

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -7382 of 2019

Akhtar Hussain and 07 others

Versus

The Government of Sindh & 03 others.

Constitutional Petition No. D -7625 of 2019

Mukhtiar Ahmed and 131 others

Versus

Province of Sindh & 04 others.

Constitutional Petition No. D -7809 of 2019

Abdul Majeed and another

Versus

The Government of Sindh & 03 others.

Constitutional Petition No. D -4704 of 2020

Shah Murad and 05 others

Versus

Province of Sindh & 60 others.

Constitutional Petition No. D -5755 of 2020

Qadir Bux and 02 others

Versus

The Government of Sindh & 03 others.

Date of hearing : 04.02.2021

Date of announcement : 12.02.2021

Mr. Abdul Salam Memon, advocate for the petitioners in C.P Nos. D-7382/2019 and 5755/2020.

M/s. Raj Ali Wahid and Jamshed Abbasi, advocates for the petitioners in C.P No.D-4704/2020.

Mr. Meer Ahmed Mangrio, advocate for the petitioners in C.P No.D-7625/2019.

Mr. Javed Hussain, advocate for the petitioners in C.P No.D-7809/2019.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh a/w Dr. Sikandar Memon, Chief Technical Officer, Health Department and Dr. Khalilullah, Dy.Project Director, EPI.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. - All the above referred constitutional petitions are being disposed of vide this Single Judgment, as common questions of law and facts are involved therein.

2. Through captioned petitions, the petitioners seek issuance of direction to the respondent-Health Department to issue them offer/appointment orders to the post of Gavi Vaccinators (BPS-6) in the Health Department, Government of Sindh on the plea that they have already been declared successful candidates based on marks they obtained in the competitive process i.e. National Testing Service (NTS) and interview, alternatively the appointment orders issued to the private respondents/beneficiaries may be declared nullity in the eyes of law.

3. It is contended, inter alia by Mr. Abdul Salam Memon, learned counsel for the petitioners in C.P Nos. D-7382/2019 and 5755/2020 that procedure of appointment of Vaccinators was flawed under the law; that merit was compromised by the respondent-department to accommodate the beneficiaries / the private respondents in these petitions and other candidates, who were having influence and/or were selected for extraneous consideration; that while selecting the beneficiaries / private respondents, recruitment Rules for the subject post were not adhered to; that initially passing marks was 60, which were reduced to 55 marks to accommodate failed candidates/blue-eyed ones; that Selection Committee constituted by the competent authority i.e. Chief Minister Sindh for conducting re-interview of passed candidates were bypassed vide notification dated 07.08.2019; that successful candidate lacked experience for the post; that the appointment for the subject post was based on Union-wise, which factum was ignored. He further pointed out that some of the petitioners also obtained more than 60 marks in the written test conducted by NTS, but were ignored. In support of his contention, he relied upon the cases of Suo Motu Action E.C & M. SPSC, 2017 SCMR 637, CSP v. Abdul Raouf Dasti, 2006 SCMR 1876 and Syed Mubashir Raza Jaffari & others v. EOBI & others, 2014 SCMR 949. In the alternate, he has prayed for the annulment of appointment of the beneficiaries / private respondents as Vaccinators in (BS-6).

4. M/s. Raj Ali Wahid, Meer Ahmed Mangrio, and Javed Hussain learned counsel representing the petitioners in all connected petitions have adopted the arguments of learned counsel for the petitioners in C.P Nos. D-7382/2019 and 5755/2020 and replied that the official respondents have violated the rights of

