

IN THE HIGH COURT OF SINDH KARACHI

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

C.P. No. D-1695 of 2022

(*Ghayasuddin Shahmi and 33 others v. Province of Sindh and 03 others*)

C.P. No. D-2485 of 2022

(*Basheer Ahmed & 13 others v. Province of Sindh and 03 others*)

C.P. No. D-3192 of 2022

(*Ghulam Mustafa and 26 others v. Province of Sindh and 03 others*)

Mr. M.M. Aqil Awan, advocate for the petitioners in CP Nos. D-2485/2022 and 1695/2022

Mr. Danish Rashid Khan, advocate for the petitioners in CP No. D-3192/2022

Mr. Ali Safdar Depar, AAG alongwith Mr. Zulfiqar Ali Shah, Secretary Health, Government of Sindh, and Dr. Irshad Ahmed Memon, Project Director EPI Sindh, Karachi

Date of hearing
& order : 31.05.2022

ORDER

The petitioners are seeking annulment of the fresh advertisement published in Daily Dawn on 06.02.2022 for hiring the services of the Gavi Vaccinators (BPS-6) in the Health Department, Government of Sindh, against the posts already occupied by them in terms of the previous advertisement dated 22.03.2018; and, judgment dated 12.02.2021 passed by this court in CP No.D-7382 of 2019 and merged into the judgment dated 19.05.2021 passed by the Honorable Supreme Court in the case of *Ghayasuddin Shahani and others v. Akhtar Hussain and others*, **2021 SCMR 1204**. Petitioners have averred that refusal by the respondents to accommodate them and keeping the notification of their appointment in abeyance is without any lawful basis or justification. For convenience sake, the contents of the advertisement dated 06.02.2022 are as under:

HIRING OF VACCINATORS (BPS-06)			
In order to enhance vaccination rate among eligible population groups, the office of Expanded Program on Immunization (EPI) Sindh is hiring against the vacant positions of Vaccinators (Male / Female) (BPS 06) throughout the province.			
Sr. No.	Division	District	No. of Vacant Position (BPS-06)
1		WEST & KEAMARI KARACHI	35
2		EAST, KARACHI	18
3		SOUTH, KARACHI	15
4		KORANGI KARACHI	10
5		HYDERABAD	40
6		BADIN	40
7		DADU	35
8		JAMSHORO	30
9	HYDERABAD	MATIARI	4
10		SAJAWAL	35
11		TANQO ALLAH YAR	20
12		TANQO M KHAN	11
13		THAT TA	35
14		SUKKUR	50
15	SUKKUR	GOTHIKI AT MIRPUR MATHELO	14
16		KHAIRPUR MIR'S	55
17		MIRPURKHAS	19
18	MIRPURKHAS	THARPARKAR	30
19		UMERKOT	27
20		SBA	50
21	S.B.A.	NAUSHEHRO FEROZE	14
22		SANGHAR	25
23		LARKANA	20
24		JACOBABAD	40
25	LARKANA	KAMBAR AT SHAHDADKOT	10
26		KASHMIRE AT KANDHKOT	30
27		SHIKARPUR	3
			715

How to Apply

- Minimum qualification required for shortlisting stands as Matriculation or equivalent.
- Having age of 18-30 years (age relaxation shall be entertained as rules & policy).
- Preference will be given to candidates having experience in vaccination.
- Applicant should be domiciled for the same district / town / taluka in which he/she has applied.
- Minimum passing Marks required in NTS are 50%.
- Quota is reserved for 15% females, 5% Disabled & 5 Minorities.
- District-wise allocation of posts shall be strictly followed.

How to Apply

- Interested candidates must visit NTS website to apply Online www.nts.org.pk
- The last date of submission of application form is 28 February 2022.
- No need to dispatch a hard-copy of application forms to NTS Headquarters Islamabad.
- Incomplete online application form will be rejected.
- NTS written test fee of Rs. 350/- and Rs. 10/- Bank Service Charges can be paid via 1 Link, 1 Bill, Participating Bank / ATM / Internet, Banking / Mobile Banking / Easypaisa / Jazz Cash, TCS Express Counters.
- Keep visiting online application portals for fee paid status.
- Applications submitted by hand will not be entertained.

