

**IN THE HIGH COURT OF SINDH KARACHI**

**Constitutional Petition No.D-5987 of 2021**

*(Waqar Ali Khoso & 60 others v. The Government of Sindh and 03 others)*

**Constitutional Petition No.D-6009 of 2021**

*(Sajid Ali Shahani and 28 others v. Province of Sindh and 03 others)*

Date	Order with Signature of Judge(s)
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1. For hearing of CMA No.25273/2021 (Stay)
2. For hearing of main case

**Date of hearing**

**& Order: 19.1.2022**

Mr. Abdul Salam Memon, advocate along with Ms. Rabya Javed, advocate for the petitioners in CP No. D-5987/2021

Mr. Zamir Hussain Ghumro, advocate along with Mr. Faizan Hussain Memon, advocate for the petitioners in CP No. D-6009/2021

Mr. Ali Safdar Depar, AAG along with Mr. Sikandar Memon, Focal Person Health Department, Government of Sindh and Mr. Abdul Jabbar Shahani, Focal Person, SELD, Government of Sindh

**ORDER**

Through captioned petitions, in principle, the petitioners are seeking issuance of direction to the respondent-Health Department to issue them offer/appointment orders to the post of Gavi Vaccinators (BPS-6) in the Health Department, Government of Sindh on the plea that they have recently been declared successful candidates in terms of advertisement dated 22.03.2018 and judgment passed by this Court and maintained by the Hon'ble Supreme Court of Pakistan and refusal by the respondents is without any lawful basis or justification.

At the outset, learned AAG has filed the statement on behalf of respondents No.2 & 3 and submitted that since the re-interview of the vaccinators/petitioners has been conducted by the respondent-department in line with the direction of this Court vide order dated 12.2.2021 passed in C.P No. 7382 of 2019 and other connected petitions; and, all the eligible candidates as per advertisement as discussed supra have been appointed on union-wise basis, therefore the subject petitions merits no consideration and same may be dismissed. For convenience sake, an excerpt of the judgment passed by this court is reproduced as under:

“20. In this scenario, we deem it appropriate to dispose of these petitions in the following terms:

- a) All the successful candidates who obtained 60 marks and above in the written test conducted by NTS (1611 candidates) are required to undergo a fresh interview by the committee constituted by the competent authority vide notification dated 07.08.2019; and, the rest of the posts shall be re-advertised in accordance with the recruitment rules. AND

- b) The appointment of the successful candidates in the interview is subject to Union-wise seats as outlined in the terms of the advertisement published in daily newspapers dated 22.3.2018. AND
- c) The competent authority is directed to establish an Institute for the training of Vaccinators within three (03) months. In the meanwhile, the successful candidates of the interview are required to undergo training of Vaccinator for the post within a reasonable time from any recognized institute of Nursing and/or Government Hospital before administering the subject vaccine to the public at large.
- d) The petitioners who obtained less than 60 marks have to participate in the fresh recruitment process, thus their petition(s) stand dismissed.”

Mr. Abdul Salam Memon, advocate assisted by Ms. Rabya Javed, advocate for the petitioners in CP No. D-5987/2021 has strongly controverted the stance of the learned AAG and argued that failure of the respondents to conduct re-interview fairly and transparently is illegal, unlawful, unconstitutional, mala fide, discriminatory, arbitrary, capricious, and in violation of principles of natural justice, equity and fair play. He emphasized that the respondent's actions are tainted with malice; and, the entire exercise conducted by them is sham, whereas, the petitioners have been unduly deprived of their right to livelihood based on nepotism and favoritism; that the petitioners being eligible in all respect and qualified, have a right to be considered for appointment for the subject posts under law, whereas the respondents have failed to conduct re-interviews in line with the direction of this Court in the earlier round of litigation. Per learned counsel, the act of the respondents tantamount to infringement of an inalienable and fundamental right as enshrined under Articles 4,9, 18, and 25 of the Constitution of the Islamic Republic of Pakistan 1973; that the petitioners have sufficient experience and are now well conversant with the nature of the job, therefore, it would be in the larger interest that they are considered for subject appointment on a Taluka basis and/or they be appointed on available vacant posts in Union Councils; that the appointment of similarly placed candidates in Karachi District and earlier appointments across the Province of Sindh was made on a Taluka basis, therefore, the petitioners may be treated in the like manner and not otherwise; that the respondents have proceeded in hasty manner and have arbitrarily deprived them of their legitimate right; that the respondents have Constitutional obligation to act under the law and treat all similarly placed employees equally without discrimination; that non-selection of the Petitioners based on limited seats in Union Councils is mala fide. He prayed for allowing the instant petitions in the larger interest of justice. In support of his contentions, he relied upon the case of Ghayasuddin Shahani and others v. Akhtar Hussain and others, 2021 SCMR 1204.