the petitioners by failing/delaying to issue appointment letters, although the petitioners have successfully passed the prescribed examination and interview by securing requisite marks i.e. 55/60 marks; that after successfully clearing the examination and interview, the petitioners have acquired a vested right and interest to be appointed on the post of Vaccinators in BS-06, which cannot be nullified/denied by the whimsical and arbitrary actions of the respondents; that the action of the official respondents is in violation of the Fundamental Rights of the petitioners guaranteed under Articles 18, 24, 25 and 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 petitioners are being deprived of their lawful rights to be considered for appointment against the post of Vaccinators in BS-06; that the purported action on the part of respondents is discriminatory and against the fundamental rights of the Petitioners thus not sustainable in law; that the petitioners have completed all the codal formalities viz. written test and interview/via-voce test, therefore, the petitioners' right to seek job is their fundamental right for the particular post and that cannot be snatched by appointing someone else which is violative of principle of natural justice; that the petitioners have the right to seek appointment and the respondents cannot curtail such rights of the petitioners as guaranteed under the Constitution; that the respondents are acting beyond the mandate of law; that petitioners are not at fault and in their place favorable candidates were recommended for the post. In support of their contention, they relied upon the cases of Yameen Khan v. Inspector General of Police, Khyber Pakhtunkhwa Peshawar and 2 others, 2019 PLC (C.S) 1511, Engineer Siddiq Ullah v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar, and 2 others, 2013 PLC (C.S) 1405, and Usman Ali and 17 others v. the Secretary, Religious Affairs and Inter-Faith Harmony Department, Government of Baluchistan and another, 2020 PLC (C.S) 242. They lastly pray for allowing the instant petitions.

5. Mr. Ali Safdar Depar, learned Assistant Advocate General Sindh, has raised the question of maintainability of the instant petitions and argued that the subject petitions are liable to be dismissed as there was transparency in the appointment procedure of the said respondents on the aforesaid posts purely on merit without any favoritism or otherwise, and they have qualification commensurate to the positions advertised in the newspapers. The petitioners have no vested right to challenge the reduction of passing marks initially from 60 to 55 made by the competent authority. However, the same

was ratified and 60 passing marks were kept intact; the recruitment process had been completed due to the reasons as discussed in the report dated 11.1.2021 submitted on behalf of the respondents, therefore no fundamental right of the petitioners have been infringed. In support of his contention, he relied upon the cases of Muhammad Ashraf Sangri v. Federation of Pakistan, 2014 SCMR 157, Arshad Ali Tabassum Vs the Registrar, Lahore High Court, Lahore 2015 SCMR 112 and Sh. Muhammad Sadiq v. Federal Public Service Commission and others, 2013 SCMR 264. He lastly prayed for dismissal of the petitions.

6. We have heard learned counsel for the parties, perused the material available on record and case-law cited at the bar.

7. First of all, we take up the issue of the maintainability of the instant petitions under Article 199 of the Constitution. We are of the view that the grievance of the petitioners does not relate to the terms and conditions of service, but they have sought relief of appointment, therefore the petitions are not barred by Article 212 of the Constitution and are maintainable to be heard and decided on merits.

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

- i) Whether the recruitment process for the post of vaccinator (BPS-6) was flawed under the law?
- ii) Whether the Selection Committee was lawfully constituted; and, the Provincial Minister was competent to reduce the passing marks and facilitate private respondents/beneficiaries for appointment to the posts of vaccinators (BPS-6)?
- iii) Whether some of the private respondents/beneficiaries on the recommendation of the two-member Selection Committee were lawfully appointed as vaccinators in BPS-6?
- iv) Whether the petitioners can claim a right to be appointed through the two-member Selection Committee to the posts of vaccinators (BPS-6)?

9. To dilate upon the aforesaid propositions, it appears from the record that in pursuance of the advertisement published on 22.3.2018 in various Newspapers, inviting applications for recruitment of 1733 vacant posts of Vaccinators in (BS-6) in Expanded Program on Immunization (EPI) Sindh 2019-20, Health Department, Government of Sindh. The prescribed qualification and experience contained in the advertisement was as under:-

- “1. *Matric or equivalent qualification from recognized university or Board.*
2. *Certificate in Vaccination from a recognized institute will be given preference.*
3. *Location/Domicile: All Sindh Province (1733)/Union Council/Town/Taluka*
- *Age limit from 18-30 years required & Age relaxation will be entertained as per Govt rules and Policy.*
 - *Domicile should be only for concerned District.*
 - *Applicant must be residence of same Union Council.*
 - *The preferably marks of NTS are 60 required as per merit.”*

10. Respondent-department started the recruitment process by constituting Selection Committee vide notification dated 19.12.2018 for the subject posts through the competitive process, i.e. National Testing Service (NTS), and none of the candidates secured requisite marks (except few candidates as described in the summary) to make them eligible for further interview, which includes the petitioners as well.

