

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Dost Muhammad Khan

Civil Petition No.70/2014

(On appeal from the judgment
dated 5.11.2013 passed by the
Peshawar High Court, Peshawar in
W.P.No.1643-P of 2012)

Tariq Khan

...Petitioner

VERSUS

Govt. of KPK thr. Secy. Irrigation, Mardan & others

....Respondents

For the petitioner:

Mr. Amjad Ali, ASC
Mr. M.S. Khattak, AOR

For the respondents:

N.R.

Date of hearing:

04.03.2014

ORDER

Dost Muhammad Khan, J.—

CMA 762/2014:

Through this CMA, the petitioner seeks the permission of the Court to place on record, additional documents, which is allowed. Hence the same is disposed of.

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2. Leave to appeal has been sought through this petition against the judgment of a Division Bench of the Peshawar High Court, Peshawar dated 5.11.2013 dismissing Writ Petitions No.1643-P/2012, 2639-P/2012 and 380-P/2013 because identical

question of law and the facts were involved in all the three petitions.

3. Arguments of the learned ASC heard and available record perused.

4. The official respondents advertised 10 vacant posts, to be filled up as Revenue Inspectors (BPS-10). The petitioner being eligible, applied and participated in the test conducted by the respondents and secured 66 marks out of 100 marks, thus, stood first, however, in the meanwhile the Government of KPK, Irrigation Department re-structured the Irrigation Circle Mardan, probably, for administrative convenience and efficient service delivery. Mardan Irrigation Circle was made independent, whereas, Sawabi Circle was created besides the Malakand Circle.

5. Respondent No.2 re-advertised 22 vacant posts of Revenue Inspector, while rest of the 10 vacant posts of Revenue Inspectors were independently advertised by the Sawabi Irrigation Circle.

6. The petitioner questioned the cancellation of the earlier result of the test conducted for the 10 vacant posts, the re-advertisement of the posts and re-conducting the test for the same through W.P.No.2639-P/2012 and W.P.No.380-P/2013. However, without pursuing the remedy so chosen by himself, he willingly participated in the test and interview, freshly held. This time, the petitioner could not secure any position entitling him to be appointed against any vacant post, so advertised. Thus, he filed W.P.No.1643-P/2012, challenging the entire process subsequently

conducted by the official respondents, on the basis of allegation that it was done on political consideration; was unfair and his accrued right was disturbed in an unwarranted manner. However, after dealing with each and every aspect of the case and the contentions of the petitioner, the Division Bench of the Peshawar High Court, Peshawar dismissed all the three writ petitions as no element of *malafide*, ill will or any consideration other than merits, was established.

7. We have gone through the impugned judgment and we are of the firm view that learned Judges of the Division Bench of the Peshawar High Court have taken the correct view of the subject matter, elaborately dealing with each and every aspect of the case and that once the petitioner has participated in the subsequent test and interview, through such conduct, he forfeited his right to pursue the earlier writ petitions, referred to above, which were still pending disposal before the High Court.

8. No element of discrimination has been found by us because it was not only the petitioner but all the successful candidates, who passed the earlier test, result of which was cancelled by the official respondents, have not shown any grievance against that process, probably because of the government's notification, re-structuring Mardan Irrigation Circle, dividing it into three Divisions.

9. No solid evidence or material has been brought on record to establish that the petitioner was given discriminatory treatment or any deliberate attempt was made by the official

respondents thwarting his way to succeed in the test and the interview.

10. Thus, in the absence of any such material no adverse inference can be drawn against the exercise carried out by the official respondents. Accordingly, this petition is dismissed and leave to appeal refused.

Judge

Judge

Islamabad, the
4th March, 2014
'Nisar'

Not Approved For Reporting