

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-595 of 2022

(Khalil Ahmed v. Government of Sindh and 04 others)

Petitioner present in person

Mr. Ali Safdar Depar, AAG a/w

Muhammad Zulfiqar, Muhammad Zahid, and

Kamran Khan Police Inspectors on behalf of AIGP

Telecommunication Officer Karachi

Date of hearing

& order

:

30.05.2022

ORDER

Through the captioned petition, the petitioner is seeking appointment to the post of Constable Driver in Sindh Police, *inter alia*, on the ground that the petitioner applied for the post of Constable Driver in Sindh Police vide advertisement dated 15.09.2021 and after qualifying the written and physical test, he appeared in the interview. The grievance of the petitioner is that there were only 10 seats and he stood at Sr. No.12 in the list of Male Candidates of General Recruitment 2021 for the subject post having a low merit position. Per petitioner, there are various posts of Constable Driver lying vacant in different regions of Sindh, therefore, he may be adjusted to the subject post for the reason that he is going to reach the age at which one is no longer eligible for certain special services.

2. Petitioner who is present in person has submitted that the officials Respondents have violated the rights of the Petitioner by not issuing him the appointment letter, for the post of the Constable Driver in Sindh Police despite the fact that the Petitioner has successfully passed the prescribed examination and test; that after successfully clearing the examination, the Petitioner has acquired a vested right to be appointed on the post of the Constable Driver, which cannot be denied by the whimsical and arbitrary actions of the official Respondents; that the action of the official Respondents is in violation of the Fundamental Rights of the Petitioner as guaranteed under Articles 18, 24 and 25 read with Articles 4, 8 and 10-A of the Constitution; that due to omission/failure of the official Respondents to fulfill their legal obligations and that to timely discharge their duties/functions, he is being deprived of his lawful rights to be appointed against the post of the Constable Driver in Sindh Police; that the Recruitment Policy is to be interpreted liberally; that despite availability of one post, the refusal / denial to shift/add the

vacant post to next recruitment process on the part of the respondents is an illegal and arbitrary act; that non-implementation of the instructions for selection/appointment process in terms of the recruitment Policy, is violative of the fundamental rights and protection under the law. He lastly prayed for allowing the instant petition.

3. Mr. Ali Safdar Depar, AAG while referring to the comments filed on behalf of respondent No.2 submitted that a departmental recruitment committee was constituted for conducting recruitment against 135 vacant posts of HC/Wireless Operator and 10 posts of Driver Constable in Telecommunication Sindh through 3rd Party Testing Service as per Sindh Police Recruitment Police dated 11.12.2018 and 09 candidates were issued appointment orders for the post of Driver Constable as per the order of merit and against the existing vacancy, after completion of all codal formalities by the DIGP/T&T Sindh vide letter dated 04.10.2021. He admitted that the petitioner had participated in the recruitment process for the post of Driver Constable (BPS-05) and qualified for the physical and written test as well as the Driving Test/Interview and his name appeared at Sr. No.12 in the Final Merit List of Driver Constable. Per learned AAG, a 5% quota for the minority was reserved in the aforesaid recruitment process and one (01) post was reserved, however, the same post is switched over to the next recruitment process as nobody turned up for the minority quota. He submitted that the petitioner has a low merit position i.e. beyond the number of posts advertised, thus, his case is not considered for the post of Driver in T&T Sindh. He further submitted that a person who is selected does not, on account of being impaneled alone, acquire any indefeasible right of appointment. He added that empanelment is at best a condition of eligibility for purposes of appointment and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary. He lastly prayed for the dismissal of the instant petition.

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

5. Since, a pure question of law involved in the present proceedings is whether a waiting list candidate, could be declared successful, and can be recommended for appointment against one vacancy occurring due to non-selection of the candidate based on quota reserved for the minority. And whether the petitioner could be accommodated against one vacant seat which has now been switched over to the next recruitment process.

6. Admittedly the petitioner has qualified for the post of the Constable Driver in Sindh Police through a competitive process. His name appears at Serial No.12 of the successful candidates, however, the said one post has now been switched over to the next recruitment process on the plea that no one could be selected based on minority quota. It is a well-established principle that once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of the vacancies changes after his name has been included in the list of selected candidates. Thus, where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting the appointment from a fresh list from the subsequent recruitment or examination. Even, though it is not correct to say that if many vacancies are notified for appointment and an adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the Government is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the Government has the license of acting arbitrarily. The decision not to fill up the subject vacancy has to be taken bona fide for appropriate reasons. And if the vacancy is filled up, the Government is bound to respect the comparative merit of the candidates, as reflected in the recruitment test, and no discrimination can be permitted.

7. Having considered the matter from all angles, we are of the view that when one post remains vacant and the respondent-police department needed to have considered the remaining candidate for appointment against the post of the Constable Driver in Sindh Police. Such posts cannot be kept vacant till the next process of recruitment if the selected candidate was/is available on the waiting list.

8. In this view of the matter i.e. one post of the Constable Driver in Sindh Police was not filled in, the petitioner was/is entitled to be considered for appointment. The failure of the department to appoint the petitioner was/is not under the fair practice of recruitment. It is not denied that the petitioner was/is selected during the recruitment process but only nine persons were appointed and the petitioner was, ignored despite the availability of one post.

9. In the circumstances of the case, we are of the considered view that the competent authority had no valid grounds and lawful justification to switch over the leftover post to the next recruitment process for the simple reasons that a successful candidate is available to fill the post, merely by taking the plea that one post was reserved for the minority, is no ground to dislodge the successful candidate to be appointed for the post of the Constable Driver in Sindh Police.

10. For the aforesaid reasons this petition is allowed along with pending applications; and the competent authority of the police department is directed to issue the offer letter to the petitioner for the post of the Constable Driver in Sindh Police, subject to his eligibility and qualification the aforesaid exercise shall be undertaken within one week.

Nadir*

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