

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constt. Petition No. D- 338 of 2013,
Constt. Petition Nos. D- 91, 411, 1175, 1215 of 2014,
& Constt. Petition No. D- 69 of 2015.

Present:

Mr. Justice Zaffar Ahmed Rajput.

Mr. Justice Muhammad Iqbal Kallhor.

Mr. Safdar Ali Ghouri Advocate for petitioner in Constt. Petition No. D- 338/2013 and 1175 of 2014.

Mr. Ashfaq Hussain Abro, Advocate for petitioners in Constt. Petition No. D- 91/2014 and Constt. Petition No. D- 69/2015.

Mr. Ali Nawaz Junejo, Advocate for petitioner in Constt. Petition No. D- 411/2014.

Mr. Abdul Rehman A. Bhutto, Advocate for petitioner in Constt. Petition No. D- 1215/2014.

Mr. Abdul Hamid Bhurgri, Addl. A.G.

Date of hearing: 07.12.2016.

Date of judgment: 07.12.2016.

J U D G M E N T

Muhammad Iqbal Kallhor, J.- By this common judgment, we intend to dispose of all the above captioned petitions. The case of petitioners is that they applied for the job to respondent No.1 in response to the advertisement published in daily Sindhy newspaper "Kawish" in October of 2012 inviting applications on various posts ranging from BPS-01 to 12 lying vacant in the District Health Office, Kashmore @ Kandhkot. And after due process they were selected respectively against the post, they had applied for, hence, they were issued offer letter, in some cases on 19.01.2013 and in other cases on 21.01.2013, by respondent No.1. However, when they in terms of the said offer letters approached respondent No.2/Medical Superintendent Taluka Hospital, Kashmore @ Kandhkot for physical examination and fitness-certificate, he refused to examine them and issue Physical Fitness Certificate, as required. Thereafter, the petitioners approached respondent No.1 and apprised him of the above facts but he too did not extend them any help. Finally, perceiving some mala-fide on the part of the respondents to appoint

some other persons at their stead due to political influence, they filed the instant petitions seeking directions to the respondents to appoint them in terms of their offer letters.

137

In response to notice, the respondents have filed the objections. In essence, they have not denied the case of the petitioners, but have taken the stance that the Election Commission of Pakistan (ECP) had imposed a ban on all the appointments through a notification dated 29.01.2013 with effect from 31st August, 2012; therefore, the petitioners could not be appointed.

We have heard the counsel for parties and perused the material available on record. Learned Additional Advocate General although has opposed these petitions but at the same time he has stated that in the subject notification a clause is provided to the effect that despite the ban, the requests for recruitments sent by Federal Government or any department or institution of any Provincial or Local Government including health and education department would be considered on case to case basis by ECP. And respondent No.1 in the light of such scheme should have sent the requisition for appointment of the petitioners to the ECP. But since no such requisition was sent, he urged, the petitioners could not be appointed. He however has conceded that not seeking any such permission by respondent No.1 from ECP for appointment of the petitioners would not reflect adversely on the merits of the case of petitioners now when the elections are already over. He has not questioned either the merits of petitioners' appointment process except that it was initiated during the ban-period. A perusal of the above notification of ECP reveals that the ban was imposed on 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 except on the recruitments being made through Public Service Commission. This notification has been issued by the ECP under Article 218 (3) of the Constitution of Islamic Republic of Pakistan, 1973, and palpably its purpose is to hold fair, free and transparent elections, and in the process of which to thwart the Federal and Provincial Governments from making any appointments in the times close to the elections, because such practice is usually seen a dishonest way to woo the votes. Admittedly this notification very specifically bans only *the appointments* from 31.08.2012 for the reason as discussed above, but here in the present case it is obvious that the petitioners were not appointed, and for this reason it can be safely said that no violation of the said notification ever took place in the case of petitioners. In



fact it seems that the respondents duly complied with the above notification and did not proceed further to appoint the petitioners after issuing them offer letters. However, when the ban was lifted vide notification No.F.8 (12)/2012-Cord dated 28th March, 2013 by ECP after expiry of the term of National and Provincial Assemblies and resultantly the elections were held; there was no justification available to the respondents to still refuse to appoint the petitioners on the posts they were already selected by the selection committee. The object for which the ban was imposed on the recruitments stood satisfied on completion of the elections process. And thereafter resuming the process of appointments of the petitioners (particularly when there was no apparent illegality to it) by the respondents held back due to above notification would not be termed illegal and/or in violation of the said notification.

For foregoing discussion, while allowing these petitions we direct respondents No.1 to 3 to resume remaining process on the offer letters issued to the petitioners and appoint them in terms thereof. It is however made clear that the petitioners would be deemed to have been appointed on the date of assuming duty.

11