

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

C.P. No. D- 1556 of 2015

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon.

Khuda Bux and others Petitioner

Vs.

Province of Sindh & others Respondents

Date of Hearing: 29.01.2019

Mr. Kanjimal Meghwar, advocate for the petitioners

Mr. Allah Bachayo Soomro, Addl.A.G along with Dr. Muhammad Umar Hingorjo, D.H.O. Mirpurkhas

O R D E R

ADNAN-UL-KARIM MEMON, J. - Through the captioned petition, the petitioners have assailed the letter dated 02.07.2015 and 10.7.2015 issued by respondent No.3 whereby the appointments of the petitioners were cancelled.

2. Brief facts of the case as per pleadings of the parties are that, in pursuance of advertisement published in 'Daily Kawish' dated 18.3.2015, inviting applications for appointment on various posts of Telephone Operator, Attendant, Naib Qasid, Chowkidars, Midwife and others, in all Districts of Sindh, including District Mirpurkhas, the Petitioners applied for the aforesaid posts. Petitioners have submitted that Respondents vide letter dated 4.6.2015, accorded permission for recruitment/appointment against vacant posts of BPS-1 to BPS-15. As per Petitioners, Respondents started recruitment process, after processing the applications of the Petitioners, the Respondents conducted walk-in-interview on different dates. The Respondent published merit list of successful candidates with

regard to recruitment test for the aforesaid posts. Petitioners further claim that they having successfully qualified in the walk-in interview test had legitimate expectation of recruitment for the post applied for, however the Respondents only issued offer orders to the petitioners, in the month of June 2015 and were recommended for Medical fitness. Per petitioners they appeared for their Medical fitness examination and subsequently were declared fit for the post applied for. It is the claim of the petitioners that before issuance of appointment orders, the Respondents had issued impugned letter dated 2.7.2015, whereby they withdrew / cancelled the letter dated 4.6.2015, without any cogent reason. Petitioners have added that the impugned letter dated 2.7.2015 did not disclose any reason for cancelling the permission for the recruitment on the aforesaid posts. Petitioners have submitted that the Civil Surgeon Civil Hospital Mirpurkhas had also cancelled the fitness certificates issued in favour of the petitioners from 1.6.2015 to 9.7.2015. Petitioners added that District Health Officer (DHO) Mirpurkhas is/was the competent authority for making recruitment / appointment on the posts below BPS-16 and the petitioners were issued offer orders against the vacant posts and as such there was no need to obtain permission from the office of Respondent No.1 or any other authority to make appointment / recruitment against the posts lying vacant under the control of District Health Officer/ respondent about 2; that the petitioners are waiting for their appointment orders for which they were issued offer orders, therefore, they are liable to be appointed on the aforesaid posts; that non-appointment of the petitioners against the posts is illegal and unlawful; that the Respondents after issuance of offer orders cannot scrap the whole process of appointments, which act is illegal.

3. We have asked from the learned counsel for the petitioners that how this petition is maintainable, when the whole process of recruitment has been scraped on the premise that District Health Officer Mirpurkhas was not competent to issue

offer orders to the petitioners, even he did not adopt / follow the Government Policy, recruitment Rules to fill up the posts as discussed supra.

4. Mr. Kanjimal Meghwar, learned counsel for the petitioners in reply to the quarry submitted that the appointments were made in accordance with law upon fulfillment of all the codal formalities; that termination of services of the petitioners without providing them an opportunity of hearing is illegal and against the basic spirit of law, more particularly, violation of judgments passed by Honourable Supreme Court of Pakistan, rendered in the case of Muhammad Ali and 11 others vs. Province of KPK and others (2012 SCMR 673), Muhammad Rafi and others vs. Federation of Pakistan and others (2016 SCMR 2146), Mst Basharat Jehan vs. Director General federal government education and others (2015 SCMR 1418). He next argued that the petitioners cannot be held responsible for the illegal acts committed by the official respondents; therefore the instant petition is maintainable.

