

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-4279 of 2020

Muzaffar Ali Talpur and
02 others

Petitioners through : Mr. Muhammad Arshad Khan Tanoli, advocate

Respondents

Through : Mr. Muhammad Nishat Warsi, DAG along with
Mahmood Khan Lakho, Section Officer (Litigation),
Establishment Division Islamabad and Syed Ali Raza
Zaidi, Deputy Director (Law) Ministry of Climate
Change, Islamabad.

Date of hearing
& order

: **10.02.2022**

ORDER

The above-captioned petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. The Petitioners have summarized their case with the voice of concern that their candidature for the post of Inspector General of Forest Ministry of Climate Change (BS-21) Inspector General (Forests) was shortlisted by the Federal Public Service Commission, Islamabad (FPSC), vide letter dated 20.8.2019, however, due to untimely intervention of the respondent- Ministry of Climate Change, department vide letter dated 30.10.2019, withdrew the requisition of the subject post with the motive to alter the recruitment rules notified for the post, hence, the instant Constitution petition is filed for sending the case of the petitioners to FPSC for their interview of the subject post. An excerpt of the list of provisionally shortlisted candidates is reproduced as under:

“The following two (02) candidates, whose Names & Roll numbers are given below, have been provisionally shortlisted and will be called for Interview as and when it is scheduled, subject to submission of attested copies (with name stamp of attestation officer) of documents mentioned against their names within Ten (10) days. They have also been informed by Registered Post:-

Sr. No.	Roll No./Name (M/S)/Domicile	Document(s) required
1.	00006/K Ghulam Qadir Shah Sindh (R)	Original Departmental Permission Certificate (DPC) with exact date of appointment and domicile accepted on FPSC's prescribed Form (available on FPSC's website) duly signed and stamped by issuing authority.
2.	00012/K Muzaffar Ali Talpur Sindh (R)	-Nil-

LIST OF REJECTED CANDIDATES:-

2. The following two (02) candidates, whose Names & Roll numbers are given below have been rejected for the reason(s) mentioned against their names and they have also been informed by Registered Post:-

Sr. No.	Roll No./Name (M/S)/Domicile	Document(s) Required	Reason(s) of Rejection
1.	00001/K Abdul Jabbar Sindh (R)	Original TR of Rs.1500/- deposited on or before closing date (21.01.2019).	Did not deposit/submit Original TR of Rs.1500/- on or before the closing date (21.01.2019) as advertised despite of undertaking given at the time of test.
2.	00016/K Riaz Ahmed Wagan Sindh (R)	Original TR of Rs.1500/- deposited on or before closing date (21.01.2019).	Did not deposit/submit Original TR of Rs.1500/- on or before the closing date (21.01.2019) as advertised despite of undertaking given at the time of test.

3. Mr. Muhammad Arshad Khan Tanoli, learned Counsel for the petitioners, has pressed into service that 01 post of IG (Forests) (BS-21), was referred to the Federal Public Service Commission for initial recruitment on open merit vide advertisement No.01/2019 dated 03.01.2019. The petitioners being qualified applied for the same and after obtaining the test only petitioner No.1 was shown to be short-listed and placed at Sr.No.2 on the merit list, however, the candidature of petitioners No.2 and 3 was rejected on the premise that they failed to submit an Original TR of Rs.1500/ on or before the closing date i.e. 21.1.2019. Per learned counsel, they have paid such requisite fee and relied upon the bank challan available on record. He emphasized that for mala fide reasons, the requisition of the post was recalled vide impugned letter dated 30.10.2019. He further argued that as petitioner No.1 after obtaining the test, his name is falling at the Sr. No.2 of the merit list, of the shortlisted candidates, therefore, the necessary direction for his interview is the demand of law and justice. He also emphasized that the Federal Public Service Commission had commenced the selection process by advertising the subject post and the petitioners had duly applied for it. Thus, a right had come to accrue in favor of the petitioners that they ought to be called for required interview for appointment to the advertised post in the light of the rules prevalent at the time when the post was advertised. He lastly submitted that because of the foregoing circumstances a writ of mandamus may be issued against Chairman Federal Public Service Commission, to the extent that he should convene the committee to interview the candidates to assess their suitability for the post of IG (Forests) (BS-21).

