

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Amir Hani Muslim

Mr. Justice Sh. Azmat Saeed

SUO MOTO CASE NO.18/2016,

CMAs NOs.7067, 7587, 8495-8498/2016 IN SMC NO.18/2016 &

CMA NO.8198/2016 IN CMA NO.7067/2016 IN SMC NO.18/2016,

(Suo Moto Action regarding eligibility of Chairman and Members of Sindh Public Service Commission and others)

In attendance:

For Government of Sindh : Mr. Zameer Hussain Ghumro, AG Sindh
Mr. Ghulam Ali Brahmai, Addl.
Secretary, Services, Sindh

For Chairman & Members of SPSC : Mr. Farooq H. Naek, ASC
Raja Abdul Ghafoor, AOR

For Saindad Khan Solangi, Ghulam Shabbir Shaikh and Muhammad Hanif Pathan : Raja Muhammad Ibrahim Satti, Sr. ASC
Syed Razaqat Hussain Shah, AOR

For the applicant(s) : Mr. Zulfiqar Khalid Maluka, ASC
(In CMA No.7587/2016)

Nemo
(In CMAs Nos.7067, 8495 to 8498 of 2016)

Date of Hearing : 03.01.2017.

ORDER

AMIR HANI MUSLIM, J. - These proceedings emanate out of an Application submitted by Mr. Muhammad Junaid Farooq, a practicing Lawyer of the High Court of Sindh, addressed to the Hon'ble the Chief Justice of Pakistan, complaining therein that the Chairman and Members appointed by the Government in the Sindh Public Service Commission (hereinafter referred to as the Commission), lack eligibility threshold as

provided in Section 3 of the Sindh Public Service Commission Act, 1989. It was further averred that the Chairman and Members were involved in corruption, nepotism and mass mismanagement in the Commission, which stories were aired/printed in the electronic and print media. He has prayed that this Court should take suo motu notice of this matter of great public importance, as it has far reaching effects on the future of youth of the Province of Sindh. He further prayed that all the recommendations made by the illegally appointed Chairman and Members for appointments to different posts should be declared void and of no legal effect.

2. On this Application, one of us (Amir Hani Muslim, J), made the following recommendations:-

“Through this Application, the applicant has challenged the eligibility and qualification of Chairman Public Service Commission Sindh and the members appointed by the Sindh Government. This is a matter of public importance and has direct bearing on the rights of public at large. Public Service Commission is constituted pursuant to the directions contained under Article 240 of the Constitution. If the Chairman and the Members themselves are not eligible to hold office, how can they allowed to undertake exercise of examining the candidates for appointments in the government departments. I, therefore, suggest the office to place this application before the HCJP, recommending to examine the issue raised in the application on judicial side under Article 184 (3) of the Constitution.

3. Accordingly, the Application was placed before the Hon’ble Chief Justice of Pakistan, who was pleased to pass the following order:-

“It may be treated as suo motu case and fixed at Islamabad on 28.09.2016 with notice to the A.G Sindh and the persons named at the bottom of this application.”

4. Notices were issued to the Applicant, Advocate General, Sindh, and the Respondents. The matter was fixed in Court on 28.09.2016, and the Secretary, Services, Sindh, was directed to place before the Court the service profiles of all the Members of the Commission, indicating the length of service of the Respondents in departments in each scale, including their length of service in BS-20. The Secretary, Establishment Division, Government of Pakistan, was also directed to produce the service profile of Muhammad Saleem Bhanwar, with details of his length of service in each scale, including BS-20.

5. Thereafter the matter was posted on 17.10.2016 and on 03.11.2016, when the following order was passed:-

“The learned Advocate General Sindh has placed a statement in writing before the Court, which reads thus : -

“The following persons have tendered their resignation to the Government of Sindh and has such Sindh Public Service Commission shall be reconstituted in accordance with the law.

