36 of 2019.
C.P. No.D-94 of 2019.
C.P. No.D-137 of 2019.
C.P. No.D-138 of 2019.
C.P. No.D-139 of 2019.
C.P. No.D-140 of 2019.
C.P. No.D-141 of 2019.
C.P. No.D-188 of 2019.
C.P. No.D-189 of 2019.

DATED	ORDER WITH SIGNATURE OF JUDGE
<u>29.01.2019</u>	

Mr. Altaf Ahmed Shahid Abro, advocate for petitioner in C.P. No.D-36/2019.

Mr. Ishrat Ali Lohar, advocate for petitioners in all remaining petitions.

Mr. Allach Bachayo Soomro, Additional Advocate General Sindh alongwith Abdul Wajid Ansari Superintendent SPSC and Shafi Muhammad Shah Assistant SPSC.

ORDER

Basically the petitioners have called into question the publication of Advertisement No.10/2018 dated 18.11.2018 issued by Sindh Public Service Commission (SPSC) whereby they have invited applications for the posts of Assistant Engineer BPS-17 (Civil).

2. It is inter-alia contended by Mr. Ishrat Ali Lohar, learned counsel for the petitioners that the petitioners are awaiting for regular promotion for the post of Assistant Engineer (Civil) BPS-17 and all of sudden respondents published advertisement in "Daily Dawn" dated 18.11.2018 for filling up 46 posts of Assistant Engineer BPS-17 (Civil) through SPSC, Hyderabad; that respondents have failed to follow the recruitment rules notified on 05.05.2001 in which 50% of the initial appointment to be made through competitive examination and 30% by promotion from amongst the Sub-Engineer/ Supervisors possessing degree of the Civil/ Electrical Engineering having at least five years of service; that

impugned notification dated 18.11.2018 in which 46 posts of Assistant Engineer BPS-17(Civil) directly filling through the competitive process is in gross violation of recruitment rules as notified and discussed supra; that petitioners are eligible and qualified for the next regular promotion in BPS-17 as Assistant Engineer but the office of the respondents have deprived them from their legitimate right of promotion; that the impugned public notice is ultra vires and is contrary to the recruitment rules notified on 05.05.2001; that the impugned publication is liable to be quashed; that the action of Respondent-department to fill up the post of Assistant Engineer through direct recruitment, without observing the ratio of quota as recruitment rules is illegal and not sustainable under the law. He lastly prayed for suspension of the impugned publication.

3. We queried from the learned counsel for petitioners as to how these petitions are maintainable against a public notice. In reply to the query he has submitted that respondent-department has to follow the recruitment rules and since they have failed to abide by the recruitment rules by observing 30% ratio for promotion against the post of Assistant Engineer, therefore, impugned publication is nullity in the eyes of law. He next added that the aforesaid publication is discriminatory and in clear violation of the recruitment rules; that the Petitioners were not given full and fair opportunity of hearing while sending the posts of Assistant Engineers to be filled up through direct recruitment; that the promotion post cannot be filled through direct recruitment. Learned counsel for the Petitioners further argued that it is a settled principle of law that an officer who is otherwise eligible for promotion is entitled to be promoted from the date when the regular vacancy occurred, which legal proposition was totally ignored by the Respondent-department, while sending the matter to SPSC; that the Petitioners were ignored for promotion as Assistant Engineer in BPS-17 long time. Learned counsel for the Petitioners has also made statement that no prejudice will be caused to any other candidate if the ratio of 30% is observed by the respondents,

while rest of the ratio may be filled through SPSC as per recruitment rules notified vide Notification dated 05.05.2001, which provides the length of service, qualification and other conditions for appointment for the posts of Assistant Engineer (Civil) BPS-17 as under:-

- i. 50% by initial appointment through competitive examinations conducted by the Sindh Public Service Commission in accordance with the syllabus prescribed by Government.
- ii. 30% by promotion from amongst the sub-engineers / supervisors possessing degree in Civil/ Electrical Engineering having at least five years' service.
- iii. 30% by promotion from amongst the sub-engineers possessing a degree of B. Tech (Hons) having at least ten years' service as such.
- iv. 17% by promotion from amongst the Sub-Engineers holding three years Diploma from the Board of Technical Education/ University in Civil/ Electrical Engineering having at least ten years' service as such.

4. Mr. Altaf Ahmed Shahid Abro, advocate has argued that the impugned order dated 4.10.2018 is illegal, therefore, he prays for suspension of `impugned order`.

5. We have heard, learned counsel for the petitioners on the issue of maintainability of instant petitions. Petitioners have agitated that the present matter pertains to promotion policy. Recruitment Rules have been amended to confer right of promotion to the petitioners against the posts of Assistant Engineer (Civil) in PBS-17.

6. To appreciate the aforesaid contention of the petitioners, let these matters be posted on 14.2.2019 for filling of the comments by the respondents. In the meanwhile, the posts of Assistant Engineer (Civil) in PBS-17 to the extent of Ratio as notified in the recruitment rules, if any, and claimed by the petitioners may not be finalized, till next date of hearing.

JUDGE

JUDGE

Irfan Ali