4. Mr. Muhammad Nishat Warsi, learned DAG, assisted by Syed Ali Raza Zaidi, Deputy Director (Law) Ministry of Climate Change Islamabad, has raised the question of maintainability of the instant petition on the ground that the competent authority is empowered under the service jurisprudence to withdraw the post from the Federal Public Service Commission, in terms of the proposed amendment in the recruitment rules for the post of IG (Forests) BPS-21. Per learned DAG, all the petitioners have no vested right to call in question withdrawal of the requisition for the subject post from FPSC. Learned DAG has pointed out that only petitioner No.2 filed representation against rejection of his candidature whereas petitioner No.3 did not file any representation against his rejection. Per learned DAG only recruitment process has been halted on the request of respondent-Ministry vide impugned letter dated 20.01.2020 in terms of policy decision made on

28.7.1991; that petitioners have no cause of action to file this petition because the withdrawal of requisition has not yet been decided by FPSC; that subject position is 100% reserved for promotion and was requisitioned to FPSC for direct recruitment under proviso to rule -2 of the Recruitment Rules notified on 4.4.1989; that the sponsoring Ministry has requested to halt the recruitment process due to restructuring the forestry wing of climate change, including the downgrading of the post of IG (Forests) from BS 21 to BS-20; that the respondent-Ministry is empowered under the law to withdraw the requisition as per policy which could not be challenged in Constitutional Petition. In support of his contentions, he relied upon the statement dated 10.11.2021, 02.02.2021, and documents attached with the statement and submitted that instant petition is not maintainable and is liable to be dismissed.

5. At this juncture, we asked the learned DAG as to how BS-19 officer/respondent No.5 has been posted as IG (Forests) on the acting charge, since 11th April 2019, learned DAG has submitted that it is for this Hon'ble court to decide if his appointment on the subject post is found to be against the law. Prima facie, there is no justification under the law to continue the respondent No.5 to look after the charge of the post of IG (Forests)BS-21, being a junior officer of grade 19, therefore, we are inclined to direct the competent authority of Government of Pakistan, Ministry of Climate Change to appoint forthwith the officer of BPS-21 against the post of IG (Forests), in the intervening period.

6. On merits, we have gone through the recruitment rules for the subject post. According to the Recruitment Rules, 1989, vide notification dated 04.04.1989, for the post of Inspector General of Forest Ministry of Climate Change (BS-21). This post is reserved for promotion and in case of non-availability of a suitable person for promotion, then the post shall be filled in by initial appointment and failing, that by Transfer. The relevant extract reads as under:-

2. Method of Appintment.-The posts shall be filled by the following posts

Name and BPS of the Post	By Promotion	By initial appointment
Inspector General of Forests/Member Secretary of the National Council of Wildlife (BS-21)	100%	-

Provided that if no suitable person is available for promotion, then the post or seats reserved for promotion shall be filled in by initial appointment and failing that transfer.

7. After examining the record, it appears that there is 01 post of Inspector General of Forest Ministry of Climate Change (BS-21). It is an admitted fact that petitioners were called for the written descriptive test on 7.5.2019 by FPSC; and were principally considered, however, the candidature of only one petitioner was shortlisted by the FPSC vide letter dated 20.8.2019, and rest were rejected on account of non-payment of Rs.1500, though this factum has been denied by the petitioner No.2, on the plea that he deposited the requisite challan in the National Bank before the cut of date i.e 21.1.2019, however, the said post was withdrawn by the respondent-Ministry vide impugned notification dated 30.10.2019. Prima facie, non-suiting petitioners No.2 and 3 on technical grounds cannot be

allowed and there will be no harm if the suitability of the petitioners for the subject post is assessed by FPSC on merit.

