

Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT
W.P. No.1982/2013**

Babar Sultan Versus Government of the Punjab etc.

JUDGMENT

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| Date of hearing | 17.12.2024 |
| Petitioner by | Mr. Umer Hameed Khan, Advocate. |
| Respondents by | Barrister Zargham Lukhesar, Assistant Advocate General Punjab. |

ABID AZIZ SHEIKH, J. This constitutional petition is directed against the orders dated 19.09.2012 and 31.12.2012 passed by respondents No.2 and 1 respectively.

2. Relevant facts are that respondent No.2/DCO, Pakpattan Sharif advertised posts of educators in daily express on 17.11.2011 under the Recruitment Policy dated 25.10.2011 (**Policy of 2011**). The total numbers of post advertised for SSE (Engineer) were four. The petitioner applied for the post of SSE (Engineer), Tehsil Arifwala and as per merit list, he secured 56.031 marks and was placed at serial No.5. All 04 successful candidates joined and the recruitment process was completed. However, subsequently services of one Usman Farid Chishti were terminated under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (**PEEDA Act**) on 06.08.2012. The petitioner applied for his appointment being

next on the merit list, however, the said request was declined through impugned orders, hence this constitutional petition.

3. Learned counsel for the petitioner submits that the post became vacant due to termination of service of Usman Farid Chishti, hence, the petitioner was entitled to be appointed being next on the merit list. Submits that period of 190 days under Clause ix(d) of the Policy, 2011 will not come in the way of petitioner's appointment. He placed reliance on "Government of the Punjab through Secretary Cooperative Societies Department Lahore and others Versus Asad Abbas" (2022 SCMR 739), "Dr. Sumera Tabassum Versus F.P.S.C. and others" (2016 SCMR 196), "Province of Sindh and others Versus Ghulam Hassan Bughio" (2014 SCMR 643), "Government of N.W.F.P. through Secretary Education Department, Peshawar and others Versus Qasim Shah" (2009 SCMR 382), "Rafaqat Ali Versus Executive District Officer (Health) and others" (2011 PLC (C.S.) 1615), judgment dated 29.10.2014 in W.P. No.18648/2014 titled "Hafiz Ali Ahmad Versus Secretary Education and two others" Judgment dated 14.04.2022 in W.P. No.63174/2021 titled "Ehtisham Basharat Versus D.I.G. etc." "Shahid Habib Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Department Peshawar and 3 others" (2019 PLC (C.S.) 1426) and Judgment dated 26.09.2018 in

W.P. No.817/2017 titled "Saiful Haq Versus Government of KPK and others".

4. Learned Law Officer, on the other hand, submits that as Usman Farid Chishti was not only appointed but also joined the post and subsequently terminated under PEEDA Act, therefore, the post was no more vacant for appointment from waiting list. He submits that the case law referred above is distinguishable.

5. Arguments heard. Record perused. There is no dispute that the recruitment process for the posts of SSE (Engineer) was initiated under the Policy of 2011. Clause ix of the Policy relates to the letter of agreement, joining of service and offer to the next candidate on merit. For the convenience the aforesaid Clause is reproduced as under:-

(ix) Letter of Agreement

"(a) The names of selectees will be declared provisionally by the Recruitment Committee and the selected candidates will get Pre-service Induction Training before joining the service. If a selectee does not join training, he/she will lose the right to join service and offer will be given to the next candidate on merit.

(b) The selected candidates shall have to process computer tests and post training tests. After successful training, provisional Letter of Agreement shall be issued and signed between a selected candidate and Appointing Authority.

(c) If a person fails to join the post within fifteen days or where a written refusal is received from a selectee, his/her selection shall stand cancelled and next person

on the merit list will be offered the Letter of Agreement (Annex-B) subject to provisions of para a and b/ante.

(d) In case a person joins and leaves the same within a period of 190 days, then the Appointing Authority may offer the appointment to the next candidate on the merit list with the approval of Chairman District Recruitment Committee".

(Emphasis Supplied)

From above Clause (ix) of the Policy of 2011, it is evident that under ix(a) the names of the selectees will be declared provisionally by the Recruitment Committee and the selected candidates will get Pre-Service Induction Training before joining the service. If the selectee does not join training, he/she will lose the right to join service and offer will be given to the next candidate. Similarly under ix(c) if a person fails to join the post within fifteen days or where a written refusal is received from the selectee, his/her selection shall stand cancelled and next person on the merit list will be offered the Letter of Agreement. Under Clause ix(d) in case a person joins and leaves the same within 190 days, the Appointing Authority may offer the appointment to the next candidate with the approval of Chairman District Recruitment Committee.

