

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-1449 of 2023

Before:

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Tarique Hussain and others,
through Mr.Achar Khan Gabol, Advocate.

Respondents : Province of Sindh and others,
through Mr. Shahryar Imdad Awan,
Assistant Advocate General Sindh.

Date of Hearing: 15.05.2025.

Date of Order. 15.05.2025.

ORDER

Abdul Hamid Bhurgri, J.- The case of the petitioners is that the respondent authority had invited applications for the recruitment of Field Assistants (BPS-11) in the Agriculture Extension Wing via an advertisement published in various newspapers. The petitioners, being qualified and eligible candidates, duly applied for the said post and successfully cleared both the written examination and viva voce/interview process. Their names were accordingly included in the merit list of successful candidates.

2. Despite their selection, the petitioners were left waiting for issuance of offer letters and formal appointment orders. However, the respondents, in deviation of due process, proceeded to appoint individuals who had not even participated in the recruitment process, thereby depriving the petitioners of their lawful entitlement.

3. Aggrieved by this arbitrary and unlawful conduct, the petitioners earlier filed C.P No.D-2270 of 2012 before this Court seeking directions for the issuance of appointment orders. That petition, along with analogous petitions (C.P No.D-776 of 2011 and C.P. No.D-456 of 2014), was disposed of vide order dated 08.03.2023. Pursuant thereto, the petitioners and others were summoned by the respondents through a letter dated 27.03.2023 for the scrutiny of original documents, biometric verification, and further interview proceedings. Accordingly, the petitioners appeared

before Respondent No.3 on 30.03.2023, along with all requisite documentation, which was verified and found genuine.

4. Despite the above, the petitioners assert that the respondents have failed to issue appointment letters, leaving them in a state of prolonged uncertainty. A compliance report submitted by the Secretary Agriculture, Government of Sindh, in C.P. No. D-2270 of 2012, through the Additional Advocate General Sindh on 15.06.2023, claimed that the petitioners were declared unsuccessful on account of securing fewer marks in the provincial merit list.

5. The petitioners have refuted this assertion, contending that the respondent department did not adhere to the prescribed Urban-Rural quota policy prevailing in the province of Sindh. They allege that the respondents deliberately manipulated the merit lists of Urban and Rural candidates to favour certain individuals, thereby violating the recruitment policy and unjustly depriving the petitioners of their legitimate right to appointment. Accordingly, the instant petition has been filed seeking following reliefs:-

- (a) *To declare that the act and report of the Scrutinizing committee report dated.5.6.2023 as illegal, null, void and unconstitutional and with the discriminatory with the petitioners as the committee has given its findings which are contradictory/illegal and against the directions of this Honorable Court passed in the earlier order dated.8.3.2023.*
- (b) *To direct the Scrutiny Committee to consider the cases of the petitioner as per directions in the earlier order vide dated.8.3.2023 passed by this Honorable Court and issue the appointment orders to the petitioners for the post of Field Assistant BPS-11 as the petitioners had earlier qualified the entire tests and interviews conducted by the department and the petitioners already posses all the required qualification and experience for the post of Field Assistant BPS-11 as per the advertisement of the department.*
- (c) *To award the cost of the petition.*
- (d) *To grant any other relief, which this Honorable Court may deem fit and proper under the circumstances of the petition.*

06. In response to the aforementioned correspondence, the Secretary of the Supply and Prices Department, Government of Sindh, tendered comments through the Additional Advocate General. According to the respondent No.2, the Secretary Agricultural Department, Government of Sindh, the meeting of scrutiny committee convened on 28.07.2009.

07. The deliberations of the Committee, having regard to the veracity and precision of the merit list, culminated in a unanimous resolution that district-wise scrutiny of the candidates' credentials and interviews be undertaken. Accordingly, the final merit list was to be prepared strictly in accordance with the cumulative marks obtained by each candidate, culminating in a comprehensive tabulation of eligible candidates.

08. Consequently, a district-wise merit list encompassing those candidates securing the highest aggregate marks was compiled. It is further submitted that a Provincial-Level Committee, convened under the chairmanship of the Secretary of the Livestock Department and constituted at the Directorate General, Animal Husbandry, Karachi, was entrusted with the task of finalizing a conclusive merit list of successful candidates.

