

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-1896 of 2022

(Jalaluddin and others v. Province of Sindh and others)

Mr. Akhtar Hussain Jabbar, advocate for the petitioners
Mr. Abdul Jalil Zubedi, Additional Advocate General Sindh.
Dr. Liaquat Ali Abro, Consultant Law to Chief Secretary,
Government of Sindh.

Date of hearing : 08.03.2023.

Date of Order : 17.03.2023

ORDER

The petitioners claim that they have been declared successful candidates by the Sindh Public Service Commission (SPSC) for the post of Staff Nurse (BPS-16) (Male/Female) in the Health Department, Government of Sindh vide press release dated 06.02.2020 and consequent whereof they were appointed as Staff Nurse on contract basis vide notifications issued in 2020. Their further claim is that they were/are required to be appointed on regular basis under the Sindh Civil Servants Act, 1973 and the rules framed thereunder.

2. Mr. Akhtar Hussain Jabbar, the learned counsel for the petitioners contended that respondent SPSC has declared them qualified in one of the modes of test i.e. the written test vide Press Release dated 06.02.2020 conducted by SPSC and petitioners are occupying the present posts based on merit. Per learned counsel, the petitioners are not required to undergo the same process afresh as they have already faced the rigorous pre-interview written test for the subject posts. The learned counsel for the petitioners referred to various documents attached with the memo of the petition and submitted that under the Sindh Civil Servants Act, 1973, and rules framed thereunder, the petitioners have already occupied the regular posts, thus their posts could not be re-advertised and filled, for the reason that the respondents have no lawful justification to hire the services of the petitioners on a contract basis, rather than regular basis. The learned counsel emphasized that respondent SPSC is not required to conduct recruitment of contractual posts already held by the petitioners, therefore their case ought to be dealt with by the respondent health department by converting their contractual service into regular service.

3. The aforesaid stance of the petitioners has been refuted by the learned AAG, inter- alia on the ground that the petitioners qualified for the written test conducted by SPSC and were called for interview, however, due to the pandemic COVID19 outbreak in the country, their interview was postponed, and in the intervening period, the competent authority hired the services of the petitioners on a contract basis to meet the acute shortage of staff Nurses in the health department. Learned AAG pointed out that aftermath of the lockdown the SPSC interviewed the candidates who passed the written test and sent the recommendations of successful candidates to the Health Department vide letter dated 19.11.2020 for appointment; and as per recommendations of SPSC, the successful/eligible candidates were appointed for the post of Staff Nurse (BPS-16) in the Health Department, Government of Sindh. As per learned AAG petitioners failed in the interview thus they are not entitled to be appointed as staff Nurses on regular basis. Learned AAG submitted that the Health Department subsequently forwarded another requisition to SPSC for assessment of the suitability of candidates against 304 vacant posts of Staff Nurses. The petitioners had also this opportunity to appear in the competitive recruitment process conducted by SPSC but they failed to participate. The Health Department also sent another requisition to SPSC for assessment of the suitability of candidates against 558 vacant posts of Staff Nurses, this was another opportunity for the petitioners to compete in the process of recruitment, but unfortunately, they did not participate. He prayed for the dismissal of the instant petition.

4. We have heard learned counsel for the parties and perused the material available on record with their assistance.

5. The questions involved in the present case are whether the petitioners could be treated as qualified for the post of Staff Nurse under the law; whether the petitioners ought to have been appointed by the Health department government of Sindh on regular basis in terms of Rule-10 of the Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974; and whether the case of petitioners is based on discrimination in terms of regularization of service of 03 Staff Nurses namely Zulfiqar Ali, Sardar Ali, and Tanveer Bashir.

