

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 121 of 2021

Tanveer Ahmed & others v. Federation of Pakistan & others

C. P. No. D – 256 of 2021

Muhammad Tagyal v. Federation of Pakistan & others

C. P. No. D – 308 of 2021

Nisar Ali & others v. Federation of Pakistan & others

C. P. No. D – 1501 of 2021

Rajab Ali & another v. Federation of Pakistan & others

Date of hearing: **25-01-2022**

Date of announcement: **02-02-2022**

Mr. Mukesh Kumar G. Karara, Advocate for the Petitioners in C. Ps. No. D-121 and 308 of 2021.

Mr. Kamran Mobeen Khan, Advocate for the Petitioner in C. P. No. D-256 of 2021.

Mr. Aamir Mustafa Kamario, Advocate for the Petitioners in C. P. No. D-1501 of 2021.

Mr. Ghulam Abbas Akhtar, Advocate for Respondents-Pakistan Railways.

Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – All petitioners before us seek a writ of mandamus against Pakistan Railways for issuance of appointment orders as according to the petitioners despite completion of the entire recruitment process, the Respondents have halted the appointment process without any lawful excuse. For this reason, they are being decided through this common order. In the leading petition (C. P. No. D-121 of 2021), the Petitioners have sought the following prayers:

- a. *To declare that the impugned Letter dated 02.01.2021 thereby stopping the recruitment process of Sukkur Division in respect of the appointment of posts of various categories (BS-1 to 5) is and will be illegal, unlawful, without any lawful authority, bases upon malafide and for extraneous consideration, hence without any legal consequence.*

- b. *To direct the respondents to issue offer letters / appointment letters in terms of the successful balloting process (as per the rules and regulations) in favour of the petitioners on their respective posts forthwith in the light of the results prepared by the selection committee.*
- c. *To restrain the respondents from acting upon the impugned letter dated 02.01.2021, by suspending its operation till final conclusion of the present petition.*
- d. *To grant any other just and equitable relief, which has not been specifically prayed for, under the circumstances of the present matter and for the just decision of the present petition and in the interest of justice.*

2. Mr. Mukesh Kumar G. Karara learned Counsel for the Petitioners in C. Ps. No. D-121 and 308 of 2021 has contended that pursuant to an advertisement dated 05-10-2018, the Petitioners applied for jobs in Railways in respect of Gatekeeper, Gangman, Trolleyman etc in lower grades; that pursuant to notification dated 17-06-2019, certain amendments were made in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, whereby in respect of appointments in Grade 1 to 5, instead of personal interviews, the applicants were to be appointed through balloting; that in the present case, balloting was held and the Petitioners were successful; that all successful Petitioners were then called for medical tests which were announced, however, no appointment orders were issued; that suddenly the entire process was stopped / halted pursuant to letter dated 02-01-2021; that the Petitioners have been discriminated as against other applicants in Multan Division, who, despite stoppage of the recruitment process, have been appointed, and he has referred to their posting letters; that even the Parliamentary Committee on Railways had taken up the issue and directions were issued to Pakistan Railways for completing the appointment process within three (03) months; that the facts, as pleaded, have not been disputed, and as to the appointment in Multan Division, it is simply stated that the said matter is being reinvestigated through an inquiry; that though subsequently the rules have once again been amended and the appointment through balloting now stands omitted, but the period under consideration is protected; that this amounts to discriminatory treatment to the Petitioners; hence, the Petition merits consideration. In support, he has relied upon Secretary Finance and others v. Ghulam Safdar (2005 SCMR 534), Abdul Samad and others v. Federation of Pakistan and others (2002 SCMR 71), Fida Hussain v. The State and others (PLD 2002 Supreme Court 46), Ziauddin Hospital Trust

through Trustee and Medical Director v. Director-General/Commissioner, Excise and Taxation, Sindh, Karachi and another (PLD 2001 Karachi 52) and Muhammad Rasheed v. Government of Punjab and others (2006 SCMR 1082).

3. Insofar as the learned Counsel for Pakistan Railways is concerned, according to him, since no appointment orders were ever issued, no vested right has accrued; that no appointments have been made pursuant to the advertisement; whereas, the appointment so made in Multan Division has not been approved, and the matter is under investigation through an inquiry, hence, it is not a case of discrimination *per se* that even no appointment have been made in Lahore, Quetta and other Divisions; that the Petitions are liable to be dismissed. In support, he has relied upon Secretary Finance and others v. Ghulam Safdar (2005 SCMR 534) and Abdul Khaliq v. University of Karachi through Vice-Chancellor/Registrar and 4 others (2003 PLC (C.S.) 1150). He has further contended that C. Ps. No. D-1306 of 2020 and 5380 of 2019 were filed at the Principal Seat, whereby the appointment through balloting was challenged and one Petition is still pending.

4. Learned DAG has adopted the arguments of the learned Counsel for Pakistan Railways and submits that since no appointment was made in Sukkur Division, therefore, it is not a case of discrimination.

5. All other learned Counsel for the Petitioners in the connected Petitions have adopted the arguments of Mr. Mukesh Kumar G. Karara.

6. We have heard all the learned Counsel as well as learned DAG and perused the record.

7. Insofar as the facts, as stated hereinabove, including the advertisement in question and the process so adopted and followed is concerned, the same does not appear to be in dispute. The Petitioners applied for the jobs and were selected through balloting and even were called for medical tests. However, before any appointment orders could be issued, the same has been halted by Pakistan Railways, and in that regard, it would be advantageous to refer to letter dated 02-01-2021, which reads as under:

“In supersession of this office letters of even number dated 19.11.2020 addressed to DS/KYC dated 20.11.2020 addressed to DS/SUK & QTA, and dated 14.12.2020 addressed to DS/PSC, please stop the recruitment process against which approval has already been communicated to your office till further orders.