11. As per learned Assistant Advocate General Sindh, the official respondents constituted a Selection Committee of two members only by excluding the member of the Services, General Administration and Coordination Department (SGA&CD), who deliberately absented himself in the recruitment process, for the reasons best known to SGA&CD; however, the respondent-department started conducting interviews of candidates, who qualified in the written test. Per learned counsel for the petitioners, the entire recruitment process was conducted with the sole object to ensure selection of candidates of their choice to extend favor, though the Selection Committee did not have the mandate of shortlisting the candidates for interview, who had not secured 60 marks to get them eligible for interview. However, the Committee shortlisted the candidates by reducing their passing marks from 60 to 55 declared by NTS. The composition of the Selection Committee was as under:-

1.	Additional Secretary (Admn-II) Health Department	Chairman
2.	Additional Secretary (Services-II) SGA&CD	Member
3.	Project Director, EPI	Member

12. We have noticed that irrespective of the above, the final list of successful candidates in the written test and interview/Via-voice was issued in January 2019; and, they were appointed Vaccinators in (BS-6) accordingly. The aggrieved candidates/petitioners assailed the aforesaid recruitment process by filling these petitions before this Court on the aforesaid grounds. Looking at the above perspective and keeping in view the legal flaws as pointed out in the

recruitment process of Vaccinators (BS-6) initiated by the respondent-department, this court vide order dated 29.10.2020 directed the Secretary Health Department Government of Sindh to probe into the appointment procedure of vaccinators and submit the compliance report. The Inquiry Committee unanimously opined as under:

“Findings:

1. The committee made a thorough enquiry and went through following main record list.
 - a. Letter of permission of appointment
 - b. Advertisement (of concerned News Papers)
 - c. District and UC wise list of candidates who applied for the posts.
 - d. District and UC wise list of candidates who appears in the NTS test.
 - e. District and UC wise list of candidates who secured 60% and above numbers.
 - f. Provision of interview (of candidates secured more than 60%)
 - g. Notification of recruitment committee
 - h. Copy of approved Summary of Hon. Chief Minister Sindh
 - i. Copy of letter sent by SGA&CD
 - j. Final list of Candidates who were issued offer of appointment
 - k. District and UC wise appointed vaccinators who assumed their duties
 - l. Any other relevant information in support of above
2. The committee probed into following two matters:-
 - a) Whether those candidates who were appointed have acquired 60% or above marks in NTS Test or otherwise.
 - b) Whether the appointments were made on the basis of Union Councils or otherwise.
 - c) Mr. Zahoor Baloch Ex-PD, EPI Sindh and Saeed Soomro were called upon and enquired by the Committee about process of recruitment.
3. After looking comprehensively into the matter, the enquiry committee concluded that,

All the candidates who are appointed against the post of vaccinator BS-06 are those who obtained 60% and above marks and succeeded in interview by recruitment committee in 2019. None of them is below 60 marks which was set in the advertisement as well as directed by the Hon. Chief Minister Sindh. However, all the selected candidates were appointed in their respective district of domicile instead of Union Councils.

However, one candidate Named Guhram S/o Imamdin Bajkani (Roll No.7102860) who was having domicile of District Kashmore but entered in district Tharparkar in NTS form and therefore, was selected from District Tharparkar and was transferred to District Kashmore.

Sd/-
(Dr. Faiz Ali Mangi)
Chief Technical Officer
(Health)/Member

Sd/-
(Riaz Ahmed Jakhri)
Deputy Secretary (Admn-II)
Health
Department/Member

Sd/-
(Dr. Mazahir Ali Buriro)
Section Officer-III (Health)
Member

Sd/-
(Fayaz Hussain Abbasi)
Additional Secretary (Health)
Chairman of the Committee

13. We have also noticed that the Secretary, Health Department has floated the summary for Chief Minister Sindh on 03.05.2019 for approval of the recommendations of Selection Committee for Selection of (1733) candidates as Vaccinator (BS-06) in all Districts of Sindh recruited for Expanded Program on Immunization (EPI) Sindh, pointed out certain illegalities in the process, an excerpt whereof is reproduced as under:

“12. The observations of the Services Wing on the process of recruitment are as under:

- a) The Recruitment Rules for the post of Vaccinator require qualification of Matric together with Certificate in Vaccination from a recognized institution whereas in the advertisement the Certificate in Vaccination has been published as preference instead of mandatory.
- b) The threshold of minimum marks has been reduced from 60% to 55% without any approval/justification.
- c) A number of candidates have been declared as “Failed” or Not Selected despite having secured more marks in the recruitment test than the candidates declared as selected by the Selection Committee.