8. Now the question arises whether after advertisement of the post; and, completion of the selection process up to the level of test, the respondent-Government could withdraw requisition of the post in question.

9. Before going ahead on the proposition, it would be beneficial to have a glance on the reasoning of respondent-department in recalling the requisition already made to FPSC, to start recruitment process for the vacant position of IG (Forests) BS-21, vide letter dated 27th November, 2018, for convenience sake, an excerpt of the letter dated 30.10.2019 is reproduced as under:

“Subject: Appointment of Inspector General (Forests) (BS-21)

I am directed to refer to this Ministry O.M. No.3(6)/Admn-/CC/2018 dated 27th November, wherein it was requested to start the recruitment process for the vacant position of IG (Forests/BS-21)

2. It may be mentioned that this Ministry is undertaking huge projects of national importance pertaining to eco-system restoration and the most important of them is TBTT programme. This programme aims at plantation of 3.29 billion trees in the first phase, compilation of Red Data book of mammals in Pakistan, strengthening of Islamabad Wildlife Management Board and establishment of CITES Management Authority. Such initiatives come under the purview of Forestry Wing which requires strengthening of its role and developing human resource capacities.

3. Apart from the position of IG (Forest), the present hierarchy of the office of IG (Forest) consists of two DIG's (one recently filled through FPSC while other other is vacant) and one post of AIG (Forest) (recently filled through FPSC). The position of IG (Forest) is a 100% promotion post as per existing rules.

4. In view of the operational complexities and lack of career progression for officers of the Forestry Wing, the Ministry has initiated a process for amendment of existing rules of the Forestry, wing which were notified in 1989. Further, there are very few officers/individuals in the country with the requisite experience & exposure required to hold the BS-21 post of IG (Forest) as HR pool is very small in the Forestry Sector.

5. It has accordingly been decided in the Ministry that Recruitment/Service Rules should be revised with special focus on improving career progression of the officers for the Forestry Wing of Ministry of Climate Change and to get the best available human resource for the said post. This includes downgrading of the post of IG (Forests) from BS-21 to BS-20 along with change of criterion of filing of this post and creation of additional posts of DIG (F) and AIG (F).

6. Keeping in view of the aforementioned, it is requested that recruitment of IG (Forests), Ministry of Climate Change requested vide O.M No.3(6)/Admn-1/CC/2018 dated 27th November 2018 may be stopped. The above-mentioned O.M No.3(6)/Admn-1/CC/2018 dated 27th November 2018 if accordingly withdrawn.

This issues with the approval of Secretary, Ministry of Climate Change.”

10. Primarily, the FPSC is an autonomous statutory body is governed under the FPSC Ordinance, 1977 (Ordinance, 1977) as amended up to date. Its main functions are to conduct tests and examinations for recruitment of persons to all Pakistan services, the civil services of the Federation and civil posts in connection with the affairs of the Federation in basic pay scales 16 and above or equivalent; and, other functions as provided under Section 7 of the Ordinance, 1977. In this case, in response to the advertisement published in newspapers on 03.1.2019, the petitioners had participated in the competitive process initiated by the FPSC for the post of Inspector General of Forest (BPS-21). The petitioners were short-listed by the FPSC vide letter dated 20.8.2019, whereafter they were to be called for the interview. Their grievance is that despite successful completion of the process, the same has not been finalized by the FPSC and the only reason for such inordinate

delay is that respondents, vide letter dated 30.10.2019 have purportedly decided to amend the recruitment rules so that the subject post may be filled up by way of promotion instead of direct recruitment.