1. Mr. Muhammad Saleem Bhaounr, Chairman, SPSC
2. Syed Jawed Ali Shah Bukhari, Member, SPSC
3. Mr. Shamsuddin Hisbani, Member SPSC
4. Mr. Feroze Mehmood Bhatti, Member SPSC
5. Dr. Baz Muhammad Junejo, Member, SPSC
6. Mr. Ashiq Ali Memon, Member, SPSC”

2. *From the above statement, it is not clear as to whether the resignations so tendered by the aforesaid officers of the Sindh Public Service Commission (SPSC) have been accepted or are still under consideration before the Competent Authority. In case, the fate of these resignations has not been decided as yet, it shall be positively decided within three days and relevant material to this effect be placed on record before the next date of hearing. In addition to it, the learned Advocate General, Sindh is directed to place on record the complete list of recommendies of SPSC from the date when Mr. Muhammad Saleem Bhaounr, Chairman SPSC was so designated in this office.*

3. *The hearing of this case is adjourned to 17.11.2016. In the meantime, the interim order dated 17.10.2016 shall remain operative with further clarification that the Government of Sindh shall not make any appointment on the recommendations of SPSC, if any, already received by it.”*

6. Today, Mr Farooq H Naek, learned ASC, has appeared and states that he has been instructed not to contest the case of Ashiq Ali Memon, one of the Members of the Commission, and that Ashiq Ali would immediately tender his resignation to the competent authority. On tendering the resignation, the competent authority shall forthwith accept it.

7. Mr. Muhammad Ibrahim Satti, Sr. ASC has appeared for Saindad Khan Solangi, Ghulam Shabbir Shaikh and Muhammad Hanif Pathan, all three of whom are Members of the Sindh Public Service Commission and contended that all of them were appointed in accordance with law. He referred to Section 3 of the Sindh Public Service Commission Act, 1989 and submitted that two members i.e Saindad Khan Solangi and Ghulam Shabbir Shaikh were appointed by the Government in terms of Section 3 (3) of the Act, which provided for the appointment of not less than half of the Members from the service of Pakistan. However, the Member namely Muhammad Hanif Pathan was appointed under Section 3 (4) of the Act of 1989, whereby the remaining Members were to be appointed from the private sector. He referred to the service profiles of all the three Members and contended that the matter was taken up by this Court on the application of one Mr Muhammad Junaid Farooqi, whereby the appointments of the Chairman and the other Members were challenged but the eligibility of the Members who are his clients was never challenged.

8. He referred to the service profiles of the two Members namely Saindad Khan Solangi and Ghulam Shabbir Shaikh and contended that these Members fulfill the criteria laid down under Section 3(3) of the Act.

9. He next contended that the 3rd Member, namely Muhammad Hanif Pathan, was appointed in pursuance of Section 3(4) of the Act, which stipulates that the remaining members shall be selected from private sector from amongst the eminent persons with minimum age of forty five years and maximum age of sixty five years representing liberal arts and science and professionals having a Bachelor's Degree with sufficient practical experience in the relevant field. He submitted that the said Applicant/Respondent is from the private sector and has 40 years experience including 28 years experience of Aviation industry/P.I.A and 12 years in different Government organizations and is qualified to hold the office as Member of the Commission.

10. He lastly contended that the removal of the Chairman and the Members of the Commission could only be made in accordance with the procedure laid down in Section 6 of the Act.

11. We have heard the learned counsel M/s Farooq H. Naek and Ibrahim Satti besides the Advocate General Sindh and have perused the record with their assistance. After scanning the service profiles of all the Respondents, we are of the view that the appointments of two of the Members namely Saindad Khan Solangi and Ghulam Shabbir Shaikh were made in accordance with the provisions of Section 3(3) of the Act. However, Muhammad Hanif Pathan, who is appointed as a Member, does not qualify the eligibility criteria as laid down in Sub-Section 4 of Section 3 (*ibid*). Contrary to the requirements stipulated in the said sub-section, he is not from the private sector. His experience is based on his 28 years service in the P.I.A, which is a public sector organization besides he does not qualify the

test of 'eminent person', as provided by Section 3 (4) of the Act. We, therefore, hold that the appointment of Muhammad Hanif Pathan as a Member of the Commission was not made in conformity with the provisions of Section 3 (4) of the Act.

