

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

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

**Mr. Justice Yousuf Ali Sayeed**

**C.P No. D- 3000 of 2016**

Abdul Qayum Khaskheli.....Petitioner

Versus

Government of Sindh and another.....Respondents

**Date of hearing:        06.12.2018**

Syed Amir Ali Shah Jeelani, Advocate for the Petitioner.

Mr. Shahariyar Mehar, A.A.G alongwith Mr. Khalilullah Jakhro, Ms. Shamin Imran & Ms. Humaira Jatoi, internees of the Advocate General office.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:-** The Petitioner has approached this court for directions to the Director-I, Sindh Local Government Board, Karachi to issue his posting order on the post of Sub Engineer (Civil) in BPS-11, in Sindh Councils Unified Grade Service (Engineering Branch) (SCUGS).

2. Brief facts of the case in nutshell are that in pursuance of the advertisement published in “Daily Kawish” dated 15.07.2010, inviting applications for recruitment in SCUGS Department of Local Government Board, Government of Sindh and the Petitioner applied for the post of Sub Engineer (Civil) in BPS-11. As per Petitioner, the Respondents started recruitment process, after processing the application of the Petitioner and after conducting the physical test, written test and interview/via-voice the Respondent No.2 issued a final merit list of successful candidates for the aforesaid post. Petitioner has asserted that after passing of the aforesaid tests, he had paid the medical fee to undergo the

Medical test and succeeded in obtaining Medical Fitness Certificate for the aforesaid post. Petitioner has submitted that the Respondents issued offer of appointment for the post of Sub-Engineer (Civil), BPS-11 vide letter dated 20.7.2017. Petitioner has added that he submitted his joining report vide letter dated 4.8.2010 and requested for posting, but the respondents declined to entertain the request of the Petitioner on the premise that the Petitioner's qualification is not in the discipline of Civil Engineering. Petitioner further claims that he having successfully qualified the written test and interview had legitimate expectation of appointment for the post of Sub-Engineer. Petitioner has asserted that he has been singled out in the recruitment process for the post of Sub-Engineer (Civil), BPS-11. Petitioner has submitted that the act of the Respondent-Department tantamount to circumvent the law and sabotage the merit on their own whims, which has no sanctity in the eyes of law and the same is without lawful justification; that the Respondent-Department has no authority or jurisdiction in law to withhold the posting order of the Petitioner by imposing certain condition of such Degree Certificate in the discipline of only Civil Engineering, which is in violation of Article 27 of the Constitution and Recruitment Rules framed for the aforesaid post.

3. We asked from the learned counsel for the Petitioner to satisfy this Court regarding maintainability of the instant Petition on the premise that Petitioner's Degree of Bachelor of Engineering is in the discipline of Mechanical Engineering, whereas the post of Sub Engineer (Civil) in BPS-11 SCUGS was advertised, which is different than the Civil Engineering qualification. He in reply to the query has submitted that various posts were advertised in the Local Government Department, Government of Sindh. Petitioner

applied for the post of Sub-Engineer in BPS-11 as per his qualification and was selected as Sub-Engineer accordingly, however, the Respondents issued the offer of appointment, in favour of the petitioner, as Sub-Engineer (Civil), therefore, he was not at fault. He further submitted that it was the duty of the Respondents to issue offer letter for the post of Sub-Engineer in (Mechanical Engineering) rather than in Civil Engineering.

4. We are not satisfied with the assertion of the learned counsel for the Petitioner for the simple reason that instead of Civil Engineering, the Petitioner had produced the Degree of Mechanical Engineering, which was not the required qualification for the post of Sub Engineer (Civil). In our view, no person can be appointed to a post in the service by initial recruitment unless such person possesses the qualifications prescribed for the post applied for, therefore, we are not inclined to issue directions to the respondents to issue posting order to the Petitioner on the post of Sub Engineer (Civil) in BPS-11.

5. Syed Amir Ali Shah Jeelani, learned counsel for the Petitioner has vigorously argued that the Respondents have violated the rights of the Petitioner by failing/delaying to issue posting letter, despite the fact that the Petitioner has successfully passed the prescribed examination and interview; that after successfully clearing the examination and interview, the Petitioner has acquired a vested right and interest to be posted on the post of Sub Engineer (Civil) or (Mechanical) in BPS-11, which cannot be nullified/denied by the whimsical and arbitrary actions of the Respondents; that the action of the Respondents is in violation of the Fundamental Rights of the Petitioner guaranteed under Articles 18, 24, 25 and 27 read with Articles 4 and 8 of the Constitution; that due to omission/failure of the Respondents to

fulfill their legal obligations and timely discharge of their duties/functions, the Petitioner is being deprived of his lawful rights to be considered for posting against the post of Sub Engineer (Civil) or (Mechanical) in BPS-11. He lastly prays for allowing the instant petition.

6. Conversely Mr. Shahariyar Mehar, learned A.A.G, representing the respondents has raised the issue of maintainability of the captioned Petition and objected on the aforesaid plea of the petitioner. He reiterated his submissions as contained in the comments filed on behalf of the respondents. He lastly prayed for dismissal of the instant petition.

7. We have heard learned counsel for the parties and perused the material available on record.

8. To commence, we would address the difference between Civil and Mechanical engineering disciplines, it is expedient to shed light on both the technologies, which are defined as under:-

**i) Civil engineering -- This is the engineering discipline that deals with the design, construction and maintenance of the physical and naturally built environment, including works such as bridges, canals, dams, road and buildings. It is traditionally broken into several sub-disciplines including environmental engineering, geotechnical engineering, construction engineering, coastal engineering, transportation engineering, water resources engineering, structural engineering, material engineering and surveying.**

**ii) Mechanical Engineering -- This has to do with the design of any mechanical system and the assembly of different mechanisms to form a machine. This can be combined with other elements, such as the study and effect of heat in motion (Thermodynamics), the flow and application of compressible and incompressible fluid (Fluid Mechanism), mechanical design and computer/electronics engineering with the application of automatic control. (Mechatronics), etc.**

9. Having understood the difference between the two technologies, the pivotal question, which agitate the controversy at

hand could be reduced as to whether the Petitioner was eligible to apply for the post of Sub Engineer (Civil) BPS-11 in Sindh Councils Unified Grade Service (Engineering Branch), Government of Sindh?

10. We are of the view that the Respondents have processed the scrutiny of the documents of the Petitioners after issuance of offer letter to the Petitioner in accordance with the SCUGS Rules, 1982 and no illegality, therefore, appears to have been committed.

11. The record further reflects that the Respondents rejected the candidature of Petitioner, when they found him not eligible for the post of Sub Engineer (Civil) in BPS-11 in SCUGS (Engineering Branch) as he had no qualification for the aforesaid post, in our view that was the correct approach of the Respondents.

12. In the light of foregoing discussion, we are of the view that disqualification of the Petitioner on the cut-off date as mentioned in the Public Notice cannot be converted into qualification to claim posting order, because the Petitioner was required to possess Civil Engineering degree on the said cut-off date which the Petitioner failed to produce the same.

13. This being the position, coupled with the fact that exercise of jurisdiction by this Court under Article 199 of the Constitution is purely discretionary in nature and meant to foster the cause of justice and fair play, we do not find any valid reason for indulgence. Consequently, the instant Constitution Petition merits no consideration and stands dismissed with no order as to costs.

14. These are the reasons of our short order dated 6.12.2018, whereby we have dismissed the captioned Petition.

Karachi:  
Dated: 07.12.2018.

**JUDGE**

**JUDGE**