PROJECT DIRECTOR
EPI SINDH KARACHI

INF-KRY: No. 527/2022
Say No to Corruption WEAR MASK-SAVE LIFE

2. The aforesaid position was confronted to the Secretary, Health Department, Government of Sindh, who is present in the Court and admitted that all petitioners had obtained more than 60% marks in NTS and were appointed as Gavi Vaccinators (BPS-6) in the year 2019. He appraised the Court with the factum that the failed candidates filed different Constitution Petitions before this Court and same were disposed of vide order dated 12.02.2021, whereby it was directed to re-interview the candidates who have secured 60% marks in NTS test; and, this Court in the judgment made it clear that Union Council wise appointment shall be made in terms of the previous advertisement. He added that the matter landed in the Hon'ble Supreme Court; and, leave to appeal was refused to vide judgment dated 19.03.2021, consequently Health Department re-interviewed all the candidates who secured 60% marks in the NTS test and successful candidates (UC wise) were recommended/appointed by the Health Department in August 2021.

3. We asked the Secretary Health Department, whether petitioners are eligible and fit candidates for the subject posts, in terms of recruitment rules notified on 27.02.1990. Secretary Health candidly endorsed the viewpoint of the petitioners and submitted that the petitioners meet the eligibility criteria for the post of Gavi Vaccinators (BPS-6). He further submitted that now, their appointment orders have been kept in abeyance due to present litigation. Secretary Health Department, in principle, has agreed to the disposal of these petitions in the terms that the petitioners shall be adjusted against the vacant posts.

4. We have asked the Secretary Health Department as to why the respondent department has changed the criteria for the hiring of the Vaccinators based on District/Town/Taluka wise as previously the subject posts were related to the Union Council/Taluka wise only. He replied to the query and submitted that the posts of the concerned Union Council have already been filled and the remaining 715 posts are yet to be filled based on District/Town/Taluka wise. Looking into this aspect of the case, we asked him whether petitioners need to apply afresh against the vacant positions of the Vaccinators.

He candidly agreed with the proposition that the petitioner's earlier appointment could be revived, subject to their fitness for the subject posts.

5. Learned AAG has also supported the stance of the Secretary, Health Department, Government of Sindh. We have asked the learned AAG whether judgments passed by this court in the earlier round of litigation will come in the way of the petitioners, he submitted that the decision of this court in the earlier round of litigation will not come in the way of the petitioners as they have filled the instant petitions assailing the fresh advertisement dated 06.02.2022 for hiring the services of the Gavi Vaccinators (BPS-6) in the Health Department, Government of Sindh. He further stressed that since the matter between the parties has been resolved at the departmental level as such there is no impediment in the disposal of the matter as opined by the Secretary Health Department, Government of Sindh.

6. Mr. M.M. Aqil Awan learned counsel for the petitioners has agreed to the disposal of the captioned petitions in the terms of the statement of the Secretary, Health Department, Government of Sindh, however, he added that respondents have neither very carefully followed the judgment dated 12.02.2021, nor order passed by the Hon'ble Supreme Court of Pakistan, wherein the Hon'ble Supreme Court of Pakistan at page No. 06, has observed that "because the recruitment process was initiated through advertisement with certain terms and conditions and only those who fulfill those conditions are eligible to be appointed". The above observation further emphasized the significance of the advertisement and very interestingly in the advertisement, no doubt priority has been given to the Union Council but at the same time Town and Taluka are also made the basis for further appointments; the cumulative effect of the judgment of this Court and the Judgment of the Hon'ble Supreme Court, if looked into logically is that the priority is to be given to the Union Council and if no successful candidate is found in the Union Council then to fill the left vacancy, is to be filled on Taluka basis, now District wise. Learned counsel pointed out that the appointments are made in BS-01 to 15 on a regional / district quota basis as provided under Sections 14 & 15 of the Sindh Civil Servants (Appointment Promotion, and Transfer) Rules, 1974. Learned counsel referred to the Recruitment Rules of 1990 for the subject post and argued that the post of vaccinator is to be made by initial recruitment and not on a union council basis; that the Judgment dated 12.02.2021, of this court and the Judgment dated 19.05.2021, of the Hon'ble Supreme Court, is still in the field, therefore, the respondent-department cannot take somersault by treating the present petitioners differently, than those who have been appointed on union-wise seats. He stressed the point that quota or number of seats are allocated to the district and merely the Union Council / Town Taluka is the stages of priority for making an appointment in a district; that petitioners have rendered service of two years, after qualifying NTS test, hence, the cancellation/keeping in abeyance, the appointments of the petitioners is illegal and unlawful. Learned counsel added that the respondents are seeking permission for re-advertising for the post of vaccinator BS-06, (762), on the basis of

