

Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: Writ Petition No.64123/2022.

**Muhammad Abdul Rehman.
Vs.
Punjab Public Service Commission etc.**

JUDGMENT

Date of hearing	27.04.2023.
Petitioners by	M/s Kashif Ali Chaudhry and Malik Asad Akram, Advocates for the petitioners.
Respondents by:	Mr. Omer Farooq Khan, Assistant Advocate General, Punjab alongwith Hafiz Muneeb Ahmad, Agricultural Officer (PP) O/o DG (Pest Warming) & QCP, Punjab Lahore.

ABID AZIZ SHEIKH, J. This judgment will also decide Writ Petitions No.66540/2022, 69284/2022, 76036/2022, 4203/2023 and 1580/2023, as identical questions of law and facts are raised in all these petitions.

2. Relevant facts common in all these petitions are that through advertisement No.01/2021 dated 03.01.2021, 03 posts of Assistant Director of Agriculture (Plant Protection) (**hereinafter referred as Assistant Director**) in (BS-18) and 02 posts of Deputy Director of Agriculture (Plant Protection) (**hereinafter referred as Deputy Director**) in (BS-18 + 165-SP) were advertised by Agriculture Department through the

Punjab Public Service Commission, Lahore (**PPSC**). The petitioners in all these petitions applied for the said posts and also passed the written test, however, the petitioners' interview call were cancelled on the ground that the petitioners do not have the required experience for the posts. The petitioners filed Writ Petitions No.64123/2022, 66540/2022, 69284/2022 and 76036/2022 in which as an interim relief, the petitioners were provisionally allowed to appear for interview subject to final outcome of these writ petitions. However, in the meanwhile, vide letter dated 12.12.2022, the Agricultural Department, requested the PPSC to withdraw the requisition of the aforesaid posts for the reasons mentioned in the said letter. Some of the petitioners being aggrieved have filed separate Writ Petition No.1580/2023 and 4203/2023, challenging the letter dated 12.12.2022 for withdrawal of requisition of the posts of Assistant Directors and Deputy Directors.

3. Learned counsel for the petitioners submits that petitioners have required experience for the posts in question, therefore, their interview call could not be cancelled. Further submits that requisition could not be withdrawn by the department on 12.12.2022 without approval of Addl. Chief Secretary, Services & General Administration Department (**S&GAD**). Further submits that once the petitioners were

called for interviews after passing the written test, the vested right accrued in favour of the petitioners and the requisition could not be withdrawn. Finally submits that the grounds of withdrawal of requisition are not valid as the post of "Agricultural Officer" was also upgraded under the Rules but same was not withdrawn rather appointments were made against the said post.

4. Learned Law Officer, on the other hand, submits that as requisition for the posts in question have been withdrawn by the competent Authority, therefore, these constitutional petitions have become infructuous and the petitioners should apply again when the posts will be re-advertised. He, however, explained that post of Agriculture Officer was not withdrawn because no upgradation took place in respect of post of Agricultural Officer, which was BS-17 post and was properly advertised. He also submits that as required by PPSC, the approval of the Addl. Chief Secretary has been obtained in terms of relevant regulation.

5. Arguments heard. The record shows that the posts of Assistant Director and Deputy Director were advertised on 03.01.2021 by Agriculture Department, through PPSC, however, the requisition of said posts were withdrawn by the concerned department. The first moot question require determination in these cases is that whether the requisition of

said posts was lawfully withdrawn and secondly whether any vested right accrued in favour of the petitioners against the withdrawal of said requisition. To determine the aforesaid legal issues, it is necessary to reproduce regulation 12 (a) of the Punjab Public Service Commission Regulations, 2022 (**Regulations**) as under:-

12. a. If the department decides to increase/decrease the number of vacancies or to withdraw altogether the requisitioned vacancies for valid reasons, approval of Additional Chief Secretary (S&GAD) shall be required, but this shall be done before sending of recommendation(s) by the Commission to the Department.

6. Plain reading of aforesaid Regulation shows that department can withdraw the requisitioned vacancies altogether for valid reasons, however, approval of Additional Chief Secretary (S&GAD) shall be required and said withdrawal must be before sending recommendations by the PPSC to the concerned department. In the present case, admittedly the recommendations were not yet sent by the PPSC to the Agriculture Department and on instruction of PPSC, the approval of Additional Chief Secretary (S&GAD) was also obtained on 31.03.2023 as per requirement of Regulations 12 (a) *ibid*. So far as the reasons for withdrawal of requisition are concerned, the working paper placed on record by the respondents shows that post of Assistant Director and Deputy Director have been omitted from the

Rules and revised nomenclature and pay scale of the said posts have been mentioned but same was not incorporated in the advertisement. The learned Law Officer on instructions also explained that post of Assistant Director was advertised in BS-18, whereas under the prevailing Rules the same is of BS-17 post, whereas against the posts of Deputy Director, special pay 165 was mentioned which is actually not available under the current Rules. The above reasons recorded by the department to withdraw the requisition appear to be valid reasons and does not show to be suffered from any illegality or *mala-fide*.

