

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D- 4460 of 2012**

Marvi Aslam & 02 others .....Petitioners

V/s

Province of Sindh  
& others .....Respondents

**Date of hearing: 27.03.2019**

**Date of Decision: 01.04.2019**

Mr. Muhammad Saleem Khaskheli, Advocate for the Petitioners.  
Mr. Abdul Jalil Zubedi, Assistant Advocate General, Sindh.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** The instant Constitution Petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been filed by the Petitioners, seeking declaration to the effect that the process of selection initiated by the Information and Archive Department Government of Sindh in the year 2012, for the post of Information Officer (BPS-17) is against the basic sprit of law. Petitioners are also seeking further direction to the Respondents to initiate the selection process for the aforesaid post afresh.

2. Brief facts of the case as per pleadings of the parties are that in pursuance of advertisement published in 'Regional Times` dated 20.10.2012, inviting applications for the appointment of Information Officer (BPS-17) on contract basis for the period of one year. Petitioners applied for the aforesaid post and after processing the applications of the Petitioners, official Respondents started

recruitment process, through walk-in-interview on 05.11.2012, but in the meanwhile, the Respondents with utter shock and dismay to the Petitioners, re-advertised the aforesaid post vide public notice dated 23.11.2012, with change of qualification from Masters in Mass communication to Masters in in Social Science(s). Petitioners have asserted that employment is basic necessity of the life, particularly for the educated youth and the State is responsible to provide transparent working environment and the employers are required to provide opportunity for grooming and exploitation of abilities and talent by the employees. Petitioners being aggrieved by and dissatisfied with the malafide action of the Respondents, who deprived the Petitioners from competing for the aforesaid job, approached this Court on 19.12.2012.

3. Upon notice, Respondents No.2 and 3 filed comments and denied the allegations leveled against them.

4. We queried from the learned counsel for the Petitioners as to how the instant Petition is maintainable against the process of selection for the post of Information Officer (BPS-17) and since 2012, much water has passed from the bridge.

5. Mr. Muhammad Saleem Khaskheli, learned counsel for the Petitioners, in reply to the query has submitted that the entire recruitment process for the aforesaid post is illegal and void on the premise that the same was conducted in haste in order to accommodate their blue eyed boys. He next submitted that the entire selection process is full of errors and severe irregularities based on malice; that the Petitioners are entitled to equal protection of law for competing for the aforesaid post; that the Respondents have violated Articles 4,9,18 & 25 of the Constitution. He next added that in the month of October, 2012 the Respondent-Department advertised 30 contract positions of

Information Officers in BPS-17, i.e. 18 posts for Rural Sindh and 12 posts for Urban Sindh with required qualification i.e. Masters in Mass communication, the sole eligibility criteria for the aforesaid post but the Respondents changed their stance by changing the qualification to Masters in Social Science(s) without assigning any valid reasons; that the Sindh Public Service Commission, which usually conducts the written test and interview for the appointment to the Gazetted posts but the Respondents avoided the selection process through competitive process and opted for Walk-in-Interview in the month of November 2012 in Karachi. Per learned counsel, more than 200 candidates from across Sindh participated in interview but the result was not announced; that later on the same positions were again advertised on 22.11.2012 with new interview plans conducted in the month of December, 2012. He emphasized that the Information Department earlier had recruited 12 officers through Sindh Public Service Commission, but this time the Department opted to hire the candidates directly on contract basis for the reasons that they had to accommodate someone else in place of genuine candidates; that the process of direct hiring of Information Officer in BPS-17, through Walk-in-Interview is unfair and against the basic spirit of law and judgment pronounced by the Honorable Supreme Court reported in (2013 SCMR 1752). He lastly prayed for allowing the instant Petition.

6. Conversely, Mr. Abdul Jalil Zubedi, learned Assistant Advocate General has raised the question of maintainability of the captioned petition and has referred the comments filed on behalf of Respondent No.2 and 3 and argued that the Petitioners did not participate in `Walk-in-Interview`, they only preferred applications to the higher authorities and thereafter filed the instant Petition with malafide intention; that the successful candidates were

selected on merits; that the candidates selected were qualified having Masters Degree in Social Science(s); that a summary was floated to the Worthy Chief Minister, Sindh for relaxation of the qualification criteria for recruitment of Information Officers in BPS-17 and the same was duly approved and thereafter entire exercise was completed in accordance with law. He emphasized that there is /was no malice on the part of Respondent-department in the episode. He lastly prayed for dismissal of the instant Petition.

7. We asked from the learned AAG as to how the Respondents have bypassed the recruitment for the post of Information Officer in BPS-17 through competitive process. He in reply to the query has submitted that the Respondents had devised a method to appoint the person on contract basis and the competent authority can do so under the law. We posted another question to him as to how the qualification could be changed in the next advertisement while scrapping the earlier one. He in reply to the query has referred paragraph No.07 of the Comments available at Page 93 of the `Memo of Petition` and argued that such relaxation of the qualification is permissible and was allowed by the Competent Authority. Be that as it may we intend to decide the lis in hand on merit.

8. As per record notice was issued to the learned counsel representing the Respondents No.2 & 3, but he opted to remain absent in-spite of issuance of notice to him on 23.09.2016, 02.11.2016, 24.11.2016, 19.03.2019 & 27.03.2019, when the learned counsel for the Respondents No.2 & 3 is called absent without any intimation. We are left with no option but to proceed with the matter in his absence in presence of Learned AAG.

9. We have heard learned counsel for the Petitioners as well as learned AAG and perused the entire material available on record.

