

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 5779 of 2019

Nisar Ahmed Baloch

Versus

Province of Sindh & 10 others

Date of hearing & Order : 27.04.2021

Mr. Nasrullah Korai, advocate for the petitioner.

Malik Naeem Iqbal, advocate for respondent No.3.

M/s. Farrukh Usman & Aamir Maqsood, advocates for respondents No.4 to 11.

Mr. Ali Safdar Depar, AAG..

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner has prayed for issuance of the writ of quo warranto against respondents 4 to 11, inter-alia, on the ground that they are not fit, eligible and qualified to hold the office of Professor, Associate Professor, Assistant Professor, and Senior Registrar in Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi, (**'SMBBMC'**) and their future appointments in SMBBMC on contract are hit by Article 199 (1) (b) (ii) of the Constitution, 1973.

2. We asked learned counsel for the petitioner to satisfy this Court about the maintainability of this petition on the ground that private respondents have already been terminated from service vide office order dated 02nd July 2019, issued by the Government of Sind, Health Department.

3. Mr. Nasrullah Korai, learned counsel for the petitioners, has submitted that initially, the private respondents were holding public office posts, though they were, later on, terminated vide order dated 02.07.2019, however, their case falls within the purview of sub-clause (1) (b) (ii) of Article 199 of the Constitution, 1973. He added that official respondents are bent upon to protect the private respondents by floating summary No. Nil dated 30.04.2019 for the Chief Minister, Sindh for withdrawal of termination order and extension of the contract for two years, which has triggered the cause to approach this Court through the instant petition. He next argued that the direct appointment in the

higher grades by way of summary, bypassing the proper procedure of appointment through the competitive process was/is patently discriminatory and in gross violation of Articles, 4, 8 and 25 of the Constitution of Islamic Republic of Pakistan, 1973, thus their prospective appointments are liable to be cancelled. He prays for allowing the instant petition with the direction to the competent authority to appoint new and competent doctors for SMBBMC through a competitive process.

4. Malik Naeem Iqbal, learned counsel for respondent No.3, has supported the stance of the petitioner and seeks disposal of this petition in the line with the prayer clauses of the petition.

5. The aforesaid stance has been refuted by Mr. Farrukh Usman, learned counsel for respondents No.4 to 11 by referring para-wise comments filed on behalf of the said respondents argued that this petition is not maintainable under the law, however, the same has become infructuous as the competent authority i.e. Chief Minister has approved the summary, wherein contracts of respondents 4 to 11 have already been extended. He further argued that the petitioner is a notorious person and involved in heinous crimes committed in Lyari. He emphasized that the petitioner has no *locus standi* to call in question the appointment of the private respondents through the instant petition. At this stage, we confronted him with the findings of the Worthy Chief Minister dated 05.9.2019 with the following assertion that "However considering the exigency of the situation and immediate needs of SMBBMC, the proposal at para 04/ is approved. Nonetheless, the Health Department should initiate the process of hiring/ recruiting senior-level teaching/nonteaching staff for SMBBMC through SPSC. Subsequently, Chief Secretary and Secretary Health will submit the report within one week, fixing responsibility regarding irregularities cited above". Learned counsel replied that their termination order has been allowed to be withdrawn and their contractual service was extended for six months.

6. At this juncture, Mr. Naeem Iqbal asserted that the contract of respondents 5 to 10 was extended in violation of law as neither the new induction procedure was adopted nor the private respondents were selected by the Selection Committee and secondary, there is no concept of post-facto extension of the contract by law/service rules. Learned counsel referred to the grounds agitated in his counter-affidavit to the petitioner and argued that the competent authority is bound to initiate the recruitment process afresh for the subject post in accordance with law.

7. We have heard the learned counsel for the parties on the subject issue and have gone through the record of the case file.

8. It is well-settled law that if a civil/public servant is appointed in violation of any provision of law, the competent authority can look into the matter and this Court, at this juncture, cannot dilate upon the allegations of the petitioner on the aforesaid analogy.

9. Before parting with this order, we may observe that the appointments are to be made by the Government in statutory bodies, autonomous bodies, semi-autonomous bodies, regulatory authorities, etc. through the competitive process and not otherwise as such no further deliberation on our part is required. However, we may further observe that the competent authority i.e. Chief Minister Sindh has already endorsed the point of view of respondent-Health Department vide summary as discussed supra with the observation that the Health Department should initiate the process of hiring/ recruiting the senior-level teaching/nonteaching staff for SMBBMC through SPSC.

10. The above discussions lead us to an irresistible conclusion that the instant petition being incompetent is dismissed along with the pending application(s) with no orders as to cost. However, the petitioner is at liberty to approach the competent authority for the redressal of his grievances if he feels that his cause of action still subsists against the private respondents.

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