11. The question is again that once the requisition for direct recruitment is placed with the FPSC by the respective departments of the Government of Sindh and examination process is started that could not be halted in principle on such request of the department and the FPSC under the law has to complete its recruitment process without interruption by the concerned Departments. However, it is conducive to mention here that the respondent department has not amended the recruitment rules as yet to justify their purported withdrawal of the requisition from the FPSC, and such reason has not been assigned by the department after a considerable period of almost three years. It is evident from the above legal position of the case by now it is a well-established principle of law that the rules applicable and conditions required to be specified or those which are in force on the date of initiation of the recruitment process for the subject post and not which were/are obtained later on. In the present case, the recruitment rules notified in the year 1989 are still in force and the FPSC initiated the recruitment process under the aforesaid rules, however, the FPSC could not stop on account of the request of the respondent-department to halt the process on the purported plea of amending the rules to benefit the aspiring officers of the department. Prima facie, we do not see any justifiable reason to stop FPSC.

12. As per our humble view, after advertisement of the subject post, the test was taken by the FPSC, hence, there was no valid justification to recall the requisition of the post at the belated stage for the simple reason that if a post has been advertised candidates have a right to be considered according to the qualifications, etc., laid down in the advertisement. We deprecate the above conduct on the part of defaulting department on the analogy put forward by them in the impugned order and allow the junior officers to continue with the post of B5-21 as discussed in the preceding paragraph, therefore, we are of the considered view that there cannot be any justification to violate the express mandate of Article 27 of the Constitution that no citizen otherwise qualified for appointment in service of Pakistan shall be discriminated against in respect of any such appointment. On the aforesaid proposition, we are fortified with the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Mushtaq Ahmed Mohal and others v. the Hon'ble Lahore High Court, Lahore and others, **1997 §CMR 1043**. Besides that, it is well settled that once the candidate appeared in the light of advertisement before the competent examining forum and pass the test and interview, is entitled to further process of appointment against the vacant post. The Honourable Supreme Court in the case of Nasreen Akhtar and 3 others v. Sameena Bilqees and 3 others **2006 §CMR 312** held as under:-

"So far as the appellants Nasreen Akhtar and others are concerned, it is an admitted fact that they appeared in the light of advertisement dated 25.07.2004, before the selection committee and passed the test and interview. Under the law, they are entitled to be appointed against the vacant posts for which they contested. Even otherwise they were not a party before the High Court and the judgment under challenge has been passed at their back. The Education Department should have issued their appointment orders in the light of the merit list but unfortunately, they were

dragged into the litigation which is the fault on the part of officials of the Education Department. Even otherwise only the notice dated 02.08.2004 was challenged by Sameena Bilqees in the High Court and the learned Judge of the High Court only declared the notice as being illegal and without jurisdiction, whereas the appellants Nasreen Akhtar and others appeared for test and interview before the Selection Committee in the light of advertisement dated 25.07.2006 and passed the same. The respondent Sameena Bilqees did not challenge the aforesaid advertisement. She only challenged the notice dated 02.08.2004 and the learned Judge of the High Court only declared the notice as without lawful authority, therefore, the judgment of the High Court was not binding on the appellants. As the appellants Nasreen Akhtar and others have secured positions in the merit list, therefore, a right has been accorded in their favour and they cannot be deprived of their rested right. Even otherwise, for the sake of argument, if it is accepted that the advertisement dated 25.07.2006 was issued without lawful authority, even then that was the fault of the department, not the appellants. No person can be penalized for the fault of the department."

13. The gist of the above discussion is that captioned petition is allowed and the impugned notification dated 30.10.2019, through which requisition of the post of Inspector General of Forest Ministry of Climate Change (BS-21) was recalled by respondent-Ministry Government of Pakistan, is quashed as without lawful justification and is of no legal effect. Consequently, the Federal Public Service Commission is directed to interview the petitioners for the post of Inspector General of Forest Ministry of Climate Change (BS-21), by ignoring the letter of the Secretary, Ministry of Climate Change, as well as the proposed amendment in Recruitment Rules. It is further held that the Rules as enforced in 1989 will apply to the present case of the petitioners. The aforesaid exercise shall be undertaken by the competent authority/Chairman, FPSC, within two weeks from the date of receipt of the instant order, thereafter recommend the suitable candidate for the subject post on merit. Let a copy of this order be communicated to the Chairman, FPSC, for compliance.

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