

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Muhammad Saleem Jessar
Justice Nisar Ahmed Bhanbhro

CP No.D-771 of 2023

(Amjad Ali and 2 others v. Province of Sindh and 2 others)

Petitioners : *Amjad Ali and 2 others* through Mr. Talha Abbasi, advocate

Respondents : Mr. Muhammad Kamran Baloch, Assistant Advocate General

Date of hearing and order: **30.01.2026**

Date of Reasons: **13.02.2026**

ORDER

NISAR AHMED BHANBHRO, J. The petitioners, through this petition, have invoked the jurisdiction of this Court seeking directions against the Respondents No. 1 & 2 to immediately communicate the Respondent No.3 about un-occupied posts due to non-joining of recommended candidates and the Respondent No. 3 may be directed to re-allocate the Petitioners against three un-occupied posts of PMS in Sindh Rural quota at due merit position.

2. Learned counsel for the petitioners contended that the petitioners are serving as Excise & Taxation Officers (BPS-17) in the Excise, Taxation & Narcotics Control Department, Government of Sindh, and are enjoying unblemished service record; that they were selected through Combined Competitive Examination-2018 (CCE) conducted by the Sindh Public Service Commission (SPSC) pursuant to Advertisement No.01/2018 dated 19.02.2018 and were recommended against the posts of Excise & Taxation Officer (BPS-17) under Sindh Rural quota, securing Merit Nos. 1, 2 and 3 respectively. It was argued that under the settled mechanism, candidates securing higher merit are first allocated to Provincial Management Service (PMS) posts, subject to quota bifurcation, and only thereafter to ETO and other posts. Had three additional vacancies been available in PMS, the petitioners, being next in merit and having opted PMS as their first preference, would have been allocated accordingly. Learned counsel submitted that vide letters dated 06.11.2019, SPSC, while referring to directions of the Hon'ble Supreme Court in *Suo Moto Case No.16/2018*,

specifically required the departments to intimate particulars of candidates who failed to join within stipulated time, so that candidates next in merit could be recommended. Despite issuance and acceptance of offer letters and appointment notifications in 2020, the respondents remained inactive for about two years and only in May 2022 sought explanation from certain non-joining candidates. It was emphasized that three PMS candidates under Sindh Rural quota, namely Mr. Mehran Khan Sheikh, Mr. Sarfaraz Ahmed Bhutto and Mr. Abdul Sattar Soomro at Merit Nos. 14, 30 and 117, never joined, rendering PMS posts vacant. In view of the law laid down by the Hon'ble Supreme Court in SMC No.18/2016 and consistent practice, such vacancies were required to be filled by candidates next in merit, i.e., the petitioners, however, the respondents neither informed SPSC nor filled the vacancies, keeping them lying vacant for an indefinite period. Learned counsel further submitted that in identical circumstances, re-allocation of candidates next in merit has been allowed by the Hon'ble Supreme Court and this Court, and the respondents have acted upon such directions in the past. He contended that despite representations made by the petitioners seeking re-allocation, no response was given, reflecting clear non-compliance of binding directions of the Hon'ble Supreme Court, to the detriment of public administration. He lastly prayed to allow this petition.

3. Learned Assistant Advocate General contended that after completion of all codal formalities, including publication of advertisement, screening test, written examination and final interview, the SPSC selected fit and suitable candidates strictly in accordance with merit and preferences given in the option forms, including the present petitioners. It was submitted that in the final recommendations of CCE-2018, the SPSC had clearly conveyed that particulars of candidates who failed to join within the stipulated period be furnished by the concerned departments so that candidates next in merit could be recommended in terms of the directions of the Hon'ble Supreme Court in SMC No.18/2016. It was argued that to date no such intimation has been received by the SPSC from the concerned quarters; therefore, the SPSC cannot be faulted and has duly discharged its statutory role in a fair, transparent and non-discriminatory manner. The petitioners were allocated the posts of Excise & Taxation Officer on the basis of their performance in the written examination and interview, and such allocation was strictly in accordance with the rules and policy. Learned AAG further submitted that the record, including letter dated 26.05.2022 of

