

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-921 of 2012

Muhammad Nasir & others Petitioners

Versus

Federation of Pakistan and others Respondents

C.P No.D-1527 of 2012

All Pakistan Postal DMO's

Employee & Workers Union & others Petitioners

Versus

Federation of Pakistan and others Respondents

Date of hearing: 10.10.2018

Chaudhary Muhammad Ashraf Khan Advocate for Petitioners in C.P. No. D-921 of 2012.

Mr. Sanaullah Noor Ghouri Advocate for Petitioners in C.P. No. D-1527 of 2012.

Shaikh Liaquat Hussain Assistant Attorney General along with Mr. Ateeq-ur-Rehman Assistant Director of Post Master General Karachi.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: Through the captioned Constitutional Petitions, Petitioners are seeking appointment in BS-1 to BS-9 in the office of Post Master General, Metropolitan Circle, Karachi in accordance with the provisions of Post Office Manual Volume IV Chapter 1. Petitioners are also seeking declaration to the effect that the appointment of daily wagers on the posts of permanent nature is in violation of the Post Office Manual Volume IV Chapter I.

Both these Constitutional Petitions are being disposed of vide this Single Judgment, since common question of law and facts are involved therein.

2. The case of the Petitioners in a nutshell is that in pursuance of advertisement published in "Daily Muqadma" dated 3.3.2011, inviting applications for appointment of candidates, in various cadres, in BPS 1 to 9 in the office of Post Master General, Metropolitan Circle, Karachi, they applied for the aforesaid posts and therefore the Respondents started recruitment process. After processing the applications of the Petitioners, the Respondents issued a final merit list of the successful candidates with regard to the recruitment test for the appointment on the aforesaid posts. Petitioner's claim is that they having successfully qualified the written test and interview had legitimate expectation of recruitment for the posts applied. Petitioners have submitted that they have been ignored and in their place, other daily wagers had been appointed in violation of Post Office Manual Volume IV chapter I, which action on the part of official Respondents is against the basic spirit of law. Petitioners have added that they approached the Respondents for redressal of their grievances but to no avail as they were informed by the officials of the Respondents that the Competent-Authority of the Respondent-department directed on 8.9.2011 to hold in abeyance the recruitment process, for unknown reasons. Petitioners have submitted that they were surprised rather shocked to know that factum, as they were waiting for the offer letters. Petitioners further added that the Respondents were under legal obligation to complete the process by recruiting the successful candidates/Petitioners; however the official Respondents had failed to recruit/consider the Petitioners without any lawful justification or reason and appointed daily wagers/outsideers in place of the Petitioners on permanent posts in

violation of the relevant laws. Petitioners being aggrieved by and dissatisfied with the actions of the Respondents have approached this Court on 13.03.2012.

3. Upon notice, the Respondents filed para-wise comments and controverted the allegations leveled against them.

4. Chaudhary Muhammad Ashraf Khan, learned counsel for Petitioners has argued that the Respondents have violated the rights of the Petitioners by failing/delaying to issue appointment letters, despite the fact that the Petitioners have successfully passed the prescribed examination and interview; that after successfully clearing the examination and interview, the Petitioners have acquired a vested right and interest to be appointed on the aforesaid posts, which cannot be nullified/denied by whimsical and arbitrary actions of the official Respondents; that the Respondents have acted in violation of the prescribed Rules as mentioned under Post Office Manual Volume IV; that the impugned action of the Respondent-department was the example of highhandedness and the petitioners have been condemned unheard; that once the academic record of the Petitioners were found in accordance with the requisite criteria and in consequence thereof they were called for the written examination in which they duly participated and were declared successful candidates, there was left no option with the Respondents but to issue them appointment letters and not to cancel their written / interview examination with a single stroke of pen; that the action of the Respondents is in violation of the Fundamental Rights of the Petitioners guaranteed under Articles 18, 24 and 25 read with Articles 4 and 8 of the Constitution; that due to the

omission/failure of the official Respondents to fulfill their legal obligations and timely discharge of their duties/functions, the Petitioners are being deprived of their lawful rights to be considered for appointment against the aforesaid posts; that purported action of scraping the entire process of recruitment and appointing someone else on the aforesaid posts is discriminatory thus not sustainable in law. The learned counsel relied upon the order dated 21.03.2012 passed by the learned Division Bench of Peshawar High Court in Writ Petition No. 545 of 2011 with respect to the appointment of the colleagues of the Petitioners in the same process. He argued that the Respondents ought to have complied with the aforesaid directives of the Hon'ble Peshawar High Court Bench, D.I Khan in the case of the Petitioners. He lastly prayed for allowing the instant petitions.

5. Mr. Sannaullah Noor Ghuori, learned Counsel representing Petitioners in C.P. No. D-1527 of 2012 adopted the arguments of the learned counsel for the Petitioners in C.P. No. D-921 of 2012.

6. Mr. Shaikh Liaquat Hussain, learned Assistant Attorney General has raised the issue of maintainability of the captioned Petitions and supported the impugned action of the Respondent-department and contended that it was the prerogative of the appointing authority to cancel the whole process of the test / interview as per the terms of advertisement; that there is no malafide involved in the cancellation of the recruitment process as such no fundamental rights of the Petitioners have been infringed in this regard; that no discrimination has been meted out in the case of the Petitioners. Learned AAG in support of his contention relied upon the minutes of the meeting dated 21.06.2012 of the

committee constituted by PMG Metropolitan Circle Karachi vide letter dated 28.05.2012 to review the result / answer sheets of examination to the various cadres of Respondent-department in BPS-01 to BPS-07, held on 28 / 29.07.02011 at PTC Karachi and argued that during review of record the committee observed the confounding and criminal disorders. He lastly prayed for dismissal of the instant petitions.