Mr. Zamir Hussain Ghumro, advocate assisted by Mr. Faizan Hussain Memon, advocate for the petitioners in CP No. D-6009/2021 has supported the stance of Mr. Abdul Salam Memon learned counsel for the petitioners in CP No. D-5987/2021 and argued that those respondents have neither very carefully followed the judgment dated: 12-02-2021, nor order passed by the Hon'ble Supreme Court of Pakistan, wherein the Hon'ble Supreme Court of Pakistan at page No. 06, has observed that "because the recruitment process was initiated through advertisement with certain terms and conditions and only those who fulfill those conditions are eligible to be appointed". The above observation further emphasized the significance of advertisement and very interestingly in the advertisement, no doubt priority

has been given to the Union Council but at the same time Town and Taluka are also made the basis for further appointments; that the cumulative effect of the judgment of this Court and the Judgment of Apex Court, if looked into logically is that the priority is to be given to the Union Council and if no successful candidate is found in the Union Council then to fill the left vacancy, is to be filled on Taluka basis. Learned counsel pointed out that the appointments are made in BS-01 to 15 on a regional / district quota basis as provided under Sections 14 & 15 of the Sindh Civil Servants (Appointment Promotion, and Transfer) Rules, 1974. Learned counsel referred to the Recruitment Rules of 1990 for the subject post and argued that the post of vaccinator is to be made by initial recruitment and not on union council basis; that the Judgment dated: 12-02-2021, of this court and the Judgment dated: 19-05-2021, of Honorable Apex Court, is still in the field, therefore, the respondent-department cannot take somersault by treating the present petitioners differently, than those who have been appointed on union-wise seats. He stressed on the point that quota or number of seats are actually allocated to district and merely the Union Council / Town Taluka is the stages of priority for making an appointment in a district; that petitioners have rendered service of two years, after qualifying NTS test, hence, the cancellation of the appointments of the petitioners is illegal and unlawful. Learned counsel added that the respondents are seeking permission for re-advertising for the post of vaccinator BS-06, (762), on the basis of Taluka is the mockery of the entire process of recruitment of vaccinators particularly when petitioners and other candidates are already available with sufficient experience in vaccination; that petitioners have vested right to be restored in service in terms of the Recruitment Rules of 1990, as well as in terms of Advertisement, therefore, the cancellation of appointments of petitioners is against the mandate of law and cannot be countenanced by this court even for a single moment; that it was the policy statement of the Government through the Health Department that Vaccinators BS-06, would be appointed based on Union Council, Town Taluka, and now the Government has to implement its policy in its letter and spirit and in terms of the Judgment Dated: 19 05-2021 of the Apex Court, the Government cannot take departure thereof by treating present petitioner differently; and, discrimination will be to circumvent the principles enunciated by the superior Courts and of course Article 25 of the Constitution of Pakistan, 1973, which confers on the petitioners the fundamental right of equality; that the petitioners are not treated under the law as mandated by the Article 4 of the Constitution of Pakistan, 1973; that respondents have not discharged their responsibility obligation to the petitioners, which obligation is inviolable as mandated by the Article 5. of the Constitution of Pakistan 1973; that it is the fundamental right of the petitioners to enter upon any lawful profession and occupation as mandated by Article 18 of the Constitution of Pakistan. 1973, therefore, it is incumbent upon the respondents to conduct the fair and transparent process on recruitment in public appointments which must be above the board; that under the law there is no room or justification for the respondent to avoid the competence which is proved by the petitioners by one through the whole process of appointment laid down by the respondents and giving no effect to that is the denial of merit and the same process completed according to the law cannot be brushed away or bartered away as per the pleasure of the respondents which is apparent in this case, hence this Court may intervene in the matter; that the petitioners are entitled to be appointed against the post of Vaccinator since the petitioners have qualified the tests conducted by the respondents under law and advertisement; that grave injustice has

been done to the petitioners with no fault on their part by depriving them of the post for which they qualified all the pre-requisite tests. He lastly prayed for allowing the instant petitions as prayed.

