

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Bench:

Mr. Justice Amin-Ud-Din Khan
Mr. Justice Jamal Khan Mandokhail

Civil Petition No. 178-Q of 2023

*(On appeal from the judgment of the High Court of
Balochistan Quetta dated 05.06.2023 passed in
C.P. No. 1860 of 2022)*

Parina Haresh and 19 others

.....Petitioner(s)

Versus

The Govt. of Balochistan and 16 others

....Respondent(s)

For the Petitioner(s): Mr. Abdul Rahim Mengal, AOR

For the Respondent(s): Mr. Muhammad Asif Reki, Advocate General
Mr. Muhammad Ali Rakhshani, Addl. AG
Mr. Irfan Bakhtiari, DG Agriculture Department

Date of hearing: 26.07.2023

JUDGMENT

Jamal Khan Mandokhail, J.- The Agriculture and Cooperatives Department, Government of Balochistan (the “**Department**”) intended to fill posts in Basic Pay Scale(s) (“**BPS**”) 1 to 14. Applications were invited through publications on 06 February 2018, but the recruitment process could not be completed for the reasons mentioned in the judgment impugned. The Department issued different letters/notifications for constitution of the Departmental Selection Committee (the “**Committee**”) for the selection process of candidates. In the meanwhile, more posts became available and thereby the Department extended the time for the selection process. Due to the increase in the number of posts, the Department ultimately invited further applications for 1184 posts in total. Through different publications and finally through advertisement bearing PRQ No.738/24.10.2022, the Department issued a corrigendum for newspapers on 13.04.2023. The Petitioners, feeling aggrieved, approached the High Court of Balochistan through a Constitutional Petition, which was disposed of through the impugned judgment as under:

“27. *In view of all the above circumstances, the respondents/Recruitment Committees are permitted to further proceed with the recruitment process for 1184 advertised posts in pursuance of advertisement/PRQ No.738*

dated 24.10.2022 after issuing corrigendum for information of all the interested candidates in pursuance of circular dated 13.04.2023 issued by respondent No.2.

The earlier interim order dated 07.12.2022 passed by this Court in the instant Constitution Petition stands recalled.

The Recruitment Committees shall select the candidates strictly on merits without nepotism, favouritism or any political influence.

The petition is disposed of in the above terms."

2. Arguments of the learned counsel for parties and the learned Advocate General heard and have perused the record.

Law regarding the affairs of persons in service of the Province of Balochistan

3. The Balochistan Civil Servants Act, 1974 (Balochistan Act IX of 1974) (the "**Act 1974**") deals with the appointment of persons in the service of the Government of Balochistan (the "**GoB**"). According to section 5 of the Act 1974, the appointment to the Balochistan Service or to a civil service of the Province of Balochistan or to a civil post in connection with the affairs of the Province of Balochistan shall be made in the prescribed manner by the GoB or by a person authorized by it in that behalf. To regulate and give effect to the Act 1974, the GoB in exercise of its powers, has framed the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 (the "**AP&T Rules**"). Rule 3 whereof prescribes the method of appointment and is reproduced hereunder:

3. Method of appointment.

(1) Appointments to a post shall be made by any of the following methods, namely:

(a) by promotion or transfer in accordance with Part II of these rules;
and

(b) by initial recruitment in accordance with Part III of these rules.

(2) the method of appointment and the qualification and other conditions applicable to a post shall be as laid down by the Department concerned in consultation with the Services and General Administration Department, on the recommendations of the Service Rules Sub Committee or on the recommendations of the Service Rules Main Committee whenever the case referred by the Service Rules Sub Committee.

4. The mode of initial appointment has been set out in Rule 9 of Part III of the AP&T Rules which reads as under:

9. *(1) Initial appointment to the post in basic pay scales 16 and above or equivalent shall be made if the post;*

(a) fall within the purview of the Commission, on the basis of examination or test to be conducted by the Commission; and

(b) do not fall within the purview of the Commission, in the manner as may be determined by Government.

(2) Initial appointments to the posts in basic pay scales 1 to 15 and equivalent shall be made on the recommendations of the Departmental Selection Committee, after these vacancies have been advertized in leading newspapers.

(3) A candidate for initial appointment to a post must possess the educational qualification(s) and experience and be within the age limit as laid down for the post.

(4) A candidate for appointment shall be the citizen of Pakistan and a domicile/local of the Province of Balochistan.

(5) Posts in basic pay scale 3 to 15 in offices which serve only a particular Region or District shall be filled by appointment of person domiciled in the Region or District concerned.

(6) Posts in basic pay scale 1 and 2 shall ordinarily be filled on local basis.