6. The above Clause ix in policy of 2011 manifests that the next candidate on merit list shall only be given offer, if the selectee either does not join training or fails to join the post within fifteen days or where a written refusal is received from the selectee or in case a person joins and leaves the same within a period of 190 days. However, there is no provision that once a

person is appointed and joined service but subsequently removed from service under PEEDA Act, the candidate next on the merit list shall be selected. This legal position was further elaborated by the Competent Authority in its approval letter dated 05.06.2012 (Approval Letter) whereby recruitment of educators against the left over posts which remained unfulfilled due to non-availability of candidates during the recruitment under Policy of 2011 was approved. In the said approval letter, it is specifically mentioned that where joining has not taken place or some candidates have left after joining, the candidate next on the merit list available will be issued Letter of Agreement. For ready reference relevant part of the approval letter is reproduced hereunder:-

“The Competent Authority has approved the recruitment of Educators against all the left over posts which remained unfulfilled due to non-availability of candidates during the recent recruitment under the Recruitment Policy-2011 dated 25.10.2011. Presently, if any next in merit candidates be available against the seats where joining has not taken place or some candidates has left after joining, the EDO (Edu.) will issue Letter of Agreement immediately for such candidates. The joining of these candidates will be arranged on first working day after summer vacation”

7. In the present case, against four posts of SSE (Engineer) the top four candidates including Usman Farid Chishti were appointed on 11.02.2012 and he joined the post on 02.04.2012, whereas the petitioner was at Sr. No.5 of the merit list. However, after joining and the completion of selection process,

one of the candidates (Usman Farid Chishti) was removed from service on 06.08.2012 w.e.f. 02.04.2012 under Section 4 (b)(v) of the PEEDA Act. Under Clause ix *ibid* of the Policy of 2011, in case a person joins and leaves the same, only then a person next on the merit list can be selected whereas Usman Farid Chishti did not leave the post on his own rather he was removed from service under PEEDA Act, hence, the petitioner could not be appointed against the said post under the Policy of 2011 and approval letter. His removal from service under PEEDA Act will not render the seat vacant for selection of a next candidate from the waiting list, rather said seat can only be filled through fresh recruitment process.

8. I have carefully gone through the case law relied upon by the learned counsel for the petitioner and found the same distinguishable. In the case of "Government of the Punjab through Secretary Cooperative Societies Department Lahore and others Versus Asad Abbas" *supra*, there were four seats of Sub Inspectors (BS-11) advertised and out of top four persons, the candidate at Serial No.1 was selected for the higher post of Inspector (BS-14), hence, did not join. The candidate at Serial No.2 refused to join duty and candidate at Serial No.3 subsequently resigned and only one vacancy could be filled. It was in these circumstances that the candidate from waiting list was appointed and it was not the case where after joining, the candidate was dismissed from service under PEEDA Act like in

this case. Similarly, in the case of “Dr. Sumera Tabassum” supra, four posts of lecturer were advertised, however, the candidate on top did not join and petitioner in said case was not allowed joining on the ground that stipulated period of six months was lapsed. However, the Hon’ble Supreme Court allowed petitioner to join on the ground that the time will not come in the way of candidate selected on merit to join. In the said case, also no seat became vacant due to dismissal of candidate after joining as in the present case. In case of “Province of Sindh and others Versus Ghulam Hassan Bughio” supra, 43 posts of Deputy District Officers (DDO) were advertised and petitioner was at Serial No.44 of the merit list and subsequently candidate at Serial No.8 did not join the post of DDO, hence, the petitioner was appointed through intervention of the Court. This case is also distinguishable because here candidate was not dismissed after joining. In case of “Government of N.W.F.P. through Secretary Education Department, Peshawar and others Versus Qasim Shah” supra, some of the selected candidates did not join the service, such posts remain vacant, hence, appointment was made from waiting list. In said case, also there was no dismissal after joining. In all the aforesaid judgments of the Supreme Court, the candidates did not join or subsequently resigned, hence, the next candidate on the merit list was selected, however, in none of the above cases, the candidate after joining was dismissed

from service and candidate next on the merit list was allowed to join.

9. The case law of different High Courts referred above are also distinguishable. In the case of "Ehtisham Basharat" by this Court and "Saiful Haq" by Peshawar High Court, the candidates did not join whereas in the case of "Shahid Habib" *supra* by Peshawar High Court, the documents of the candidates were found fake before the process of training, hence his appointment was withdrawn. In none of these cases, candidate was dismissed from service as happened in the present case. No doubt in the cases of "Rafaqat Ali" and "Hafiz Ali Ahmad", *supra*, the service of the candidate was terminated after joining, however, in the said cases only question discussed and decided regarding the validity period of 190 days for the waiting list, which was found to be unreasonable. It is neither discussed nor held in any of the above case law that once a candidate is appointed and joined the post but subsequently dismissed from service, the next candidate from merit list can be selected in the wake of Clause ix of the policy of 2011. Similarly in "Shabana Akhtar Versus District Coordination Officer, Bhakkar and 2 others" (2012 PLC (CS) 366), "Muhammad Saeed Zafar Versus District Co-ordination Officer, Mianwali and 2 others" (2017 PLC (CS) Note 5) and "Muhammad Aqib Irshad Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary

Education, Peshawar and 2 others” (2024 PLC (CS) 505), the candidates did not join the posts in question and next candidates were selected from waiting list notwithstanding expiry of 190 days but none of the candidate was dismissed from service and next candidate was appointed from waiting list.

10. The above interpretation of Clause ix of the Policy of 2011 is not only explicit but also logical because when a person does not leave voluntarily after joining but is dismissed from service, there is stigma attached to the said dismissal. Such removal from service order is subject to challenge and the next candidate on merit list cannot be appointed unless and until the decision of dismissal attains finality from all relevant forums, however, the position is altogether different and next candidate can be appointed without objection from third party, in case the candidate does not join or leave voluntarily after joining.

11. In view of the above discussion, this writ petition being meritless is hereby **dismissed**.

(Abid Aziz Sheikh)
Judge

Approved for reporting

Judge