

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -912 of 2021

Asad Ali

Versus

Province of Sindh & 04 others

Date of hearing
& order : 08.02.2021

Mr. Irshad Ali Shar, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this petition, the petitioner has prayed for the declaration to the effect that the recommendation made by the Sindh Public Service Commission (SPSC) for the appointment of respondent No.5 is illegal, unlawful, and void-ab-initio, hence liable to be reversed. He also prayed for the direction to respondent No.2 to appoint him against the post of Assistant Director (BPS-17) Cartography and Survey, Mines and Mineral Development Department, Government of Sindh, Karachi.

2. We asked learned counsel for the petitioner to satisfy this Court about maintainability of this petition on the ground that private respondent has been recommended for the post of Assistant Director (BPS-17) Cartography and Survey, Mines and Mineral Development Department, Government of Sindh, Karachi, through the competitive process. He has submitted that the private respondent has wrongly been recommended on the premise that he lacks the basic qualification i.e. Masters Degree in Mining Engineering and as such has no relevant experience in Survey, Drawing and Exploring work, thus his case falls within the purview of sub-clause (1) (b) (ii) of Article 199 of the Constitution, 1973. He prays for allowing the instant petition.

3. We are not satisfied with the assertion of learned counsel for the petitioner on the aforesaid question for the simple reason that the only recommendation of private respondent No.5 has been made by SPSC and no appointment order has so far been issued in his favour by the respondent-department; and, it is for the respondent-department to look into the matter

if the private respondent lacks the qualification for the subject post. Prima facie, this is a premature stage to deliberate upon the recommendation of SPSC.

4. In the light of facts and law discussed above, the recommendation made by SPSC in favour of private respondent, at this stage, does not require interference by this Court in Constitutional Jurisdiction. However, if the petitioner feels aggrieved by the aforesaid recommendation, he has the remedy under the regulations of SPSC to file an appeal against such recommendation before the competent authority. It is well-settled law that the advice of the Commission shall ordinarily be accepted by the department; and, if the advice of the Commission is not acceptable the case shall be submitted to the Government for orders as provided under Section 7 (1)(3) of Sindh Public Service Commission (Functions) Rules, 1990.

5. The above discussions lead us to an irresistible conclusion that the instant petition being pre-mature is dismissed in limine along with the pending application(s) with no orders as to cost. However, the petitioner is at liberty to avail the remedy as provided to him under the law, if his cause subsists, after issuance of appointment order in favour of respondent No.5 by the respondent-department.

J U D G E

J U D G E

Nadir*