

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon
Justice Mrs. Kausar Sultana Hussain

Constitutional Petition No.D-4275 of 2014

(Abdul Latif and 02 others v. Province of Sidh and 02 others)

Mr. Zamir Hussain Ghumro, advocate for the petitioner

Mr. Ali Safdar Depar, AAG

Date of hearing &
Order : **18.04.2022**

ORDER

Adnan-ul-Karim Memon, J. Through the captioned Constitutional Petition, the petitioners are seeking direction to the respondents to give them joining/posting orders and allow them to assume duties as Assistant Executive Engineer (BPS-17) and Assistant Accounts Officer (BPS-16) in Sindh Local Government Board, Government of Sindh, in terms of offer of appointment letters dated 30.11.2012, inter alia, on the ground that they applied for the posts of Assistant Executive Engineer (BPS-17) and Assistant Accounts Officer (BPS-16) in Sindh Local Government Board vide advertisement published in the daily newspaper dated 24.02.2012. Petitioners further averred that the applications submitted by them were scrutinized by the respondents and after completion of all codal formalities, they were declared successful candidates by the Selection Committee, subsequently, they received offer letters dated 30th November 2012. Consequently, they submitted their joining report to the concerned report which was duly accepted vide letter dated 03.12.2012. It is also urged that the petitioners are still waiting for their appointment orders, albeit the fact that they successfully went through a competitive process, besides the respondents have adopted a discriminatory posture against the petitioners since their other colleagues have been enjoying their respective postings.

2. Mr. Zamir Hussain Ghumro, learned counsel for the petitioners, has argued that the petitioners have been issued offer letters, which they duly accepted as such vested rights have occurred in their favor, which could not be denied by the respondents on the false and frivolous pretext, rather the respondents are bound to give appointment letters to the petitioners. He next contended that the failure of respondents to issue appointment/posting orders is tantamount to a colorful exercise of power even though the petitioners are qualified to hold the posts and have fulfilled all legal requirements for subject appointment. Learned counsel emphasized that the respondents are discriminating against the petitioners since other candidates have received posting orders, but the petitioners are still in the queue as such the respondents have acted in violation of Article 25 of the Constitution. He next contended that denying employment to a lawful appointee is a manifest violation of the right of life envisaged and protected by the

Constitution such acts of the respondents lack legitimacy. He lastly prayed for allowing the instant petition.

3. Mr. Ali Safdar Depar, learned AAG has submitted that in pursuance of the order passed by this court, the respondent department has verified the record of the petitioners and found the signature appearing on the offer letters issued to the petitioners was of one Javaid Pervaiz, the then Administrative Officer, Sindh Local Government Board, who had issued the offer letters to the petitioners, without the approval of competent authority, on the premise that the petitioners had no academic qualification for the post applied for; and they ought not to have been issued offer letters by the respondent Local Government Board; besides that under the recruitment rules, petitioners cannot be appointed in Sindh Council Unified Grade Service. He prayed for the dismissal of the instant petition.

4. Perusal of record shows that Sindh Local Government Board, Government of Sindh on 24.11.2011 initiated a process of recruitment against the posts in BS-17 and BS-16 of SCUG service (Engineering/Accounts/Administration Branch). In this regard, Public Notice was published in "Daily Dawn" dated 24.02.2012. According to said Public Notice, candidates possessing prescribed qualifications and domicile of Province of Sindh were short-listed and called for interview by the Selection Committee. The Selection Committee after holding their interviews recommended for appointment of candidates for the post in BPS-17 and BPS-16 of SCUG service. An excerpt of the offer letter dated 30.11.2012 issued in favor of one of the petitioners is as under:

"Abdul Latif
S/O Rasool Bux

Subject:- APPOINTMENT IN BASIC PAY SCALE -17 (M&E) OF SINDH COUNCILS UNIFIED GRADES SERVICE (ENGINEERING BRANCH)

With the approval of competent authority, you are hereby offered a post of BS-17 (M&E) of Sindh Councils Unified Grade Service (AEN/DTO) (Engineering Branch) in the pay Scale of Rs.16000-1200-40000, plus usual allowance as admissible under the rules, on the following terms and conditions that:-

- a) Your appointment will be on probation for a period of two years in the first instance. If your work and conduct is found un-satisfactory during the probationary period your services will be dispensed with without any notice.
- b) You will be governed by Sindh Councils Unified Grade Service Rules 1982, as amended from time to time and by such other rules as may have been or may hereafter be framed/adopted by the Government for officials in this cadre.
- c) You will be liable for transfer from one Local Government to another Local Council/Government within the province of Sindh.
- d) In case your intend to resign from the post, you shall have to give one month's notice or in lieu thereof surrender one month's salary.

If you accept the above terms and conditions, you are required to convey your acceptance within fifteen days from the receipt of this offer letter along with the following documents duly attested, failing which offer will be cancelled without any notice:

- i. Matriculation Certificate
- ii. Degree (B.E Civil)
- iii. Domicile Certificate
- iv. Permanent Residence Certificate
- v. C.N.I.C and photograph Medical/Physical Fitness Certificate from the Medical Superintendent
- vi. Two Character Certificates from Government Officers n BS-17 or above who are not related to you

Sd/-
Secretary
Sindh Local Government Board”

5. Prima facie, there is no denial of the fact that the petitioners were issued offer letters for the subject posts, and/or their offer letters were not found fake, however, the respondents have taken the plea that the petitioners have no academic qualifications to ask for the appointment letters as per recruitment rules and in terms of advertisement. The aforesaid stance has been refuted by the petitioners on the analogy that they have a requisite qualification equivalent to the required degree in terms of advertisement; as such their appointment was erroneously withheld by the respondent Local Government Board. An excerpt of the advertisement dated 24.02.2012 is as under:

Sr#	Name of Post	BPS	Eligibility/Qualification
Administration Branch			
1.	Chief Municipal Officer/Chief Officer	BPS-17	Maximum 30 years age, Graduate from a recognized University
2.	Town Officer/Chief Officer	BPS-15	Maximum 30 years age, Graduate from a recognized University
Accounts Branch			
3.	Accounts Officer	BPS-17	Maximum 30 years age, Graduate from a recognized University
4.	Assistant Accounts Officer	BPS-16	Maximum 30 years age, Graduate from a recognized University
Engineering Branch			
5.	Assistant Executive Engineer (Civil)	BPS-17	Maximum 30 years age, B.E. (Civil Engineering) or equivalent qualification from a recognized University and registered with PEC

6. Learned AAG has referred to the statement dated 17.01.2022 and submitted that petitioner Abdul Latif and Noor Nabi possessed the degree of B.E (Electronic) and (Industrial) and the matter was referred to the Registrar Pakistan Engineering Council Islamabad for tendering expert opinion/advice whether the qualifies of the petitioners were equivalent to mechanical and electrical. He further submitted that so far as the petitioner Ali Asghar is concerned. He possessed the degree of BSc. (Hons) and argued that all the candidates have no requisite qualification for the subject post, therefore, no appointment letters were issued to them. At this stage, learned counsel for the petitioners referred to the statement dated 17.01.2022 and submitted that degree in Engineering from a recognized university or equivalent qualification was required and the petitioners meet the requirement. He also referred to the letter dated 30.01.2014 issued by the Pakistan Engineering Council and submitted Graduate possessing B.S/B.E./Bc. (Electrical Engineering) and BS/B.E/Bc (Electronical Engineering) degree of an accredited program of the university is considered for the job by the employer keeping in view the specified job description; that both qualifications are relevant fields, however, their engineering

graduates are being registered with PEC in their respective domain/discipline. He further submitted that similarly B.S/B.E./Bc (Mechanical Engineering) and B.S/B.E./Bc (Industrial Engineering) Degree can be considered for the job. Be that as it may, we have noticed that this Court vide common judgment dated 27.9.2017 passed in CP No. D-557/2016 and other connected petitions dismissed the petitions of the colleagues of the petitioners, however, the matter was landed in the Hon'ble Supreme Court of Pakistan and the Hon'ble Supreme Court passed the following common order dated 06.12.2017 in Civil Petition No.3440/2017 and other connected petitions:

“These Civil Petitions for Leave to Appeal have arisen out of the judgment dated 27.09.2017, passed by a learned Division Bench of High Court of Sindh at Karachi, whereby Constitution Petitions filed by the Petitioners were dismissed.

2. Learned ASCs for the Petitioners contended that even if it is assumed for a while that appointments of the petitioners were not made validly, they could not be sent packing without being heard. They next contended that where the Division bench of the High Court itself came to the conclusion that the matter raised involves factual controversy, it could not have expressed view on merits. Learned ASCs lastly argued that whatever the case may be any order passed in violation of the principle of natural justice enshrined in maxim audi alteram partem would be bad in law and that it would be just, fair and equitable if the Writ Petitions filed by the Petitioners before the High Court are treated as appeals before the departmental authority for being decided in accordance with law their grievance to a great extent will be redressed.

3. Learned Additional Advocate General, Sindh contended that notices were already issued to the Petitioners but they themselves opted not to appear before the competent authority.

4. Be all that as it may, last argument addressed by learned ASCs for the Petitioners has substance. We, therefore, convert these petitions into appeals; allow them, set aside the impugned judgment; treat the Writ Petitions of the Petitioners as appeals before the departmental authority and send them for being decided in accordance with law after hearing the appellants.”

7. Before we advert to the aforesaid submissions and the legal substantiality of the offer letters issued in favor of the petitioners for the subject post as discussed supra, in the first instance, we deem it appropriate to have findings of the competent authority on the subject offer letters. In the similar circumstances, the decision of the Honorable Supreme Court in the case of *Government of Punjab through Chief Secretary and others vs. Aamir Junaid and others* (2015 SCMR 74), is providing guidance principle; and in the aforesaid case, the judgment of the learned Lahore High Court was upheld; whereby the learned Lahore High Court allowed a writ petition of certain employees in District Chiniot, whose appointments were canceled on the ground that the process of their selection was non-transparent and fraudulent, etc. by directing to reprocess the cases of such employees.

8. In view of the order dated 06.12.2017 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.30440/2017 and other connected petitions and the decision of the Honorable Supreme Court in the case of *Government of Punjab through Chief Secretary and others* (supra), we deem it appropriate to refer the matter to the Chief Secretary, Government of Sindh who shall constitute a Committee headed by him; and, the Secretary Local Government Department, and Secretary Services General Administration & Coordination Department, as members who shall scrutinize the

candidature of the petitioners. The Committee shall examine the qualification of the petitioners for the subject posts, including all the relevant documents to satisfy that the same are not fake, forged, or manipulated; and to ascertain that the offer letters issued to the petitioners were within the ambit of the relevant law, rules, and regulations. The Committee shall also satisfy itself that the petitioners meet the eligibility criteria prescribed in the advertisement, in pursuance of which their offer letters were issued. The petitioners shall be intimated to furnish to the office of the Secretary, Local Government Department, Government of Sindh the requisite testimonials /documents/record along with their address and contact number so that they may be called for a personal hearing before the Committee. After hearing the petitioners and examining the documents furnished by them, if found in order and possess the requisite qualification/equivalent qualification, they shall be treated as valid and lawful appointees. The above exercise be concluded within one month from the receipt of a copy of this order.

Petition stands disposed of in the above terms.

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