

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

**Constitutional Petition Nos. D – 1706 of 2015,
1700 of 2015 and 1900 of 2015**

Order with signature of Judge(s)

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR &
MR. JUSTICE ADNAN-ULKARIM MEMON**

05.10.2021

Mr. Moiz Ahmed, advocate for the petitioner in C.P. No. D-1700/2015.

Mr. Muhammad Rizwan Saeed, advocate for the petitioner in C.P. No. D-1900/2015

Mr. Aziz-ur-Rehman Akhund, advocate for respondents No.2, 4, 5, 6, 7 and 9 in C.P. No. D-1900/2015

Mr. Karam Dad Khan Tanoli, advocate for respondent No2 in C.P. No. D-1706/2015

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SALAHUDDIN PANHWAR, J: Precisely, relevant facts of the case are that six complaints were preferred before the Ombudsman, challenging the recruitment in STEVTA. Learned Ombudsman after hearing concerned authorities passed order dated 13.4.2013. Being relevant, operative part of the decision is that: -

“58. In view of the above, I, in exercise of powers vested in me under Section 11 of the Establishment of the Office Ombudsman for the Province of Sindh Act, 1991, hereby direct the Managing Director, STEVTA, to appoint all the six (6) complainants to the posts for which they had applied and had secured higher marks in the test and interview and which are lying vacant as reported by the Legal Advisor STEVTA, vide his letter No.STEVTA/Admin/Legal/2012/7409 dt. 10.12.2013 as well as by the Regional Directors through different letters as mentioned hereinabove, inside 15 days hereof.

59. I also direct the Chief Secretary, Sindh to constitute an enquiry committee, comprising senior officials, to probe into the matter of appointments made in STEVTA and to ensure that those found delinquent are not escaped unpunished.”

2. Learned counsel for the petitioner in C.P. No. D-1700/2015, while referring judgments reported as PLD 2016 SC 940, 2017 PLC

CS 602, PLD 2016 SC 687 and 2017 PTD 1481, contends that Ombudsman was not having jurisdiction to issue direction with regard to appointment of any complainant in STEVTA, which is a public sector institution. Whereas counsel for respondents in C.P. No. D-1706/2015 is seeking implementation of the Ombudsman's order. He further contends that as per comments of Ombudsman, Ombudsman was fair enough when he noticed certain illegalities by STEVTA, hence directions with regard to issuance of appointment order are in accordance with law.

3. At the outset, it would be conducive to reproduce herein below Section 9 of the Ombudsman Act:

"9. Jurisdiction, functions and powers of the Ombudsman:-- (1) The Ombudsman may on a complaint by any aggrieved person, on a reference by the Governor or the Provincial Assembly, or on a motion of the Supreme Court or the High Court made during the course of any proceedings before it, or of his own, motion, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees:

Provided that the Ombudsman shall not have any jurisdiction to investigate or inquire into any matters which:--

(a) are subjudice before a Court of competent jurisdiction of judicial tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or

(b) relate to the external affairs of Pakistan or the relations or dealings of Pakistan with any foreign state or government; or

(c) relate to, or are concerned with, the defence of Pakistan or any part thereof, the Military, Naval and Air Forces of Pakistan, or the matters covered by the laws relating to those forces.

(2) Notwithstanding anything contained in subsection (1), the Ombudsman shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the Agency in which he is, or has been, in respect of any personal grievance relating to his service therein.

(3) For carrying out the objectives of this Act and, in particular for ascertaining the root causes of corrupt practices and injustice, the Ombudsman may arrange for studies to be made

or research to be conducted and may recommend appropriate steps for their eradication.

(4) The principal seat of the Office of Ombudsman shall be at Karachi, but he may set up regional offices, as, when and where required."

4. Reading of the above provision prima facie permits the Ombudsman to entertain and investigate a complaint/application by an aggrieved on allegation of mal-administration on the part of any 'Agency' or any of its Officers or employees albeit Ombudsman cannot exercise the ultimate jurisdiction of Civil Court as well investigate the matters which are pending in the competent Courts as enshrined in the above referred Section 9. Thus, the prima facie object of domain of the Ombudsman appears to be of 'supervisory' in nature whereby Ombudsman can pass appropriate order in event of any mal-administration. The term mal administration shall include failure to perform legal duty or a poor management in performing legal duty/obligation.

5. The perusal of the impugned judgment coupled with its examination with referred law (legal position) in juxtaposition, it becomes obvious and clear that Ombudsman is not competent to issue direction for appointment (s) of complainant (s), even if there had been found some illegalities in recruitment process. The provision of Section 11 of the Act is quite clear and obvious that even on finding '**mal-administration**' in the complained matter, the legal course available for him is to:-

"he shall communicate his findings to the Agency concerned."

6. We are of the view that by issuing such *specific direction*, the Ombudsman has travelled beyond his jurisdiction; though he was competent to point out any illegality and refer the matter for legal action to the concerned authority in accordance with law, as

defined in Section 11 of the Act *itself*. Thus, such direction cannot be stamped as *legal*. Accordingly, the impugned order is set aside. Resultantly, C.P. Nos. D-1700/2015 and 1900/2015 are allowed and C.P. No. D-1706/2015 is dismissed.

Office to place copy of this order in connected petitions.

JUDGE

JUDGE

Zahid/*