5. We put another quarry to learned counsel for the petitioners that since offer orders had not been acted upon and no appointment orders had been issued, how vested right has accrued in favour of the petitioner. He in reply submitted that the Respondents are bound to follow acceptance of offer orders made by the petitioners, whereby they were allowed to obtain Medical fitness certificates, which they had acquired; therefore, denial of such appointment orders is illegal, which amounts to depriving the petitioners from their vested right as guaranteed under the Constitution. The submission proceeds on the premise that recruitment process initiated was required to be concluded as per the rules, and that the Government of Sindh was not justified in cancelling the process.

6. We have heard the parties at length on the issue involved in the matter and perused the material available on record, and case law cited at the bar.

7. The grievance of the petitioners is that recruitment initiated as per the rules then in force has not been concluded, and the Respondent-department has arbitrarily

discontinued the recruitment process, midway. The action of the Respondent-department in now proceeding to fill up such seats by a fresh advertisement is challenged. The grounds of challenge to the aforesaid action essentially are that the Respondent-department's decision to abort the ongoing recruitment process is otherwise vitiated, being arbitrary, irrational and actuated by political considerations which lack bona fide. The details of recruitment process initiated and discontinued, with reference to the year of advertisement, is enumerated hereinafter.

8. Having regard to the facts and circumstances of this case, we are of the view that it is important to discuss the Rule of the 'Doctrine of Proportionality' in ensuring preservation of the rights of the petitioners/workman. The principle of 'Doctrine of Proportionality' is a well-recognized one to ensure that the action of the Respondents against the petitioners does not impinge their fundamental and statutory rights. The above said important doctrine has to be followed by the Respondents at the time of taking action against the petitioners to satisfy the principles of natural justice and safeguard the rights of the petitioners.

9. On the basis of respective submissions advanced, this Court finds that following issues arise for consideration in the petition:-

- (i) Whether the petitioners have acquired any right of appointment pursuant to advertisement issued for recruitment, or to be considered for appointment, in accordance with the rules existing on the date of advertisement?
- (ii) Whether the decision of Government of Sindh in discontinuing the recruitment exercise initiated in the year 2015 is arbitrary?

10. We are of the considered view that even a successful candidate does not acquire indefeasible right to be appointed and that it could be legitimately denied. The notification inviting application for appointment has been held only to be an invitation to the qualified candidates to apply for recruitment. On their mere applying or selection they do not acquire any right to the post.

11. In the absence of any relevant rule, the Government is under no legal duty to fill up all or any of the vacancies. Such right of employer is, however, hedged with the condition that State action is not arbitrary in any manner. The decision of employer, if is otherwise not arbitrary and has been taken for valid reasons, no interference with the State action is warranted.

12. There can be no doubt that the petitioners merely on account of making of applications for appointment do not acquire any right of appointment to the post.

13. The question as to whether the respondents had the right to stop the recruitment process. In our view that the mere fact that petitioners were selected for appointment to vacancies, pursuant to an advertisement did not confer any right to be appointed to the post in question to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment, for the simple reason that the Government of Sindh Health Department advertised the posts from BPS-1 to BPS-15 in various Health Facilities of Sindh Province in leading newspapers in the year 2015, for recruitment on vacant posts through the selection committees at various levels constituted by the Services, General Administration & Co-ordination Department Government of Sindh. The District level committee comprised of the following members.

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| 1. | Deputy Commissioner | Chairman |
| 2. | Head of concerned Department at District Level | Member |
| 3. | Deputy Secretary (Services) SGA&CD | Member |

14. Record reflects that the District Health Officer Mirpurkhas did not adopt / follow the Government policy / recruitment rules, Government Selection Committee and issued the offer orders to 304 candidates against twenty seven (27) vacant posts, which fact he himself conveyed to Director General Health Service

Sindh Hyderabad for advertisement / recruitment in vacant pool vide letter No.DHO/MPS/E-II/4550/51 dated 27.04.2015.

