

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Zulfiqar Ahmad Khan

C.P. Nos. D-4617 to D-4620 of 2013

(1) Irfan Gul Dars & others (2) Murad Ali & others, (3) Waseem Gabar
& others AND (4) Mohammad Rafiq Rahukari & others

Versus

Province of Sindh & others in all petitions

Date of Hearing: 26.11.2019

Petitioners: Through Mr. M.B. Khatyan Advocate

Respondents No.1 to 6 in all petitions: Through Mr. Shaharyar Mehar, AAG.

Respondent No.7 in CP No.D-4617 and 4620 of 2013: Through Mr. Munawar Ali Advocate

Respondent No.7 in CP No.D-4619 of 2013: Through Mr. Jamil Ahmed Shah Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioners in these four connected petitions claim to have been appointed in low-paid scales (BS-1 to BS-9) as Naib Qasids, Chowkidars, Baildars, Darogahs, Junior Clerks, Assistant Inspectors, Recovery Clerks, Senior Clerks and supervisors in the defunct Taluka Municipal Administration i.e. Shah Bander, Jati, Sujawal and Mirpur Bathoro of District Thatta.

2. It is claimed in the petitions that petitioners were appointed after all codel formalities as the posts were advertised in the local newspaper. Petitioners claimed to have appeared in tests/interviews, as taken by competent selection committee. After their alleged appointments, it is claimed that the salaries of first month was paid vide entry in the Bank statement of some of the petitioners, as available on

record. It is also claimed in the petitions that petitioners were appointed as election staff and they performed their duties accordingly.

3. Conversely claim of the petitioners as to lawful appointments was seriously denied by the counsels representing the Taluka Municipal Administrations of District Thatta. It is claimed that the then Administrator in violation of the rules/regulations made such appointments in bulk without observing legal/codel formalities and entire process of recruitment was a sham and bogus exercise and tainted with malafide.

4. An interim report of excessive and fake appointments was filed which concluded that the actually walk-in-interview for the appointments in local government department (District Thatta) took place before the actual dates published in the local newspaper with mala fide intention which cannot be termed as lawful recruitment and it did not provide equal opportunities to all eligible and deserving candidates. It is also claimed that these posts were neither sanctioned nor available as vacant at the time of recruitment and all such appointments are not only illegal but a mala fide attempt for their own monetary gains, which cannot be ruled out.

5. We have heard the learned counsel and perused the material available on record.

6. At the very outset we had inquired the petitioners' counsel about the sanctioned strength of these four talukas of District Thatta. The petitioners' counsel has not only failed in his attempt to show the sanctioned strength of these talukas of District Thatta but on the contrary stated that these petitioners were not aware of the sanctioned strength of different talukas and hence they cannot be deprived of their rights vested in them by virtue of issuance of appointment letters.

7. These appointments, in the absence of sanctioned strength, cannot be safeguarded on the count that the petitioners were not actually aware of the sanctioned strength of the four talukas of District Thatta. These petitioners have a recourse available under the law against appointing individuals.

8. The first advertisement, as relied upon by petitioners' counsel, is at page 43 of the leading petition bearing No.D-4617 of 2013, which advertisement appeared on 10.12.2012 on the basis of a letter of 07.12.2012 which disclosed a date of 20.12.2012 for the interviews. A committee claimed to have been constituted by the Administrator of Shah Bunder consisting of Maqsood Mallah, Najam-ul-Majeed and Abdul Jabbar i.e. Administrator Taluka Officer (I&S), and T.O (Finance) Member as Chairman and members respectively. The appointment committee, allegedly constituted, met on 10.12.2012 and fixed a date for meeting of appointment committee on 12.12.2012 at 12:00 p.m. to interview the candidates/applicants who applied for the post of BPS-01 to BPS-09. The above letter is available at page 51 of the leading file. The following letter is Annexure A/8 page 53 which disclosed that the meeting convened on 12.12.2012 as against 20.12.2012 and they started the interview and unanimously decided/approved appointments and ordered to issue appointment letters to the successful candidates for various posts.

