

Judgment Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -2643 of 2020

Muhammad Nabi and 45 others

Versus

Province of Sindh and 2 others

Constitutional Petition No. D -2028 of 2020

Muhammad Abid Khan and another

Versus

Government of Sindh and 04 others

Date of hearing : 11.03.2021

Date of announcement : 16.03.2021

Mr. Raghieb Ibrahim Junejo, advocate for petitioners in C.P. No.D-2643 of 2020.

Mr. Taj Fareen Khan, advocate for the petitioners in C.P. No.D-2028 of 2020.

Mr. Ali Safdar Depar, AAG.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. - Through the instant Petitions, the Petitioners have sought directions to the respondent-Police department to issue Offer Letters to them for appointment as Police-commandos (BPS-05) in Special Security Unit (SSU), Home Department, Government of Sindh (Karachi range). The main grievance of the petitioners is that their candidature for the post of Police-commandos (BPS-05) has been declined by the Competent Authority i.e. Chief Minister, Sindh, though they had been declared medically fit based on medical reports as well as Character Verification Certificates issued by the concerned departments.

2. Mr. Raghieb Ibrahim Junejo, learned counsel for the petitioners in C.P. No.D-2643 of 2020, has argued that Recruitment Test for Police-commandos/Lady Police-commandos and Driver Constable (BPS-05) was conducted by the respondent-Police department, in pursuance of Public Notice dated 24.09.2017, published in various leading newspapers; and, petitioners' names were included in the final merit list of selected candidates, however, after a lapse of considerable time offer letters have not been issued to them.

It is contended by the learned counsel that 1150 posts of Police-commandos/Lady Police-commandos (BPS-05) in SSU were lying vacant as advertised by the respondents in the year 2017 and out of 1150 posts, 1814 candidates were able to qualify the written test and interview, however, 1107 candidates, from the merit list, were taken up and appointed as Police-commandos/Lady Police-commandos (BPS-05) in SSU against the aforesaid vacant posts. It is urged that now there are several vacancies, which are still lying vacant; and, the petitioners deserve to be appointed on the said vacant posts based on the next in line/waiting list candidates. Learned counsel emphasized that the respondent-Police department recommended the candidatures of the petitioners for the vacant posts in SSU to the competent authority on the aforesaid analogy as discussed supra, which request unfortunately was declined and ordered for fresh recruitment against the vacant posts. Learned counsel referred to various documents attached with the memo of the petition and argued that the respondents have initiated afresh recruitment to deprive them of their legitimate right of being considered for appointment against the vacant posts of Police-commandos/Lady Police-commandos. He prayed for allowing the instant petitions as prayed.

3. Mr. Taj Fareen Khan, learned counsel for the petitioners in C.P. No.D-2028 of 2020, has reiterated the factual position of the case; however, he has adopted the submissions made by the learned counsel representing the petitioners in C.P. No.D-2643/2020.

4. Mr. Ali Safdar Depar, learned AAG has endorsed the viewpoint of the Competent Authority on the premise that the candidate who finally qualifies the subject Examination is to be recommended in order of the merit against the number of advertised vacancies announced by the respondent-police Department Government of Sindh; and in case of non-joiner or if a successful candidate in the Examination does not report for within specified date due to the reason whatsoever, no alternate nomination could be issued and such vacancies would be carried over to the next recruitment process. Learned AAG pointed out that afresh recruitment has already been initiated and the petitioners could participate to compete for the subject posts. On the point of earlier successful candidates in the recruitment process, initiated in the year 2017, he asserted that out of 1150 posts, 1814 candidates were able to qualify for the written test and interview, however, only 1107 candidates, from the merit list, were appointed as Police-Commandos/Lady Police-

commandos (BPS-05) in SSU against vacant posts; and, since the petitioners could not get the requisite threshold marks, thus remained on the next merit line/waiting list, however, he emphasized that the leftover candidates could not be construed to be successful candidates under the law. Learned AAG has referred to the portion of Summary dated 2.8.2019 floated by the respondent-police department to the competent authority and argued that during the recruitment process 2340 more posts were created in SSU, besides 43 posts had already been reserved for minorities. He prayed for dismissal of the instant petitions.