A reference is made to the case of Mr. Dur Muhammad S/o Muhammad Saleh bearing Roll No.2900655, Merit No.147 (District Tharparkar) who secured 77 marks in recruitment test whereas the Selection Committee has declared him as “Failed” and awarded nil marks.

- d) Few candidates who have secured passing or more than passing marks have been declared as “does not read/write” by the Selection Committee which raises doubts on the transparency of the recruitment process.”

14. Keeping in view the aforesaid discrepancies in the recruitment process as discussed supra, the competent authority constituted the committee vide notification dated 02.08.2019. The terms of reference of the committee were as under:

- a) the threshold of maximum marks as 60% shall be adhered and no relaxation in this regard will be allowed.*
- b) Only those candidates who secured 60% marks or above in the recruitment test and possesses Certificate in Vaccination from recognized Institute shall be re-interviewed.*
- c) The condition of Certificate in Vaccination from recognized institute shall be compulsory and not relaxable as the same is requirement of the Recruitment Rules for the post of Vaccinator.”*

15. Prima-facie the aforesaid factual position of the case explicitly show that the appointments were made without consultation with the Services, General Administration and Coordination Department which had a pivotal role in the recruitment process; bypassing the aforesaid department, has a far-reaching

effect; and, is against the basic law as provided under the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1973.

16. The reasons assigned by the respondent-Health department for non-joining the member of Services, General Administration and Coordination Department are not sufficient to take a unilateral decision and continue with the recruitment process, if continued that would be violative of Rule 3 (2) of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1973.

17. Furthermore, the tabulated interview sheet of the candidates and marks assigned by the two-member Committee, who belonged to the same department, unambiguously show that they failed and neglected to look into the basic qualification of the candidates on the premise that the successful candidates lacked the experience for the post applied for; and, having no training/experience certificate from any recognized institution for the subject post before applying for the post. It is well-settled law that qualification cannot be relaxed under the law, however, they were assigned more than 60 marks to them who were simply matriculated having no experience for the post, which prima-facie show that whole recruitment process initiated by the respondent-health department was flawed under the law, even the directive of the competent authority was not followed by the official respondents, who ordered to conduct re-interview of the candidates by constituting the three-member committee vide notification dated 2.8.2019. However, the concerned department went ahead and completed the recruitment process as earlier undertaken by the Recruitment / Selection Committee by adhering to the original marks granted to the candidates i.e. 60 marks.

18. It is an admitted position that the NTS test was conducted on the aforesaid posts; and, only 1611 candidates could qualify the written test, and in the meanwhile, due to intervention by the Provincial Minister Health (as per summary), the threshold was unilaterally reduced from 60 to 55 marks. Resultantly 3245 candidates were made to qualify NTS who were subsequently interviewed by the Selection Committee. Prima facie, this approach negates the basic spirit of the terms of advertisement and recruitment rules framed by the competent authority for which this Court cannot endorse the viewpoint of the respondent-Health Department which is against the law.

19. In view of the foregoing legal position of the case, we cannot agree with the said inquiry report for the simple reason that as per the conditions

prescribed for the aforesaid appointment, a candidate had to have the experience certificate for the post applied for, merely achieving a minimum of marks in the test and interview was not sufficient to be declared successful candidate until and unless he has requisite qualification for the post.

20. In this scenario, we deem it appropriate to dispose of these petitions in the following terms:

a) All the successful candidates who obtained 60 marks and above in the written test conducted by NTS (1611 candidates) are required to undergo a fresh interview by the committee constituted by the competent authority vide notification dated 07.08.2019; and, the rest of posts shall be re-advertised in accordance with the recruitment rules.
AND

b) The appointment of the successful candidates in the interview is subject to Union wise seats as outlined in the terms of advertisement published in daily newspapers dated 22.3.2018. AND

c) The competent authority is directed to establish an Institute for training of Vaccinators within three (03) months. In the meanwhile, the successful candidates of the interview are required to undergo training of Vaccinator for the post within a reasonable time from any recognized institute of Nursing and/or Government Hospital before administering the subject vaccine to the public at large.

d) The petitioners who obtained less than 60 marks have to participate in fresh recruitment process, thus their petition(s) stand dismissed.

21. For all the foregoing reasons, we dispose of these petitions with the above observations.