

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 3131 of 2018

CP No. D- 1848 of 2019

CP No. D- 239 of 2020

BEFORE :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Date of hearing 04.11.2021
Date of decision: 11.11.2021

Petitioners: Adeel Ahmed and others in CP No. D- 3131 of 2018, Asif Ali & others in CP No. D- 1848 of 2019 and Ms. Sundas Khan and others in CP. No. D- 239 of 2020 through M/s. Hameedullah Dahri, Javed Ali Buriro, Abdul Rehman Dahri Advocate(s) who are present while Malik Naeem Iqbal, Advocate is reportedly busy before principal seat.

Respondent-5: Mr. Ali Abbas Memon, Advocate along with Dr. Touqeer Ahmed, Chief Commissioner FBR Hyderabad

Respondent-1: Mr. Ashfaq Nabi Qazi, Assistant Attorney General

ORDER

ADNAN-UL-KARIM MEMON, J:- Through all the captioned constitutional petitions the petitioners have prayed as under:-

- a. To declare that the appointment orders dated 05.10.2018 of the petitioners are legally and lawfully issued in favour of the petitioners by respondent No.4 while substantially holding charge of the Chief Commissioner Regional Tax Office Hyderabad.
- b. To declare that, while holding Look After Charge, the exercise of powers by respondent No.5 to declare the appointment orders dated 05.10.2018 of the petitioner through the impugned letter dated 22.10.2018 is incompetent, illegal, unlawful, unconstitutional, ultra vires, malafide, without lawful authority, void ab-initio, against principles of natural justice and no legal effect.
- c. To declare the impugned letter dated 22.10.2018 is incompetent, illegal, unlawful, unconstitutional, ultra vires, malafide, without lawful authority, void ab-initio, against principles of natural justice, and of no legal effect.

- d. To direct respondent No.1 to produce before this Honourable court complete original record of the recruitment process initiated through the advertisement dated 4.7.2018.
- e. To direct quash and are set aside the impugned order dated 22.10.2018 being issued in excess of authority not vested in respondent No.5.
- f. To direct respondent No.1 to allow the petitioners to join their respective duties, which they have been appointed against through the appointment orders dated 05.10.2018, or any action adverse to the person and employment of the petitioners.

2. All the above referred Constitutional Petitions are being disposed of by this Single Order, as the common question of law and facts are involved therein.

3. Brief facts of the case are that respondent No.2 published advertisement in leading Newspaper for appointment to the posts of Upper Divisional Clerk (UDC), Lower Divisional Clerk (LDC), Driver, Sepoy, Naib Qasid, chowkidar, and Sanitary Worker for Regional Tax Office Hyderabad Federal Board of Revenue (FBR). Petitioners have averred that in addition to the posts advertised, there were other posts also which had been lying vacant on account of promotion of the employees which was/is evident from the public notice as discussed supra. Petitioners further added that the posts could be increased or decreased at the time of initial appointment. Petitioners have submitted that in response to the above advertisement several candidates including petitioners applied for the subject posts, and subsequently qualified for the Test & Interview; and, were issued appointment orders on contract basis, subject to physical fitness and antecedent report from the concerned quarters. Petitioners pointed out that before retirement of respondent No.4 on attaining the age of superannuation, he completed all codal formalities for such appointments being competent authority, however after just his retirement from service, respondent No.5 took look after charge of the subject post he issued letters to Civil Surgeon Services Hospital Hyderabad and District Accounts Officer Hyderabad informing them that no any appointment letter had been issued in favour of the petitioners; and, in case of production of such letter / order the same may be treated as fake; that issuance of such letter by respondent No.5 was not only in excess of his limited powers to Look After the Charge of the post of Chief Commissioner Inland Revenue but also infringed the principles of natural justice by declaring the

recruitment process initiated by respondent No.4 through transparent manner as fake and bogus without assigning any reason and affording an opportunity of hearing to the petitioners; that coincidentally on the same day Medical Superintendent Services Hospital Hyderabad went to Directorate of Internal Audit (Inland Revenue) / Respondent No.3 for verification of letters / offers orders of those candidates including some of the petitioners approached to the hospital for Medical Fitness Certificate dated 22.10.2018 who verified the offer orders of the listed persons being genuine and authentic vide letter dated 24.10.2018 and this unequivocally vindicated the appointment letters duly issued by respondent No.4 while holding the incumbency of Chief Commissioner Regional Tax Office Hyderabad; that the petitioners are waiting for their fate as on one hand the impugned letter of respondent No.5 addressed to Civil Surgeon Services Hospital Hyderabad and District Accounts Officer Hyderabad declaring the said appointment letters of the petitioners as fake and on the other hand the appointment letters hold the field as it has not been cancelled as yet by the recently posted regular incumbent of Chief Commissioner RTO Hyderabad since 22.10.2018, in the circumstances the petitioners finding no other remedy have filed the instant petition.

