

**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. No. D-8112 / 2022**

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Date Order with signature of Judge

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Present:  
*Mr. Justice Muhammad Junaid Ghaffar*  
*Justice Ms. Sana Akram Minhas*

Petitioner: Muhammad Amin  
Through Mr. Abdul Salam Memon & Ms.  
Rabiya Javed Advocates.

Respondents: Port Qasim Authority & others  
Through Mr. Muhammad Nishat Warsi,  
Advocate for Respondent No. 2 to 4.

Date of hearing: 27.09.2023.

Date of Order: 20.11.2023.

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Petition,  
the Petitioner has sought the following reliefs: -

- a) Declare that the oral / written order of the cancellation of the recruitment process for the Advertised post of PA / SGS (BS-17), illegal, unconstitutional without jurisdiction and of no consequence.
- b) Direct the respondents that appointment order in respect of advertised post of PA / SGS (BS-17), be issued to the Petitioner immediately.
- c) Any other relief which this Honorable court deems just and proper in the best wisdom and discretion of this court in the facts and circumstances of the case favorable to the Petitioner may also be granted.
- d) Cost of the petition."

2. Learned Counsel for the Petitioner has contended that pursuant to an advertisement dated 25.01.2021, the Petitioner who is already employed with Respondent No.2 applied for the post of Personal Assistant / Selection Grade Stenographer (SGS) (BS-17) and successfully qualified all tests and interviews; however, no appointment order was issued. According to him when a legal notice was sent, Respondent No. 2 replied that though the Petitioner was the only remaining candidate in the said category; however, since he

had worked in two different organizations at the same time; hence, was disqualified. Per learned Counsel, this allegation is false, whereas, cancellation of the entire process in respect of this post on such basis was illegal and malafide inasmuch as all remaining posts were filled by issuance of employment contracts. He has contended that a legitimate expectation arose in favor of the Petitioner and per settled law, the Petitioner is entitled for appointment on the said post. In support he has relied upon ***Uzma Manzoor and Others Vs. Vice Chancellor Khushal Khan Khattak University, Karak and Others (2022 SCMR 694); Ghulam Hussain v Province of Sindh [2023 PLC (CS) 194] & Abdul Rauf v Government of Baluchistan [2022 PLC (CS) 1494]***.

3. On the other hand, Respondent's Counsel has argued that since the Petitioner was the only person left in the field and according to them, he was not qualified; rather had misstated certain facts; therefore, the entire process in respect of this post has been cancelled and a new advertisement has been issued; however, due to a restraining order of this Court the process is still pending. He has further argued that the interview result was never announced and even mere passing of test and interview does not confer any vested right unless the appointment has been approved by the competent authority and duly communicated to the Petitioner. In support he has relied upon ***District Manager, Karachi Transport Corporation Vs. Rahim Bux (1991 PLC 90), Dhani Bux Vs. Municipal Committee, Tando Allahyar and another (1997 PLC 419), National Database and Registration Authority (NADRA) and Others Vs. Jawad Khan and 2 Others (2023 SCMR 1381)***.

4. We have heard both the learned Counsel and perused the record. Insofar as the Petitioner is concerned, it appears that he was appointed on 02.08.2012 with Respondent No. 2 as a Security Guard and now is a regular employee in the capacity of Security Guard (BS-03) since 2013. It further appears that the advertisement in question was published on 25.01.2021 wherein, 16 different posts were advertised and the Petitioner applied for the post at serial No. 16 (i.e. Personal Assistant / Selection Grade Stenographer (SGS))

(BS-17) and was issued an interview letter on 01.11.2021. Thereafter, nothing was communicated to the Petitioner and his legal notice was replied, wherein certain allegations were raised as to the Petitioner being engaged in two different organizations at the same time. The Petitioner being aggrieved then filed instant Petition and by way of order dated 20.02.2023, certain directions were given to the Chairman of Respondent No. 2 for filing a comprehensive report and in the meanwhile, they were restrained from filling one post of Personal Assistant / Selection Grade Stenographer (SGS) (BS-17).

5. Insofar as the facts as available before us are concerned, though there are some allegations against the Petitioner so raised on behalf of Respondent No.2 in reply to the legal notice as well as in comments / report filed pursuant to orders of this Court which the Petitioner has objected to as being false and misleading; however, we in our Constitutional jurisdiction are unable to adjudicate such disputed facts; nor, presently are otherwise required to do so. What we are concerned with is, that whether by mere passing of a test or for that matter an interview, any vested right is created in appointment or not. It is not in dispute that neither any offer letter has been issued to the Petitioner; nor any further commitment has been made by Respondent No.2 which could create any right in favor of the Petitioner. This is notwithstanding passing of any test or interview, as claimed. This Court while exercising discretionary jurisdiction under Article 199 of the Constitution of Pakistan, 1973, cannot assume the role of an appointing authority and must not issue any directions for appointment in these given facts and circumstances. Moreover, if any offer or appointment letter had been issued, and withdrawn, then perhaps, the matter would have been different; but for the present purposes, it is not so. It is settled law that unless a vested right is first established no enforcement can be sought. As far as legitimate expectation claim is concerned, we may further observe that it has not arisen in this matter as mere passing of a test and interview does not *ipso-facto* create any such legitimate expectation. This is for the reason that the process of appointment has been cancelled, whereas, no one else has been appointed and

a fresh advertisement has been published and therefore, no injustice or illegality has been committed insofar as Respondent No.2 is concerned.

