

Order Sheet

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

C.P. No. D-1509 of 2019

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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Present:-

Justice Mrs. Kausar Sultana Hussain.

Mr. Justice Khadim Hussain Soomro.

For orders on office objection

For hearing of MA-5409/19 (stay)

For hearing of main case

03.04.2024

Mr. Zameer Ahmed Kalhoro advocate for the petitioners.

Mr. Muhammad Ismail Bhutto, Additional Advocate General Sindh.

ORDER

KHADIM HUSSAIN SOOMRO,J:- Through the instant petition, the petitioners have prayed as under:-

- (a) Declare that the recommendations of the scrutiny committee dated 21.03.2018 is illegal, without jurisdiction and contrary to directions/orders of the Hon'ble Court dated 01.02.2018 passed in C.P. No.D-776/2011 and C.P. No.D-456 of 2014.
- (b) Direct to respondents to consider the cases of the petitioners who had cleared all tests and interviews earlier held and issue offer/appointment letters to the petitioners forthwith.
- (c) Restrain and prohibit the respondents from filling the post of Field Assistant/Crop Reporter on the basis of recommendation of purported Scrutiny Committee.
- (d) Any other relief(s) as this Hon'ble Court may deem fit and proper under the above facts and circumstances of this case may kindly be granted.

2. The relevant facts of the case are that respondent No.3 made an advertisement dated 20.11.2006 inviting applications to fill 95 vacancies of Field Assistant/Crop Reporters in BPS-11 and also invited applications through another advertisement dated 17.07.2008 to fill 102 vacancies of the said posts in the Province of Sindh, for which, the petitioners submitted their applications according to recruitment procedure. Respondent No.3, after completion of the validation process of applications, constituted District level Interview Committees. The petitioners were called for an interview on 25.10.2008 before the interview committees of their respective Districts. After that, the successful candidates' merit list was published, encompassing the petitioners' names. The respondent did not issue any appointment offer orders to any of the candidates until 30.11.2010. Respondent No. 4 unlawfully and arbitrarily issued appointment orders for field assistants purely on

the basis of favouritism and nepotism. The petitioner claimed to have been deprived of their long cherished, hard-earned, genuine expectations of the appointment to the said posts. The respondent's behaviour is unlawful and motivated by malice, as well as manifestation of maladministration.

3. Counsel for the petitioners mainly emphasized that the petitioners appeared in the test, qualified in the examination, and were on merit but not appointed for the subject post. Further, the counsel argued that respondent No. 4 appointed field assistants and crop reporters via favouritism and nepotism, which was done arbitrarily and unlawfully. The counsel claims the relief on the basis of previous orders passed in C.P. No.D-776/2011 and C.P. No.D-456/2014.

4. Conversely learned Addl. A.G. submits that this petition is not maintainable as prior to this petition, the petitioners preferred C.P. No.D-776/2011 and C.P. No.D-456/2014, wherein the directions were issued by this Court to conduct the interviews of the petitioners. The interviews were conducted in accordance with the necessary requirements. The petitioners were declared unsuccessful; consequently, they are not entitled to the appointment for the subject post. He prays for the dismissal of this petition.

5. We have examined the orders passed in the cited petitions wherein this Court was pleased to dispose of those petitions with the following directions:-

- "i. *That the Secretary Agriculture Department, Government of Sindh, would examine the case of each petitioner, which is stated to be thirty-three (33) in number in both these petitions separately and if the credentials / testimonials of those petitioners are found to be in accordance with law and as per the relevant Rules & Regulations and as per the merit list prescribed by the department in this behalf and, after fulfilling all the legal and codal formalities, issue offer letters to those petitioners preferably within a period of three (03) months' time from today.*
- ii. *That the Secretary Agriculture Department, Government of Sindh would call those petitioners for interview whose interview previously has not been conducted; however, the petitioners whose interviews have already been conducted would not be called for the interview.*
- iii. *That the Secretary Agriculture Department, Government of Sindh, however, would be at liberty not to consider any person who according to his merit list, is a failed candidate.*
- iv. *The Department, after completion of the above exercise, would be at liberty to take necessary steps with regard to new recruitment as per relevant Rules & Regulations, in accordance with law.*
- v. *That the Secretary Agriculture Department, Government of Sindh is directed that after completing the above exercise within three (03) months' time compliance report be furnished through MIT-II of this Court. "*

6. Per the directions in the disposed of petition as cited supra, the petitioners were called for interviews and were subsequently declared unsuccessful. Such a compliance report was submitted before this Court. The petitioners also filed a contempt application, CMA-16556/2018, due to non-compliance with the directions contained in the petitions mentioned above, which was also dismissed vide order dated 09.08.2018. The petitioners did not challenge the compliance report or the dismissal order passed on the aforementioned C.M.A., before the apex court. Now, the previous round of litigation has ended, and after the lapse of one year on the basis of the same facts, the petitioners have filed the instant petition. They are seeking the implementation of the orders passed in the previous petitions, which have already been implemented with letter and spirit.

