

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –2866 of 2011

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Wariyam and 72 others

Versus

The Province of Sindh and 07 others

For hearing of CMA No.18085 of 2019 (stay) :

For hearing of CMA No.1846 of 2019 (contempt) :

Date of hearing & order : 16.11.2020

Mr. Faizan Hussain Memon, advocate for the petitioners.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh along with Mumtaz Hussain, DEO Secondary Education, District Badin, Muhammad Aslam Pathan, DEO Primary, District Badin, Riaz-ul-Rehman Korejo, Regional Director, RDSE&RC, Hyderabad, and Farman Ali Tanwari, Deputy Director, PCRDP (Focal Person) Department of Empowerment Persons with Disabilities, Karachi.

ORDER

ADNAN-UL-KARIM MEMON, J. The present application for initiating contempt proceedings, against the alleged contemnors, arises out of the order passed by this Court on 01.11.2018 in the aforesaid matter.

2. On 18.01.2019, petitioners filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No. 1846 of 2019) for initiation of contempt proceedings against the alleged contemnor on account of his willful, intentional, and deliberate act of disobeying the above-mentioned order passed by this Court.

3. Mr. Faizan Hussain Memon learned counsel for the applicants, has submitted that since the alleged contemnor had failed to comply with the order passed by this Court in the aforesaid matter, contempt proceedings may be initiated against him. Learned counsel next contended that several chances were given to the respondents to do the needful, but to date compliance has not been made for one or the other reason and lame excuses have been put forward which have already been discarded by this Court. Learned counsel states that out of 73 petitioners, 63 petitioners have already been regularized. As far as the case of 10 petitioners is concerned, he has filed objections to purported compliance report dated 20.10.2020. He further argued that as per recruitment Rules notified on 14.12.2011, petitioners were required to have a qualification to be a "literate",

whereas, the respondents have knocked out the remaining petitioners on the ground that they did not have requisite qualification i.e. VIII class pass. Per learned counsel this is / was is not the requirement for the post as per advertisement published on 19th July, 2006 ; that the respondents have adopted a discriminatory attitude by singling out some of the petitioners without any rhyme any reason. He further pointed out that the petitioner No.15 was amongst the candidates who were recommended for regularization and his name was appearing at Sr. No.8 of the list, however, in the compliance report his case was unlawfully reconsidered and not recommended for regularization purportedly for not having the required qualification ; that the aforesaid logic of the respondents negates the basic advertisement published in daily Kawish on 19.07.2006 as discussed supra. Furthermore, the case of petitioners No.11 and 12 have been wrongly rejected on the pretext that they ought to have been considered by the Administrative Department, instead of scrutiny committee. Per learned counsel this reason has already been rejected by this Court vide order dated 13.01.2020 passed in C.P No.D-245 / 2011, hence, the petitioners No.11 and 12 deserves the similar treatment.

4. Mr. Ali Safdar Depar, Assistant Advocate General has submitted a compliance report dated 22.10.2020 and submits that the committee scrutinized documents of all the petitioners, and rejected the cases of 15 petitioners on the ground that their appointment was not made in accordance with the provisions of the respective Recruitment Rules 1989.

5. Prima-facie, the petitioners were appointed in the year 2007 to 2008 against the post of Naib Qasid, Chowkidar, Sweeper, and Mali being literate and the recruitment Rules notified in the year 2011 provide the qualification required for the aforesaid post was “Preferably Literate” and not VIII class pass. An excerpt of the notification dated 14.12.2011 is as under:

“GOVERNMENT OF SINDH
EDUCATION & LITERACY DEPARTMENT
Karachi, dated the 14th December, 2011

NOTIFICATION

No.SO(G-I) E&L/(Rec.Rules)2011: In pursuance of sub-rule (2) of rule 3 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and in partial modification of this Department’s Notification No.(E-VI)I(56)/89 dated 20th March, 1989, and in consultation with the Services, General Administration & Coordination Department, the method, qualifications and other conditions for appointment in respect of the posts in the Education and Literacy Department, Government of Sindh, mentioned in column 2 of the table below, shall be as laid down in columns 3, 4 and 5 thereof:-

TABLE

S.No.	Name of post with BS	Method of appointment	Qualification and experience	Age limit Mini. Max
1	2	3	4	5
1.	Naib Qasid / Chowkidar / Malhi / Calendar / sweeper (Sanitary Workers) / Workshop Coolie / Workshop Attendant / Conductor / Gestetner Operator / Hamal / Fresh Coolie (BS-01)	By initial appointment	Preferably literate	18-40

6. Admittedly, the aforesaid petitioners are literate i.e. Primary Pass, which is requisite qualification to claim regularization, therefore, the compliance report submitted on behalf of the alleged contemnor is not in line with the order dated 01.11.2018 passed by this Court in letter and spirit. Resultantly, the compliance report is rejected.

7. We are of the considered view that the interest of justice would be best met if the respondents are granted last opportunity to comply with the direction of this Court in the instant matter without fail within two (02) weeks and to submit compliance report to this Court on the next date of hearing, failing which show cause notice shall be issued to alleged contemnors on the next date of hearing. To be listed on **02.12.2020 at 11:00 a.m.**, when alleged contemnor must be present in Court along with his compliance report.

J U D G E

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Shahzad*