

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -648 of 2021

Asif Ali Unar

Versus

Province of Sindh and 03 others

Date of hearing
& order : 10.02.2021

Sayed Zulfiqar Ali Shah, advocate for the petitioner.

ORDER

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 Petitioner, seeking direction to the Chief Secretary, Government of Sindh, for transferring Chairman and Controller of Examination, Sindh Public Service Commission (SPSC), on the premise that they are indulged in malpractice, nepotism, and bungling in the recommendation of the favorable candidates to the Government of Sindh, thus do not deserve to be posted in SPSC Respondent.

2. We asked the learned counsel as to how the aforesaid prayers can be entertained under Article 199 of the Constitution for the reason that it is for the Government of Sindh to take appropriate measures if the private respondents are allegedly indulged in such malpractice.

3. Sayed Zulfiqar Ali Shah, learned counsel for the petitioner, argued that the Controller of Examination, SPSC, is mainly involved in accommodating his caste fellows for the posts of Assistant Sub-Inspector, Inspector (Investigation) in Sindh Police Department, and Inspector (Anti-corruption) Anti-corruption Department, Government of Sindh. He further argued that both the private respondents are facing inquiry for their alleged corrupt practices in National Accountability Bureau. He asserted that this Court can give direction to the Chief Secretary Government of Sindh to constitute a Committee to hold an impartial inquiry against the affairs of SPSC as well as private respondents who are involved in these kinds of illegal, unlawful, and illegal activities. He lastly

prayed for the direction to the competent authority for their posting outside the SPSC for the smooth functioning of the affairs of SPSC. In support of his contention, he relied upon the various documents attached with the memo of the petition and argued that respondent No.2 has already taken cognizance of the matter and sought an explanation from respondent No.4 vide letter dated 30.08.2019, but to no avail.

4. We have heard the learned counsel for the petitioner on the maintainability of this petition and perused the material available on record.

5. We are not satisfied with the assertion of the learned counsel for the petitioner on the aforesaid question for the simple reason that where a civil servant is accused of subversion, corruption, or misconduct, the competent authority should initiate prompt disciplinary proceedings and require him to proceed on leave or suspend him under the law and if no action is taken against the delinquent officer for the alleged charges, the Department has to account for such departmental negligence, which is of serious nature and cannot be ignored or condoned.

6. Primarily, the posts of Chairman and Controller of Examinations, SPSC, are Public Office posts that fall within the purview of sub-clause (1) (b) (ii) of Article 199 of the Constitution. Since the petitioner has failed to bring on record any concrete material evidence to take cognizance under a “Writ of Quo-warranto”.

7. Since the issue is confined to the transfer and posting of respondents 3 & 4 who are civil servants and the petitioner cannot seek direction for posting of a civil servant of his choice and it is for respondents 1&2 to look into their conduct and affairs of SPSC. Reference may be made to the case of Peer Muhammad v. Government of Balochistan and others, 2007 SCMR 54.

8. Keeping in view the above-mentioned facts and circumstances of the case, we do not see any infringement of the right of the Petitioner which could be entertained by way of Writ Petition.

9. In the light of the above facts and circumstances of the case, the instant petition is meritless, which is accordingly dismissed in limine along with the pending application(s) with costs. However, the petitioner is at

liberty to approach the respondent-department for redressal of his grievances which shall be attended by respondents No.1&2 under the law, if the petitioner approaches them.

10. These are the reasons for our short order announced in open Court on 10.02.2021, whereby we dismissed the instant petition with costs.