15. We have also noted that the Government of Sindh Health Department had taken notice of the state of affairs and constituted enquiry committee to conduct an enquiry and also issued the directions for cancellation / withdrawn of offer orders. Therefore the Medical and offer letters issued in favour of the petitioners were cancelled / withdrawn respectively.

16. Record further reveals that the enquiry committee submitted report dated 24.7.2015 which is reproduced as under:-

“ CONCLUSION:

The crux of discussion is that the offer orders issued by Dr. Ghulam Ghous Khan, Ex-DHO, Mirpurkhas are prima facie void-ab-initio. The codal formalities have not been completed and even the recruitment against the vacancies which were not available on the date of interviews has been made. So much so, those said vacancies were even not shared with the Director General, Health Services Sindh, Hyderabad who was coordinating recruitment process including publication of notice inviting applications, with all DHOs. The committee unanimously decided as the appointments made are void-ab-initio, therefore, the eligibility of candidates needs not to be explore”.

17. The Health Department Government of Sindh referred the findings of the enquiry committee to the Anti-corruption authority for perusal and necessary action in accordance to law. The Anti-corruption authorities lodged the FIR No.7/2015 at Anti-corruption Establishment (Provincial) Hyderabad.

18. During the course of arguments, we were appraised that all the original record of recruitment process of the post from BPS-01 to BPS-15, i.e. office copies of offer orders, medical fitness certificates, documents, self-made outward register, letters and all other relevant correspondence letters were/are not available in the office of respondents.

19. We have noted that in the present case the selection was yet to be made by the respondent-department. Therefore, the petitioners cannot even claim that they were selected for appointment by the respondent-department. The selection process had not been completed and before it could be completed the Government reviewed its earlier decision and decided to revise the same for appointment. It is, therefore, clear from the settled legal position that the petitioners had no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the respondent-department.

20. We are of the considered view that merely issuance of offer order is no ground to claim appointment order as the respondents had found something fishy in the matter and recommended for scrapping of the whole recruitment process as initiated at District level by the concerned District Health Officer Mirpurkhas who failed and neglected to follow the recruitment rules and found no selection committee was formed to make recommendations for the appointment. Record does not reflect as to whether there was any interview conducted by the respondent District Health Officer, Mirpurkhas. As per record no codal formalities were adopted while making such recruitments on the posts as discussed supra.

21. We have gone through the comments filed on behalf of the respondents and are of the considered view that the respondents conducted an enquiry which prima facie suggests that the act of respondent DHO falls within the ambit of misconduct, therefore, the case was recommended for penal action wherein FIR was registered against him on 27.8.2015.

22. The crux of the above discussion is that offer orders issued by the then DHO Mirpurkhas Dr. Ghulam Ghous Khan are prima facie void ab-initio and the codal formalities have not been completed and even recruitment against the vacancies which were not available on the date of interview, so much so, those vacancies were not even shared to DG Health Services Sindh, Hyderabad who was coordinating the

recruitment process including publication of notice inviting applications; that the committee unanimously decided and opined that the appointments made as discussed supra were void, ab-initio therefore the eligibility of the candidates needs not to be further explored / probed.

23. In view of the discussions made above, it is obvious that the petitioners do not acquire any right of appointment against the post advertised. Since the Government also has the right to cancel the recruitment process, even prior to its conclusion, for valid reasons, the petitioners cannot compel the Government to complete the recruitment process, once initiated, as per the rules operating on the date of advertisement.

24. The material placed on record before this Court clearly shows that a policy decision was taken by the Government to have the recruitment undertaken for the posts by way of fresh advertisement. Such material would clearly justify a departure in policy for ascertaining merit of candidates which is neither irrational nor discriminatory or arbitrary. The petitioners otherwise have not acquired any right to be considered for recruitment. Objection, raised in that regard, therefore, fails.

25. The case law cited by the learned counsel for the petitioners is quite distinguishable from the facts and circumstances of the case.

26. In the light of above facts and circumstances of the case and for the reasons as alluded hereinabove, this petition merits no consideration which is accordingly dismissed.

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