

IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D – 4685 of 2020

Date	Order with Signature of Judge(s)
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Before:
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Azhar Hussain Solangi and others,
Petitioners, through : Mr. Muhammad Nizar Tanoli,
advocate.

Province of Sindh
& three others, respondents
through : Mr. Ali Safdar Depar, AAG alongwith
Mr. Muhammad Yousuf Alvi, law
Officer, Sindh Public Service
Commission, Ikhtlaq Ahmed Kalwar,
Deputy Director SPSC, Dr. Kazim
Hussain Jatoti, Secretary Health
Sindh, and Riaz Hussain Jakhirani,
D.S Health

Ms. Sohni and 07 others,
Applicants u/s 12(2) CPC through : Mr. Ayatullah Khawaja, advocate.

Dates of hearing : 27.04.2021, 05.05.2021, 20.05.2021
& 21.05.2021.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. – Through the instant petition, the petitioners are seeking direction to the respondents Sindh Public Service Commission (SPSC) to conduct the interviews on the same line, as they had earlier followed in the cases of 500 candidates, for the post of staff nurses (BPS-16).

2. Principally, the Petitioners had applied for the post of Staff Nurses (BPS-16). Later on, they were issued interview call/admission letters by the respondent-SPSC. The Petitioners in response thereto did appear in `written test` and were declared successful candidates vide Press Release dated 6.2.2020. Besides, they submitted all requisite qualification documents. They also fulfilled all other requisite formalities. Petitioners have submitted that the respondent-SPSC thereafter issued the letters dated 22.8.2020 and 24.8.2020, and rejected their candidature on the ground that the Petitioners failed to submit a Valid Registration Certificate of the Pakistan Nursing Council

before the cutoff date i.e. 14.1.2019. The Petitioners thus, on account of refusal to participate in the interview/viva-voce have called in question the aforesaid rejection letters and have filed the instant Petition on 28.9.2020.

3. At the first instance, we asked the learned Law officer of SPSC, present in Court, to show us any lawful justification for not considering the case of Petitioners for their appearance in the interview for the post of Staff Nurses (BPS-16), on the premise that they had already been declared successful candidates in the pre-interview written test for the aforesaid post in the recruitment process initiated by the respondent-SPSC.

4. Mr. Muhammad Yousuf Alvi, Law Officer of SPSC has supported the stance of the respondent-SPSC vide rejection of candidatures of the petitioners vide impugned letters dated 22/24.8.2020 and submitted that the Petitioners were required to produce Registration Certificate from Pakistan Nursing Council on or before the commencement of the pre-interview-written test. However, on scrutiny of documents, the respondents found that the Petitioners were not eligible because they did not possess the required qualification i.e. Registration from Pakistan Nursing Council up to the cutoff date i.e. 14.1.2019. Therefore, the candidatures of Petitioners were rightly rejected by the SPSC. He next contended that no fundamental right of the Petitioners is violated as the complete process of scrutiny has been done as per law, fairly and transparently; that Petitioners at the relevant time were not entitled to participate in the interview for the aforesaid posts on the ground that they did not possess the requisite qualification as required under the Pakistan Nursing Council Act and Rules to practice; and/or apply for the subject post.

5. Mr. Muhammad Nizar Tanoli learned counsel for the petitioners has refuted the stance of the Law Officer of SPSC by submitting that procedure of appointment of Staff Nurses (BPS-16), was flawed under the law; that merit was compromised by the respondent-SPSC to accommodate their blue-eyed ones/ beneficiaries who participated in the same process and other candidates, who were having influence and/or were recommended and subsequently selected for extraneous consideration; that while recommending the beneficiaries, the petitioners were ignored. He further argued that the purported action on the part of respondent-SPSC is discriminatory and against the fundamental rights of

the Petitioners thus not sustainable in law. He averred that the action of the official respondents is in violation of the Fundamental Rights of the petitioners guaranteed under Articles 18, 24, 25 and read with Articles 4 and 8 of the Constitution; that due to omission/failure of the respondents to fulfil their legal obligations and timely discharge of their duties/functions, the petitioners are being deprived of their lawful rights to participate in the interview for appointment against the post of Staff Nurses (BPS-16). He next argued that the petitioners have completed all the codal formalities viz. written test and were entitled to participate in interview/via-voice test, therefore, the petitioners' right to seek a job is their fundamental right for the particular post and that cannot be snatched away by appointing someone else, which is violative of the principle of natural justice; that the petitioners have the right to seek appointment and the respondents cannot curtail such rights of the petitioners, as guaranteed under the Constitution; that the respondents are acting beyond the mandate of law; that petitioners are not at fault and in their place favourable candidates were recommended for the post. He added that the impugned rejection letters are based on malafide intention thus liable to be set aside. He lastly prays for allowing the instant petition.

