

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-783 of 2012

Before:

**Mr. Justice Nadeem Akhtar &
Mr. Justice Muhammad Iqbal Kalhoro**

Date of Hearing: 28.10.2014.

Petitioner, Muhammad Samiullah, through Mr. Ashiq Muhammad, Advocate.

Respondents No.1, 3 & 8 - Karachi Port Trust & Director General Port and Shipping, through Mr. Obaidur Rehman Khan, Advocate.

ORDER

MUHAMMAD IQBAL KALHORO, J:-The petitioner has filed the

instant Constitutional Petition seeking following relief(s):

- (1) *To direct respondent No.2 to provide the list of receiving money /amount from un-employed students whose received the form of apprenticeship from respondent No.2 of Rs.100/- each which is near about Twenty Lacs which has been empuzzled by the Respondent No.1 to 7.*
- (2) *To pass order against respondent No.3 to 7 to cancel all the admission of apprentice sons in-law relative or authority approached persons and employees as apprentice on Merit according to law.*
- (3) *To direct respondent No.8 to 9 to hold enquiry against respondents No.1 to 7 why they did not send interview letters as well as test by all the un-employed student of Karachi as well as whole of Pakistan for test and interview and did not comply the law of the Constitution of Pakistan 1973.*
- (4) *To pass order to allow petitioner and all other un-employee student who has received forms after paying Rs.100/- each from the office of the respondent No.2 and submitted /received by the respondent No.1 Office and conducted examination from independent persons of KPT Officials /Officers not relationship from respondent No.3 to 7 and allow all the un-employed students of Karachi as well as Pakistan in*
- (5) *Apprenticeship training on Merit according to Constitution of Pakistan 1973 as ability.*

(6) Any other relief may kindly be granted if deem fit according to law.

2. The necessary facts are that the respondent No.1 had invited applications from candidates aged between 14 to 25 years having matriculation in Science or Technical group for Apprenticeship Training Program through a publication in daily "Express" Karachi, dated 05.11.2011. The application forms for admission in the program were available at Habib Bank Limited, Karachi Port Trust (KPT) Head Office Branch, Edaljee Dinshaw Road, Karachi against the payment of Rs.100/- The petitioner and his one relative namely Jamil Ali submitted the applications on 28.11.2011 at the office of respondent No.1 after fulfilling all the prescribed formalities. The petitioner and his relative then kept on approaching the office of respondent No.1 to enquire into the status of their forms but no satisfactory reply was given to them. It is further case of the petitioner that he and other un-employed students, whose number has been given by the petitioner to be about 22,000, who had applied were eligible to be admitted in the program but the respondent No.1 never sent the interview letters to them and Rs.100/- received from each of them (total Rs.22,00,000/-) were embezzled by them. The petitioner further revealed that he had later on come to know, through the Receptionist working in the office of respondent No.1, that only relatives of the authorities concerned were taken in the above program. According to the petitioner such conduct by the respondents had violated the fundamental rights of the petitioner as well as other candidates who were though duly qualified to be taken in the said program but were not given a fair chance to appear in the interview to compete with other candidates who were admitted by the respondents in the said program. On these facts the petitioner has filed the present petition.

3. The respondents No.1, 3 & 8 filed objections in the shape of counter-affidavit, wherein they raised a preliminary objection to the locus standi of the petitioner to file the instant petition. On factual aspects, the respondents state that the Apprenticeship Training Programs are run by the KPT as a mandatory obligation and the program starts with the publication of an advertisement in the press. Total 50 candidates are selected for the particular program. They denied to have received Rs.22,00,000/- from the candidates in lieu of application forms and, according to them, they had received 654 applications in all, including the application of the petitioner, and a total of 918 prospectuses were issued by them. On scrutiny of the petitioner's form it was found incomplete in respect of requisite information as he had not provided the references required under item No.10 of the form. Moreover, the petitioner had passed his matriculation in the General Group, whereas the prerequisite for entitlement to sit in the test for the program was to have matriculation either in the Science or Technical Group. Since the petitioner was found wanting in his qualification, therefore, he was not called for the interview. In the last the respondents have stated that they reserve the right to initiate appropriate proceedings against the petitioner who has alleged serious wrong doings against them without any basis and substances.