7. We have heard learned counsel for the parties and have perused the material available on record.

8. First and foremost, we would address the question of the maintainability of the instant Petitions under Article 199 of the Constitution.

9. We have noted that the Respondent-department has filed statement dated 30.04.2014 submitting details of the irregularities in the recruitment process initiated in pursuance of advertisement dated 03.03.2011.

10. Prima facie these are serious allegations with regard to the aforesaid recruitment process, which in our view cannot be brushed aside in a cursory manner hence before deciding the issue involved in this matter, it is expedient to see whether the Petitioners were selected in accordance with the law and to claim appointments on the aforesaid post and whether the vacancies in BPS-01 to BPS-9 in various cadres of the Respondent-department were scraped/abolished in pursuance of report of enquiry committee dated 22.06.2012?

11. Our attention was also invited to the advertisement dated 03.03.2011. The learned counsel for the Respondents argued that the Petitioners were not selected as per the due process of law for the advertised posts; therefore no premium can be given to the petitioners to claim appointment.

12. In view of aforesaid circumstances of the case, we are of the considered view that the entire case of the Petitioners is based upon factual controversy which cannot be gone into by this Court in exercising its Constitutional jurisdiction. The claim and counterclaims of the Parties cannot be adjudicated by this Court under Constitutional jurisdiction therefore, at this juncture, we are not inclined to direct the Respondents to consider the case of the Petitioners for appointment against the aforesaid posts. It is an established principle in law that in service cases there exists criteria for initial appointment under the law, which needs to be adhered to, in absence of such; no premium can be given to the Petitioners at this stage.

13. Reverting to the plea taken by the learned counsel for the Petitioners that they qualified the test and interview therefore they are liable to be appointed. We do not agree with the assertion of the learned counsel for the Petitioners on the premise that mere selection in written test/interview could not, by itself, vest a candidate with the fundamental right for enforcement through Constitutional jurisdiction of this Court.

14. Admittedly the authorities had not issued any offer of appointment letters to the candidate to the Petitioners and appointment to the posts is subject to the Recruitment rules and

other codel formalities as required under the law, which in our view has not been followed in letter and spirit. In the comments, the Respondents relied upon the enquiry report dated 22.06.2012 , which prima facie suggest as follows:-

1. **The award lists prepared by the officers/officials duly signed by them appears in accordance with the marks awarded in the Answer Sheets.**
2. **The final merit list approved by the Dy. PMG (Admin) in quite different from that of actual award list. In the final merit list the marks of some "Chosen" candidates were fraudulently and dishonestly changed/increased and interpolated in the final merit list in order to fall them within the range of available vacancies.**
3. **The changes observed as compare to award lists and the final merit list are given in the schedule attached with the aforesaid minutes.**
4. **More surprisingly it was observed that the chosen candidates who were completely absent from examination and were marked "A" in the original result sheets were included in the approved result for their appointment. The detail of such candidates is given here under:-**
 1. **The examination was conducted in 28/29-07.2011 but due to political interference and pressure of various labour unions the result was repeatedly manipulated and revised many times up to the very end.**
 2. **The result was held in abeyance by the PMG, the competent authority, with telephonic approval of the than DG (Annexure-A). The subsequent successor PMGs also reached on the conclusion that the examination and its result are not fair. Therefore, it was also recommended by one of the PMGs to cancel the examination (Annexure-B).**
 3. **Now after passing a period of one year to the examination, present committee was constituted with only mandate of "Review" the results and answers sheets.**
 4. **There were five different cases by the different Unions and the candidates (felt aggrieved) in NIRC and the Sindh High Court, Karachi. From these five cases, one has been withdrawn, Notices in two are awaited from the respective legal forum and the status quo granted in two others is still effective.**
 5. **It is also worth mention here that the advertisement of the examination under reference was published in unpopular rather dummy newspaper instead of famous in the readers that (in the view of committee) also deprived a lot of candidates from applying for the examination.**
 6. **Since the result/merit list is not fair and has been manipulated and engineered for the benefit of chosen candidates with foul play and smell of financial considerations, the committee's recommendation is that the entire examination may be cancelled by the competent authority by using legal powers and up to date vacancies re-published for holding the examination a fresh in fair and transparent manner to remove all type of controversies.**
 7. **With the above submission, the report is submitted for your kind perusal and further necessary action."**

15. We have found that prima-facie; there are flagrant discrepancies in the aforesaid recruitment process, which needs serious attention. In such eventualities, the impugned action of the Respondents prima-facie was quite justified and cannot be brushed aside.

16. In the above circumstances, we are of the view that the claim and counterclaims of the Parties cannot be adjudicated by this Court under Constitutional jurisdiction therefore, at this juncture; we are not inclined to direct the Respondents to consider the case of Petitioners for appointments on the aforesaid posts. It is an established principle in law that in service cases there exists a criteria for initial appointment under the law, which needs to be observed, in absence of which no premium could be given to the petitioners at this stage.

17. In the light of foregoing, we direct the Respondent No. 1 to scrutinize the entire recruitment process initiated in pursuance of advertisement dated 03.03.2011 within a period of two months and determine whether or not they were legally selected or not in the written test and interview and submit compliance report through MIT-II of this Court. The period of two months shall commence from the date of communication of this order to the Respondent No. 1.

18. The Petitions stand disposed of in the above terms.

Karachi
Dated: .10.2018.

JUDGE

JUDGE