

ORDER SHEET
**IN THE HIGH COURT OF SINDH
BENCH AT SUKKUR**

Const. Petition No.D-2101 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Khadim Hussain Tunio

Mr. Mukesh Kumar G. Karara, advocate for the petitioners.

Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

Date of hearing:	18.11.2022
Date of decision:	18.11.2022
Date of reasons:	02.01.2023

ORDER

KHADIM HUSSAIN TUNIO, J- Through instant constitutional petition, the petitioners have impugned the letter dated 13.11.2018 issued by respondent No. 4/Section Officer General Health Department Government of Sindh seeking permission from respondent No.3/Director General Health Services Sindh @ Hyderabad for fresh advertisement to fill out vacant posts in Health Department from BPS-01 to BPS-15 including the posts for which the petitioners have already passed the test conducted by SIBA testing service.

2. Facts in brief for the disposal of instant constitutional petition are that pursuant to an advertisement in different newspapers, applications were invited for different vacant posts in Health Department Government of Sindh. The petitioners applied and successfully passed the written test conducted by the SIBA testing service and were waiting for further process, but to their surprise the respondent No.4 issued a letter to respondent No.3, seeking permission to make a fresh

advertisement for filling vacant posts from BPS-01 to BPS-15 including the posts for which the petitioners had already passed the required test, hence this petition with the following prayers:-

- a) To declare that the impugned letter dated 13.11.2018 thereby granting permission for fresh advertisement for filling the vacant posts of BPS-01 to 15 in the Health Department, in presence of the earlier results of the written test conducted by SIBA testing service is and will be illegal, unlawful, without any lawful authority, based upon malafide and for extraneous consideration, hence without any legal consequences.
- b) To direct the respondents to issue further process in terms of the appointments of the petitioners against their respective posts forthwith in accordance with law, rules and regulations and in the light of the results issued by SIBA testing service.
- c) To restrain the respondents from acting upon the impugned letter dated 13.11.2018, by suspending its operation till final conclusion of the present petition.
- d) To grant any other just and equitable relief which has not been specifically prayed for, under the circumstances of the present matter and for the just decision of the present petition and in the interest of justice.

3. District Health Officer Ghotki/respondent No. 5 has filed para-wise comments and did not deny the advertisement of posts pursuant to order dated 06.09.2017 passed by this Court in CP Nos. D-1137 and 2940 of 2015 where it was ordered that all written tests for appointments in BPS-06 to BPS-15 be done through NTS or IBA Sukkur. He also admitted that the tests were conducted by SIBA and the said results were communicated, then the Secretary of Health Department, Government of Sindh was requested for approval of recruitments, but in this time the DC Ghotki and DHO Ghotki, members of the recruitment committee were transferred which caused delay in the process. He also admitted that after the written tests were conducted, the viva was delayed due to a ban by the Government. He also stated that he has requested the Government for further guidelines and for conducted viva of the candidates.

4. Director General, Health Services Sindh at Hyderabad/respondent No. 3 also filed his para-wise comments and admitted the contents of the plaint and further stated that after the test was conducted by Sukkur IBA, the list of qualified candidates was forwarded to the Sindh Government for approval, however the Sindh Government directed the recruitment committees to halt all recruitments until proper process for the recruitment was formulated which is why the recruitment process could not be continued.

5. Secretary Health Department, Government of Sindh/respondent No. 2 also filed para-wise comments and admitted the contents of the plaint while stating that after the recruitment process was halted, the Election Commission of Pakistan imposed a ban on fresh appointment on 11.04.2018.

6. Learned counsel for the petitioners mainly contended that the petitioners had qualified in the tests and were not called on take part in further recruitment process; that the petitioners are worthy candidates and eligible for appointment after passing the written test; that the petitioners belong to a poor background and were able to prove their merit and quality in the results; that the respondents are bent upon to harm the fundamental rights of the petitioners; that the impugned letter has been issued with malafide intention and ulterior motives without any lawful authority.

7. On the other hand, learned Assistant Advocate General contended that a ban was imposed by the Election Commission of Pakistan on any further recruitment which is why the recruitment process was halted.

8. We have heard the learned counsel for the petitioners, learned Assistant Advocate General Sindh and perused the record available before us.

9. Perusal of the record shows that the contents of the

plaint have been admitted by the respondent No. 2, 3 and 5 in their para-wise comments, but they have made an attempt to hide behind a notification dated 11th of April, 2018 passed by the Election Commission of Pakistan, banning further recruitment to any positions due to the General Elections at the time. It would be appropriate to reproduce the relevant portion of the same for ready reference:-

“AND WHEREAS, it is grave concern of general public that some government departments are in the process of inducting thousands of people on various positions which amounts to pre-poll rigging as political bribe.

AND WHEREAS, for tangible reasons, the Election Commission is of the considered view that such mass recruitments at this point of time when the General Elections of the National Assembly and Provincial Assemblies are going to take place shortly, will substantially, influence the results of elections, therefore, it is imperative on all standards of legal, moral and democratic ethics that all kinds of recruitments except the recruitments which are made by the Federal and Provincial Public Service Commission, be banned forthwith.”

10. What the respondents failed to consider is the actual orders passed by the Election Commission of Pakistan through that notification, relevant portion of which is also reproduced for ready reference:-

“a. That all kinds of recruitments in any Ministry, Division, Department or Institution of the Federal Government or any Department or Institution of any Provincial and Local governments is banned forthwith, except recruitments by the Federal or Provincial Public Service Commission and those where test/interviews have already been conducted by 1st April, 2018.”

A perusal of the above directions show in clear terms that recruitments where tests or interviews had already been conducted prior to the 1st of April, 2018 were allowed to carry forward and the ban was solely imposed on any freshly advertised posts where the tests and interviews had not yet been conducted. It is a matter of record that the posts within the Health Department, on the order of this Court, were advertised in 2017 and the tests were conducted by the Sukkur IBA on

14.01.2018, prior to the notification being passed. The notification had no retrospective effect on this recruitment since the tests had already been conducted and even the result had been published and even several letters were wrote to the Government of Sindh by the respondent No. 3 and 5 seeking approval to continue the recruitment process, however these recruitments were unnecessarily halted and the rights of candidates who had qualified the written test were infringed especially where no allegations were raised regarding any wrongdoing or dishonesty/fraud on the part of the candidates/petitioners.

11. For what has been discussed above, the instant petition was allowed, the impugned letter dated 13.11.2018 seeking permission for fresh advertisement was declared illegal. The respondents were directed to continue the process of recruitment from the stage of written tests conducted on 14.01.2018 for the qualifying candidates in accordance with law vide short order dated 18.11.2022. These are the reasons for the same.

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