

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P. No.D-2116 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE (S)
	1. For orders on office objections. 2. For hearing of main case.
<u>08.04.2021</u>	

Petitioner present in person.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh along with Saeed Ahmed Manghejo Secretary SGA & CD, Ghulam Ali Birhmani, Additional Secretary SGA & CD, Zahid Hussain Secretary Labour Department and Hadi Bux Kalhoro Controller SPSC.

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A review of the comments of the officials depicts that admittedly a number of positions have become available. It is also an admitted position that respondent No.3 recommended 76 suitable candidates for the appointment of positions of Section Officer (BPS-17) vide letter dated 02.11.2018. Accordingly the candidates were issued offer for the appointments vide letter dated 14.01.2019. Out of these 76 candidates, 74 accepted offers for the appointment and they were appointed vide Notifications dated 15.02.2019, 05.03.2019 and 25.03.2019, however, two of the candidates namely Imran Son of Abdul Ghaffar Rajput and Dinesh Kumar Son of Chandu Mal Solanki did not accept the offer of the appointment of Section Officers and their offer letters for appointments dated 14.01.2019 were cancelled vide letters dated 05.03.2019 and 19.08.2019 resultantly 02 posts of SOs remained reserved for awaiting candidates. Court was also informed that every department directly sends requisition to Sindh Public Service Commission for appointment against the posts falling under the purview of Commission under Section-7(i)(a)&(b) of the Sindh Public Service Commission Act, 1989, Rule-3(1)(i)(ii)&(iii) of Sindh Public Service Commission (Function) Rules, 1990 and Rule 18 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. SGA&CD sends requisition for appointment against the posts of Section Officers (BS-17) and Assistant Commissioners (BS-17) only to the Commission under the Rules *ibid*. Accordingly, on the recommendation of SGA&CD the commission recommended 76 candidates for appointment against 76 posts of Section Officers and 45 candidates for appointment against 45 posts of Assistant Commissioners. However,

rest of the departments directly corresponded with the Commission for appointments against the posts in their respective departments, and the Commission directly sent recommendations of candidates to the departments concerned.

It is further respectfully submitted that as per directions of the Honourable Supreme Court of Pakistan in Suo Moto Case No.18/2016 the candidate next on merit be offered appointment for the post which is not accepted by a candidate selected for it. Hence, the candidates next on merit, though, they are already allocated to some other cadre and feel prompted to move up may be offered for appointment against such posts firstly, instead of giving opportunity to those at bottom of the merit list. In this regard, Respondent No.2 & 3 may work out as per merit list and option forms submitted by the Candidates next on merit and send the recommendations to the Department concerned accordingly.

Respondents No.1 and 5 in their comments also affirmed the above position and with regards para-7 of the petition answered as under:

“It is submitted that the Respondent No.3 recommended 76 suitable candidates for appointment to the posts of Section Officers (BS-17) vide letter dated 02.11.2018. Accordingly, the candidates were issued offer of appointment vide letters dated 14.01.2019. Out of 76 candidates, 74 accepted offer of appointment and they were appointed vide Notifications dated 15.02.2019, 05.03.2019 and 25.03.2019. However, 02 of the candidates namely Mr. Imran s/o Abdul Ghaffar Rajput and Mr. Dinesh Kumar s/o Chandu Mal Solanki did not accept the offer of appointment as Section Officer (BS-17) and their Officer of Appointment letters dated 14.01.2019 were cancelled vide letters dated 05.03.2019 and 19.08.2019. The information regarding non-acceptance of Offer of Appointment by two candidates was communicated to the respondent No.03 vide letter dated 19.08.2019.

It is further submitted that one of the candidates Mr. Imran Khan s/o Irshad Ali Abbasi accepted offer of appointment and was appointed to the post of Section Officer (BS-17) vide notification dated 05.03.2019. He appeared before the Chief Secretary, Sindh and the Secretary (Services), SGA&CD and submitted his unwillingness (with copy of CNIC) to join as Section Officer (BS-17) in Sindh Secretariat.

Subsequently, the Offer of Appointment was cancelled vide order dated 04.05.2020.

