

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 7952 of 2015

Date Order with Signature(s) of Judge(s)

Hearing of case

1. For hearing of CMA No.6693/2016
2. For hearing of CMA No.5021/ 2013
3. For hearing of CMA No6021/2012
4. For hearing of main case

23.01.2023

Petitioner present in person
Mr. Abdul Jalil Zubedi, AAG

The case of the petitioner is that in terms of advertisement, he had applied for the post of Sub-Accountant (BPS-11) and appeared in the written test; however, official respondents without declaring the result had issued appointment letters to their favorites. He further submitted that the minimum qualification was graduation with IInd Class, whereas the appointment letters have been issued to IIIrd Class Graduates and the matter has been decided by the Hon'ble Supreme Court of Pakistan by setting aside the judgment dated 27.11.2018 passed by this Court in CP No.D-197 of 2011 along with connected petitions and the matter was remanded to this Court, to hear and decide all the Constitutional Petitions afresh and under the law and, in particular, considering the questions as are noted in the order within six months. As per the petitioner, the matter has been decided by this Court, Bench at Sukkur vide order dated 28-06-2022, which is extracted as under:

“Mr. Shahryar Imdad Awan learned AAG Sindh has submitted compliance report dated 28.06.2022 along with copies of offer of appointment dated 27.06.2022 in respect of the petitioners, which are taken on record. After examining the offer of appointment, petitioners are satisfied and they seek disposal of this petition in terms thereof.

Accordingly, by consent, the petition and all applications pending therein stand disposed of in terms of the offer for appointment issued in favour of the petitioners.”

2. The grievance of the petitioner is that this Court had adjourned the above-said constitutional petition till the pendency of the Appeal under Constitution Petition No. D-197 of 2011, and the same petition was disposed of by the Hon'ble Supreme Court and the case was remanded back to this Court on 07-07-2021 and the same petitions have finally been decided by this Court, Bench at Sukkur on 28-06-2022. He relied upon the order dated 02.03.2022 passed by this Court, Bench at Sukkur, which is extracted as under:

“In order to shorten the controversy in all these petitions, we direct that official respondents should interview the above petitioners for the post for which they had applied in Finance Department, Government of Sindh. It was also brought on record by the official respondents that in the intervening period, around ten candidates have submitted bogus testimonials who were dropped and few vacancies are lying vacant.

Let the above process be completed and report be submitted in these petitions, which will be listed thereafter on. It is expected that these petitioners would be given a fair treatment as given to other successful candidates.

Three weeks’ time is granted. Adjourned to 30.03.2022. This matter may not be treated as part-heard.

Office is directed to place a signed copy of this order in all the captioned connected matters.”

3. Petitioner claims that in compliance with the orders of this Court, the Finance Department has appointed Mr. Muhammad Rizwan Qureshi S/o Muhammad Yaqoob Qureshi as Sub-Accountant (BPS-14) in Treasury & Accounts Service vide appointment order dated 08th September 2022.

4. Mr. Abdul Jalil Zubedi, learned AAG referred to the statement dated 11.01.2023 filed by the Additional Finance Secretary (Admn) Finance Department, Government of Sindh, and submitted that the Honorable Supreme Court of Pakistan, vide aforesaid orders, set aside the judgment passed by this court and remanded back the matter to this court for hearing and deciding all constitutional petitions afresh under the law. Learned AAG contended that this court, after hearing all the constitutional petitions passed the orders dated 28.06.2022 following the proposal submitted by the Finance Department, Government of Sindh that this process will be confined to one time only, and after that, in future, no requests of any unselected candidates will be considered, who appeared in test/interviews, held in 2011 under the advertisement dated 16.01.2011. Their appointment (if selected) will be effective from the date of their joining after fulfillment of requirements / codal formalities and having no right to make any retrospective claim. Learned AAG alleged that the petitioner is not entitled to similar treatment; that the process carried out by this department under said orders of this Court was confined for one time only. He lastly prayed the dismissal of the instant petition.

5. We have heard the petitioner who is present in person and learned AAG on the subject issue involved in the matter and perused the record with their assistance.

6. Record reflects that the Hon’ble Supreme Court of Pakistan passed the order dated 07.07.2021 dated in Civil Petition No.1189 to 1195, CMA No.10995 of 2018 in CP NIL of 2018 and CMA No.100 of 2019 in CP NIL of 20148, against the judgment dated 27.11.2018 passed by the High Court of

Sindh, Bench at Sukkur in CP No.D-197 of 2011 and other connected petitions, an excerpt whereof are as under:

“We have heard the learned counsel for the parties so also the learned Additional Advocate General, Sindh (AAG).

2. By the impugned judgment, the High Court of Sindh, Bench at Sukkur (the High Court) has directed that 336 candidates, who were appointed by the Government of Sindh, their written tests be conducted through the Institute of Business Administration (IBA), Sukkur, in consultation with the Finance Department, Government of Sindh. The interviews were also: directed to be conducted by the Professors of IBA, Sukkur. Pursuant to this Court's order dated 06.03.2019, a report has been filed by the Government of Sindh by way of CMA No.7756 of 2019, where it has been noted that out of 335 candidates (not 336 candidates), the Educational Certificates/Degrees of 10 were found to be bogus/fake and, thus, these 10 candidates have been dismissed from service.

3. The learned AAG states that the advertisement and some other documents pertaining to appointment process are available with the Government, which incidentally were not filed before the High Court and even before the High Court, the stance taken by the Government side was not correct, in that, the Government has appointed the persons, who appeared in the test and interview and have passed the same. He, however, concedes that he has no instructions from the Government to state whether the record pertaining to written test and interview is available with the Government.

4. We note that some of the appointments have been made in Grade-11 and above directly without the intervention of the Sindh Public Service Commission (SPSC), which in terms of Articles 240 and 242 of the Constitution of the Islamic Republic of Pakistan, 1973, read with rule 10 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 and rule 3 of the Sindh Public Service Commission (Functions) Rules, 1990, can only be made through the recruitment process initiated by the SPSC. If any appointment contrary to these provisions is made, the same apparently will suffer from incurable illegality.

5. In these circumstances, while setting aside the impugned judgment dated 27.11.2018, the matter is remanded to the High Court, to hear and decide all the Constitutional Petitions afresh and in accordance with law and, in particular, considering the questions as are noted above.

6. As the matter is quite old, we expect that the High Court shall hear and decide the matter preferably within a period of six months.

7. The appeals are allowed in the above terms.

8. As the main appeals have been decided, Civil Misc. Applications No.10995 of 2018 and 100 of 2019, for permission to file Civil Petitions are dismissed as infructuous.”

7. In view of the above, let the case of the petitioner be referred to the Chief Secretary, Government of Sindh, to decide the issue of appointment of the petitioner in terms of the orders passed by this Court and the Hon'ble Supreme Court of Pakistan, within two weeks, however, that arrangement is subject to his eligibility and qualification for the subject post.

JUDGE

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