6. Mr. Ali Safdar Depar, learned Assistant Advocate General Sindh, has raised the question of maintainability of the instant petition and argued that the subject petition is liable to be dismissed as there was transparency in the appointment procedure of the said respondents on the aforesaid posts purely on merit without any favouritism or otherwise, and they have qualification commensurate to the positions advertised in the newspapers. Learned AAG has supported the stance of the Law Officer of SPSC and argued that Petitioners did not qualify the terms and condition, as outlined in the advertisement 18.12.2018. He lastly prayed that the instant Petition may be dismissed.

7. We have heard learned counsel for the parties on the subject issue and perused the material available on record.

8. First of all we take up the issue of maintainability of the instant Petition under Article 199 of the Constitution. We are of the view that the grievance of the Petitioners does not relate to the terms and conditions of service, but they have sought relief for their appointments, therefore, the Petition is not barred by Article 212 of the Constitution and is maintainable, which is to be heard and decided on merits.

9. The questions involved in the instant petitions are as follows:

i) Whether the recommendation of respondent-SPSC for the post of Staff Nurse (BPS-16) in the Health Department, Government of Sindh was flawed under the law?

ii) Whether the Petitioners possess the required qualification for the post of Staff Nurse (BPS-16) to claim the right to participate in an interview to be conducted by SPSC?

10. To dilate upon the aforesaid propositions, it appears from the record that SPSC invited online applications through advertisement No.11/2018 dated 18.12.2018 with closing date 14.01.2019. A large number of aspirants (**7803**) applied for the said posts, out of them, 2321 candidates qualified for the pre-interview written test. Among them, 958 candidates were found fit and suitable, who were recommended to Health Department for the appointment as per the Rules and policy of the Government of Sindh.

11. A perusal of the record depicts that the Petitioners were given an offer to appear in the examination on the condition that they have to produce the Registration Certificate from Pakistan Nursing Council and other documents on or before the commencement of the pre-interview written test. Admittedly, the Petitioners appeared and were declared successful in the written examination. However, SPSC after the written test conducted the scrutiny of the record of the Petitioners and found that at the time of the written test the Petitioners were not awarded Registration Certificate from Pakistan Nursing Council before the cutoff date as discussed supra. Therefore, the Petitioners were held to be not eligible for the subject post and their candidature was declined, vide impugned letters dated 22/24.8.2020.

12. It is the main contention of the learned counsel for the Petitioners that once the Petitioners were allowed to appear in written test and were declared successful a vested right had been created in their favour to participate in the interview. This stance is refuted by the learned law officer while referring to the regulation No.0514, framed by the respondent-SPSC, and argued that a large number of candidates had applied for the subject post, and to save time, all candidates were provisionally allowed to appear in the pre-interview written test to shortlist the successful candidates for an interview before the scrutiny of their applications and after scrutiny, they were found ineligible for the subject post the reasons are discussed in the preceding paragraph.

13. Prima-facie, the above Regulation stipulates that in case of a large number of candidates, the PSC may allow the candidates to appear in the examination to save time, but, such an appearance would

be subject to the scrutiny of eligibility of the candidates. By no means, the appearance of candidates and their passing of examination would create a vested right in their favour when the candidates are found to be ineligible in the scrutiny process of their documentation, after the written test.

14. In view of the above the respondent-SPSC has processed the scrutiny of the documents of the Petitioners after written test under the above provision and no illegality, therefore, appears to have been committed by scrutinizing the relevant record. The record reflects that the Petitioners were provisionally allowed to appear in the examination for the post of Staff Nurse (BPS-16) in the Health Department, Government of Sindh and it was mentioned in the Admission Slip of the Petitioners that “their eligibility would be determined after the professional test”.

15. The record further reflects that respondent-SPSC rejected the candidature of the Petitioners as per clauses xiii of the impugned common letters dated 22/24.8.2020, which is reproduced as under:-

“Your initial registration is after the closing dated i.e. 14.1.2019.”

