

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1443 of 2016

Mir Najeeb-Ur-Rehman Jakhrani Petitioner

Versus

The Province of Sindh and others.....Respondents

Date of hearing: 02.02.2018

Mr. Samiullah Soomro, advocate for the Petitioner.

Mr. Chaudhary Muhammad Rafiq Rajorvi, AAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - The Petitioner has prayed for the following relief(s).

- a) That a writ of mandamus may kindly be issued with direction to the Respondents to declare the Result of the Annual Registration Departmental Examination held on 15.09.2013 for three categories i.e. Sub-Registrar, Assistant and Junior Clerk, wherein Respondents have declared only two categories results i.e. Sub-Registrar and Junior clerk and withheld the result of the Assistant till date without any lawful justification.***
- b) That direct the Respondents not to discontinue or ignore the Annual Registration Departmental Examination held on 15.09.2013 for the category of Assistant.***

2. Brief facts of the case are that the Petitioner was appointed in year 2011 as Assistant (BPS-14) in office of the District Registrar Karachi, the Board of Revenue (BOR), and Government of Sindh. He contends that there are three different grades of Sub-Registrar

cadre in the Registration Department, which are BPS-11, 14 & 16, and “The Code of Standing Orders”, issued under the Registration Act, 1940, at Serial No. 6 lays down the procedure for holding Annual Departmental Examination prescribed in Rule 8. The petitioner further contends that the Registration Department conducted Annual Departmental Examination, 2013, which was held on 15.9.2013 and that with permission of the Respondent No. 02/Senior Member, BOR; he appeared in the said Departmental Examination for the Sub-Registrar. He further asserts that the Respondent No. 3 vide his Notification No. 1407 of 2013 dated 23.9.2013 announced names of Sub Registrars (U.T) declared successful in the examination for the post of Sub Registrar and that his result was not announced for the reason that a summary was submitted to the Chief Minister for Amendment in Section 8 (1) of Sindh Registration Rules, 1940 as otherwise category of Assistant is not eligible to compete in the Departmental Examination for the post of Sub Registrar. The Petitioner has further averred that the Chief Minister, Sindh approved Amendment in Rule-8 (1) of Sindh Registration Rules, 1940, notified by the Respondent No. 3 vide Notification No. IGR/HYD./2015-658 dated 12.6.2015, which is reproduced below:

“8(1) Ten percent of the posts of Sub Registrars shall be filled in from amongst the qualified Assistants (BS 14).

(2) Notwithstanding anything contained in sub-rule (1), The Assistant shall maintain his seniority in his own Cadre of Assistants and shall be promoted next to the Post of Superintendent on seniority-cum-fitness Basis”

The Petitioner concludes that after above cited Amendment in the Rules, he waited that his result would be announced and submitted an application dated 04.2.2016 to the Respondent No. 2 for direction to the Respondent No. 3 to announce and notify his result of Departmental Examination; but he received no response so far; hence, being aggrieved by and dissatisfied with the inaction of the Respondent No.2, has filed the instant petition.

3. Upon notice the Respondents filed para-wise comments.

4. Mr. Samiullah Soomro, learned Counsel for the Petitioner narrated his case as highlighted in para 02 supra and further added that the Petitioner has gone through entire process on merits and appeared in annual Departmental Examination, 2013; but the Respondents are not declaring his result in the said examination without any lawful justification; which is illegal and not sustainable in law and violation of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Having explained his case as above, he prayed for allowing the instant petition.

5. Mr. Chaudhary Muhammad Rafiq Rajorvi, learned AAG representing the Respondents contended that the instant petition is not maintainable in law and that a Departmental Examination for Registration Department of the Board of Revenue, Sindh was meant for Clerks, Sub Registrars in the Registration Department in order to regulate/confirm their appointments in terms of Rule 8 of the Registration Rules, 1940, which is one of the conditions of

their appointment. He further averred that other categories of the officials of the Registration Department, like Assistants, Stenographers, Computer Operators and Attendants were allowed to appear in the examination on their own request on their undertaking given in writing that if their appearance in examination is found unjustified and against the rules, then their result would be withheld and examination given by them would be considered null and void and they would have no legal right to claim. He further contended that Department initiated Amendment in the Registration rules, 1940, which was notified on 12.06.2015 with approval of the Chief Minister, Sindh followed by corrigendum date 07.07.2015. He has further contended that the above amendment has come into force with immediate effect while the Petitioner demands its retrospective application i.e. 15.9.2013 when the Annual Departmental Examination, 2013 was held. He further asserted that in pursuance of Judgment dated 12.06.2013 of the Hon'ble Supreme Court of Pakistan passed in Criminal Original Petition No. 89/2011 (CMA NO.309-K/2012), the Petitioner was repatriated to his original cadre as Assistant BPS-14 and he assailed the said repatriation order through Civil Appeal No. 167 of 20134 before the Sindh Civil Service Tribunal Karachi and he withdrew the same after the Respondent-Department filed their comments stating that the Petitioner was appointed as Assistant in BPS-14 in office of Executive Development Officer (EDO) (Revenue), Jacobabad and there is no provision in the method of recruitments notified vide notification dated 27.12.1987 as amended on 20.05.1991 for

appointment of Sub-Registrars in BPS-11, 14 and 16 from Assistants (BPS-14) and that the Petitioner is insisting on declaring of result of 2013 examination with male fide intentions to get himself inducted as Sub-Registrars from back door. Referring to amendment of the Registration Rules, 1940 vide Notification dated 12.6.2015, he said that as per recruitment rules in force at the time of Annual Departmental Examination, 2013 Assistants were not eligible to appear in the said examination except the Clerks and that Sub-Registrars were required to pass the Departmental Examination which is one of the conditions of their appointment to pass the said examination. He lastly prayed for dismissal of the petition.