6. It appears from the record that the Health Department, the Government of Sindh forwarded the requisition to SPSC on 10.12.2018 with the request to ascertain the suitability of Staff Nurses (BPS-16) and recommend the eligible candidates for their appointment against 1096 vacant posts in Health Department. SPSC got conducted the pre-interview written test of the candidates who applied

for the post of Staff Nurses and declared 2382 candidates as successful in the written test. However, the process of interviewing successful candidates for the written test was halted due to the outbreak of the COVID-19 pandemic, therefore, the Health Department decided to hire all Staff Nurses who cleared the written test on a contract basis. After the lifting of the emergency of the COVID-19 pandemic, the petitioners were called for interviews by the SPSC. Everyone appeared for the interview but SPSC recommended 958 suitable candidates for appointment as Staff Nurses, who later on were appointed in the department after completion of codal formalities but the petitioners were not included in the recommended list of candidates, therefore, their period of contract has been extended from time to time till today.

7. In the light of the above narration, the petitioners would be justified to ask for protection of their services on the premise that employment is the source of livelihood and the right of livelihood is an undeniable right to a person. If work is the sole source of livelihood of a person, the right to work shall not be less than a fundamental right that should be given protection accordingly; and, the respondent- the department cannot act whimsically while making fresh appointments against the posts already held by the Petitioners; besides nothing adverse in terms of qualification and character and/or inefficiency in the subject field was observed by the Competent Authority of the respondent-department during their entire period of service. Therefore, the petitioners who have served the respondent department during such difficult times of the pandemic would deserve to be given a fair chance for the reassessment of their suitability to hold the subject post by SPCS in the given situation.

8. In the light of the above analogy and more particularly the principles outlined in the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Dr. Naveeda Tufail and 72 others v. Government of Punjab and others, 2003 SCMR 291. Primarily, these petitions need to be disposed of in the terms of the ratio of the aforesaid judgment, an excerpt whereof is as under:

“12. We having examined the above scheme find that in the similar circumstances, the Federal Government while giving fair treatment to its employees appointed on ad hoc basis successively framed policies for regularization through the process of selection by the Public Service Commission. It is stated that all Provincial Governments, except Government of Punjab, following the Federal Government also adopted the policy of regularization and gave their employees the equal treatment. The petitioners, being ad hoc employees of Provincial Government, cannot claim regularization as of right in the light of policy of Federal Government but the principle of equality as embodied in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, would demand that they while facing the similar circumstances should be treated in the same manner. The principle of equality would impliedly be attracted in favour of the petitioners as they being ad hoc lecturers in the Provincial Government would stand at par to that of the ad hoc employees of the Federal Government and therefore, it would be fair, just and

proper to consider their cases for regularization. We having heard the learned counsel for the petitioners and Mr. Maqbool Ellahi Malik, learned Advocate-General Punjab, assisted by Mr. Tariq Mahmood Khokhar, Additional Advocate-General, are of the view that since substantial questions of public importance are involved in the present petitions, therefore, the technical objection that the, questions not raised before the Tribunal, cannot be allowed to be raised before this Court, is not entertained. The authorities in the Education Department, Government of Punjab, while adopting the method of ad hoc appointments as a continuous, policy, created a legitimate expectancy in the mind of petitioners for their retention on regular basis and therefore, we deem it proper to direct that the respondents while seeking guidance from the scheme of regularization of ad hoc employees of Federal Government referred above, will initiate the process of regularization of the petitioners through Punjab Public Service Commission giving the concession as mentioned in the reply filed by the respondents in the Punjab Service Tribunal within a period of one month and meanwhile without prejudice to title right of the selectees of the Public Service Commission for appointment on regular basis, the posts which were being held by the petitioners shall not be filled. It is clarified that the cases of the petitioners shall be sent separately to the Public Service Commission and shall not be tagged with the direct recruits. In case any of the petitioners is not found suitable, by the Public Service Commission, he shall not be entitled to be retained in service. 13. We in the light of above discussion, convert these petitions into appeals and dispose of the same with no order as to costs.”

9. For the reasons given above, we find it appropriate to direct the competent authority of the respondent-Health Department to refer the candidature of the petitioners to SPSC to reassess their suitability for appointment on the subject post by conducting their fresh interview within one month from the date of order of this Court, while considering their case for the said purpose, the ratio of judgment passed by the Honorable Supreme Court in the case of Dr. Naveeda Tufail supra must be kept in mind, in the intervening period, the posts which were being held by the petitioners shall not be filled.

10. These petitions are disposed of in the above terms.

JUDGE

JUDGE

Nadir*