16. We have scanned the file, *prima-facie* it appears that the Registration Certificate from Pakistan Nursing Council issued in favour of the petitioners was after the cutoff date i.e. 14.1.2019, as per advertisement, and thus we asked the learned counsel to point out any illegality in the impugned rejection letters issued by the respondent-SPSC. At this juncture, he pointed out that under similar circumstances the respondent-SPSC allowed nine (09) candidates to participate in the interview, whose, Registration Certificate from Pakistan Nursing Council issued in their favour was after the cutoff date i.e. 14.1.2019 and they were recommended for appointment.

17. *Prima-facie* these are serious allegations against the respondent commission; and, because of the above statement, this Court vide order dated 23.11.2020 directed Secretary SPSC to appear and to explain the exclusion of the petitioners from the list of all such candidates who were found eligible for interview. In compliance whereof, Secretary SPSC appeared before this Court on 14.12.2020 and the following order was passed:

“14.12.2020.

In compliance of order dated 23.11.2020, Shaukat Ali Ujjan, Secretary Sindh Public Service Commission / respondent No.3, is present in person. He states that the name of Asia Bibi was inadvertently included in the merit list which has now been deleted therefrom and after deletion of her name, no such applicant is mentioned in the merit list who was registered after the cutoff date i.e. 14.01.2019. This claim has been denied by learned counsel for the petitioners by stating that there are at least 8 to 9 applicants whose registration was subsequent to the cutoff date, but their names are still appearing in the merit list. The above named Secretary states that an inquiry has been ordered by the Chairman of the Commission to ensure that names of all such applicants, who were registered after the cutoff date, should be deleted from the merit list, and the said inquiry shall be completed within a period of one (01) month. He is directed to submit the report of above inquiry before this Court on the next date of hearing. By consent, adjourned to 19.01.2021 at 11:00 a.m. along with C.P. No. D-584/2019. Till then, appointment letters / orders shall not be issued by respondent No.1 to any of the applicants.”

18. In pursuance of the aforesaid order, learned AAG has placed on record a statement dated 19.1.2021, disclosing the conclusion of the inquiry. The findings of the inquiry report are as under:

“Sindh Public Service Commission came to the knowledge through the Order passed by the Honourable High Court for Sindh, Karachi dated 25.11.2020 in connection with C.P. No.D-4685 of 2020 filed by Mr. Azhar Hussain Solangi and others Versus Province of Sindh and others that a candidate namely Ms. Asia Bibi has been recommended for the post of Staff Nurse (BPS-16) though her registration with Pakistan Nursing Council (PNC) was after the cutoff date i.e. 14.01.2019 of the advertisement.

Keeping in view the seriousness of the implications, a Committee constituted on the directions of Chairman Sindh Public Service Commission to dig out the cases whose PNC registration was after the cutoff date.

The Scrutiny Committee after detailed verification of the documents identified (06) candidates shown below including Ms. Asia Bibi whose PNC registration was after the cutoff date.

SR. NO.	MERIT NO.	ROLL NO.	NAME WITH FATHER'S NAME	INITIAL REGISTRATION DATE OF PNC CARD
01	106	64656	Zahida D/o Sher Ali	10.07.2019 (After cutoff date i.e. 14.01.2019)
02	213	64727	Asia Bibi D/o Ahmed Naqwaz	02.03.2020 (After cutoff date i.e. 14.01.2019)
03	241	64619	Sohni D/o Taj Muhammad	05.02.2019 (After cutoff date i.e. 14.01.2019)
04	445	64624	Shagufta D/o Muhammad Yousuf	22.04.2020 (After cutoff date i.e. 14.01.2019)
05	660	64531	Ihsan Ali S/o Abdul Majeed	17.07.2019 (After

				cutoff date i.e. 14.01.2019)
06	758	64657	Saima D/o Qasim Ali	23.07.2019 (After cutoff date i.e. 14.01.2019)

It was further directed that PNC Cards of 03 (Three) candidates mentioned below were not attached with the documents.

SR. NO.	MERIT NO.	ROLL NO.	NAME WITH FATHER'S NAME	INITIAL REGISTRATION DATE OF PNC CARD
01	121	71005	Rukhsana D/o Muhammad Hashim Abbasi	PNC not attached
02	489	64870	Miss Aftab D/o Wazir Ali	PNC not attached
03	886	64339	Imtiaz Ali S/o Ahmed Khan	PNC not attached

Sindh Public Service Commission invited online applications through advertisement No.11/2018 dated 18.12.2018 with closing date 14.01.2019. A large number of aspirants (7803) applied for the said posts, out of them 2321 candidates, qualified pre-interview written test. Among them 958 candidate were found fit and suitable who were recommended to Health Department for the appointment as per the Rules and policy of the Government of Sindh.