9. The committee then made an attempt to file a comparative statement of the candidates who appeared for the interview by filing their list which disclosed names of the applicants, posts, education and the remarks and consequently the appointment orders were issued on 21.01.2013. This exercise is a sham and bogus one as the interviews were held much before the date disclosed in the advertisement.

10. Insofar as claim of the salary is concerned, which is claimed to have been deposited in their (petitioners') accounts, most of the salary amounts were deposited in the account through deposit slip. The individuals who benefited out of this unlawful process will not shy away from depositing a meager amount in the accounts of these individuals in an attempt to make it a legitimate process. The statement of account relied upon shows that perhaps the entry was made on the basis of a cheque deposited through deposit slips. These entries in the statement of account thus cannot be made basis to legitimize the process of recruitment of the petitioners.

11. The petitioners have failed to establish that their appointments were made against sanctioned strength of these four talukas and against the vacancies and budgetary provisions. The total strength of the Town Committee is not more than 50 and the appointments were made in bulk up to 300 or more, which exercise cannot be legitimized on the count that these petitioners were ignorant of the sanctioned strength. It amounts to giving them a permission of unlawful process adopted of which the petitioners are part and parcel. These Town Committees with their meager budget would practically ceased to exist as the entire amount would then be spent on the salaries of these petitioners.

12. In the interim report one Salman Mallah was held to be responsible by the provincial government who was never given permission to appoint candidates over and above sanctioned strength and the non-existent post. It was even revealed that the salaries to these unauthorized/illegal persons were paid by this gentleman who was responsible for their appointments. It cannot be ruled out that he (Salman Mallah) could have deposited the first month salary to some of the individuals, out of the amount he received as illegal gratification. The petitioners have also failed to demonstrate that any election duties

were assigned to them by the Town Committee. Interim report/order revealed as under:-

*“i) **TMA Sujawal**: Advertisement published in Daily Awami Sochon 06.12.2012 wherein applications were called from the eligible candidates, for Walk-in-Interviews on 08.12.2012 in BS-01 to BS-09 (Annex-II) but it has been pointed out that Walk-in-Interviews took place on 06.12.2012 instead of actual Walk-in-Interviews call dated i.e. 08.12.2012 (Annex-III).*

*ii) **TMA Mirpur Bathoro**: Advertisement published in Daily Hilal Pakistan on 06.12.2012 wherein applications were called from the eligible candidates, for Walk-in-Interviews on 08.12.2012 in BS-01 to BS-09 (Annex-IV) but it has been pointed out that Walk-in-Interviews took place on 06.12.2012 instead of actual Walk-in-Interviews call date i.e. 08.12.2012 (Annex-V).*

*iii) **TMA Jati**: Advertisement published in Daily Hilal Pakistan on 12.12.2012 wherein applications were called from the eligible candidates, for Walk-in-Interviews on 20.12.2012 in BS-01 to BS-09 (Annex-VI) but it has been pointed out that Walk-in-Interviews took place on 14.12.2012 instead of actual Walk-in-Interviews call date i.e. 20.12.2012 (Annex-VII).*

*iv) **TMA Shah Bandar**: Advertisement published in Daily Hilal Pakistan on 10.12.2012 wherein applications were called from the eligible candidates, for Walk-in-Interviews on 20.12.2012 in BS-01 to BS-09 (Annex-IV) but it has been pointed out that Walk-in-Interviews took place on 12.12.2012 instead of actual Walk-in-Interviews call date i.e. 20.12.2012 (Annex-IX).”*

13. Thus, we do not see any iota of evidence to consider the case of appointments of these petitioners to be lawful and hence by short order dated 26.11.2019 these petitions were dismissed and above are reasons for the same.

Dated:

Judge

Judge