

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Constitutional Petition No.D-1757 of 2017
[Anzar Ali Shah & others v. Province of Sindh & others]

Constitutional Petition No.D-3355 of 2018
[Taaruf Hussain & others v. Province of Sindh & others]

Present:-

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Fahim Ahmed Siddiqui

Date of hearing: 26.03.2019.
Date of Decision: 03.04.2019.
Petitioners: Through Mr. Ishrat Ali Lohar advocate in C.P. No.D-1757 of 2017.
Through Mr. Altaf Ahmed Shahid Abro advocate in C.P. No.D-3355 of 2018.
Respondents: All respondents except respondent No.2 through Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.
Respondent No.2: Through Mr. Hameedullah Dahri advocate.

JUDGMENT

Muhammad Iqbal kalhoro, J- By this judgment captioned petitions involving the same issue are disposed of.

2. As per brief facts, different posts in I.T. database were created in the office of respondent No.2/Secretary Sindh Text Board, Jamshoro and in order invite applications to fill them up advertisements were published in different newspapers in February 2016. The petitioners applied individually for the post matching their respective qualification and after going through the whole range of selection process comprising written test, viva voce, etc. were declared successful candidates in final merit list, which was issued on 23.11.2016 by the office of respondent No.2. However, the petitioners were not issued offer letters for appointment, hence they approached respondent No.2 in this regard but to no avail, which led them to file these petitions on following prayers:-

C.P. No.D-1757 of 2017

- A. That this Honourable Court may pleased to declare the act of respondents for not issuing the offer order in favour of petitioner are void, abinitio and without lawful authority.
- B. That this Honourable Court may kindly be pleased to direct the respondent for issuing of office order since November 2016 and further direct them to pay the consequential benefits in respondent of their posting.
- C. That any other relief which this Honourable Court may deem fit and proper to award the petitioners.

C.P. No.D-3355 of 2018

- A. This Honourable Court may be pleased to declare the hatred act of Respondents for not issuing the offer orders in favor of the present petitioners being successful candidates of the Test since long time is void, ab-initio and without lawful justified and authority.**
- B. That this Honourable Court may kindly be pleased to direct the respondents / competent authority to issue the offer orders to the present petitioners being successful candidates in the light of final result announced by the respondent No.3 of the successful candidates.**

OR

That this Honourable court may kindly be pleased to direct the respondents / competent authority to regularize the present petitioners, in view of the resemblance laid down by the Honourable Supreme Court of Pakistan recently in the case of (2018 SCMR 1405).

- C. That this Honourable Court may kindly be pleased to direct the respondents / competent authority to maintain status-quo as already restrained by this Honourable Court on 13.09.2017,**

And/OR

Suspend / prevent the operation of recruitment process perhaps may begin in near future, unless the present petitioners are not given offer orders in their favor being successful candidates of the said Test. In this regard and to save the due right of the earlier candidates / petitioners in C.P No.D-1757 of 2017, this Honourable Court have already passed order on 05.11.2018, whereby restrained the respondents that may not be filled-up three posts as described in the said order.

- D. That any other relief (s), which this Honourable Court feels better fit and proper to allow this present Constitution Petition as prayed, keeping in view of the present age and for the enhanced future of the energetic and young petitioners having sufficient knowledge of Information Technology in computer literacy.**

3. The authorized officer of respondent No.2 has filed comments stating that one Syed Zakir Hussain was Chairman, Sindh text Board, Jamshoro who had kept entire record of alleged selection process and relevant correspondence in his own laptop, whose degree was found bogus after scrutiny and hence on the directions of Honorable Supreme Court of Pakistan an FIR against him and others was lodged. That he is absconder since and not in contact with respondent No.2 and therefore the record of alleged selection process is not available with the department to appreciate case of the petitioners. It is further stated that since earlier process initiated by the said Chairman was found dubious, Board of Governors (BOG) in a meeting held on 19.07.2017 decided to re-advertise the subject posts and consequently, such exercise has been carried on. It has been proposed that if the petitioners apply in the said process, their case will be considered as per rules and regulations.

4. We have heard learned counsel for the parties and perused the material available on the record. Learned defense counsel have mainly reiterated the above facts and relied upon the case law reported in 2006 SCMR 1082, 2009 PLC (C.S.) 4, 2015 SCMR 1257 and 2018 PLC (C.S.) 105 in support of their case. Whereas learned counsel for respondent No.2 has prayed for dismissal of these petitions.

5. The facts as reproduced above would show that alleged process of selection of the petitioners had not yet completed and they were not issued any letter offering appointment. They had allegedly only qualified the interview tests and still their appointment was subject to various verifications in regard to their qualification and antecedents. However before the said process culminated at issuance of offer orders to the petitioners, the degree of the then Chairman, Sindh Text Board, Jamshoro namely Syrd Zakir Hussain, who supervised the entire process of selection, was found bogus and he absconded along with relevant record on account of an FIR registered against him in this respect. Resultantly the whole process was aborted. Thereafter, BOG while discussing the issue under item No.10 in a meeting held on 19.07.2017 observed that the tests conducted by Pakistan Testing Service seems to be doubtful, and in view thereof decided to re-advertise the posts to be filled through a process to be held by Institute of Business Administration (IBA).

6. Further it may be stated that there is no valid list issued either by Pakistan Testing Service or Sindh Text Board, Jamshoro showing names of the petitioners as successful candidates except a note dated 23.11.2016 (Annex-I) page 65 (C.P.D-No3355/2018) on the purported letter pad of Sindh Text Book Board to Secretary, School Education Department indicating details of finally selected candidates including the petitioners by Pakistan Testing Service. But this document is unsigned and its authenticity is not beyond doubt. However, Annex-D to DII at page No.39 to 41 (C.P.D-No3355/2018) are Photostat copies of purported result sheets for the subject posts containing names of the petitioners, which are signed by Director Examination, Pakistan Testing Service. But none from the said agency came forward to verify veracity of said documents despite notices. Besides, learned defense counsels were even not able to show that Pakistan Testing Service is a recognized institution and has protection under the law to hold tests for recruitment to attach some legal value to its results. So neither there is record of petitioners' success in the interview tests available with Sindh Text Board, Jamshoro nor have they been successful to establish their selection in the alleged process of appointment through any authenticated document. In these facts and circumstance and particularly when authenticity of very process of selection has been doubted by BOG, this Court will not proceed to direct respondent No.2 to issue offer letters in favour of the petitioners.

7. In addition, we may observe that it is well established that mere a recommendation or selection for appointment by any agency to a vacancy would not confer a right of appointment on the selectee or recommendee. The Honorable Supreme Court of Pakistan in the case of **Secretary Finance and others vs. Ghulam Safdar (2005 SCMR 539)** has held that mere selection in written examination and interview test would not by itself vest candidates with a fundamental right for enforcement in the exercise of constitutional jurisdiction of the High Court. In the case of '**Raza Muhammad and others v. Secretary, Home Department Sindh and others (C.P No.D-2298 / 2018)**', a division bench of this

Court, one of us [Muhammad Iqbal Kalhoro, J] is a member of which, has held in paragraph 19 of the judgment dated 21.03.2019 that selection for appointment to a vacancy pursuant to an advertisement would not confer any right to be appointed to the post in question or entitle the selectee to a writ of mandamus or any other writ compelling the authority to make appointments.

8. We, therefore, find no merit in the petitions and dismiss them accordingly. But before parting with this order we may observe that the petitioners may be allowed to participate in the pending process of selection initiated in terms of re-advertisement and their case be considered as per relevant rules and regulations.

JUDGE

JUDGE