4. Mr. Ashiq Muhammad, learned counsel for the petitioner argued that a serious embezzlement of the amount received from the candidates in lieu of the application forms for admission in the program had been committed by the respondents, as albeit they issued the forms to thousands of prospective candidates against the sum of Rs.100/- each but they deliberately did not call them for the interview so as to accommodate their near and dear ones; the petitioner was well qualified

in terms of the advertisement to be taken in the program but he was discriminated against by the respondents as they even did not send him a letter for the interview to appear before the Committee to prove his eligibility. The learned counsel contended that the respondents had admitted only their relatives in the program and just to hood wink the people and to give an impression of transparency in the selection process an advertisement was published by them in the newspaper. He lastly prayed to declare the whole process of admitting candidates for the Apprenticeship Training Program as null and void, which was carried out without completing due formalities.

5. Mr. Obaidur Rehman Khan, learned counsel for respondents No.1, 3 & 8 vehemently refuted the contentions of the learned counsel for the petitioner and argued that no embezzlement of any amount had been committed by the respondents and the figure in respect of the number of the candidates given by the petitioner in his petition was conjectural and figment of his imagination as no proof to establish the allegations had been filed by him; only 654 candidates had applied for admission in the program out of whom only short listed were selected for training but since the petitioner's application form was not complete vis-à-vis the requisite information, he was not called for the interview; it was not obligatory upon the respondents to call every candidate who had submitted his application form for training as the authorities concerned were required to scrutinize the forms of prospective candidates at preliminary stage to short list them as only 50 candidates were to be selected for the program; only meritorious candidates were taken in for the training in the program after conducting a fair, clean and transparent procedure of selection. He further argued that the petitioner had never applied for supply of the requisite information concerning the procedure

employed by the respondents for selecting the candidates in the said program. He lastly submitted for dismissing the instant petition.

6. We have considered the contentions of the parties advanced at length and perused the entire material. The petitioner has raised some factual controversies here that 22,000 candidates had applied for the training program announced by the respondents and each one of them deposited Rs.100/- against the application form, thus an amount of Rs. 22, 00000/- stood deposited in the account of the respondents which has been gobbled up them under the garb of a so-called training program. The allegations ante, however, have been denied by the respondents. A perusal of file reflects that these assertions have been stressed by the petitioner without presenting any substantial and convincing proof in support whereof on the record. While exercising constitutional jurisdiction, this Court can look into only settled facts which are discernable on the face of the record. Much as there would hardly be any petition unaccompanied by some factual controversies, the criterion to invoke constitutional jurisdiction would be that, if the path leading to the facts in a given case is covered with mist and fog of uncertainty resulting from the lack of proof about them, the Court would not embark upon an exercise to clear that haze of uncertainty to reach the facts. But if the facts are settled, recognizable, noticeable, transparent, obvious, and palpable and floating on the face of the record, may be disputed ordinarily by the other party, the Court can act upon them. The allegation of the petitioner that 22,000 application forms were submitted by the candidates which raked in an amount of Rs.22,00,000/- to the respondents is not supported, ex facie, by any evidence at all, much less confidence-inspiring one to hold so. The kind of allegations leveled by the petitioner cannot be summarily established or proved by just making

a plain assertion about them. In order to arrive at a definite conclusion in relations to the allegations of the petitioner, a process entailing recording of evidence and its deep probe is compulsory and shall have to be undertaken. Admittedly this Court cannot embark upon this exercise while sitting on the constitutional jurisdiction. The petitioner however in this respect can pursue his remedy before the proper forum in accordance with law. The petitioner also has failed to pinpoint any material irregularity or lack of transparency in the selection procedure adopted by the respondents for admitting the candidates for the program and before questioning the validity of whole process; he has neither collected any material nor applied to seek any information in black and white leading towards alleged wrongdoings of the respondents. He has come in the Court with empty hands. He also could not satisfy as to under what law it was obligatory upon the respondents to call him for the interview after his application form was found incomplete by them. The examination of his application form which has been submitted by the respondents along with their objections reflects that he has not provided the requisite information under item No.10, which is in respect of references of two respectable persons (Not related to the applicant). He also does not appear to meet eligibility requirement of matriculation with 45% or more marks as in item No.11 of the form, he has described his percentage "40% and above but below 50%"; by providing such vague figure, admittedly the petitioner could not be said to have submitted a complete form in all respects as he was not supposed to keep the respondents guessing as to whether he had more than 45% marks in matriculation or less than that to determine his suitability for appearing in the interview. Concerning the successful candidates, the petitioner has not furnished any details about them nor has made them party, so in their absence any

order declaring the selection procedure (which must have benefitted them) null and void would be against the tenets of natural justice. There appears no violation of fundamental rights of the petitioner to warrant interference by this Court in exercise of constitutional jurisdiction. We are, therefore, of the considered view that this petition is without any merits, hence is dismissed accordingly.

Aforementioned are the reasons for our short order passed on 28.10.2014.

JUDGE

JUDGE