

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-1016 of 2020

Abdul Hafeez
Petitioner through

:

Mr. Faheem Ali Memon, advocate along with petitioner.

Respondents
Through

:

Mr. Ali Safdar Depar, AAG along with Samiullah Shaikh, DC, Dadu.

Date of hearing
& order

:

10.02.2022

ORDER

Through this petition, the petitioner seeks appointment as Ward boy in Health Department, Government of Sindh, *inter-alia*, on the ground that he applied for the job in the quota reserved for the differently-abled person and after completion of all codal formalities; a merit list was issued by the Health Department wherein his name was mentioned at serial No.32.

2. The grievance of the petitioner is that despite completion of all legal and codal formalities and inclusion of his name in the merit list, the offer letter was not issued to him although his name was once again mentioned in the list /letter available on page 51. His other grievance is that none of the people was appointed in the said quota was mentioned in the merit list and they did not complete the requisite formalities.

3. Mr. Faheem Ali Memon, learned Counsel for the petitioner, has urged that not only the appointment of such person namely Abdul Hafeez son of Abdul Jabbar as Ward boy is illegal, but deletion of the petitioner's name in the process of appointment is also illegal. He prayed for allowing the petition.

4. Mr. Ali Safdar Depar, AAG assisted by Samiullah Shaikh, Deputy Commissioner, Dadu (DC) has refuted the claim of the petitioner, *inter-alia*, on the ground that petitioner failed in the recruitment process and one Abdul Hafeez son of Abdul Jabbar had cleared the test and succeeded to obtain the job of Ward boy, but inadvertently the name of the petitioner was mentioned in the list of successful candidates instead of abovenamed candidate. In support of his contentions, he relied upon the test paper of the petitioner in which he obtained only 2 marks thus was declared failed candidate.

5. We have heard learned counsel for the parties, perused the material available on record, and report submitted by Deputy Commissioner, Dadu.

6. It appears from the record that Deputy Commissioner, Dadu, initiated recruitment for implementation of the quota of differently-abled persons in Government of Sindh jobs. As per the report submitted by DC, Dadu, the applicant did not qualify for the written

test for the post of Computer Operator (BS-12), he obtained only two marks out of 25 marks. However, one candidate namely Abdul Hafeez son of Abdul Jabbar appeared in the interview for the post in BS-01 to BS-04 before the District Recruitment Committee (DRC) dadu on 12.3.2019 and succeeded with 18 marks out of 25 marks.

7. The minutes of the DRC meeting issued with the signature of 08 members and Chairman of DRC have been made available on record. Deputy Commissioner, Dadu, present in person has submitted that the name of the applicant has been shown at Sr. 25 by showing two marks obtained in the written test and the name of candidate namely Abdul Hafeez son of Abdul Jabbar has been shown at Sr. 97 by showing 18 marks obtained in the interview.

8. The aforesaid stance of the Deputy Commissioner, Dadu, has been refuted by learned counsel for the petitioner on the plea that the petitioner being an undergraduate was not obliged to go through the written test for the post of Computer Operator (BS-12). Per learned counsel, the conduct of the Deputy Commissioner is not aboveboard, he just simply ignored the petitioner for the post of Ward boy and erroneously discarded the candidature of the petitioner on the quota reserved for differently-abled persons by confusing the things concerning name and parentage of petitioner with other candidate Abdul Hafeez son of Abdul Jabbar. Be that as it may, prima facie, these are disputed questions of facts which cannot be resolved in the constitutional petition for the reason that the DRC vide decision dated 14.3.2018 recommended 21 candidates for the appointment against the vacant post received from the concerned department through the administrative department, the name of petitioner is missing and the candidate Abdul Hafeez son of Abdul Jabbar has been recommended as Wardboy in BPS-02; the question papers and result of written test, prima facie show the petitioner appeared in the written test for the appointment, his signature is also available on the sheet which explicitly shows that he voluntarily appeared in the written test with the qualification of diploma in commerce, intermediate, however, failed to obtain the threshold marks for the post of Computer Operator (BPS-12).

9. The denial of the petitioner on the aforesaid analogy creates ambiguity in the matter, which is a disputed point that cannot be threshed out in the constitutional petition as discussed supra, however, the petitioner is at liberty to avail his remedy if his cause is still subsisting against the candidate who qualified for the post of Ward boy in his place.

10. If this is the position, no case for indulgence of this Court under Article 199 of the Constitution is made out.

11. We, in the above circumstance of the case, have no option but to reject the claim of the petitioner and dismiss this petition.

JUDGE

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