4. Learned counsel for the petitioners contended that the impugned letters dated 22.10.2018 issued by respondent No.5 are illegal, unlawful and without lawful authority; that the entire recruitment process initiated by respondent No.4 being Chief Commissioner Regional Tax Office Hyderabad and culminated in the appointment orders of the petitioners was not only transparent but in accordance with law as declared by the Hon'ble Superior Courts; that on issuance of appointment orders by respondent No.2 after fulfilling the codal formalities vested rights accrued to the petitioners which could not be taken away on mere assumption, supposition and whims of respondents; that after issuance of appointment orders of the petitioners even the office of Chief Commissioner RTO Hyderabad has become functus officio to deprive the petitioners of their vested right of employment; that it well settled that Look After Charge does not envisage exercise of powers of regular incumbency of the office for which Look After Charge is assigned; that the petitioners have been condemned unheard; that if any negligence is presumed on the part of authority in appointing the petitioners, the same cannot take away

the rights of the petitioners created by the appointment orders issued after complying with all legal formalities; that denial of employment by respondents to the petitioners notwithstanding appointment orders have been issued in their favour after all legal formalities, such action of respondents is violative of fundamental rights of the petitioners guaranteed under Articles 2A, 3, 4, 8, 9, 10-A, 18, 25, 27, 31, 37 & 38 of the Constitution. They lastly prayed for allowing the instant petitions.

5. Upon notice respondent No.3 / Chairman Recruitment Committee filed comments and supported the stance of the petitioner on the premise that the respondent No.4 holding look after charge of Chief Commissioner Inland Revenue, Regional Tax Office, Hyderabad, and was not authorized to declare the appointments as “fake” in his letter sent to FBR; that the appointments on the subject posts were made by the competent authority under the recommendations which were made by the Recruitment Committee, after following due process and Standard Operating Procedure, as provided under Administrative Law; that the appointments have been alleged to be “the fake” by the successor incumbent Chief Commissioner without carrying on any inquiry by the Federal Board of Revenue, Islamabad and without appropriate inquiries required to be conducted by a committee, consisting of unbiased officers, constituted by the Board. However, no Enquiry Committee was constituted to check the genuineness / veracity of the procedure adopted and authority exercised for such recruitments.

6. Mr. Ashfaq Nabi Qazi, Assistant Attorney General has contended that the alleged appointment letters of the Petitioners produced along with Memo of Petitions do not validate and legitimize their appointments as genuine. However, he pointed out that the committee headed by Dr. Touqeer Ahmed, Chief Commissioner FBR Hyderabad opined that their basic appointments on contract basis on the aforesaid posts as fake. In support of his contention he relied upon the parawise comments / reply of respondent No.2 coupled with certain documents including report of Chief Commissioner Inland Revenue Regional Tax Office Hyderabad.

7. Learned Counsel for the Petitioners refuted the claim of RespondentNo.5 and emphasized during hearing that all the documents of the Petitioners regarding their employment with the

FBR Hyderabad are genuine and hence not allowing them to join their respective postings, without hearing by the Respondents based on the report of Respondent No.5 is illegal. However, said assertion has been rebutted by Respondent No.5 present in court on the basis that the furnished documents of the Petitioners are false.

8. We have noticed that learned counsel for Petitioners 1 to 4 in C.P. No.D-3131 of 2018 was called absent due to his engagement on the previous date of the hearing; today also he is called absent and reportedly busy before principal seat. Since the identical issue is involved in all these petitions, therefore these petitions are taken up at the request of learned counsel for the Petitioners present in court in connected petitions for final disposal on merits.