Taluka/district wise basis is the mockery of the entire process of recruitment of vaccinators particularly when petitioners and other candidates are already available with sufficient experience in vaccination; that petitioners have vested right to be restored in service in terms of the Recruitment Rules of 1990, as well as in terms of previous Advertisement, therefore, the cancellation and /or keeping in abeyance the appointments of petitioners is against the mandate of law and cannot be countenanced by this court even for a single moment; that it was the policy statement of the Government through the Health Department that Vaccinators BS-06, would be appointed based on District wise, and now the Government has to implement its policy in its letter and spirit and in terms of the Judgment Dated: 19.05.2021 of the Honorable Supreme Court, the Government cannot take departure thereof by treating present petitioners differently; and, discrimination will be to circumvent the principles enunciated by the superior Courts and of course Article 25 of the Constitution of Pakistan, 1973, which confers on the petitioners the fundamental right of equality; that the petitioners are not treated under the law as mandated by the Article 4 of the Constitution of Pakistan, 1973; that respondents have not discharged their responsibility obligation to the petitioners, which obligation is inviolable as mandated by the Article 5 of the Constitution of Pakistan 1973; that it is the fundamental right of the petitioners to enter upon any lawful profession and occupation as mandated by Article 18 of the Constitution of Pakistan, 1973, therefore, it is incumbent upon the respondents to conduct the fair and transparent process of recruitment in public appointments which must be above the board; under the law there is no room or justification for the respondent to avoid the competence which is proved by the petitioners by one through the whole process of appointment laid down by the respondents and giving no effect to that is the denial of merit and the same process completed according to the law cannot be brushed away or bartered away as per the pleasure of the respondents which is apparent in this case, hence this Court may intervene in the matter; that the petitioners are entitled to be appointed against the post of Vaccinator since the petitioners have qualified the tests conducted by the respondents under law and advertisement; that grave injustice has been done to the petitioners with no fault on their part by depriving them of the post for which they qualified all the pre-requisite tests. He lastly submitted that the petitioners were appointed after fulfilling codal formalities which created vested rights in their favor that could not have been withdrawn or canceled in a perfunctory manner on mere presupposition and or conjecture which is hit by the doctrine of locus poenitentiae that is well acknowledged and embedded in our judicial system.

7. We have heard the learned counsel for the parties and perused the material available on record.

8. We have noticed that in the earlier round of litigation, the judgment dated 12.02.2021 passed by this court in CP No.D-7382 of 2019 and other connected petitions have been

endorsed by the Honorable Supreme Court vide judgment dated 19.05.2021 passed in the case of Ghayasuddin Shahani and others v. Akhtar Hussain and others, 2021 SCMR 1204.

9. The petitioners filed CP No.D-5987/2021 and CP No.D-6009/2021 before this Court which were dismissed vide order dated 19.01.2022, however, the petitioners have again filed the captioned petitions on the analogy that since the respondents have changed the criteria for appointment of vaccinators and advertised the remaining posts against which they were declared successful candidates and appointed in the year 2019, however, respondents are appointing the candidates to fill the vacant position of Vaccinators (Male/Female) BPS-16 in terms of Sections 14 & 15 of the Sindh Civil Servants (Appointment Promotion, and Transfer) Rules, 1974, and presently there are more than 700 seats which are lying vacant and the respondents are filling up the same on district/town and taluka basis for which the petitioners have already been appointed and their appointment orders have been kept in abeyance by the respondents in terms of order dated 17.03.2022 passed by this Court.

10. Because of the consensus developed between the parties for resolution of the matter amicably, the Secretary Health Department, Government of Sindh, has given candid consent to reinstate the services of the petitioners for the posts of the Gavi Vaccinators (BPS-6) in the Health Department, Government of Sindh, with the understanding that they will continue to hold the post of Vaccinator already occupied by them, however, the concern of the Secretary is that the remaining seats may be allowed to be filled through the subject advertisement dated 06.02.2022 on merits.

11. In view of the above, facts and circumstances of the case, by consent of the parties, these petitions are disposed of in the terms of the statement of the Secretary, Health Department Government of Sindh. Consequently, the petitioners shall be reinstated in service forthwith subject to all just exceptions as provided under the law. The question of the salary of the petitioners of the intervening period shall be decided by the competent authority under the law within a reasonable time.

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