5. Since, a pure question of law involved in the present proceedings is whether a waiting list candidate, not declared successful, can be recommended for appointment against any vacancy occurring due to non-joining of any successful candidate.

6. We have heard the learned counsel for the parties and gone through the record with their assistance. Prima facie, it appears from the record that the respondent-Police department had advertised 1100 posts of Police-commandos and 50 posts of Lady Police-commandos in the Police department, Government of Sindh (Karachi range). Out of the 1150 posts, 1107 candidates from the merit list were declared successful for appointment against the aforesaid posts; however, we have been informed that 43 seats were reserved for the minority and remained unfilled.

7. Learned AAG has informed us that during the recruitment process, 2340 more posts of commando constable were created in SSU due to various reasons. Be that as it may, the main contention of the petitioners is that the process to fill such many vacancies through fresh recruitment will take considerable time and efforts; and, since they have already been declared successful candidates in the final interview by the recruitment committee; and, they have fulfilled all the legal and codal formalities, as such, they have a legitimate expectancy to be appointed against the overall posts remained vacant, which have now been included in the fresh advertisement dated 09.01.2021 for recruitment against the posts of Police-Commandos/Lady Police-commandos (BPS-05) in SSU.

8. Prima facie, the fresh process has been undertaken by the respondent-Police department through an open competitive process; therefore, all posts available are liable to be filled accordingly. We have also been apprised of the fact that there are no vacancies available against the aforesaid posts in the recruitment process initiated in the year 2017 against which the petitioners

could be accommodated at this point on the premise that a fresh recruitment process has already been undertaken. Adverting to the request by the petitioners for an alternate candidate is concerned, a perusal of the relevant record explicitly shows that such discretion lies with the Competent Authority i.e. Chief Minister, Sindh. In the first place, admittedly such discretion was not exercised in favor of the petitioners.

9. We also find that the said exercise of such discretion was not withheld unreasonably because a large number of posts had become available and the department re-advertised the subject posts to attract fresh blood/better candidates. There was neither malafide nor ulterior motive involved in the matter to call in question their discretionary powers. Therefore, we are not persuaded by the arguments of the learned counsel for the petitioners on the aforesaid analogy. In the circumstances of the case, we are of the considered view that the competent authority had valid grounds and lawful justification to opt to re-advertise the leftover posts including fresh ones. Therefore, in the facts and circumstances of this case, interference by this Court, at this stage, even after the lapse of considerable time in a valid and lawful decision of the respondent-Police department is uncalled for; and, to substitute our viewpoint. Primarily, our view is further cemented by the decision of the Hon'ble Supreme Court, rendered in the case of *the Secretary Punjab Public Service Commission, Lahore and others v. Aamir Hayat and others*, 2019 SCMR 124.

10. Adverting, to the question raised by the petitioners that they succeeded in the subject examination, thus vested right existed in their favor. This assertion is misconceived. Prima-facie, this petition is not maintainable for the simple reason that no offer of appointment order had been issued in their favor, thus no vested right had/has accrued in favor of the petitioners. It is well-settled law that even a successful candidate does not acquire an indefeasible right to be appointed and that it could be legitimately denied. The notification inviting application for the appointment has been held only to be an invitation to the qualified candidates to apply for the recruitment. On their mere submitting application or offer/selection, they do not acquire any right to the post.

11. The jurisdiction of this Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required by law to do and refrain from doing what they are prohibited by law to do. Unless an act or omission of a state functionary falls within the above parameters, it is not liable to be interfered with.

12. For reasons recorded above, these petitions are dismissed with no order as to costs, leaving the petitioners to participate in the recruitment process initiated in 2021, subject to all just exceptions as provided under the law.

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