

IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D – 6244 of 2019

Date	Order with Signature of Judge(s)
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Before:
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Azizullah,
Petitioner, through : Mr. Hussain Bux Sariyo, advocate.

The Province of Sindh
& 03 others, respondents
through : Mr. Ali Safdar Depar, AAG.

Date of hearing : 26.05.2021

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. – By invoking extraordinary Constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, the Petitioner seeks the following relief(s):-

- i. To declare that the appointment of petitioner is valid and genuine in accordance with procedure, therefore, he is entitled to get salary and other benefits as provided to the other batch mates.
- ii. To direct the respondent No.4 to activate the ID of petitioner bearing No.10770305 and release the salaries of petitioner w.e.f. July, 2017.

2. Brief facts of the case, as per pleadings of the petitioner, in a nutshell, are that in pursuance of the advertisement published in 'Daily Kawish' dated 10.05.2015 inviting application for appointment of Head Master/Head Mistress BPS-17, on contract basis for one year, Petitioner applied for the aforesaid post. As per Petitioner, Respondent No.2 started the recruitment process, after processing the application of the Petitioner, on different dates; Respondent No.2 conducted a written test through the Institute of Business Administration Sukkur (IBA). Petitioner added that after conducting the written test and interview, Respondent No.2 issued a final merit list of successful candidates about recruitment test for Head Master/Head Mistress BPS-17. Petitioner asserted that he successfully qualified the written test/interview and was selected and Offer Letter dated 15.05.2017 was issued in his favor and thereafter he obtained medical fitness certificate from Medical Superintendent Office Kashmore, vide

medical certificate dated 22.05.2017. Per learned counsel for the petitioner, subsequently, he was appointed as Headmaster (equivalent to BPS-17) on contract basis vide Office Order dated 10.07.2017. Petitioner has averred that he submitted his joining report to the office of the District Education Officer, District Kashmore vide letter dated 11.06.2017. He further asserted that District Education Officer Primary School, Mumtaz Abad, Taluka Kandhkot, accepted his joining report (Page-33 to 39). Per the petitioner, after joining of his service, no salary was paid to him. Petitioner has submitted that he had forwarded a complaint regarding injustice made with him by the Respondents to the competent authority, however, the Section Officer-I vide letter dated 31.05.2018 opined that previously petitioner was appointed as HST (BPS-16) and posted at Government Special Education Unit, Kandhkot vide appointment order dated 02.01.2013, as such the I.D of employees of Government Special Education Unit, Kandhkot had been blocked on 01.01.2016 due to over appointment in the said unit. Besides, his name was not available in the list of employees of 294 successful candidates, therefore, his I.D. was blocked and his salary was stopped by the Accountant General Sindh, Karachi. He further opined that before the closing of his I.D., he had drawn his salary illegally only for November 2016. Learned counsel for the Petitioner further added that Respondents are under the legal obligation to issue salary to the Petitioner; however, the Respondents have failed to release the same without any lawful justification or reason. Learned counsel has further averred that Respondent No.2 in the meanwhile selected more than 100 candidates who were already holding the post on a contract basis as they were enlisted in the final list of successful candidates and subsequently were appointed and getting their respective salaries, however, only the Petitioner was sidelined; therefore, the action of the official Respondents is discriminatory. The Petitioner being aggrieved and dissatisfied with the self-interpretation of law by Respondent No.2 regarding blocking the I.D of the Petitioner for the post of Head Master/Head Mistress in BPS-17 on contract basis on his wish and will without adherence to the process initiated based on an advertisement for the aforesaid post, has approached this Court on 19.09.2019.

3. We have heard learned counsel for the Petitioner as well as learned AAG on the subject issue.

4. Upon pleading of the parties and arguments extended thereon, two primordial questions arise for our determination in the present proceedings, are as follows:-

i) Whether the Petitioner is qualified for the post of Head Master/Head Mistress in BPS-17 in Education & Literacy Department, Government of Sindh?

ii) Whether the post of Head Master/Head Mistress in BPS-17 in Education & Literacy Department, Government of Sindh is to be filled by 80% by initial appointment through Sindh Public Service Commission (except contract employees) and 20% by promotion amongst the various categories of teachers having 7 years' service in BPS-16?

5. During arguments, learned AAG pointed out that the relevant Recruitment Rules have been framed in pursuance of sub-rule (2) of Rule 3 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, in consultation with the Services, General Administration & Coordination Department, and in supersession of all notifications issued in this behalf. He further submitted that the method, qualification and other conditions for appointment in respect of the post in School Management Service Cadre, Education & Literacy Department, Government of Sindh, has already been provided under the Recruitment Rules vide Notification dated 14th October 2014.

6. The Recruitment Rules depict that the post of Head Master/Head Mistress in BPS-17 can be filled in an aforesaid manner through a competitive process and by promotion on seniority-cum-fitness basis with certain qualification and experience. We do not see any logic to take the aforesaid posts out of the purview of the Sindh Public Service Commission and to fill the same on a contract basis. Admittedly, the Petitioner has not been declared a successful candidate by SPSC, therefore; he cannot claim an appointment for the said post on a contract basis as a matter of right. The declaration of result of the Petitioner for the aforesaid post, if any, made by Respondent No.2 for the post of Head Master/Head Mistress in BPS-17 violates the law which cannot have any sanctity. We are of the view that the qualification and experience for the post of Head Master/Head Mistress in BPS-17 cannot be relaxed under Recruitment Rules.