9. We have heard the parties at length on the issue involved in the matter and perused the material available on record.

10. A query was raised by this Court as to how the instant petitions are maintainable against the issue of appointments in the light of judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Government of Punjab through Chief Secretary and others vs. Aamir Junaid and others [2015 SCMR 74]. In reply to the query, learned counsel for the petitioners argued that the Petitioners were validly appointed on the subject posts, they completed all codal formalities of the Respondent-department, therefore, they are entitled to be allowed to join their respective posts.

11. Based on respective submissions advanced, the issues that arise for consideration of this Court in the petitions are whether the process through which the petitioners were appointed was transparent, if not, the respondents have sufficient reason to scrap the appointments of the petitioners to be fake who have passed through the proper recruitment process. And, whether the petitioners have acquired any right of appointment on contract basis in terms of public notice issued for such posts, are to be considered for regular appointment?

12. Learned counsel for the petitioners in unequivocal terms have stated that the purported action taken by respondent No.5 could not draw any force in the advertisement under which the authority had reserved the powers to withdraw from the process once the process

was completed and the Selection Committee / Board had recommended the appointments of the petitioners. Thus the impugned letters are liable to be set aside and the petitioners are required to be taken back to their respective jobs in terms of offer letters issued by the Respondents.

13. In our view, he who seeks equity must do equity and approach the Court with clean hands, ill-gotten gains cannot be protected. It is argued by Respondent No.5 that Petitioners had got their appointments through the backdoor, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to them. Prima facie the appointments of the Petitioners against the posts of UDC, LDC, Driver, Sepoy, Naib Qasid, chowkidar, and Sanitary Worker for Regional Tax Office Hyderabad, (FBR) is disputed by the Chief Commissioner Regional Tax Office Hyderabad present in court through his comments. It is settled principle of law that to maintain a Constitutional Petition it is the duty and obligation of the Petitioners to point out that the action of the Respondents violated the rules and regulations, which the Petitioners have failed to point out and have also failed to make out any case for discrimination as well as no material was placed as to who were the persons who under identical circumstances were given the appointments.

14. In view of the foregoing, this Court cannot give sanctity to the appointment letters of the Petitioners and other documents produced by them and leave it for the Competent Authority to determine the genuineness or otherwise of the documents, claims, and counter-claims, therefore, on the aforesaid plea the Constitutional Petitions filed by the petitioners cannot be maintained.

15. We are of the considered view 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 their mere applying or selection, they do not acquire any right to the post. The action of the respondents does not impinge, petitioners, any fundamental and statutory right. The recruitment process initiated by them and culminated in recommending the eligible candidates do not violate the principles of natural justice. Besides that, no malafide

of the respondents has been shown by the petitioners to call in question their action of recommending the eligible candidates for the subject posts as per recruitment policy in vogue.

16. In view of the discussions made above, it is obvious that the petitioners did not acquire any right of appointment against the posts advertised. Even otherwise, this Court, on the issue of fake appointments in the department of the Government, seeks guidance from the pronouncement of the Judgment of Honorable Supreme Court in the case of Government of Punjab through Chief Secretary and others vs. Aamir Junaid and others [2015 SCMR 74], which provides guiding principle on the aforesaid issues. An excerpt of the same is reproduced as under:-

“Undoubtedly such order passed by the learned High Court is absolutely valid and it has been left to the department itself to scrutinize/examine the eligibility of the respondents those who pass the test would be retained as employees by applying the rule of locus poenitentiae, notwithstanding that there was some irregularity in the process of selection, may be on account of one of the members, who is said to have acted as an appointing authority was not competent to sit in the same meeting. Whereas those who are not eligible or qualified shall go. This is for the department now to act fairly in terms of the direction of the learned High Court and take further action.”

17. In the light of dicta laid down by the Honorable Supreme Court in the case of Government of Punjab supra, we direct the Chairman, FBR to constitute a Committee headed by him and comprising of Chief Commissioner FBR Hyderabad and another appropriate member co-opted by him, conduct an inquiry of alleged fraud/forgery in the appointments as discussed in the preceding paragraphs and subsequent events, after providing ample opportunity of hearing to the Petitioners and fix responsibility in the matter and take action against the delinquent officials strictly under the law and the observations made by the Honorable Supreme Court in the aforesaid case and submit report to this Court through Additional Registrar of this Court, within 90 days, from the date of receipt of this Order.

JUDGE

JUDGE