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

This judgment dated 12.02.2021 passed by this court in CP No.D-7382 of 2019 and other connected petitions has been endorsed by the Honorable Supreme Court vide judgment dated 19.05.2021 passed in the case of Ghayasuddin Shahani and others v. Akhtar Hussain and others, 2021 SCMR 1204, has held as under:

“9. As far as the basic qualification for induction as vaccinator is concerned, it is not disputed. There are certain reservations qua possessing of the vaccination certificate as it is an admitted fact that till finalization of appointment process there was no institute available in Province of Sindh exclusively for this purpose. However, there are other quarters working under the Health Department i.e. DHO Office with the collaboration of District Headquarter Hospital where this training process is available as such it cannot be denied straight away that there is no such arrangement to get vaccination training to meet the requirement as disclosed in the advertisement. The learned High Court took notice of a summary dated 03.05.2019 moved to the Chief Minister Sindh by Secretary Health wherein certain observations of the Services Wing on the process of recruitment were mentioned i.e. (i) the recruitment rules for the post of Vaccinator require qualification of matric together with a certificate in vaccination from a recognized institute whereas in the advertisement the certificate in vaccination has been published as a preference instead of mandatory, (ii) the threshold of minimum marks has been reduced from 60 marks to 55 marks without any approval/justification, (iii) a number of candidates have been declared 'failed' or not selected despite having secured more marks in the recruitment test than the candidates declared as selected by the Selection Committee, and (iv) few candidates who secured passing or more than passing marks have been declared as "does not read/write". Upon these discrepancies found in the recruitment process, the Selection Committee was reconstituted by the competent authority and it was decided that the threshold of minimum marks as 60 shall be adhered to and no relaxation in this regard will be allowed and the condition of certificate in vaccination from recognized institute shall be compulsory and not relaxable as the same is requirement of Rules for the post of vaccinator. However, no re-interview was done by the department and the selection process was completed as was undertaken by the earlier Selection Committee. We have noticed that the learned High Court after detailed scrutiny and inquiry has only identified certain flaws in the recruitment process and directed for removal of those flaws. The impugned judgment is not against the petitioners rather it only bounds the department to strictly follow the criterion laid down in the advertisement for the appointment of vaccinators. The High Court has addressed to all the issues those were brought forth in the recruitment process. The recommendations made by the High Court are in furtherance of clarity in the process and certainly would defeat any chance of nepotism, favoritism, and undue enrichment of individuals. The learned High Court has also directed to establish an institute for training of vaccinators and in the meanwhile, the successful candidates of the interview have been required to undergo training of vaccinator. This direction of High Court was specifically very timely and beneficial to the public at large when these vaccinators are primarily to deal with infants and the young generation. As far as other limb of queries is concerned, those are interconnected, hence are pondered upon conjointly. The learned High Court was seized with the extraordinary power under Article 199 of the Constitution of the Islamic Republic of Pakistan to entertain any matter if it is brought into notice that any act done by the public functionaries has encroached upon the basic rights of the people as enshrined in the Constitution of Islamic Republic of Pakistan. No fundamental right of the petitioners has been infringed because the recruitment process was initiated through advertisement with certain terms and conditions and only those who fulfill those conditions are eligible to

be appointed. So far as the argument of learned counsel for the petitioners that the appointment cannot be made according to union council basis is concerned, the basic purpose of Expanded Program on Immunization (EPI) was to control the spread of Vaccine-Preventable Diseases among infants/children and this target cannot be achieved unless it goes to the grassroots level, which means that it needs to be spread over the union council level by making appointments of the vaccinators from the concerned union councils enabling the public at large to be benefited from it. Secondly, it was specifically mentioned in the advertisement that applicant must be resident of the same union council and it has time and again been held by this Court that whatever the terms of the advertisement are the appointments must follow the criterion as disclosed therein without any departure so that no one can raise any objection regarding its transparency. {Emphasis Added}

10. For what has been discussed above, we are of the considered view that the learned High Court has passed a well-reasoned judgment to which no exception can be taken. These petitions having no merit are accordingly dismissed and leave to appeal is refused.