SGA&CD, reflects that five candidates were appointed in PMS (BPS-17) after acceptance of terms and conditions and were posted in various departments; hence, the contention regarding non-joining of candidates is misconceived. It was further contended that in the instant case relating to CCE-2018, the three PMS candidates pointed out by the petitioners had accepted their offer letters and were duly appointed. Consequently, the posts allocated to them cannot be termed as vacant, and no occasion arose for the respondents to intimate the SPSC for recommending candidates next in merit. Thus, the principle laid down by the Hon'ble Supreme Court and relied upon by the petitioners is not attracted to the facts of the present case. Learned AAG further apprised that all three said candidates, after approval of the competent authority, were appointed and posted as Section Officers in different departments in May 2020 and were later relieved for official online training in January and May 2021. Subsequently, upon reports of non-joining and non-participation in training, explanation letters were issued followed by publication in newspapers. Their appointment orders have not yet been canceled and personal hearings before the Chief Secretary, Sindh, have already been fixed even their time barred representation is under consideration with the competent authority. Therefore, the case law relied upon by the petitioners is distinguishable. He lastly prayed that the petition be dismissed.

4. Heard learned counsel for the parties and perused the material available on record.
5. From scanning of the record, it is crystal clear that the recruitment process under CCE-2018 was conducted by the SPSC strictly in accordance with the governing rules and prescribed procedure, commencing from publication of advertisement up to written examination and interviews. It is an admitted position that the petitioners participated in the said competitive process, were found fit and suitable on merit and, in consequence thereof, were allocated and appointed as Excise & Taxation Officers (BPS-17). Their appointments, therefore, are lawful and undisputed.
6. The grievance of the petitioners is premised upon the assumption that certain candidates recommended against PMS posts under Sindh Rural quota did not join their duties, thereby creating vacancies which, according to the petitioners, ought to have been filled by them as candidates next in

merit. In support of their stance, reliance has been placed upon the law enunciated by the Hon'ble Supreme Court in SMC No.18/2016 and other judgments, wherein it has been held that vacancies arising due to non-joining of recommended candidates within stipulated time should be filled from the waiting list or next in merit candidates. However, a careful examination of the record reveals that the factual foundation necessary to attract the above principle is conspicuously absent in the present case. The PMS candidates pointed out by the petitioners had admittedly accepted their offer letters and were issued appointment notifications after approval of the competent authority. They were posted as Section Officers in different departments of the Government of Sindh and, therefore, stood validly inducted into service. Their appointment orders have not been withdrawn or canceled till date and are admittedly still holding the field.

7. The subsequent allegations of non-joining at place of posting or non-participation in training are matters falling within the domain of disciplinary or administrative control of the competent authority. Such conduct, howsoever serious, does not automatically result in creation of a vacancy unless and until the appointment is formally canceled in accordance with law. It is a settled principle of jurisprudence of service laws that a post cannot be treated as vacant merely on account of alleged non-joining or absence, unless a final decision is taken by the competent authority after due process.

8. Equally important is the role assigned to the Sindh Public Service Commission. The SPSC mandate concludes upon making final recommendations. It has no authority to suo motu revisit or alter its recommendations unless it is duly intimated by the concerned department regarding non-joining or cancellation of appointment of a recommended candidate. In the present case, it stands admitted that no such intimation was ever furnished to the SPSC. In absence thereof, the SPSC could not have recommended candidates next in merit, and thus no illegality or inaction can be attributed to it.

9. The unreported judgment dated 13.03.2017 passed in SMC No.18/2016 so relied upon by the petitioners is distinguishable on facts, as those cases pertained to clear situations of non-joining within stipulated time resulting in undisputed vacancies. In contrast, the present case involves subsisting appointments, against which proceedings are stated to

be pending before the competent authority, including personal hearings. Until those proceedings reach finality, the claim of vacancy remains speculative and premature.

10. It is well settled that a candidate selected through a competitive process does not acquire a vested right to appointment or re-allocation merely on the basis of merit position, unless a clear vacancy exists and the relevant rules so permit. Constitutional jurisdiction cannot be invoked on conjectures or anticipated actions as a pre-emptive measure, particularly where administrative proceedings are still underway.

11. In view of the above legal and factual position, we are of the view that the petitioners have failed to establish infringement of any legal or constitutional right warranting interference. The respondents, on the other hand, appear to have acted within the bounds of law and in conformity with the governing rules and binding precedents. Consequently, no case is made out for exercising constitutional jurisdiction in favour of the petitioners.

12. This petition was dismissed through a short order dated 30.01.2026 and these are the reasons for the same.

JUDGE

JUDGE

HEAD OF CONST. BENHCES

Nadir*

Approved for reporting