

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4348 of 2017

(Dr. Dileep Kumar & 30 others v. Sindh Public Service Commission & 02 others)

C.P No.D-5141 of 2017

(Dr. Gul Hassan Dahri & 05 others v. Sindh Public Service Commission & 02 others)

C.P No.D-5261 of 2017

(Dr. Shakeel Ahmed Memon v. Sindh Public Service Commission and 02 others)

C.P No.D-5279 of 2017

(Syed Muhammad Nabeel v. Province of Sindh and 02 others)

C.P No.D-5424 of 2017

(Dr. Abid Hussain v. Sindh Public Service Commission & 02 others)

C.P No.D-5519 of 2017

(Dr. Kelash Babu v. Sindh Public Service Commission & 02 others)

C.P No.D-5987 of 2017

(Dr. Sabrina and another v. Sindh Public Service Commission & 02 others)

C.P No.D-6666 of 2017

(Fida Hussain Solangi v. Sindh Public Service Commission & 02 others)

C.P No.D-6818 of 2017

(Dr. Tahira Tauseef and 08 others v. Sindh Public Service Commission & 02 others)

C.P No.D-7087 of 2017

(Dr. Fahad v. Sindh Public Service Commission & 02 others)

C.P No.D-7554 of 2017

(Mst Saiqa Parveen v. Sindh Public Service Commission & 02 others)

C.P No.D-7555 of 2017

(Mst. Mehak Kanwal v. Sindh Public Service Commission & 02 others)

C.P No.D-7625 of 2017

(Dr. Javed Ahmed Shaikh v. Sindh Public Service Commission & 02 others)

C.P No.D-7680 of 2017

(Dr. Pareesa and 03 others v. Sindh Public Service Commission & 02 others)

C.P No.D-7681 of 2017

(Dr. Saddam Hussain v. Sindh Public Service Commission & 02 others)

C.P No.D-7859 of 2017

(Dr. Zulfiqar Ali Memon v. Sindh Public Service Commission)

C.P No.D-7957 of 2017

(Dr. Devi Bai and 03 others v. Sindh Public Service Commission & 02 others)

C.P No.D-8476 of 2017

(Dr. Srichand and another v. Sindh Public Service Commission & 02 others)

C.P No.D-8555 of 2017

(Dr. Neel Kanth and another v. Sindh Public Service Commission & 02 others)

C.P No.D-2933 of 2018

(Dr. Seema v. Province of Sindh through Chairman Sindh Public Service Commission & another)

C.P No.D-3089 of 2018

(Razia Siraj v. Chairman, Sindh Public Service Commission & 02 others)

C.P No.D-3226 of 2018

(Kishan Chand and 03 others v. Sindh Public Service Commission & 02 others)

C.P No.D-3813 of 2018

(Nisar Ahmd Soomro v. Sindh Public Service Commission & 02 others)

C.P No.D-7892 of 2019

(Dr. Abdul Jabbar & 63 others v. Sindh Public Service Commission & 02 others)

C.P No.D-2433 of 2022

(Dr. Sanila Shehnaz and 2 others v. Chairman Sindh Public Service Commission & 02 others)

Mr. M.M. Aqil Awan, advocate and Mr. Danish Rashid Khan, advocate for Petitioners in C.P No.D-4348, 5141, 7680, 4581, 6818 of 2017 and 7892 of 2019

Mr. Muhammad Arshad Khan Tanoli, Advocate for the Petitioners in C.P. No. D-6818 of 2017.

Mr. Ghulam Rasool Sohu, advocate for petitioner in CP No.D-3226 of 2019

Mr. Ghulam Shabbir Pathan, Advocate for Petitioners in C.P No.D-2433/2022.

Mr. Muhammad Awais Malano, Advocate for intervener in C.P. No. D-4348 of 2017 and for petitioners in CPs No.D-5141/2017, 5261/2017 and 5987/2017

M/s Mukesh Kumar Khatri & Kamran Khan Memon, advocates for petitioners in CP No.D-8555/2017

Mr. Badar Rajpar, advocate for petitioner in CP No.D-3089/2018

None present for the petitioners in CP No.D-7681/2017, D-5279/2017, D-7087/2017, D-6666/2017, D-8476/2017, D-5519/2017, D-7554/2017, D-5424/2017, 7957/2017, D-7625/2017, D-7555/2017, D-2933/2018, D-3813/2018.

Mr. Sibtain Mehmood, Additional Advocate General Sindh & Mr. Ali Safdar Depar, AAG assisted by Muhammad Yousuf Alvi, Law Officer, Sindh Public Service Commission

Syed Zulfiqar Ali Shah, Secretary Health Department, Government of Sindh.