11. The above are the detailed reasons of our short order of even date.”

The questions involved in the present matters are whether the respondent-health department has removed the defects from the recruitment process as pointed out in the aforesaid judgment and conducted the re-interview of the successful candidate's afresh and recommended their candidatures to the competent authority for appointment according to union council basis in terms of public notice dated 22.3.2018 and whether the petitioners have been declared successful candidates in the fresh process and are liable to be accommodated on Taluka and District level.

There is no dispute that petitioners have been declared successful candidates along with those who have already been accommodated on a union council basis, however, due to restrictions imposed on the appointment on a union council basis the petitioners are left in the lurch. Due to the paucity of seats in their respective union councils. Mr. Sikandar Memon, Focal Person Health Department, Government of Sindh present in court has admitted that still, seats are available, however, those vacant seats could be switched over for fresh advertisement and to be based on Union Council basis, therefore the petitioners cannot be accommodated as per law as they are required to fill the vacancies as per terms of judgment passed by the Honorable Supreme Court as discussed supra.

The main theme of the judgment passed by this court was/is that The appointment of the successful candidates in the interview shall be subject to Union-wise seats as outlined in the terms of the advertisement published in daily newspapers dated 22.3.2018, which explicitly show as under:-

- “1. Matric or equivalent qualification from recognized university or Board.
  2. Certificate in Vaccination from a recognized institute will be given preference.
  3. Location/Domicile: All Sindh Province (1733)/Union Council/Town/Taluka
- Age limit from 18-30 years required & Age relaxation will be entertained as per Govt rules and Policy.

- Domicile should be only for the concerned District.
- Applicant must be residence of same Union Council.
- The preferably marks of NTS are 60 required as per merit.”

The Honourable Supreme Court has also emphasized in its categorical terms that the basic purpose of the Expanded Program on Immunization (EPI) was to control the spread of Vaccine-Preventable Diseases among infants/children and this target cannot be achieved unless it goes to the grassroots level, which means that it needs to be spread over the union council level by making appointments of the vaccinators from the concerned union councils enabling the public at large to be benefited from it. Secondly, it was specifically mentioned in the advertisement that the applicant must be a resident of the same union council and it has time and again been held by this Court that whatever the terms of the advertisement are the appointments must follow the criterion as disclosed therein without any departure so that no one can raise any objection regarding its transparency.

The question as to whether the petitioners had the right to claim appointment for the subject post. In our view that the mere fact that petitioners were selected for appointment to vacancies, pursuant to an advertisement did not confer any right to be appointed to the post in question or to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment, for the simple reason that the successful petitioners in earlier round of litigation approached the Hon'ble Supreme Court of Pakistan in the case of *Chayasuddin Shahani and others v. Akhtar Hussain and others*, **2021 SCMR 1204**, but their petitions were dismissed vide order dated 19.05.2021, thereafter the Government of Sindh complied with the orders passed by the Hon'ble Supreme Court of Pakistan in the aforesaid matter and appointed the successful candidates on union-wise basis and they now intend to re-advertise the remaining vacancies for which this Court is not in a position to direct them to appoint in a particularly manner as in presence of the order of the Hon'ble Supreme Court of Pakistan.

The respondent department has fully complied with the orders passed by the Honourable Supreme Court in its letter and spirit, thus no further deliberation is required on our part. As, it is a settled position in law that this Court cannot modify, or impair a final judgment of the Honourable Supreme Court, thus no further indulgence is required on our part in the matter.

For all the foregoing reasons, we dismiss these petitions with the above observations.

JUDGE

JUDGE

Nadr/PA