

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –3997 of 2019

Dr. Liaquat Ali Abro

Versus

The Province of Sindh and 06 others

Constitutional Petition No.D-4508 of 2019

Dr. Dilshad Ahmed

Versus

Province of Sindh and 06 others

Dates of hearing : 15.10.2020, 26.11.2020, 10.12.2020 & 17.12.2020

Date of judgment : 17.12.2020

Mr. Abdul Samad Memon, advocate for the petitioner in C.P. No.D-3997 of 2019.

Mr. Farhatullah, advocate for the petitioner in C.P. No.D-4508 of 2019.

Mr. Arshad Khan Tanoli, advocate for respondent No.4.

Mr. Ali Safdar Depar, Assistant Advocate General along with Abdul Latif Sanjrani, Section Officer, Environment, Climate Change and Coastal Development Department, Govt. of Sindh.

Mr. Yousuf Alvi, Law Officer, Sindh Public Service Commission.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. In the above referred Constitutional Petitions, the petitioners have sought the declaration to the effect that impugned recommendations made by Sindh Public Service Commission ('**SPSC**') on 12.04.2019 for appointment against the post of Registrar (BPS-19) in Environment, Climate Change & Coastal Development Department, Government of Sindh, was / is unlawful, illegal and without lawful justification. The petitioners have sought a further direction to the SPSC to undertake another review of the selection process for the aforesaid position. They further prayed for the issuance of a Writ of Quo Warranto against the private respondent, namely Mrs. Abida Parveen to vacate the office / post of the Registrar, Sindh Environmental Protection Tribunal, presently she is holding in pursuance of the Government of Sindh, Environment, Climate Change and Coastal Development Department notification dated 22.07.2009 on the ground that she was / is not qualified to hold the office of the Registrar and her appointment is hit by Article 199 (1) (b) (ii) of the Constitution, 1973.

2. The relevant facts as per record are that on 10th August 2018 the Environment, Climate Change & Coastal Development Department, Government of Sindh, requested the Chairman, Sindh Public Service Commission for filling up the vacant post of Registrar (BS-19) along with other related posts in the Sindh Environmental Protection Tribunal ('SEPT'). The SPSC interviewed eligible candidates for the aforesaid post in April 2019 and recommended the private respondent for appointment against the said post vide letter No. PSC/GRS/2019/30 dated 30-04-2019. The recommendations of the SPSC were then processed under Rule 4(1) of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 and acted upon vide notification No. SO (ECC&CDD) I-561/ 19 dated 22nd July 2019, and appointed the private respondent against the position of Registrar (BP-19).

3. After giving notice to the respondents, they filed para-wise comments.

4. Learned counsel for the petitioners consented that petition bearing No. D-4508 of 2019 may be treated as the leading petition and the same may be heard and decided along with the other connected petition viz. C.P. No.D-3997/2019.

5. We asked learned counsel for the petitioners to satisfy this Court regarding maintainability of these petitions as private respondent was appointed in the year 2018 through the competitive process under the auspices of SPSC on regular basis.

6. Mr. Farhatullah, learned counsel for the petitioner in C.P. No.D-4508 of 2019, has submitted that respondent No.6, namely Abida Parveen, was on deputation and was repatriated on account of certain charges of misconduct and stood relieved from duties from Benazir Income Support Program (BISP), hence was not eligible to apply for the post advertised by SPSC, Hyderabad for recruitment against the post of the Registrar (BPS-19) in Environment, Climate Change & Coastal Development Department, Government of Sindh. He emphasized that the examination process as discussed supra was compromised to accommodate the private respondent, who was having influence and was recommended for the post of Registrar (BPS-19) for extraneous consideration; and, that the impugned result / recommendations dated 12.04.2019 made by SPSC was / is politically maneuvered and could not be relied upon on the premise that the private respondent was / is having political affiliation as such her

qualifying in written test / interview was / is tainted with malice. He asserted that respondent No.6 is holding a public office post and falls within the purview of sub-clause (1)(b)(ii) of Article 199 of the Constitution, 1973. Learned counsel referred to the various documents attached with the memo of petitions and argued that the private respondent was proceeded against departmentally and was found guilty of misconduct had caused loss of over PKR 20 Million to the public exchequer while posted on deputation in BISP; thus was not qualified to appear for the aforesaid post and her subsequent recommendation and appointment as Registrar Sindh Environmental Tribunal, Karachi, is unconstitutional. He averred that the private respondent had no sufficient experience for the post of Registrar as envisaged in the recruitment rules mentioned in advertisement No.8 / 2018 dated 11.09.2018. He pointed out that the private respondent managed the required experience certificate, no objection certificate, and other documents to show herself to be qualified and eligible for the post advertised by SPSC; thus all actions taken by her from the beginning till her appointment against the post of Registrar are null and void ab-initio and of no legal consequence and are liable to be set-aside. He prayed for allowing the instant petitions.

