

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 6788 of 2021

Dr. Zafar Iqbal Shams

Petitioner : Present in person.

Respondents

Though : Mr. Shoaib Mohiuddin Ashraf advocate &
Mr. Ameer-Uddin, advocate a/w Asif Mukhtiar,
Director Legal Karachi University.

Mr. Muhammad Nishat Warsi, DAG

Dates of hearing
& order

: **13.01.2022**

ORDER

Through this petition, petitioner seeks direction to the competent authority of respondent-Karachi University to hold Selection Board to consider his candidature for the post of Associate Professor BPS-19, *inter-alia*, on the ground that he applied for the subject post, in pursuance of the advertisement dated 13.2.2019 published in daily Dawn Karachi, and the Selection Board has not yet been held, despite lapse of 33 months, which amounts denial of his fundamental right to seek appointment, as enshrined in the Constitution.

2. Petitioner, who is present in person, has submitted that he is working as Assistant Professor in the department of Institute of Environment Studies, the University of Karachi since 26.05.2010, whereas, he applied for the post of Associate Professor in BPS-20, as discussed supra. According to the petitioner, he meets the eligibility criteria as outlined in the public notice, however, the process of appointment has been kept in abeyance without assigning any reason, whereas, he is retiring from service on 01.02.2022. He prayed that his candidature is required to be assessed for the subject post in the aforesaid department before his retirement.

3. Mr. Shoaib Mohiuddin Ashraf, learned counsel for respondent-University has opposed the instant petition with vehemence by placing reliance upon an **order dated 22.3.2021** passed by the Hon'ble Supreme Court of Pakistan in **Cri. P No.713-L/2020** (re-Chief *Executive Officer Multan Electric Power Company Ltd. Khanewal Road Multan v. Muhammad Ilyas etc.*) and

other connected petitions and read extensively the order and submitted that this Court cannot exercise powers under Article 199 of the Constitution in administrative affairs of the respondent-University. He further relied upon the case of Syed Muhammad Arif and others v. the University of Baluchistan and others, **PLD 2006 SC 564** and Dr. Imran Ali Hashmi & others v. University of Karachi & others, **SBLR 2021 Sindh 1804**, and argued that to maintain the Constitutional Petition under Article 199 of the Constitution, it is the duty and obligation of the petitioner to point out what action of the respondent violates the rules and regulations and in this case, petitioner has failed to point out, therefore, this petition is not maintainable. On merits, he referred to the comments filed on behalf of the university and submitted that there is no delay on the part of respondent-university in holding the Selection Board. In support of his contentions, he relied upon the Annexure-A to Z attached with the comments and argued that there are justiciable reasons to put on hold the Selection Board due to the COVID pandemic the university mostly remained closed in the year 2020 and also remained closed for few months in the year 2021. Besides that, appointments are made in the light of prescribed procedure as the subject appointment as per University Code the Selection Board recommends suitable names to the syndicate for appointment on teaching and non-teaching posts. The aforesaid stance has been refuted by the petitioner by submitting that in the intervening period 18 candidates have already been appointed by the Selection Board, chaired by the present Vice-Chancellor, thus there is no excuse to delay the matter of the petitioner. Be that as it may, we are only concerned with the decision of the Selection Board on the candidature of the petitioner in a reasonable time on merit as he has pleaded grave urgency in the matter on the analogy that he is going to retire from service, next month.

4. Mr. Muhammad Nishat Warsi, learned DAG has submitted that since the petitioner is simply seeking consideration of his appointment as Associate Professor in the respondent-university, which does not fall within the terms and conditions of service of the employee of the respondent-university, as such there does not impede to direct the respondent-university to hold the Selection Board for such purposes. Further such direction, does not come within the ratio of the order dated 22.3.2021 passed by the Hon'ble Supreme Court of Pakistan in Crl. P No.713-L/2020.

5. Before going ahead with the proposition put forward by the learned counsel for the respondent-university, at the first instance, we deem it appropriate to direct the competent authority of respondent-university to

convene the meeting of the Selection Board of respondent-university, within two weeks positively, and the case of the petitioner be placed before the Selection Board for consideration for the post of Associate Professor in the Institute of Environmental Studies, under the advertisement dated 13.12.2019, under law, on the premise that sufficient time has already elapsed besides that petitioner is at the verge of superannuation i.e. 01.02.2022. However, it is made clear that during the intervening period all codal formalities shall be completed by the respondent university including verification of the antecedents of the petitioner. The minutes of the Selection Board shall be brought on the record on the next date of hearing, in case of failure Vice-Chancellor of the respondent-University shall be in attendance. Let a copy of this order be transmitted to the Vice-Chancellor of the University of Karachi for compliance.

Re-list, just after two weeks.

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Nadir*