7. In the case of *Mirza Muhammad Yaqub v. The Chief Settlement Commissioner Lahore* and another reported in PLD 1965 SC 254, the Honourable Supreme Court of Pakistan has observed that it is not permissible for a petitioner to change their plea multiple times in order to file multiple writ petitions based on the same facts. In order to make a stronger argument, it would be advisable to file a petition for review if it is possible to do so. Furthermore, the principle of *res judicata* also applies to writ jurisdiction. The relevant portion of the judgment is reproduced as follows:-

"A petitioner is not entitled to take different plea at different times so as to file more than one writ petition on the same facts. For a further plea that proper course would be to file a petition for review if such a petition be maintainable. The general principle of *res judicata* is applicable to writ jurisdiction also".

8. In another case of *Muhammad Saleemullah and others v. Additional District Judge Gujranwala and others* reported in PLD 2005 SC 511, it is held that indisputable decisions made by higher courts in matters of constitutional law carry significant weight and cannot be challenged. Parties are prohibited from reopening settled issues, whether directly or indirectly, and invoking the principle of *res judicata* based on a previous judgement in constitutional matters requires demonstrating that the dispute was resolved appropriately and conclusively within that jurisdiction. In legal matters, once a question of law has been settled and a question of fact has been proven, the same can not be agitated again by filing another petition. The principle of *res judicata* can only be applied if it can be proven that the matter in question was previously decided on its merits and with finality. The relevant portion of the judgment cited supra is reproduced as under:-

"9. There can be no cavil to the legal position that the judgments of the superior Courts in Constitutional jurisdiction on the questions of law or facts have binding force and the parties are not allowed to reopen the settled issues, directly or indirectly but to claim the bar of *res judicata*, on the basis of a judgment of

superior Court rendered in the Constitutional jurisdiction, it is essential to prove that the dispute brought before the Court was previously adjudicated in the proper manner and was conclusively decided in such jurisdiction. The decision on the question of law on the basis of settled principle and a decision on a question of fact on the basis of proved facts and legal evidence, would be *res judicata* and parties would not be permitted to reopen the settled issues but a decision on a disputed question of fact based on no evidence, would not debar the judicial determination of such question in a subsequent adjudication. The net result of the above discussion is that there can be no departure to the settled law, that the principle of *res judicata* cannot be pressed into service unless it is established that the matter in issue was earlier adjudicated on merits and conclusively decided".

09. Based on a thorough analysis of the relevant case law, it can be concluded that the principle of *res judicata* applies to writ petitions. Therefore, any issue raised in a writ petition that has already been decided cannot be contested again, whether it pertains to a question of law or fact. This holds true if the matter in question in a subsequent writ petition is identical to what was already addressed in a previous writ petition. It is a well-established legal principle that a party cannot be subjected to multiple legal proceedings in the same jurisdiction. This demonstrates the universal applicability of the principle of *res judicata*.

10. Reverting to the petitioners' plea that nepotism and favouritism are not supported by any material available on record, we find no nexus between these allegations and the rejection of the petitioners in the interview/*viva voce*. Petitioners have failed to prove illegality, impropriety or *mala-fide* on the part of the interviewing panel/committee. Under these circumstances, this Court can not step into the functions of executives. Needless to reaffirm, the Constitutional scheme is based on the trichotomy of powers shared between the Legislature, the Executive and the Judiciary; each has its distinct and separate role to play and to act as a check and balance on the others while operating within its own defined sphere of power. We have sought guidance from the case of *Arshad Ali Tabassum vs The Registrar, Lahore High Court, Lahore, 2015 SCMR 112*.

11. The petitioners in the instant case so far have failed to point out any prejudice on the part of the selection committee/panel. We are guided by the dicta laid down in the cases of *Asif Hassan v. Sabir Hussain, 2019 SCMR 1720*; further reliance is made on 2019 P.L.C. (C.S.) 1375. Furthermore, no defect has been pointed out in the interviewing selection committee; the mere expectation of petitioners to be selected/appointed cannot be attributed to the illegality and interference of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Reliance is made on the case of *Muhammad Ashraf Sangri vs Federation of Pakistan and others (2014 SCMR 157)*.

12. In view of the above reasons and case law, the instant petition is not maintainable under the law; therefore, this petition was dismissed by our short order dated 03.04.2004, and these are the reasons for the same.

JUDGE

JUDGE

Dated: .05.2024.