The Recruitment Section-I states that, due to prevailing situation of COVID-19, Government of Sindh had declared emergency and desired to fill the vacant posts of Staff Nurse on urgent basis to combat the emergency situation. Due to sudden rush of work and large number of the applications the mistakes were committed by the concerned section.

In this connection Sindh Public Service Commission has written a letter to Secretary Health Department for withdrawal of recommendation of 09 (Nine) candidates vide this office letter No.PSC/GRS/2021/59 dated 15.01.2021.

It is further submitted that, the departmental action is being taken against the concerned staff members as per rules.

**SECRETARY
SINDH PUBLIC SERVICE COMMISSION”**

19. Learned AAG also placed on record the notification dated 29.1.2021 whereby the offer of appointment and appointment letters of nine candidates were cancelled/ withdrawn.

20. To address the aforesaid plea raised by the learned counsel for the petitioners, prima-facie, while hearing this petition, we found various discrepancies in the recommendation process of staff nurses (BPS-16) conducted by Sindh Public Service Commission (SPSC) vide letter dated 19.11.2020; and, directed the Secretary SPSC to scrutinize the recommendation made by the SPSC regarding those nine (9) candidates who were appointed by the respondent-Health Department Government of Sindh, despite that their Registration Certificate with Pakistan Nursing

Council was after the cutoff date i.e. 14.01.2019, as provided in the Public Notice dated 18.12.2018. Subsequently, such compliance report was submitted by the respondent-SPSC whereby the nine (9) candidate's recommendation made by SPSC and their subsequent appointment as Staff Nurse (BPS-16) was found to be erroneously made with the analogy that the aforesaid process to the extent of nine (9) candidates was flawed under the law. Consequently, the respondent-Health department acted swiftly and issued Notification dated 29.1.2021 and subsequent partial modification notification dated 20.5.2021, whereby their appointment on the subject post was cancelled/ withdrawn.

21. The nine (9) candidates/applicants being aggrieved by and dissatisfied with the aforesaid notification dated 29.1.2021 filed the listed application under section 12(2) CPC bearing CMA No.6887/2021 and prayed for setting aside the aforesaid notification on the sole ground that the order dated 19.1.2021 passed by this Court was obtained by the petitioners by misrepresenting the facts; and, the official respondents had also misled the Court at the time of passing the aforesaid order; and, they were not arrayed as the party in the proceedings; and, the order dated 19.1.2021 was procured behind their back thus they were condemned unheard on the subject issue, even on merit they were/are well qualified to hold their respective posts i.e. Staff Nurses (BPS-16).

22. We have also heard Mr. Ayatullah Khawaja learned counsel for the applicants on the listed application bearing CMA No.6887/2021 at some length and have gone through the contents of the application. It is urged by him that applicants are qualified for the post of staff nurse and they successfully went through the competitive process conducted by the SPSC, however, due to misrepresentation of facts the respondents de-notified them on the premise that they had no requisite registration certificate with Pakistan Nursing Council at the time of closing date for submission of applications i.e. 14.01.2019. learned counsel referred to various documents attached with his application and argued that the applicants have requisite qualification, however, due to the non-availability of registration certificate, which could not be issued by the nursing council in time, they were provisionally allowed to participate in the competitive process and succeeded in the written test conducted by SPSC, however, they were not allowed to appear in the interview on the premise that they had no registration certificate before the cutoff date as mentioned in the public notice. Per learned counsel, this is not the requirement of law, if, the documents are submitted at the belated stage as they qualified the competitive process and were duly recommended by the respondent commission to the Government of Sindh

who in turn appointed them on the subject post, however later on, at the request of SPSC they de-notified their appointment orders without assigning any reason and giving them an opportunity of hearing. In support of his contention, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of Jahanzaib Malik Vs. Baluchistan Public Procurement Regulatory Authority and others (2018 SCMR 414).