Date of hearing : **20.04.2022**
Date of order : **26 .04.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. In all above referred Constitutional Petitions, petitioners have sought a declaration to the effect that impugned interview and their result announced on 05.06.2017 by Sindh Public Service Commission (**SPSC**), against 2192 vacancies for the post of Medical Officer BPS-17 (Male and Female) in Health Department, Government of Sindh, is unlawful, illegal and without lawful authority. Petitioners are seeking further directions to the SPSC to undertake the fresh exercise of the selection process against the sanctioned posts of Medical Officers in the Health Department, after completion of the full strength of SPSC and after framing of the rules, in terms of the ratio of the judgment dated 22.02.2017 passed by the Hon'ble Supreme Court in Suo-Moto Case No.18/2016.

2. At the outset learned Additional AG has submitted some viable proposal for disposal of the captioned petitions, vide statement dated 21.04.2022, which reads as under:

- i. That there are 26 Petitions which are pending adjudication before this Hon'ble Court which were listed on 20/04/2022 being C.P NOS. 5141/2017, 5261/2017, 5279/2017, 5424/2017, 5519/2017, 5987/2017, 6666/2017, 6818/2017, 7087/2017, 7554/2017, 7555/2017, 7625/2017, 7680/2017, 7681/2017, 7859/2017, 7957/2017, 8287/2017, 8476/2017, 8555/2017, 2933/2018, 3089/2018, 3226/2018, 3813/2018, 7892/2019 & 2433/2022 wherein the Petitioners in essence, being disqualified to be recommended by the Sindh Public Service Commission and on the strength of Orders passed by this Hon'ble Court in C.P No.4348/2017 vide Order dated: 01/11/2017 claimed identical relief as granted therein.*
- ii. That the said arrangement for all purposes shall not be construed as a precedent and is confined only to the extent of the Petitioners who for any reason were unable to appear in the Re-interview as a last directed by this Court vide Order dated: 01/11/2017 and final opportunity. This is further made clear that those who appeared for Re-interview as per direction of this Hon'ble Court shall not be allowed to sit in another Interview (i.e. as a second/third chance) and have to qualify fresh in accordance with the law and Regulations of Sindh Public Service Commission/Province of Sindh.*
- iii. That since the Sindh Public Service Commission as on date is dis-functional on account of Judgment of this Hon'ble Court although the same has been assailed before the Hon'ble Supreme Court of Pakistan wherein leave has been granted and the matter is expected to be listed in near future. However, in the intervening period, since the Government of Sindh is seriously having a shortage of the Doctors in the Province of Sindh, therefore, the said Petitioners may be adjusted on a Temporary/Adhoc basis.*
- iv. That the above arrangement as at para(iii) shall be interim in nature and in any event the Petitioners would not be entitled to claim any benefits out of such arrangements and have to qualify the requisite qualification from the Sindh Public Service Commission on its becoming functional failing which they will not be entitled to be continued for such service/arrangement. That soon on the functionality of the Sindh Public Service Commission they will cease to discharge their functions on a Temporary/Adhoc basis as suggested above.*

- v. *Incumbent, in no event, shall claim any benefit like regularization, promotion, seniority, emoluments etc. on the basis of discharging their functions as provided in above para(iii) and in any event only after qualifying the requisite requirements from the Sindh Public Service Commission on the recommendation in accordance with the law will be entitled to be appointed in the regular service as Civil Servant on the working strength of Province of Sindh.”*

3. All the learned counsel representing the petitioners, seek disposal of the captioned petitions in the terms of paragraph (iii) of the proposal put forward by the learned AAG, however, they intend to add that subject appointment of the petitioners shall be made in the light of Rule 19 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974; and their regularization of service shall also be subject to the interview to be conducted by SPSC as and when Constitutional body becomes functional.

4. Learned counsel for the petitioners in CP Nos.D-7681/2017, D-5279/2017, D-7087/2017, D-6666/2017, D-8476/2017, D-5519/2017, D-7554/2017, D-5424/2017, 7957/2017, D-7625/2017, D-7555/2017, D-2933/2018, D-3813/2018 are not in attendance despite their names appear in the cause list. Since the case of the aforesaid petitioners is akin to the rest of the petitioners, therefore, we intend to decide all the matters on the analogy that the questions of law and facts involved therein are the same.