6. We have heard the learned Counsel for the parties and perused the material available on record.

7. The grievance and prayer of the Petitioner is declaration of the Annual Registration Departmental Examination, 2013 Result held on 15.09.2013 for the category of Assistant (BPS-14), so as to get rise/inducted in the Sub-Registrars cadre.

8. We have perused the result of Annual Registration Departmental Examination, 2013 held on 15.09.2013, in respect of two categories i.e. Sub-Registrar BPS-11 and Junior Clerk BPS-7. Per Petitioner he appeared from category of Assistant for the post of Sub Registrar with permission of the Respondent No. 02, result of which was announced on 23.09.2013 for the category of Sub-Registrar (UT) and Junior Clerks and his result was not

announced. He cited the Rule 8 of the Registration Rules, 1940 reproduced below and amendment thereto made vide notification dated 12.6.2015, reproduced as under:-

- i) ***A Departmental Examination in question relating to the Act, Rules, Code of Standing Orders and the Indian Stamp Act, 1899, etc. shall be held yearly in September in each District. All Clerks of the Department shall be required to pass the examination before being confirmed in their appointments. Failure to pass the examination within four years from date of first appointment to permanent post shall ordinarily entail loss of appointment.***
- ii) ***The questions for the years Departmental Examination will be prepared by the Inspector General of Registration and forwarded by him to the District Registrar. The question paper, when worked out by the candidates, shall be forwarded to the Inspector General of Registration who will assess the answer paper of the candidates. The name of successful candidates will be published in the official Gazette in the order of merit.***

The procedure for departmental examination has been laid down under Order No. 6 of the Code of Standing Orders, 1941 which is as under:-

6. (i) ***At the Annual Departmental Examination prescribed in Rule 8 a paper of 10 questions shall be set, four hours shall be allowed to candidates to dispose of the paper, the total marks obtainable shall be 300, of which a candidate will require not less than two thirds to pass.***
- (ii) ***The examination will be held in September along with those of other Departments on the first day of the days fixed for examinations.***
- (iii) ***The following principles are laid down for the grant of permission to appear at the Departmental Examination:-***
 - 1) ***The examination is not open to outsiders (without special permission) or candidates of other departments, and is restricted to employees of the Registration Department.***
 - 2) ***Clerks holding permanent and provincial appointments shall be eligible to appear.***

- 3) ***A Clerk shall not ordinarily be allowed to appear for the Departmental Examination unless he has completed six months continuous service immediate before the examination.***
- 4) ***D. Rs. Have discretion to refuse permission to candidates of whatever length of service to appear if the chances of their confirmation are remote.***
- 5) ***Permission to appear shall ordinarily be granted by D. Rs. But special cases shall be reported to the I.G. R for orders.***
- 6) ***The question paper shall be drawn up by the I.G.R in English and the candidates shall answer the questions in English.***

(iv) The number of candidates permitted to appear at the Registration Departmental Examination and the number of copies of the question paper required under Act XVI of 1908 or the fact that there are no candidates should be communicated by the D.Rs. to the I.G.R by the 1st August at the latest.

(v) Clerks who fail to pass the annual Registration Departmental Examination after three successive attempts should not expect to rise to the S.Rs. Grade. The first attempt should be regulated as described in para (iii) of code order No.6. (Emphasis Added).

9. Reverting to the claim of Petitioner, so far as other category of the officials other than Clerks and Sub registrars in the Registration Department, including category of Assistants, is concerned, they were erroneously allowed to appear in the examination, as they were not eligible in terms of Rule in force at the time of Examination held in year 2013.

10. We have perused amendment brought in the foresaid Rule which was notified on 12.06.2015 followed by corrigendum dated 07.07.2015, reproduced at para 02 supra.

11. The aforesaid amendment has prospective effect and not retrospective. As such, the Petitioner cannot agitate for its retrospective application.

12. Looking through the above perspective and keeping in view the legal position of the case, we do not agree with the assertion of the learned Counsel for the Petitioner that the result of the aforesaid examination should be announced meaning that amendment to the Registration Rules, 1940 notified vide notification dated 12.6.2015 be applied retrospectively i.e. with effect from 15.9.2013, the date of Annual Departmental Examination, 2013, which is not tenable under the law and misconceived claim of Petitioner.

13. In the light of above facts and circumstances of the case discussed above, the instant petition is dismissed along with listed application(s).

14. These are the reasons for our short order dated 02.02.2018.

JUDGE

Karachi
Dated **06.02.2018**

JUDGE