

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 -4826 of 2013

Muhammad Usman Ghani Qureshi

Versus

Federation of and 02 others

Date of hearing &
Decision : 16.02.2021

Petitioner present in person.

Syed Yasir Ahmed Shah, advocate for respondents 2 and 3.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. - The subject matter of the titled petition is appointment as Deputy Manager (Human Resource Management) (BS-18) in Port Qasim Authority (`PQA`).

2. The case of the petitioner is that he has been deprived of his appointment in PQA as he in terms of the assessment sheet dated 16.05.2007 was considered to be at Serial No.1 whereas the respondent-authority with the analysis of marks on different criteria considered one Muhammad Saqib son of Nawab Gul and appointed him on the subject post, though he was not qualified to be appointed on the premise that he lacked qualification i.e. overage of more than one year. Per petitioner, during his tenure of service, he passed away and the subject post remained vacant till today, however, he has been deprived of his legitimate right to be appointed as Deputy Manager (HRM).

3. At the outset, we asked the petitioner as to how he claims appointment as Deputy Manager (HRM) in PQA on the ground that as per the assessment sheet as discussed supra he secured lesser marks i.e. 31 than the candidate who obtained 33 marks and was subsequently appointed.

4. Petitioner who is present in person has submitted that though Muhammad Saqib has passed away however he still holds his right for the subject post; and, as per the aforesaid assessment, he is still waiting for the offer of appointment. He further submitted that the failure of the respondent-PQA to appoint him in time was/is the discriminatory attitude on their part, thus their action is liable to be deprecated. He next submitted that ignoring him and accommodating their blue-eyed one is against his fundamental rights as enshrined under Articles 4,9 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. In support of his submissions, he referred to the public notice dated 05.03.2006, test/interview letter dated 08th May 2007, and assessment

sheet of shortlisted candidates for the post of Manager (HRM) (BS-18) (page 21). At this juncture, we asked the petitioner that the principles of laches are fully attracted in the present case on the premise that the alleged cause of action accrued to him in the year 2007 whereas he approached this Court in the year 2013 approximately after 06 years. He replied that laches per se is not a bar to a constitutional petition. In support of his submissions, he relied upon the case of Ardeshir Cowasjee v. Karachi Building Control Authority (KBCA) Karachi, 1999 SCMR 2833. He further submitted that the alleged delay and laches would not come in the way of the grant of the substantive relief to him as this Court could decide the lis on merits. He lastly prayed for the direction to the respondents to appoint him as Deputy Manager (HRM) (BS-18) by waiving the period of probation.

5. Conversely, learned counsel representing the PQA argued that this petition is not maintainable on account of laches. The second ground raised by him that since the recruitment process of 2007 was over and a considerable time had already passed, therefore, this petition at this point is not entertainable. The third point he has raised that at the relevant time the Port Qasim Authority having no statutory rules of service as such this petition in absence of statutory rules of service was/is not maintainable and is liable to be dismissed.

6. We queried from the learned counsel representing the PQA that as to how one Mr. Muhammad Saqib (now deceased) was shortlisted and appointed against the post of Deputy Manager (HRM) (BS-18) as he did not qualify for the post as he lacked the qualification i.e. `overage` at the time of cutoff date as provided in the advertisement dated 05.03.2006. He replied that the competent authority approved his appointment; since the petitioner has not called in question the appointment of Muhammad Saqib, therefore, he is not in a position to satisfy the query raised by this Court on the premise that the post advertised was the contractual post for a limited period which period by efflux of time expired, thus no vested right accrued to the petitioner to claim a contractual post after a considerable period. He prayed of dismissal of the instant petition.

7. We have considered the submissions of the petitioner who is appearing in person and learned counsel representing the PQA as well as case-law and have also gone through the entire record carefully. Prima-facie, this petition is not maintainable for the simple reason that no offer of appointment order had been issued to him, thus no vested right has accrued in his favour. It

is well-settled law that even a successful candidate does not acquire an indefeasible right to be appointed and that it could be legitimately denied. The notification inviting application for the appointment has been held only to be an invitation to the qualified candidates to apply for the recruitment. On his mere applying, he does not acquire any right to the post.

8. The material placed on record before this Court clearly shows that the petitioner obtained lesser marks than the successful candidates as discussed supra. The subject appointment was in respect of a contractual post offered to another candidate who is not a party in the present proceedings; and, we have been informed that the successful candidate had already passed away during his tenure of service. However, we have reservations against the conduct of the respondent-PQA in dealing with the appointments in PQA in a cursory manner as discussed supra.

9. Before parting with this order, we have noticed that the post advertised in the Newspapers (Daily Dawn) dated 05.03.2006, pertained to Deputy Manager (Human Resource) (BS-18) in Port Qasim Authority, and the candidate appointed against the aforesaid post had already crossed the age of 40 years as required in terms of aforesaid advertisement, however, he was accommodated in violation of recruitment rules for which the respondent-PQA is responsible to account for that as petitioner claims that he was a suitable candidate for the subject post, he was ignored and in his place, another candidate was accommodated in violation of the law. Therefore, apparently, in the absence of the requisite qualification and experience, the candidate who is not a party in the present proceedings was not eligible to be appointed on contract on the aforesaid analogy, however, no conclusive findings could be given in the matter under Article 199 of the Constitution of Islamic Republic of Pakistan. The case of the petitioner is also hit by the application of laches as he approached the Court belatedly without any reasonable excuse for such delay.

10. Furthermore, the case law relied upon by the petitioner is quite distinguishable from the facts and circumstances of the present case.

11. This Petition merits no consideration and is dismissed along with the listed application(s) with no order as to costs.

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