

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.D-1550 of 2015

[Jalaluddin versus Federation of Pakistan & Others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:-

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner : Through Mr. Ishrat Ali Lohar advocate
Federation of Pakistan: Through Mr. Ashfaque Nabi Qazi, Asstt: A.G
Respondents No.2&3: Through Mr. M. Arshad S. Pathan advocate
Respondent No.5 : None present
Date of hearing : 09.11.2021
Date of Decision : 25.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J: - The petitioner has challenged the impugned publication dated 12.07.2015, whereby applications were invited from suitable candidates for various vacant positions by respondent No.3 / HESCO through National Testing Service / respondent No.5. Initially, the captioned petition was filed by four petitioners; however, this court vide order dated 17.05.2016 dismissed the petition as withdrawn to the extent of petitioners No.1 to 3, while petitioner No.4 intended to proceed with the matter on merits, hence amended title was filed accordingly.

2. Mr. Ishrat Ali Lohar learned counsel for the petitioner has argued that the petitioner had already been serving with respondent No.3 / HESCO as Commercial Assistant and had subsequently qualified the competitive examination against the Revenue officer and though the subject post was lying vacant, vide letter dated 10.05.2005, yet he was not appointed by the respondents on account of non-availability of vacant post. He next argued that though the petitioner had already been serving as Acting Revenue Officer, he was not considered by the respondents, despite successfully qualifying for the competitive examination; and all of sudden to the utter surprise and dismay of the petitioner, applications were abruptly invited by impugned

publication for filling up various vacant positions, including the subject post, through NTS / respondent No.5, which too in complete violation of law, as respondent No.3 was / is a Company having offices in all over Pakistan, hence no question arises for awarding quota by respondent No.3 to sister provinces. He also argued that impugned advertisement was published at the directions of respondent No.2 / Secretary Water and Power Development Islamabad and quota has been awarded on his whims and wishes, which is not permitted by any law and is in complete violation of the fundamental rights of the petitioner as well as other suitable candidates of Sindh Provinces. He prayed that instant petition may be allowed, while declaring to the effect that awarding quota to other provinces through impugned publication is illegal and unlawful and further the respondent No.2 has no authority to interfere in the internal affairs of respondent No.3 / HESCO, having its Board of Directors.

3. We have heard learned counsel, for the parties and have minutely scanned the material available on record.

4. By this petition, we are called upon by the petitioner to undertake an exercise and judicial scrutiny, regarding the public notice dated 12.07.2015, whereby the respondents invited applications for various vacant positions in HESCO. The challenge is premised on the infringement of right of the petitioner for promotion to the post of Revenue Officer HESCO. The petitioner is working as Commercial Assistant with respondent No.3 / HESCO. He claims that he has successfully qualified for the competitive examination against the post of Revenue Officer, vide letter dated 13.05.2005; however, he could not be appointed on account of low merit and non-availability of vacant post(s), though the vacant post of Revenue Officer was available. Primarily, HESCO is a government-owned entity and is being controlled by Federal Government under PEPCO, and accordingly, all the policies are to be framed by the Federal Government through Ministry concerned, as such regional / provincial quota is provided so far as the posts of BS-17 and above are concerned, hence no question arises that candidates hailing from other provinces have no right for appointment in Sindh Province.

5. At this stage, Mr. M. Arshad S. Pathan learned counsel representing HESCO submits that the petitioner is neither eligible

for direct appointment nor promotion against the subject post, as he is a Commercial Assistant, which has two steps ahead for promotion viz. Commercial Superintendent and then Revenue Officer. He further submits that before this petitioner had filed petition bearing No. D-88 of 2006 with the same prayer, which was dismissed vide order dated 25.06.2009, he has placed on record copy of said order. He lastly prayed that this petition may be dismissed as the order dated 25.06.2009 was assailed before the Hon'ble Supreme Court in Civil Petition No.735-K of 2009, which too was dismissed vide judgment dated 19.05.2010. An excerpt of the judgment is reproduced below:

"2. It has been stated that the petitioner, statedly, applied for the post of Revenue Officer and appeared in the examination conducted on 29.03.2003. According to the department against seven vacancies, the petitioner qualified the written test and his name appeared at Sl.No.72. He was also called for interview along with other candidates but finally, he was not selected as such the petitioner started agitating his claim by filing Petition under Article 199 of the Constitution. First matter came up before the High Court on 15.02.2007 when C.P No.D-88 of 2006 was finally disposed of with following observation:

"The petitioner is satisfied. The petition is accordingly disposed of with the direction that application/representation, filed by the petitioner before the Authorities, should be disposed of preferably within a period of two months. Besides, his application for the post of Revenue Officer shall be entertained and he should be considered for recruitment on merits as per rules."

In view of above observation of the High Court representation filed by the petitioner was disposed of. Subsequent thereto he submitted application (M.A No.677/2007) for initiating proceedings for contempt of Court. Other applications, as is evident from impugned order, relate to his request for restraint order. All these applications have been disposed of vide impugned judgment against which instant petition has been filed.

3. Instead of entertaining into technicalities of the case we have heard the petitioner who contended that he had qualified the examination for Revenue Officer but in his place, two other persons not eligible for appointment were recruited including one Amber Shah a lady officer whose name appeared at Sl. No.120 of the list. Representatives of the department appeared along with their counsel and contended that although she is a member of the department as Assistant Manager (Customer Services) but she was not appointed against the vacancy for which the petitioner had applied. Record also indicates that the petitioner's number is appearing at Sl. No.72, therefore against seven vacancies, he has no chance for his appointment as such no case is made

out for interference. The petition is dismissed and leave refused.”

6. It is well-settled principle of law that the appointment in public office can only be made through competitive process on merit as provided under the recruitment rules without any discrimination and in transparent manner. Thus, all appointments in the public institution must be based on a process that is palpably and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws; besides that public employment unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons as discussed supra, the same would not confer any vested right upon the appointee. It is not open for this Court to bypass the regular mode of recruitment and direct the respondents to fill the vacancies based on the whims of the petitioner. On the aforesaid proposition, if any case law is needed to fortify our view a reference can be made to the following cases decided by Hon'ble Supreme Court of Pakistan (1) Muhammad Yaseen v. Federation of Pakistan, PLD 2012 SC 132, Muhammad Ashraf Tiwana v. Pakistan, 2013 SCMR 1159, Tariq Azizuddin: in re, 2010 SCMR 1301, Mahmood Akhtar Naqvi v. Federation of Pakistan, PLD 2013 SC 195, Contempt Proceedings against Chief Secretary Sindh and others, 2013 SCMR 1752 and Syed Mubashir Raza Jafri and others v. Employees Old-age Benefits Institution (EOBI), 2014 SCMR 949 and the case of Chief Secretary Punjab v. Abdul Rauf Dasti, 2006 SCMR 1876 is clear in its terms, need no further deliberation on our part.

7. In the light of above rule position, no further action is required on our part in exercising the power under Article 199 of the Constitution on the premise that the petitioner failed to point out any violation of his fundamental right; and, merely agitating the claim that his promotion on the subject post was / is due was not sufficient ground to direct the respondents to appoint him on the post of Revenue officer. However, if the petitioner's case falls within the promotion criteria as well as on merit then his case needs to be looked into by the respondent-department subject to all just exceptions as provided under the law.

8. In view of the decision of Honorable Supreme Court on the subject, the petition challenging the vires of Public notice dated 12.07.2015 on the same analogy cannot be interfered with. This

petition is entirely misconceived and not maintainable under Article 199 of the constitution.

9. Resultantly, this petition merits no consideration and is accordingly dismissed along with pending application(s), with the above observations.

JUDGE

JUDGE

Sajjad Ali Jessar