5. Learned AAG pointed out that there are 26 Petitions which are pending adjudication before this Court, wherein the Petitioners, in essence, being disqualified to be recommended by the SPSC and on the strength of orders passed by this Court claimed identical relief as granted therein. He, however, stressed that since the Government of Sindh is seriously having a shortage of the Doctors in the Province of Sindh, the aforesaid category of the petitioners could be appointed on a Temporary/Adhoc basis on the analogy that they had already qualified for the written test conducted by SPSC, however, he emphasized that this arrangement may not be available for those categories of the petitioners who failed in the interview conducted by the SPSC under the orders passed by this Court from time to time. Primarily, this aspect is required to be addressed by the competent authority under the law; besides that, a similar relief has already been extended to the petitioners in Constitutional Petition No.D-8055/2017 vide order dated 02.03.2020 with the consent of learned AAG.

6. Secretary Health Department, Government of Sindh, present in Court has submitted that there are around 2000 sanctioned posts of Medical Officer / Woman Medical Officer lying vacant in the Health Department, Government of Sindh. However, he added that the recruitment process has been kept in abeyance till further instructions from the Government of Sindh. At this stage learned AAG has submitted that the Hon'ble Supreme Court of Pakistan vide order dated 09.11.2021 passed in Civil

Petitions No.816-K to 822-K/2021 has directed to maintain the status quo, therefore, the further recruitment process by the SPSC has been kept in abeyance vide Press Release dated 11.03.2022.

7. In the present case, it appears from the record that petitioners in response to the Advertisement No. 1/2016 published in "Daily Kawish" dated 03.01.2016, applied for the posts of Medical Officers, (Male and Female) and Dental Surgeon (BPS-17) in Health Department, Government of Sindh; that 6,683 candidates (3,502 Male and 3,181 Female) passed the written test conducted by the SPSC; that as per announcement of the result the petitioners were declared successful candidates. SPSC interviewed 2,960 candidates, whereas the interview of 3,723 candidates could not be conducted because of the restraining order passed by the Hon'ble Supreme Court of Pakistan. Out of 6000 candidates, only 2800 candidates were interviewed, and the petitioners were included. Sindh Public Service Commission became non-functional, while the process of interviews of about 2800 candidates, including petitioners, was halted because of restraining order of the Hon'ble Supreme Court, the process of ongoing interviews was postponed and that process again commenced with effect from 02.05.2017 to 22.05.2017; the remaining interviews of about 3200 candidates were conducted by the SPSC. The SPSC announced the result of interviews on 05.06.2017, whereas the names of the petitioners were not included in the press release issued by the SPSC, compelling them to call in question the vires of the press release through the instant petitions before this Court; petitioners have prayed that the said press release may be declared illegal and without lawful authority.

8. It is also well-settled law that even where appointments are to be made in the exercise of powers conferred upon the competent authority, such powers are to be exercised reasonably and in a justified manner. Primarily, fair and meritorious appointment to public office is a requirement and spirit of law under Article 18 of the Constitution of the Islamic Republic of Pakistan 1973.

9. After hearing all the for the parties on the subject issue and consensus reached between them, we are of the considered view that under the SPSC Functions Rules 1990, examination of candidates could be taken either in three methods/forms that are Written Examination, Interview, and Viva-voce, which shall be determined by the competent authority; and, in the present case, admittedly, all the petitioners have already qualified the written examination and at present, the constitutional body i.e. SPSC is not functional and much time has already elapsed from the date of passing of the written examination and/or interview. Therefore, as an interim arrangement, we deem it appropriate to direct the competent authority of the Health Department, Government of Sindh to look into the matter of the petitioners in the terms that the petitioners who have already qualified the written test conducted by SPSC in

pursuance of advertisement No.1/2016 dated 03.01.2016, for the posts mentioned therein, shall be appointed as Medical Officers/Dental Surgeon (BPS-17) in Health Department, Government of Sindh, provisionally, in terms of Rule 19 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 on ad-hoc basis, and their regularization of service shall be subject to the interview to be conducted by the SPSC as and when Constitutional body i.e. SPSC becomes functional. On the aforesaid arrangement, we seek guidance by the decision of the Honorable Supreme Court in the case of Dr. Naveeda Tufail and 72 others v. Government of Punjab and others, 2003 SCMR 291. However, it is made clear that the interviews of the petitioners shall be conducted by the SPSC as and when it becomes functional. It is also clarified that this arrangement is not for those petitioners who have already qualified for the written test as well as interview, and their candidature has already been recommended by SPSC to the Health Department, Government of Sindh for the appointment.

10. This order shall be treated as personam and not in rem. The aforesaid exercise shall be completed within two weeks from today.

11. The captioned petitions stand disposed of along with pending applications in the above terms.

Let a copy of this order be communicated to the Chief Secretary, Sindh, and Secretary, Health Department, Government of Sindh, for compliance.

JUDGE

JUDGE

Nadir*