09. The Terms of Reference (TORs) for said Committee required it to identify and enlist those candidates securing top-tier scores. The Committee also resolved that the vacancies allocated to field assistants numbering 158 at the material time would be filled purely on merit. The last selected candidate had secured a score of 83, and consequently, offer letters were issued only to those candidates attaining scores equal to or exceeding the same.

10. In contrast, the petitioners, whose scores fell below the merit threshold of 83, were declared unsuccessful, as reflected in Annexure 'B'. Furthermore, in compliance with the Order dated 08.03.2023, this Court directed the Department to constitute a Committee to reassess the individual cases of the petitioners.

11. Subsequently, in adherence to the Court's directive, the Department established the requisite Committee and furnished a compliance report before this Court. It was also elucidated that due to an inadvertent

typographical error, the number of vacant posts was erroneously recorded as 5000 instead of the actual 500 in the Order dated 08.03.2023.

12. Accordingly, an application for rectification was submitted, and the Court, vide Order dated 13.03.2023, allowed the said correction. Thus, the figure of 5000 stood substituted with 500, and the amended Order, together with the accompanying comments, was appended as Annexure 'D'.

13. The respondents have also produced an order dated 3rd April 2024, rendered in C.P. No. 1509 of 2019 filed by Qudratullah & Others v. Province of Sindh, passed at the Circuit Court, Hyderabad of this Court. The operative portion thereof is reproduced below.

“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 03.04.2024, and these are the reasons for the same.”

14. It is further contended by the respondents that, in compliance with the directive passed in C.P. No. D-1234/2011 dated 08.03.2023, the Department constituted a Committee comprising senior officials. Said Committee scrutinized the petitioners' cases and concluded that they were rightly declared unsuccessful at the time of selection for the post of Field Assistant (BPS-11).

15. The respondents maintain that they have duly complied with the judgment of this Court and, hence, the instant petition is barred by virtue of Section 11 of the Civil Procedure Code, being hit by the doctrine of res judicata. Consequently, the official respondents prayed for the dismissal of the petition.

16. Learned counsel for the petitioners submitted that the orders of this Honourable Court rendered in C.P. Nos. D-1234/2011 and D-2270/2012 dated 08.03.2023 have not been implemented either in letter or in spirit. He asserted that the official respondents failed to adhere to the prescribed rural urban quota and allegedly prepared a manipulated merit list to deprive the petitioners of their rightful entitlements. The learned counsel further contended that the official respondents acted in bad faith to accommodate favoured candidates, having manipulated the merit list accordingly. He argued that this mala fide conduct left the petitioners with no alternative but to seek relief by way of the present petition. Furthermore, he submitted that the instant petition is not barred by the principle of res judicata, as it is premised upon a distinct cause of action that arose only after the filing of the compliance report by the scrutiny committee. The previous petition, bearing No. D-2270/2012, was based upon different grounds, wherein the petitioners had challenged the initial recruitment process conducted pursuant to the advertisement. That petition culminated with the order dated 08.03.2023. Following the submission of the compliance report, which the petitioners have now contested, a fresh cause of action has arisen. Accordingly, learned counsel prayed that the present petition be allowed.

17. The learned Assistant Advocate General opposed the petition and asserted that the official respondents had fully complied with the order passed by this Court in four connected petitions, including C.P. No. D-2270 of 2012, filed by the petitioners. He submitted that mere appearance in a written test does not, in itself, confer any vested right unless the petitioners successfully surpassed the score attained by the last candidate who secured appointment. The learned AAG pointed out that the last appointed candidate had obtained 83 marks, whereas the petitioners' scores were substantially lower. Therefore, he submitted that the petitioners could not be deemed to have qualified the test and, consequently, have no locus standi to maintain the present petition. He further apprised the Court that the official respondents have once again advertised vacancies for the post of Field Assistant (BPS-11), and the petitioners may submit fresh applications, subject to fulfilment of eligibility criteria. In conclusion, he prayed for the dismissal of the petition.

18. We have heard the learned counsel for the respective parties and examined the material placed on record.

19. Prior to delving into the merits of the case, it is imperative to address the legal issue as to whether the instant petition is hit by Section 11 of the CPC and barred by the doctrine of res judicata. In order to adjudicate this issue, it is essential to revisit the earlier petition bearing No. D-2270 of 2012. In that earlier petition, the grievance raised by the petitioners was that, pursuant to the advertisement published by the official respondents for the post of Field Assistant (BPS-11), the petitioners appeared in the test and expected to receive appointment letters. However, no such letters were issued. As a result, the petitioners filed the said petition seeking a direction for issuance of appointment orders in their favour. The official respondents, in reply, denied the claim, contending that the petitioners failed to secure the minimum threshold marks required for selection.