It is respectfully submitted that the Honorable Supreme Court of Pakistan in Suo Moto Case No.18/2016 directed that if any candidate declines the offer of appointment the candidate who is next on the merit be offered the same. As such the candidates next on merit, though, they are already allocated to some other groups may be offered the same instead of the candidates at the bottom of merit list and not allocated to any cadre.”

In response to the prayer of the petitioner that his case be considered in the light of the directions of the Hon’ble Supreme Court given therein judgment dated 22.02.2017 through clause (15) that *”candidates who are selected by the commission should be offered appointment by the Government as per applicable law, and if any candidate declines, the candidate who is next on the merit list be offered the same”* respondents No.1 and 5 stated that:

“It is submitted that as per directions of the Honourable Supreme Court of Pakistan in Suo Moto Case No.18/2016 the candidate next on merit be offered appointment for the post which is not accepted by a candidate selected for it. Hence, the candidates next on merit, though, they are already allocated to some other cadre and feel prompted to move up may be offered for appointment against such posts firstly, instead of giving opportunity to those at bottom of the merit list. In this regard, Respondent No.2 & 3 may work out as per merit list and option forms submitted by the Candidates next on merit.

In view of the facts mentioned above, it is prayed that this petition may be decided on merits.”

Respondent No.6 in reference to para-7 and 10 of the petition answered as under:

“It is submitted that this department had sent requisition to Sindh Public Service Commission for appointment / recruitment of three (03) Assistant Directors (BS-17) and Eighteen (18) Labour Officers (BS-16) in the Directorate of Labour Sindh for CCE-2013 on 15.06.2016. Accordingly, SPSC had recommended three (03) names of the successful candidates for the post of Assistant Director (BS-17) and eighteen (18) names of the successful

candidates for the post of Labour Officers (BS-16) ON 02.11.2018. Out Of three (03) Assistant Director, Labour (BS-17) only one (01) had joined and out of eighteen (18) Labour Officers (BS-16), only twelve (12) had joined. Detail of those who have not joined this department is attached at (Annexure-III).

2. *It is further submitted that this position was conveyed to SGA&CD, vide this department's letter, dated 18.09.2019 followed by letters, dated 12.12.2019 & 24.02.2020 respectively for necessary guidance in the matter, but response of Services, General Administration & Coordination Department is still awaited.*

3. *Since there are number of vacancies lying vacant in this department, hence this department initiated Note for the Minister, Labour & H.R, Sindh for afresh appointments against these vacant posts through SPSC as per recruitment rules and Director, Labour, Sindh has accordingly been advised to furnish requisition forms, duly filled-in for forwarding to SPSC for initiating recruitment process, vide this department letter dated 11.03.2020 and followed by reminder dated 27.08.2020.*

The Honorable High Court of Sindh, Circuit Branch, Hyderabad may kindly pass appropriate orders in this matter as deem fit."

As per dictum laid down by Hon'ble Supreme Court of Pakistan in Suo Moto Case No.18 of 2016 that in case there is a vacancy, the candidate next in the merit should be offered the vacant position. A question arises here as to what position the petitioner should be permitted, whether as a Section Officer, Assistant Director or Labour Officer? Whilst the petitioner has placed reliance on the Judgment of Hon'ble Supreme Court of Pakistan reported in **2009 SCMR 382** which restricts change of position, the Court has been informed that amongst the individuals chosen to join may seek inter se changes and definitely those existing candidates are at better footing as compared to the petitioner, hence be given first right to opt for the available positions in the ranks of their choice in accordance with the merit list.

In the given circumstances in the presence of all concerned present in the Court it appears just and proper to direct the respondent No.2 to follow the dictum laid down by Hon'ble Supreme Court, and in the light of this Order offer the position of Labour Officer BPS-16 to the petitioner who clearly fell at Sr. No.135 of

the merit list by sending such recommendation to the concerned department, which exercise to culminate in issuance of offer letter to the petitioner within three weeks in accordance with law.

The petition accordingly stands disposed off in the above terms.

JUDGE

JUDGE

*Muhammad Danish Steno**