

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –2217 of 2021

Zeeshan Anjum & 10 others

Versus

Province of Sindh and another

Date of hearing
& order : 02.04.2021

Mr. Muhammad Ibrahim M. Sahito, advocate for the petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through the instant Petition, the Petitioners have sought directions to the respondent-Police department to consider and select them for appointment as Police Constables (BPS-05), Home Department, Government of Sindh (Karachi range). The main grievance of the petitioners is that their candidature for the post of Police Constable (BPS-05) has been declined without announcing the final merit list i.e. written test and interview.

2. Mr. Muhammad Ibrahim M. Sahito, learned counsel for the petitioners, has argued that Recruitment Test for Police- Police Constable (BPS-05) was conducted by the respondent-Police department, in pursuance of Public Notice issued in February 2020, published in various leading newspapers; and, the petitioners' names were included in the final merit list of selected candidates, however, after a lapse of considerable time offer letters have not been issued to them. It is contended by the learned counsel that 3337 posts of Police Constable (BPS-05) were lying vacant as advertised by the respondents in the year 2020 and out of the aforesaid vacancies, certain number of candidates qualified the written test and interview and were taken up and appointed as Police Constable (BPS-05) against the aforesaid vacant posts. It is urged that now there are several vacancies, which

are still lying vacant; and, the petitioners deserve to be appointed on the said vacant posts based on the next in line/waiting list candidates. Learned counsel emphasized that the criteria of passing marks in written test and interview were highly discriminatory as additional 15 marks were given to the interview qualified candidates who were/are sons/daughters of retired/serving employees of Sindh Police having 25 years qualifying service as per recruitment policy, however, they have been ignored though they qualified the test and interview and their result was withheld and could not be announced for the reasons best known to them. He further argued that as per recruitment policy, the Police department was bound to announce the final result of all the candidates not only those who have been selected. Moreover, the waiting list of the successful candidates was also required to be prepared which is valid for three months to appoint them on the occurrence of vacancies if any of the successful candidates leave the post. Per learned counsel, the final result explicitly shows that many vacancies are unfilled in the Karachi range. Learned counsel referred to clauses Nos. 14 & 15 of the advertisement and argued that the Police department ensured to increase the number of vacancies and the posts are still lying vacant and the petitioners are the most suitable candidates to be considered for appointment. Learned counsel referred to various documents attached with the memo of petition and argued that they meet the eligibility criteria, as such they could not be deprived of their legitimate right to be appointed on the aforesaid posts. Learned counsel relied upon the policy for recruitment of Constables in Sindh Police-2016 and argued that under clause 4.1.16 publication of final result is mandatory to ascertain the marks obtained in the written test and interview. He further argued that there is a provision of the waiting list in recruitment rules, which is/was required to be prepared at the same time similarly, the same shall not be displayed and shall be kept with the Chairman of the Recruitment Committee to take care of an eventuality when a suitable candidate either fails to join or subsequently he is not found fit for such appointment. He emphasized that the waiting list is also valid for three months, after the date of display of the final result. He prayed for allowing the instant petition as prayed.

3. In the present proceedings, a pure question of law is involved whether a waiting list candidate, not declared successful, can be recommended for appointment against any vacancy occurring due to non-joining of any successful candidate.

4. We have heard the learned counsel for the petitioners on the maintainability of the instant petition and gone through the record with his assistance. Prima facie, it appears from the record that the respondent-Police department had advertised the certain number of posts of Police Constable and was filled in the Police department, Government of Sindh (Karachi range). Prima facie, the candidates from the merit list were declared successful for appointment against the aforesaid posts. We have noticed that as per clause Nos. 9&10 of the Final Merit List, which explicitly provides that any selected candidates found unsuccessful for any of the reason shall stand disqualified and the candidates whose names are not mentioned in the Final Merit List shall be treated failed, as such they did not need to announce the result of the failed candidates.

5. Adverting to the request by the petitioners for an alternate candidate is concerned, a perusal of the relevant record explicitly shows that such discretion lies with the Competent Authority. In the first place, admittedly such discretion has not been exercised in favor of the petitioners to date and it is for them to take care of this issue and this Court is not a position to substitute our findings whether such discretion passed was not exercised in their favor. Prima facie, the said exercise of such discretion was/is not withheld unreasonably because a large number of posts had become available and the department could re-advertise the subject posts to attract fresh blood/better candidates. There was neither malafide nor ulterior motive involved in the matter to call in question their discretionary powers. Therefore, we are not persuaded by the arguments of learned counsel for the petitioners on the aforesaid analogy.

6. In the circumstances of the case, we are of the considered view that the competent authority has to opt to re-advertise the leftover posts including fresh ones, if not earlier done. Therefore, in the facts and circumstances of this case, interference by this Court, at this stage, even after the lapse of considerable time is uncalled for; and, to substitute our

viewpoint. Primarily, our view is further strengthened by the decision of the Hon'ble Supreme Court, rendered in the case of the Secretary Punjab Public Service Commission, Lahore and others v. Aamir Hayat and others, **2019 SCMR 124**.

7. Adverting, to the question raised by the petitioners that they succeeded in the subject examination, thus vested right existed in their favor. This assertion is misconceived. Prima-facie, this petition is not maintainable for the simple reason that no offer of appointment order had been issued in their favor, thus no vested right had/has accrued in favor of the petitioners. 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 their mere submitting application or offer/selection, they do not acquire any right to the post.

8. The jurisdiction of this Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required by law to do and refrain from doing what they are prohibited by law to do. Unless an act or omission of a state functionary falls within the above parameters, it is not liable to be interfered with.

9. For reasons recorded above, this petition is dismissed in limine with no order as to costs, leaving the petitioners to participate in the recruitment process initiated, if any, onwards, subject to all just exceptions as provided under the law.

J U D G E

J U D G E

Nadir*