23. It is imperative to determine as to whether any fraud has been committed with this Court as agitated by the Applicants? To go ahead with the aforesaid proposition, it is expedient to have a look at Section 12(2) CPC, which speaks of the principle that if a Decree, Order or Judgment is obtained by Fraud, misrepresentation; though the term Fraud, is not defined in Civil Procedure Code, but in the simplest sense means "Deception intended to result in financial or personal Wrongful gain". Through the listed applications serious allegations have been levelled by the applicants against the Petitioners and official respondents, for committing fraud upon this Court through misrepresentation of facts, for which thorough probe needs to be required, in our view in Constitutional Petition no factual controversy can be looked into and the only pure question of law can be dilated upon. On the aforesaid proposition, we are fortified with the decision rendered by the Honorable Supreme Court in the case of Mrs. Anis Haider and others v. S. Amir Haider and others (2008 SCMR 236). *Prima facie*, this application is misconceived for the reason that this Court vide order dated 19.1.2021 simply recorded the statement of Secretary SPSC who in turn submitted that he is going to scrutinize the recommendation of SPSC regarding 09 candidates who were appointed by the Health Department, Government of Sindh on the recommendation of SPSC, erroneously as they had no Registration Certificate from Pakistan Nursing Council from so practising; and/or to seek appointment as Staff Nurse (BPS-16) as provided under Pakistan Nursing Council Act, 1973 / the recruitment rules for the subject post. For the aforesaid reasons, we do not find merit in the listed application under section 12(2) CPC bearing CMA No. 6887/2021, which is accordingly dismissed.

24. An enquiry was conducted in the matter; however, surprisingly the enquiry officer has fixed the responsibility upon the staff only. We have some reservations on the said enquiry report. *Prima-facie* the respondent-SPSC made the recommendation for the subject nine posts erroneously without adopting the codal formalities by excluding the petitioners as required under the law. Therefore, the competent authority is directed to ensure that no such appointment is made in future that may violate the law

settled by the Hon'ble Supreme Court in suo moto case No.18 of 2016 (2017 SCMR 637) regarding the public appointments, etc. The Government of Sindh has to ensure complete transparency in the process of recommendation made by the SPSC and selection and appointment is to be made strictly on merit and not otherwise, for which we expect from the competent authority Government of Sindh to look into the matters of the affairs of the SPSC in its true perspective and make drastic changes in the light of findings of Honorable Supreme Court in the aforesaid matter in its true perspective to avoid proceedings under Article 204 of the constitution in the best interest of public-at-large to save the institution as pointed out and adhere the directions contained in Paragraph Nos. 7, 8, 9, 10, 11, 12, 15 & 16 of the Hon'ble Supreme Court in the aforesaid matter.

25 At this stage, learned AAG intervened and requested for disposal of this petition on the analogy that they may be given a reasonable time so that lawful recruitment process to the extent of petitioners and applicants be initiated afresh to conduct their interview in the ongoing process to fill the remaining subject posts as they have now acquired the requisite qualification for the post of Staff Nurse.

26. During arguments, we have been apprised that a fresh recruitment process has been initiated to fill the remaining posts through SPSC and the petitioners and applicants, since they have acquired the registration certificates duly recognized by the Pakistan Nursing Council, are now qualified to appear before the interview committee for their respective interviews for the subject post in the ongoing process. For that, learned counsel for the petitioners has no objection to the proposal put forward by the learned AAG. Learned counsel representing SPSC is also of the same view. If this is the legal position of the case, the competent authority of SPSC is directed to allow the petitioners and applicants to participate in the said process without discrimination, subject to all just exceptions as provided under the law by conducting their interview afresh on the subject posts and complete the same process within fifteen (15) days strictly in pursuance of law and to submit the compliance report to this Court through the MIT-II.

27. In view of the admission of learned AAG, which is endorsed by the Secretary Health Department, Government of Sindh and learned law Officer representing SPSC, that they are ready and willing to allow the petitioners and applicants to participate in the ongoing competitive process for the subject post and they shall be allowed to sit in the interview and if they qualify for the subject posts, they shall be recommended for appointment accordingly. *Prima-facie*, the

proposal put forward by learned AAG seems to be fair enough to dispose of the captioned petition in terms of the said proposal.

28. As a result of the foregoing discussion, we dispose of the instant petition along with the pending application(s), with directions to the competent authority of SPSC to allow the Petitioners and applicants to participate in the interview for the post of Staff Nurse (BPS-16) and if the Petitioners and applicants qualify in the said interview, their result be announced accordingly.

Let copy of the order be issued to the competent authority Government of Sindh, Chief Secretary, Government of Sindh and Chairman Sindh Public Service Commission for compliance and necessary action, in accordance with law.

JUDGE

JUDGE

Shahzad