20. The said petition was disposed of vide order dated 08.03.2023. The operative part of that order reads as follows:

“Within the spirit of Order dated 01.02.2018 passed in Constitution Petitions No.D-776 of 2011 and D-456 of 2014 petitions were disposed of with directions that Secretary Agriculture Department, Government of Sindh will examine the case of each petitioner. On the same analogy, these petitions are disposed of with directions that Secretary Agricultural Department, Government of Sindh shall constitute a committee comprising on reputable officers who shall examine the case of the petitioners and decide the fate as per qualifications of the petitioners.

Admittedly, more than 5000 seats are vacant and if, petitioners are qualifying and having skills from the concerned Universities/Colleges they may be accommodated accordingly. Besides, Secretary Agricultural Department shall ensure the recruitment is carried out on all Field Assistants posts through third party Testing Agency. Needless to mention here, that any decision of the committee would not be liable to contempt proceedings. Report shall be filed before this court within three months through Additional Registrar.

Additional Registrar of this court shall ensure visit of kitchen to garden by learned Magistrate(s) as per places provided by the Secretary Agricultural department.”

21. Perusal of the aforementioned order reveals that the petitioners were precluded from filing a contempt application in relation to the

compliance report. This raises the pertinent question as to the legal remedy available to the petitioners for challenging the said report. The legal *maxim ubi jus ibi remedium*, of Latin origin, translates to “*where there is a right, there is a remedy*.” It is a well-established principle that when a legal right is infringed, the law must provide redress or appropriate relief to the aggrieved party.

22. Since the petitioners were barred from invoking contempt jurisdiction under the order dated 08.03.2023, they were left with no recourse except to challenge the compliance report through the institution of the present petition. As to the question of res judicata, it is evident that the previous petition and the present one arise from distinct causes of action. The earlier petition challenged the initial recruitment process, whereas the current petition stems from the compliance report subsequently filed by the official respondents.

23. A comparison of petition No. D-2270 of 2012 and the present proceedings clearly demonstrates that the present petition is based on a fresh cause of action which accrued only after the filing of the compliance report an event that had not occurred at the time of the previous petition. In our considered view, therefore, the doctrine of res judicata is inapplicable. Accordingly, the petition is not barred by res judicata.

24. Turning now to the substantive merits of the case, the petitioners contend that they were eligible for appointment but were unlawfully denied their rights by the official respondents, who allegedly favoured certain preferred candidates. The stance of the official respondents, conversely, is that the petitioners were correctly declared unsuccessful by the Committee and, therefore, do not qualify for appointment to the post of Field Assistant. To support their plea, the petitioners have failed to furnish any credible evidence to substantiate the allegations of discrimination or favouritism. In contrast, the official respondents have submitted documentary evidence, including the merit list and the compliance report, duly endorsed by all concerned.

25. It is well settled that this Court, while exercising writ jurisdiction, cannot venture into the realm of disputed facts requiring resolution through

evidentiary proceedings. The claims advanced by the petitioners are primarily based on oral assertions, which necessitate trial and recording of evidence, matters falling outside the purview of this Court's constitutional jurisdiction.

26. The petitioners' allegations of nepotism and favouritism lack any cogent or credible substantiation. No irregularity, illegality, or mala fides have been established in the conduct of the interview or selection process. In this context, reference may be made to the dictum laid down in *Arshad Ali Tabassum v. The Registrar, Lahore High Court* (2015 SCMR 112), wherein the Honourable Court reaffirmed the principle of separation of powers and the limited scope of judicial review in matters of executive discretion. Further reliance may be placed on *Asif Hassan v. Sabir Hussain* (2019 SCMR 1720) and *Muhammad Ashraf Sangri v. Federation of Pakistan* (2014 SCMR 157), reiterating that mere expectations of selection do not constitute enforceable rights, absent illegality in the process.

27. In light of the foregoing, we are of the considered view that the petitioners have failed to demonstrate any infringement of legal rights that would warrant interference by this Court under Article 199 of the Constitution. The petition, therefore, being devoid of merit, stands dismissed, with no order as to costs.

Judge

Judge

ARBROHI