This issues with the approval of CEO/Sr. General Manager.”

8. Per settled law, insofar as the claim of the Petitioners in the present case is concerned, since no appointment orders were made; hence, no vested right has accrued as yet to seek appointments and/or pray for directions under this Constitutional jurisdiction for issuance of such appointment orders. It is entirely a discretion of the employer to halt any process in between until such time an appointment order is issued. No vested right to appointment accrues unless a merit list is displayed and appointment letters are issued. The Government can always stop or abandon the process or initiate a fresh one if there are valid reasons or justification to support such action. In the instant case, such valid reasons and justification were amply available¹. 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 appointment². The writ of mandamus is a high prerogative writ of a most extensive remedial nature and is, in form, a command issuing from the. High Court, directing any person, corporation, or inferior Court requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to do the justice; in all cases where there is a specified legal right and no specific legal remedy for enforcing such right; and it may issue in cases where, although there is an alternative legal remedy, yet such mode of redress is less convenient; beneficial and effective. To sum up, a writ of "mandamus" commands the person to whom it is addressed to perform some public or quasi public legal duty, which he has refused to perform, and the performance of which cannot be enforced by any other adequate legal remedy. In the light of Constitutional mandate, subject to other conditions, it is absolutely necessary that the law should impose on the officer concerned the duty to do what he is refusing or

¹ Government of Balochistan v Abdul Rauf and others [2021 PLC (CS) 519]

² Waqar Ali Khoso & 60 others v. Government of Sindh and 03 others (CP No.5987-2021 dated 19.1.2022)

omitting to do and that petitioner should be an aggrieved party having no other adequate and efficacious remedy³.

9. Not only this, recently in the case of Punjab Public Service Commission⁴ the Hon'ble Supreme Court has been pleased to observe that even if an appointment order has been issued, and subsequently, it transpires that there is some irregularity or the same has been issued in contravention of the rules or the advertisement, the same also does not create any vested right and can always be revoked. The relevant observations of the Hon'ble Supreme Court are as under:

16. As stated above, no vested right had or could have accrued in favour of Respondent No.1 (Husnain Abbas) by virtue of an erroneous merit list which had clearly been prepared on the basis of an erroneous advertisement which had been published in violation of the Government Policy, rules and regulations put in place by virtue of notification dated 25.05.2018. Only by reason of an error on the part of PPSC, it would neither be fair nor just to deprive a candidate from one of the Zones who had admittedly topped the merit list for zonal quota to be deprived of an appointment. Even on a balance of equities, the right of the proforma Respondent (Samra Gull) stands on a better footing based upon Constitutional as well as legal protections as incorporated in the notifications in question. Compared to her case, the case of Hussain Abbas at best stands on the foundation of a legitimate expectancy which cannot be allowed to override or overshadow another right which is based upon constitutional protections and statutory provisions put in place on the basis of an unmistakable constitutional mandate.

10. The other argument which has been raised on behalf of the Petitioners' is alleged discrimination in terms of Article 25 of the Constitution of the Islamic Republic of Pakistan. The same has been pleaded on the premise that in Multan Division, some appointments have been made; hence, the Petitioners have been discriminated. To that, it may be observed that the said process is also under investigation and an inquiry committee has been constituted, which has to decide the fate of such appointments; therefore, the same is of no help to plead discrimination till such time the said appointment is under inquiry or investigation. Notwithstanding, it is also a well settled principle of law that two wrongs do not make a right. If the process was halted by Pakistan Railways, and despite such directions, some appointments were made at Multan Division, the same cannot be made basis to seek appointment on ground of discrimination as the said appointments are per-se against the directions contained in letter dated 2.1.2021. Hence, this ground of discrimination also does not seem to be

³ Secretary Finance v Ghulam Safdar (2005 SCMR 534)

⁴ Punjab Public Service Commission v Hussain Abbas [2021 PLC (CS) 979]

based on any cogent reasoning as it does not amount to discrimination as explained and settled by the Courts. A wrong order or benefit cannot become a foundation for avowing equality or equal opportunity for enforcement of treatment alike rather such right should be founded on a legitimate and legally implementable right. A wrong order cannot be allowed to carry on which hardly confers any right to claim parity or equality. The concept of equal treatment could not be pressed into service by the petitioners which presupposes and deduces the existence of right and remedy structured on legal foothold and not on wrong notion or whims⁵.

11. Notwithstanding this, since it is not a case, wherein some other persons have been appointed in place of the Petitioners, which may give a cause of action to plead discrimination or an illegality, but is only stoppage and halt of the appointment process, which *per se* does not give a cause of action at the present moment. Having said so, it is also noteworthy that the appointment by way of balloting itself is a novel idea and with utmost respect does not seem to be in line with any sound judicial principles. Though the appointment rules were amended, which now stands corrected, but we are of the view that even if the rules were still in field, the appointments are to be made always on merits and not through any sort of balloting. This observation is only as a passing remark, as apparently, the said rule is under challenge in some other Petition and has no direct nexus with the present Petitions as well; therefore, we have restrained ourselves from finally adjudicating this aspect of the matter.

12. In view of hereinabove facts and circumstances of this case, in our considered view, no vested right has accrued to the Petitioners; whereas, it is also not a case of discrimination; hence, these Petitions do not merit any consideration and are accordingly **dismissed** with pending application(s).

Dated: 02-02-2022

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J U D G E

Abdul Basit

⁵ Provincial Selection Board, Government of KPK v Hidayat Ullah Khan (2021 SCMR 1904)