6. As to the allegations levelled by Respondent No. 2, it would suffice to observe that for the present purposes, we are not required to decide and adjudicate this dispute as it would have only been relevant when someone else was appointed instead of the Petitioner. Since the process / advertisement in question stands cancelled / withdrawn, whereas, no offer letter was ever issued to the Petitioner, therefore, no vested right has been created; nor it is a case of any legitimate expectation. We may observe that once the process has been withdrawn and no appointment offer has been made, no right has accrued in favour of the Petitioner to seek any direction under the Constitutional jurisdiction of this Court. It is not that by reason of appearing in interviews a vested right had accrued in favour of the Petitioner; in fact no vested right to appointment accrues unless a merit list is displayed and appointment letters are issued as the Government can always stop or abandon the process or initiate a fresh one if there are valid reasons or justification to support such action<sup>1</sup>. We are of the view that the department had valid grounds and lawful justification to opt to re-advertise the post<sup>2</sup>. Therefore, in the facts and circumstances of this case, interference by the High Court in a valid and lawful decision of the department would be totally uncalled for and amounts to transgressing its jurisdiction without lawful cause or justification<sup>3</sup>. It is settled law that Courts cannot interfere in lawful exercise of discretion by the concerned departments and substitute lawful decisions of the departments, by their own<sup>4</sup>. The jurisdiction of the High Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required by law to do and refrain from doing what they are prohibited by law to do<sup>5</sup>. What the Petitioner has prayed for is to issue an appointment order,

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<sup>1</sup> Government of Baluchistan v Abdul Rauf [2021 PLC (CS) 519]

<sup>2</sup> The Secretary Punjab Public Service Commission v Aamir Hayat (2019 SCMR 124)

<sup>3</sup> *ibid*;

<sup>4</sup> *ibid*;

<sup>5</sup> *ibid*;

whereas, by doing so, the High Court would arrogate itself to the position of an appointing authority which is obviously and clearly beyond the scope of Court's jurisdiction while exercising powers under Article 199 of the Constitution<sup>6</sup>.

7. Lastly, with respect, we may observe that the precedents relied upon by the Petitioners Counsel are not relevant and or applicable to the present set of facts. The case of **Abdul Rauf** (Supra) is not a binding precedent for this Court, whereas, the same stands set-aside by the Supreme Court in **Government of Baluchistan**<sup>7</sup>, which the Petitioners Counsel has failed to take note of. In **Ghulam Hussain** (Supra), the Petitioner was left out and other persons had been appointed, which according to the Court were less qualified than the Petitioner. This is not the case in hand. Lastly, **Uzma Manzoor** (Supra) is a two-member bench decision, and when the facts of this case along with the conclusion drawn by the Supreme Court is looked into minutely, it does not help the case of the Petitioner in any manner. The issue therein was that whether any additional marks can be allotted to a candidate on the basis of his / her past experience, when the advertisement of that post was silent to that effect. A respondent in this case was allotted 10 additional marks on account of some experience, which was the bone of contention between the parties. The learned High Court of Peshawar had set-aside the process of appointment and directed to conduct fresh interview of those candidates who had already passed the written tests. It was never held that any one person from amongst the candidates be appointed. It was in that context that the Supreme Court also dilated upon the doctrine of legitimate expectation; however, ultimately dismissed all the Appeals before it by maintaining the order of the High Court. And while doing so it also observed that *"we are sanguine that mere submitting an application for joining recruitment process in response to an advertisement does not create any vested right to claim the job come what may"*. It has been further held that *"when such a legitimate expectation is obliterated, it affords locus standi to challenge the*

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<sup>6</sup> The Secretary Punjab Public Service Commission (Supra)

<sup>7</sup> Government of Baluchistan v Abdul Rauf [2021 PLC (CS) 519]

*administrative action and even in the absenteeism of a substantive right, a legitimate expectation may allow an individual to seek judicial review of a wrongdoing and in deciding whether the expectation was legitimate or not, the courts may consider that the decision of public authority has breached a legitimate expectation and if its proved then the court may annul the decision and direct the concerned authority/person to live up to the legitimate expectation.”* There cannot be any cavil to this proposition; however, in the instant matter as noted hereinabove, neither a vested right has accrued; nor there is a question of any legitimate expectation, therefore, this principle of law is not applicable on the facts of the case before us.

8. In view of hereinabove facts and circumstances of this case, we do not see any reason to exercise any discretion in this matter and as a consequence thereof, the Petition being devoid of any merits is hereby **dismissed**, whereas, Respondent No.2 shall continue with the appointment process already initiated, or advertise it afresh, as the case may be. However, dismissal of instant Petition shall not preclude the Petitioner from participating in it and his candidature shall be dealt with in accordance with law and prevalent rules.

9. Petition stands dismissed as above.

**Dated: 20.11.2023**

**J U D G E**

**J U D G E**

Arshad/