7. Mr. Abdul Samad Memon, learned counsel for the petitioner in the connected Petition No.3997 of 2019, adopted the arguments of Mr. Farhatullah, learned counsel for the petitioners in C.P. No.D-4508 of 2019, and added that the entire case of the private respondent is based on misrepresentation of real facts and manipulated documents, thus she is not entitled to any relief from this Court. He prayed for allowing his petition.

8. Mr. Arshad Khan Tanoli, learned counsel for the private respondent in both the petitions, has contended that the subject petitions are liable to be dismissed as there was transparency in the appointment procedure adopted by SPSC, as a result of which the private respondent, namely Abida Perveen, was appointed purely on merits and denied allegations of favoritism or any extraneous reasons as alleged by the petitioners and that she possessed qualifications and experience required for the post of Registrar (BS 19) and that the petitioners have tried to mislead this Court for their selfish ends and the petitioners have no right to challenge SPSC's recommendation; that the issues raised by learned counsel for the petitioners involve factual controversy, which require evidence; therefore, Constitutional Jurisdiction of this Court cannot be invoked. Learned counsel added that the legal process for selection for recruitment against the aforesaid post was followed as required under the law and vested right has been created

in favour of the private respondent and the petitioners have failed to make out their case for interference. He prayed for dismissal of the petitions.

9. Mr. Ali Safdar Depar, learned Assistant Advocate General, has adopted the arguments of learned counsel for the private respondent in both the petitions and further added that the respondent-commission took the initiative and advertised the post for filling up the post of Registrar (BSP-19) and competency test was conducted; and, the prescribed recruitment process was followed and recommendations were made fairly and transparently. He asserted that the Petitioners have approached this Court with unclean hands and with ulterior motives, since, the Petitioners took part in the recruitment process and were not declared successful candidates, thereafter they filed the instant petitions on frivolous grounds. He averred that the petitioners have failed to demonstrate the basic three ingredients mandatorily required for invoking writ of quo-warranto i.e. appointment by incompetent authority, lack of qualification for the post, and violation of the procedure of appointment. Furthermore, the Petitioners have failed to specify as to which rule has been violated by the SPSC while making recommendations in favour of the private respondent and her subsequent appointment as Registrar (BSP-19). He lastly prayed for dismissal of the petitions.

10. Mr. Yousuf Alvi, Law Officer, Sindh Public Service Commission, has argued that the Private Respondent had submitted her qualifications and experience certificates and that she met the requisite criteria as per the advertisement as well as under Recruitment Rules and was rightly recommended for the post of Registrar (BSP-19). Since her appointment to the post of Registrar (BSP-19) was made by the Sindh Government, the SPSC has become functus-officio. He also prayed for dismissal of the instant petitions.

11. We have considered the submissions of the learned counsel for the parties along with case law and have also gone through the entire record carefully with their assistance.

12. The questions involved in the instant petitions are as follows:

- i) whether the respondent namely Mrs. Abida Parveen was appointed in accordance with the law and had requisite qualifications and experience for the position of Registrar (BPS-19) in Environmental, Climate Change, and Coastal Development Department, Sindh Government to claim the post under the recruitment rules;
- ii) whether this Court can overrule the SPSC's recommendation under Article 199 of the Constitution or otherwise? And

iii) whether the private respondent was awarded punishment in her previous employment and in view of such punishment, whether she could seek government employment in any other department or office.

13. The record depicts that as per the advertisement dated 11.09.2018 published in the Newspapers, which pertained to post of Registrar BPS-19 in Environmental, Climate Change, and Coastal Development Department, Sindh Government also, which required that the candidates must possess the requisite qualifications and experience for the advertised post. The relevant portion of the advertisement is reproduced hereinbelow.

- i) Master Degree in Social Sciences / Environmental Sciences as well as LLB degree at least in Second Division from a University recognized by Higher Education Commission
- ii) Having at least ten (10) years' experience in the relevant field preferably in administrative work.

We have also noted that advertisement No.8/2018 dated 11.09.2018 explicitly provides the following criteria for recruitment against the aforesaid post:-

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- i) The candidates were required to have the required age, qualification, and experience with relevant certificates as of the closing date of the advertisement.
- ii) The experience was to be reckoned from the date of acquiring the minimum academic qualification required for the post.
- iii) Ineligible candidates and those not fulfilling the conditions or submitting incomplete applications were not to be considered.
- iv) The number of posts was subject to variation without any prior permission/intimation.
- v) The candidates serving in Government and Semi-Government Organization were required to apply through proper channel or submit NOC.