7. In view of the foregoing, we are of the considered view that the Petitioner was declared successful candidate by IBA Sukkur and Respondent No.2 as Head Master/Head Mistress in BPS-17 without recourse to the provisions contained in the Sindh Civil Servant

(Appointment, Promotion and Transfer) Rules, 1974 and Sindh Public Service Commission (Functions) Rules 1990. It is a well-settled law that a post of BPS-17 can only be filled through the Public Service Commission after inviting in the public notice, therefore no sanctity can be attached with the declaration of the result of the Petitioner as Head Master/Head Mistress in BPS-17 on contract basis, which is a regular budgeted service post.

8. We have noticed that under similar circumstances of the case the Hon'ble Supreme Court has dealt with the subject question vide unreported order dated 12.04.2021 passed in Civil Petition No.590, 671 and 696 of 2021, whereby it is held as under:-

“3. The petitioner seems to have been employed in the project to the post of Headmaster in BPS-17 on two years contract w.e.f. 12.07.2017. First thing that is to be noted that very project was for the period 2013-2017, how the appointment of the petitioners were made on 12.07.2017 on contract basis when apparently the project itself has ended. We have asked the learned counsel for the petitioners as to whether the project initiated through agreement dated 28.11.2014, is continuing, he stated that there is no continuation of the project. The learned counsel for the petitioners further contended that the project has not been taken over by the Sindh Government on non-development side of its budget.

4. This very fact, that the project in which the petitioners are alleged to have been appointed is no more in existence and such project having not been taken over by the Sindh Government on the non-development side, we are unable to understand as to how the petitioners were appointed on the post of headmaster in BPS-17 when the very project was not in existence.

5. Be that as it may, the very appointments in BPS-17, as per law, made under Article 242 of the Constitution, have to be made by the Sindh Public Service Commission (SPSC) and no contract employment could have been made on such posts. Thus, the appointments of the petitioners, as observed by the High Court of Sindh, Karachi in its impugned order, were on their very face illegal and, therefore, in our view, no right whatsoever existed with the petitioners to continue with the employment, more so, when the very contract appointments were not in accordance with law.

6. Be that as it may, the High Court has given certain directions in its impugned order dated 19.01.2021 extending some benefits to the petitioners, though we note that such entitlement to the benefits, apparently, was not available to the petitioners.

7. In view of the above, we find no merit in these petitions, which are dismissed and leave refused.”

9. The Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) has held at paragraph No 198 as under:-

“The Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BS.16 to 22 against the language of these Rules, which are framed under the dictates of the Act as mandated under Article 240 of the Constitution. The Article 242 of the Constitution provides the mechanism for appointment of a Civil Servant through Public Service Commission. This Article is safety valve which ensures the transparent process of induction in the Civil Service. It provides appointment by Public Service Commission with the sole object that meritorious candidates join Civil Service. The Sindh Government through executive or legislative instruments cannot withdrawn any post from the purview of the Public Service Commission as has been done in the case of the petitioners, in negation to the command of Article 242 of the Constitution. For the aforesaid reasons, we hold that the Sindh Government shall make all the appointments in BS 16 to 22 through Public Service Commission.”

10. In view of the foregoing legal position, we are of the considered view that the Government having the domain to frame the policy of appointment and also by law, provide the qualification for appointment against a particular post and thus, appointment against such post through initial appointment or otherwise cannot be claimed without fulfillment of the criteria and the requisite qualifications as provided under the Recruitment Rules as discussed supra.

11. In view of the Judgments/orders of the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch and Shahzad Shamir and others as discussed supra, the Government of Sindh cannot circumvent the law and bypass the directions contained in the aforesaid Judgment/order of the Hon'ble Supreme Court by making appointments in BPS-17 on contract basis, which are required to be filled through a competitive process and regular mode of service.

12. For the aforesaid facts, reasons and circumstances of the case, we are of the view that Article 199 of the Constitution casts an obligation on the High Court to act in aid of law and to protect the rights within the framework of the Constitution. This extraordinary jurisdiction of the High Court may be invoked to encounter and collide with an extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised.

13. Adverting to the contentions of the learned counsel for the Petitioner that his I.D was wrongly closed by the Respondents based on his previous appointment as High School Teacher vide Office Order dated 02.01.2013 (Page 45); that he was not authorized to ascertain whether his appointment was being made within the sanctioned strength or over the above, however, he deposited two months' salary which was drawn against the post of HST (BPS-16) from the strength of Special Education Department, for the purpose to close that I.D.

14. The aforesaid assertion has been belied by the learned AAG while relying upon the enquiry report dated 08.01.2021, which *prima-facie* show that the matter was referred to the Accountant General of Pakistan and Finance Department, Government of Sindh for further probe, besides, above, the enquiry officer opined that the then Section Officers were responsible for such appointments in question to the extent of issuing Offer Letters, if their signatures are found genuine, after forensic analysis; and, recommended for recovery from the responsible officers accordingly.

15. In view of the inquiry report we are not inclined to give direction to the Respondents to unblock his I.D. and release his salary on the premise that his initial appointment in BPS-17 on contract basis is not in accordance with the judgment/order of the Honorable Supreme Court and law.

16. As a result of the foregoing discussion, we do not find any merit in the instant Petition, which is hereby dismissed along with the listed application(s).

JUDGE

JUDGE

Shahzad/