5. According to Rule 9(1)(a) of the AP&T Rules, it is clear that the appointment to posts in BPS-16 and above or equivalent, if fall within the purview of the Commission, shall be made on the basis of a test and interview to be conducted by the Balochistan Public Service Commission (the "**Commission**"). Similarly, Rule 3(1)(i) of the Balochistan Public Service Commission (Functions) Rules, 1982 (the "**BPSC Functions Rules**"), the Commission shall conduct a test and interview for initial recruitment to civil posts in BPS 16 to 22 connected with the affairs of the Province, except those specified in the Schedule appended to the Rules. Whereas, Rule 9(1)(b) of the AP&T Rules stipulates that posts which do not fall within the purview of the Commission, initial appointment to such posts shall be made in the manner as may be determined by the GoB. Sub clause (b) of Rule 3 further empowers the Commission to conduct a test and interview for initial recruitment to any other post which may be referred to it by the GoB, which may otherwise not fall within the purview of the Commission. As far as the initial recruitment for posts in BPS 1 to 15 is concerned, the GoB is empowered by Rule 5(1) of the AP&T Rules to constitute one or more Committee(s) for each department. The said rule provides that the composition of the Committee(s) shall be determined by the department concerned in consultation with the Service and General Administration Department ("**S&GAD**") and shall consist of at least four Members, one of whom shall be appointed as its Chairperson.

Selection Criteria for Chairperson and Members of the Committee(s)

6. The Committee(s) is/are responsible for the initial recruitment in BPS 1 to 15, but the AP&T Rules do not provide any mechanism nor criteria to adjudge the

competence, experience, calibre, independence, integrity, and undisputed impartiality of its Members and Chairperson. The majority of the posts in BPS-4 and/or above are meant to regulate the affairs of the department, therefore, the performance of the department depends on the person appointed against each post. One of the most vital decisions the GoB makes is who it names as Members of the Committee(s). Thus, to focus on finding the right people for the role, it is necessary that the Chairperson and Members must be of eminence, experience, knowledgeable, competent, able, most significantly of good character, integrity, and sound enough to ensure their independence. Additionally, caution must be adhered to in order to avoid any conflict of interest of the Members, including any prior knowledge of and in relation to any candidate to make the best decision possible. To achieve such goal, the unlimited power of the competent authority in selecting the Committee members needs to be structured.

Mechanism of Selection of Candidates

7. As per Rule 12 of the AP&T Rules, a candidate for initial appointment must possess educational qualifications and experience, but we have not been confronted with any rules, specifying job description, the necessary educational qualifications, and experience, if any required, for each post. However, if any job description, qualification, and experience was indeed prescribed in any rules, regulations, or instructions, it is required to be adopted and followed strictly and with due diligence to ensure transparency of the process. Moreover, we have been informed that the Committee is conducting tests and interviews for selection of the candidates. The AP&T Rules do not specify any objective selection procedure, criteria, mechanism, or guidelines for a particular post, nor do they provide the procedure and/or method to be adopted for the purpose of assessing the competence, ability, technical skills, behaviour, and strength of the candidates through the tests and interviews, if so conducted, in order to put the right person in the right job which is of utmost importance. In the absence of such determination, it is impossible to adjudge suitability, maintain merit, fairness, and ensure open competition amongst the candidates. It will also result in choosing the wrong person for the job which can produce a considerably negative outcome. For determination of such characteristics of the candidates, a fool proof mechanism and guidelines are required to be evolved and implemented.

8. At present, since there is no mechanism provided for tests and interviews to be conducted by the Committee to know the skills of a person for their initial recruitment in BPS 1 to 15, therefore, rushing for appointment without any mechanism can be a disaster. However, if any vacant post(s), including the subject matter of this petition, is/are urgently required to be filled, the GoB may requisition the posts to the Commission as provided by Rule 3(1)(b) of the BPSC Functions

Rules or may engage the services of a reputable institution having a faculty and expertise in human resources, preferably a statutory institution such as the Institution of Business Administration, Karachi ("**IBA**") for the purpose of conducting tests and interviews. While doing so, the GoB must evolve a yardstick approach for selection of such an institution. We agree with the findings of the High Court with regard to the constitution of the Committee. As stated in detail that there is no set procedure for the purpose of making papers, checking of answer papers by person(s) competent to do so, and conducting tests and interviews, therefore, the Committee may continue to perform its functions only with regard to inviting applications through publication, the scrutiny process, and shortlisting of the eligible candidates for their appearance in the tests and interviews by following the applicable rules. Besides, the process of requisitioning the posts, if any, to the Commission or any other reputable institution, be routed through the already notified Committee. The Committee must strictly observe the quota reserved under the law, rules, and policy for regions/districts/union councils, wards, minorities, women, persons with disabilities, etc., notwithstanding anything contained in Rules 15 and 16 of the AP&T Rules. After completion of the entire selection process and compiling of the result received from the testing authority/institution, it is the responsibility of the Committee(s) to recommend candidates for their appointments to the competent authorities. Rule 4 of the AP&T Rules prescribes the authorities competent to make such appointments. The intention of the rule makers is clear that other than the authorities specified in said provision, no one is empowered to interfere and influence the process of appointments, nor can add or remove already qualified candidates. The appointing authority must not misuse its powers, neither should it be influenced by any other factors while giving effect to the recommendations for selection of the candidates. It is, therefore, the constitutional and legal obligation of the authorities concerned to follow the law, rules, policy and procedure in their letter and spirit while appointing candidates to their respective posts. The GoB is required to address all the stated issues by suitably amending the AP&T Rules so as to promote and guarantee selection of candidates on merits, in order to appoint persons who are best qualified.

Thus, leave to appeal is refused. The Petition is disposed of in the above terms, by maintaining the findings of the High Court laid down in the judgment impugned.

Judge

Judge

Quetta,
26.07.2023
K.Anees/Ammar Cheema, LC
APPROVED FOR REPORTING