14. Academic as well as relevant record of private respondent showed that she passed B.Sc. (Pass) Part-II Examination in 2003 from Shah Abdul Latif University Khairpur (Sindh), Masters in Economics from Shah Abdul Latif University Khairpur in 2004, and LLB from Shah Abdul Latif University Khairpur in 2016 (2nd Division). She worked as Deputy Director-Coordination (BPS-18) in the National Commission for Human Development, Government of Pakistan in 2006. Prima-facie, she obtained NOC and experience certificate vide letters dated 08.10.2018 from NCHD. The record further reveals that she obtained a domicile certificate from UC-2, Taluka Kamber, District Kamber-Shahdadkot

@ Kamber on 05th April 2019, and previously she was holding the domicile certificate from Sukkur Tehsil New Sukkur, District Sukkur on 04.01.2010.

15. The respondent-Commission initially advertised the post of Registrar (Rural) vide advertisement dated 11.09.2019 and after some time issued corrigendum dated 28.09.2018 showing the post of Registrar to be filled on open merit. She was served with the show cause notices dated 06.01.2015, 08.01.2015, 12.01.2015, and 14.01.2015 and faced the disciplinary proceedings in her previous employment on deputation in BISP and later on, found guilty of misconduct and inefficiency which resulted in the heavy loss of Rs. 147,174,900/- to the Government exchequer on account of withdrawal of amounts from the bank by unauthorized persons, and finally was repatriated to her parent department i.e. NCHD vide notification dated 05.06.2015. She is also facing inquiry proceedings conducted by FIA on the aforesaid allegations.

16. Coming to the first proposition, we have found that *prima-facie* there is no manifest discrepancy in the appointment of private respondent requiring our attention. Even we see no substance in the issue of experience for the BPS-19 post of Registrar, as raised by the petitioners, for the reason that this Court cannot perform the functions of a recommending / selection authority in service matters to substitute its opinion for that of the competent authority. On the issue, we are fortified with the decision of the Honorable Supreme Court in the case of Sh. Muhammad Sadiq vs. Federal Public Service Commission and others, **2013 SCMR 264** and Dr. Mir Alam Jan vs. Dr. Muhammad Shahzad and others, **2008 SCMR 960**.

17. Turning to the second proposition, it is an admitted position that the private respondents had cleared the written examination as well as the interview / viva-voce conducted by SPSC, which was a pre-condition before her appointment to the post applied for and primarily, recommendations by SPSC was/is based on written test, as well as, assessment in the interview made by the competent authority / SPSC and a Court of law cannot substitute its own opinion for that of the selecting authority. If any malafide or bias or for that matter error of judgment was floating on the surface of the record, we would have certainly intervened as Courts of law are more familiar with such improprieties rather than dilating upon the question of the fitness of any candidate for a particular post, which as observed above is the subjective matter and can best be assessed by the functionaries who are entrusted with this responsibility, in the present case, the SPSC. For this proposition, we seek guidance from the decisions passed by the

Honorable Supreme Court in the cases of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani, **2011 SCMR 1198** and Muhammad Ashraf Sangri vs. Federation of Pakistan and others, **2014 SCMR 157** and unreported order dated 04.05.2012 passed by the Hon'ble Supreme Court in Civil Petition for Leave to Appeals No.2 and 3-K of 2012.

18. As for the third proposition, in our opinion, the severity of the punishment imposed in the case of dismissal, that is to say, that the employee or the person may not seek employment with the government or in other department or office. And if there has been, or there has been, a simple minor penalty or findings other than major penalty i.e. dismissal from service or compulsory retirement, that does not prevent him/her from holding a future job. On the aforesaid proposition, we are fortified with the latest decision of the Honorable Supreme Court in the case of Ghous Bux vs. Commander (A& Q) Cholistan Rangers, Rahimyar Khan, and others, **2020 SCMR 1853**.

19. Since the subject issue is confined to the appointment of the private respondent, we do not want to travel into the allegations and counter-allegations as raised by the parties in the present proceedings as discussed supra and leave it for the competent authority to look into the severity of the allegations and take appropriate measures, if any, in accordance with law.

20. In the light of facts and law discussed above, the appointment of the private respondent does not seem to suffer from any inherent defect under the law, besides the Petitioners have also failed to point out any legal flaw in the process relating to the appointment of the private respondent, warranting interference by this Court in Constitutional Jurisdiction.

These are the reasons of our short order dated 17.12.2020 whereby we had dismissed the captioned petitions along with pending application(s) with no order as to costs.

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