12. While hearing these proceedings, we have noticed that the Commission created under Article 242 of the Constitution is a constitutional body responsible for recruitment in public sector. The Act empowers the Sindh Government to appoint the Chairman and Members of the Commission, for which no formal mechanism for their selection has been delineated. Section 10 of the Act provides that the Government should make rules for carrying out the purposes of the Act, but till date no such rules have been framed by the Government for determining the mode through which the Chairman/Members would be selected although there is reference of qualification under Section 3 of the Act, providing the eligibility of the Chairman and Members which needs further clarity by the rules stipulating the mechanism. The wisdom behind the provision of Section 10 empowering the Government to frame rules appears to be that the posts of Chairman and Members, which is left at the discretion of the Government under the statute, has to reach out such a group of eminent and dignified personalities who would otherwise not apply for these posts. The Chairman/Members of this constitutional body, who enjoy the constitutional protection, need to be selected from amongst noble individuals possessing incomparable competence, exalted caliber, unblemished track record, impeccable integrity and unquestionable impartiality. They should be the persons who can be entrusted with the responsibility of selecting the most deserving candidates

who will be holding key positions in the public sector a decade down the path.

13. The application of ultimate wisdom in selection of the Chairman and Members of the Commission is extremely important, as it should have been a symbol of excellence, which is at the brink of losing its traditional grace. We have also noticed the controversy recently generated by the examinations/interviews and recommendations undertaken by the Commission headed by the Chairman namely Muhammad Saleem Bhanour, which was talk of the town.

14. The appointment of the Chairman and Members of the Commission has far reaching effects as observed by us hereinabove and the inherent disqualification that we have noticed in their appointments was willfully overlooked by the relevant forum, as there is no yardstick provided for scrutinizing the caliber of the persons before their appointment. The discretion of the competent authority in making the appointments of the Commission needs to be structured through the rules, which need to be framed by the Government in terms of Section 10, suggesting a high-powered permanent committee to examine the service profiles of the Chairman and Members to be selected under Section 3(3) and the qualifying standards provided therein. Likewise, the high-powered committee needs to scrutinize the eminence of the persons in the private sector before the selection as Member in consonance with the terms used in Section 3(4) of the Act.

15. This Court in the case of **Muhammad Yasin Vs. Federation of Pakistan** (PLD 2012 SC 132), which view was affirmed in the case of **Muhammad Ashraf Tiwana Vs. Pakistan** (2013 SCMR 1159), has provided the guidelines for appointment to the public office, which read as follows:-

“(a) whether an objective selection procedure was prescribed; (b) if such a selection procedure was made, did it have a reasonable nexus with the object of the whole exercise, i.e selection of the sort of candidate envisaged in [the law]; (c) if such a reasonable selection procedure was indeed prescribed, was it adopted and followed with rigour, objectivity, transparency and due diligence to ensure obedience to the law”.

16. These guidelines should be made basic criteria for appointment to the office of Chairman and Members of the Commission. The proposed rules need to be framed in a manner where the selection to the posts of Chairman and Members should be transparent and confined to the persons who enjoy high standards of integrity and honesty. The rules should further provide that the proposed appointee has a clean service record without any adverse entry in his P.E.Rs throughout his career.

17. We, for the aforesaid reasons, direct the Government to immediately take steps to frame rules and thereafter appoint the Chairman and Members of the Commission against vacancies created by resignations of the Chairman/Members and by the order of this Court passed today. The Government shall retain the services of two Members namely Saindad Khan Solangi and Ghulam Shabbir Shaikh, as their appointments are found to

have been made in conformity with the provisions of Section 3 of the Act. The C.M.A.No.7066 of 2016 filed by Mr Muhammad Ibrahim Satti, learned Sr.ASC, is partly allowed in the above terms.

18. There are complaints received by this Court against Jumo Khan Chandio, Deputy Controller of the Commission, and Javed Ahmed, Director I.T. who were ordered to be repatriated to their parent departments, who have been posted back to the Commission. We direct the Chief Secretary, Sindh, to place before us the original service profiles of both these officers with explanation as to how they could come back from their parent departments to the Commission and why proceedings under contempt law should not be initiated against them for willful defiance of the orders of this Court being beneficiaries. Both the officers shall appear in person on the next date of hearing with explanation.

19. The next issue raised in these proceedings relates to the examinations/interviews and recommendations made by the Commission for appointments of the candidates to different departments in the intervening period. The Advocate General Sindh and the learned Counsel representing some of the recommendees shall make their submissions on the next date and appropriate orders shall be passed after hearing them.

20. To come up after one week.

Judge

Islamabad the,
3rd January 2017.
Not approved for reporting.
Sohail/**

Judge