10. Since important question of law is involved in the subject Petition that finalizes the controversy in hand is, whether the Respondents can make recruitment of the post of Information Officer in BPS-17 directly on contract basis, or the same falls within the ambit of Rule 3(1) (i) of Sindh Public Service Commission (Functions) Rules 1990?

11. We have noted from the record that the Respondent-Department issued advertisement in 'Regional Times' on October 20, 2012 for the post of Information Officer in BPS-17 in the Information and Archives Department, Government of Sindh on 01 year contract basis to the qualification of Master Degree in Mass communication in 2nd Division (for appearance of candidates for walk-in-interview). Thereafter the Respondent-Department changed the stance and re-advertised the same post with different qualification i.e. Master in Social Sciences in 2nd Division for walk-in-interview and completed the selection process. We are surprised to note that the aforesaid post was advertised in 'Regional Times' not in leading newspapers as required under the law. Record reflects that the Respondent-Department in earlier recruitment process for the said post requisitioned to the Sindh Public Service Commission vide letter dated 12.07.2008 and such requisition form was duly filled and advertisement was duly published by the Sindh Public Service Commission on 20.08.2008 for different posts including the post of Information Officer (BPS-17) with qualification of M.A in Mass communication [M.A Journalism 2nd Division]. Record further reflects that the aforesaid post was again published by the Sindh Public Service Commission in daily 'Kawish' on 21.02.2010, but now the Respondents opted to fill the

aforesaid post on contract basis through walk-in-interview. The stance, taken by the Respondents, in the comments that the Officers were urgently required to meet the challenging assignment of Information Department due to forthcoming General Election. In our view, the aforesaid reasons are not sufficient to bypass the competitive process as required under the law.

12. We are of the considered view that the post of Information Officer in BPS-17, the same falls within the ambit of Sindh Public Service Commission. The aforesaid Rule is very clear in its term that all civil posts connected with the affairs of the Province in Basic Pay Scale 16 to 22, except those specified in the schedule, shall be filled by the Sindh Public Service Commission through competitive process. Such posts are required to be advertised publically. In the case in hand, this mandatory mode, required under the rules, was not followed by the Respondents.

13. To elaborate further on the issue involved in the present proceedings, the law requires that a post of BS-17 can only be filled through Public Service Commission after advertisement. The Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BPS-16 to 22 against the language of the aforesaid Rules, which are framed under the command of the Sindh Civil Servant Act 1973 as mandated under Article 240 of the Constitution. The Article 242 of the Constitution provides the mechanism for appointment of a Civil Servant through Public Service Commission. This Article is safety regulator which guarantees the transparent process of induction in the Civil Service. It provides appointment by Public Service Commission with the sole object that meritorious candidates join Civil Service. The Sindh Government through executive order cannot withdraw

any post from the purview of the Sindh Public Service Commission without valid reasons; therefore circumventing the competitive process is/was not called for. In this respect we seek guidance from the judgment rendered by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch v. Province of Sind (2015 SCMR 456). The Hon'ble Supreme Court at paragraph No. 188 has held as under:-

**“The background of the notification of 07.05.2013 of the Sindh Government was that during the hearing of arguments in C.P. No. 71 of 2011 and other Petitioner in Criminal Original Petition No. 89-K of 2011, two CMAs numbered as 245/2013 and 247/2013 were filed, complaining that the Sindh Government had appointed 10 D.S.P.s without observing requisite codal formalities on 06.05.2013, this Court enquired from the Additional Advocate General Sindh, representing the Sindh Government to satisfy the Court as to how the Sindh Government, to satisfy the Court as to how the Sindh government could appoint D.S.Ps without recourse to the procedure prescribed under the service law. The instructions and on the following day, he made a statement that all the D.S.Ps appointed directly, including the Petitioner, have been identified by notification dated 07.05.2013.”**

14. We are also clear in our mind that as per the law, the posts of Information Officer in BPS-17 can only be filled through the competitive process as provided under the law, therefore this Court cannot substitute its own findings in place of the findings given by the Hon'ble Supreme Court in the case discussed supra, at this juncture the case of Respondents to recruit for the post of Information Officer in BPS-17 on contract basis and thereafter regularize the same post is clear deviation from the Rules and Judgment passed by the Honorable Supreme Court as discussed in the preceding paragraphs.

15. We have found that prima-facie, there are serious discrepancies in the recruitment process regarding appointment for the post of Information Officer in BPS-17 on contract basis by the Information and Archives Department, Government of Sindh,

which needs serious attention that whether the competent authority of Respondent-department was justified to takeout the post of Information Officer in BPS-17, out of purview of the Sindh Public Service Commission and Rules framed thereunder or whether there was any public interest involved in the matter to bypass the competitive process to fill up the aforesaid posts on contract basis and to regularize the same subsequently, whether the qualification for the aforesaid post as advertised on 20.10.2012 was justified to be changed and relaxed in the light of judgment rendered in the case of Ali Azhar Khan Balouch (supra). All the queries raised herein above are required to be looked into by the committee headed by the Respondent No. 1, while conducting probe in the matter.

16. In the light of foregoing, we direct the Respondent No. 1/Chief Secretary, Sindh to scrutinize the recruitment process regarding appointment for the post of Information Officer in BPS-17 on contract basis by the Information and Archives Department Government of Sindh, within a period of two months and submit compliance report through MIT-II of this Court for our perusal in court. The period of two months shall commence from the date of communication of this order to the Respondent No. 1/Chief Secretary, Sindh.

17. The Petition stands disposed of in the above terms alongwith pending Application[s]. Let a copy of this judgment be communicated to the Chief Secretary, Sindh for his information and compliance.

**JUDGE**

**JUDGE**