7. The plea of the petitioners that Basic pay scale of Agricultural Officer was also changed from BS-17 to BS-18 but its requisition was not withdrawn, is not supported by any relevant Rules. The notification dated 06.04.2021 (presented by petitioner's learned counsel) to upgrade the post of Agricultural Officer, was merely a recommendation, however, admittedly under the Rules, post of Agricultural Officer was never upgraded from BS-17 to BS-18. Further, the notification of appointment dated 04.04.2023 shows that appointments were made against the post of Agricultural Officer in BS-17 as per advertisement and not in BS-18 as claimed by the petitioners. The above discussion would lead to ineluctable conclusion that respondent-department not only had the

authority to withdraw the requisition but same has been done validly as per requirement of Regulations 12 (a) of the Regulations.

8. Regarding the vested right in favour of the petitioners, suffice it to note that though the petitioners have applied for the post of Assistant Director & Deputy Director and also appeared in the written test and interview but thereafter, neither they have been recommended for the post nor any merit list was issued or any appointment letter was issued in favour of the petitioners. In absence of any of the aforesaid incidents, no vested right accrued in favour of the petitioners. This legal position also coincide with the Regulation 12 (a) of the Regulation under which the department could withdraw the requisition altogether for valid reasons before any recommendations made by the PPSC.

9. In similar situation, the Hon'ble Supreme Court of Pakistan and various High Courts expressed the same view in the following case law.

i. In "SECRETARY FINANCE and others Vs. GHULAM SAFDAR" (2005 SCMR 534), the Hon'ble Apex Court held as under:-

"Be that as it may, it is difficult to sustain the prayer of the respondents since mere selection in written examination and interview test would not,

by itself, vest candidates with a Fundamental Rights for enforcement as such in the exercise of Constitutional jurisdiction of the High Court. Admittedly, the appellants had not issued any offer of appointment to the respondents and their appointment was subject to clearance by the Establishment Division under the Centralized System of Recruitment till it was discontinued in November, 1996, which again coincided with the imposition of ban on fresh recruitments, which could not be safely ignored by the appellants. Thus, the High Court was not right in overlooking this aspect of the case and issuing a writ of mandamus of the nature prayed for.”

- ii. The same view was also expressed by the Division Bench of this Court (while relying on different case law) in “SAIFULLAH Vs. INSPECTOR GENERAL, PUNJAB POLICE, LAHORE and 21 others” (2019 PLC (C.S) 1345)

as under:-

“It is pertinent to mention here that right to employ an employee vests with the employer only who in its discretion can scrap the recruitment process before its finalization and employee cannot claim that the employer be directed to complete the recruitment process as his vested right. Reliance in this regard is placed on the judgment reported as Dr. Mubashar Ahmad V. P.T.C.L. through its Chairman, Islamabad and another (2004 SCMR 1673). Mere qualifying in written examination and interview does not vest a candidate with a fundamental right for appointment enforceable in exercise of constitutional jurisdiction of this Court unless the competent authority has approved such selection. Reference may be made to the judgment reported as Secretary Finance and others v. Ghulam Safdar 2005 SCMR 534). Same principle has been reiterated in Riaz Gul and 5 others v. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and 36 others (2016 PLC (C.S) 350).”

iii. The learned Peshawar High Court in *"HAYATULLAH KHAN Vs. GOVERNMENT OF KYBER PAKTHUNKNAW through Chief Secretary and 4 others"* (2017 PLC (C.S) Note 53) held that the petitioner has no *locus-standi* to call in question the enhancement of qualification and standard for recruitment in the amended advertisement. Relevant observations are reproduced as under:-

"Sensing the situation, probably the competent authority issued amended advertisement, requiring therein by way of enhancing the experience to that of Supreme Court which seems to be legal, justified and appropriate. It is an admitted fact that earlier short listing was made and petitioner was called for interview but no result was declared, nor petitioner recommended, hence, no right, whatsoever, could be claimed."

iv. The learned Sindh High Court in *"RIAZ GUL and others Vs. FEDERATION OF PAKISTAN through Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and others"* (2016 PLC (C.S) 350) held as under:-

"It will be relevant to mention that mere selection in written examination and interview test would not, by itself, vest candidates with any fundamental right for enforcement as such. Even otherwise, it is established legal position that factual controversies, which are very much involved in the present petition as per allegations and counter allegations between the parties, cannot be decided by invoking the jurisdiction of this Court under Article 199 of the Constitution."

v. Similarly, the learned Sindh High Court in "SAJID RAZA and 17 others Vs. EXECUTIVE DISTRICT OFFICER (EDUCATION AND LITERACY), NOUSHERO FEROZ and 3 other" (**2015 PLC (C.S) 108**) held that the offer letters, unless followed by acceptance and final appointment letters, does not in our view confer any vested right upon the petitioners.

vi. Same view was also expressed in "ASADULLAH MANGI and others Vs. PAKISTAN INTERNATIONAL AIRLINES CORPORATION and others" (**2005 PLC (C.S) 771**) and "ZAKA ULLAH BAJWA Vs. GOVERNMENT OF THE PUNJAB through Secretary, Public Prosecution Department, Lahore" (**2013 PLC (C.S) 344**)

10. Though the petitioners in these petitions are claiming that they have the required experience for the posts in question, therefore, their interview could not be cancelled, however, as the requisition has already been withdrawn for the posts in question, therefore, this issue needs no adjudication in these proceedings at this stage.

11. In view of above discussion, writ petitions No.64123/2022, 66540/2022, 69284/2022 & 76036/2022 have become infructuous, whereas Writ Petitions No.4203/2023 &

1580/2023 have no merits. For the reasons, recorded above,
all these petitions are **dismissed**.

(Abid Aziz Sheikh)
Judge

APPROVED FOR REPORTING.

Judge

M.Ajmal