

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO. 1948-L OF 2021

(Against the judgment dated 20.09.2021
passed by the Lahore High Court, Lahore in
Writ Petition No. 55270/2020)

Government of Punjab through Secretary Cooperative Societies
Department, Lahore etc

...Petitioners

Versus

Asad Abbas

...Respondent

For the Petitioners: Rana Shamshad Khan, Addl. A.G.

For the Respondent: N.R.

Date of Hearing: 27.12.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order dated 20.09.2021 passed by the learned Lahore High Court, Lahore, whereby the Constitutional Petition filed by the respondent was allowed and the departmental order dated 06.02.2020 rejecting respondent's application for his appointment as Sub-Inspector (BPS-11) being next in merit was set at naught.

2. Briefly stated the facts of the case are that pursuant to an advertisement dated 02.07.2017, Punjab Public Service Commission invited applications from the eligible candidates for recruitment of four posts of Sub-Inspector (BPS-11) in the Punjab Cooperatives Department, Khushab. After written test and interview, a final seniority list was prepared wherein the respondent stood at Serial No. 8. Vide letter dated 26.09.2017, the Punjab Public Service Commission recommended the appointment of first four candidates of the seniority list and the names of the persons who secured 5th to 8th positions were kept at waiting list. Out of the four recommended

for appointment, the candidate at Serial No. 1 namely Muhammad Irfan Zafar was selected for a higher post i.e. Inspector (BPS-14) whereas the candidate at Serial No. 2 namely Javed Iqbal refused to accept the job. Thereafter, vide letter dated 20.03.2018, the department requested the Commission to provide substitute of the said candidates and in response only the name of Muhammad Naeem Akhtar at Serial No. 5 was provided as substitute and the names of already recommended three candidates were again included. It appears from the record that candidate at Serial No. 3 namely Muhammad Waseem Akram subsequently resigned from duty on 30.04.2018 and in these circumstances out of the four vacancies, only one vacancy could be filled and the three were lying vacant. Pursuant to another request from the department dated 05.09.2018 for providing substitutes, the names of Muhammad Javed at Serial No. 6 and Babar Rehman Khan at Serial No. 7 were recommended by the Commission but they refused to join the duty and in this regard also sworn affidavits. The perusal of record reveals that the respondent and one another namely Muhammad Naeem Akhtar from the waiting list wanted to join the duty because five persons above them in the seniority list refused to accept the job. The said Mohammad Naeem Akhtar filed a Constitutional Petition before the High Court and ultimately succeeded in getting the relief sought for. Being aggrieved, the respondent also filed Writ Petition No. 214496/2018, which was disposed of on 27.02.2019 with the direction to the respondent to firstly approach the Department for redressal of his grievance. Pursuant to the said order, the respondent approached the department but his application was turned down by the department vide order dated 16.05.2019. Thereafter, the respondent filed Writ Petition No. 33726/2019 which was allowed vide order dated 28.11.2019 and the department was directed to re-decide his application through a well reasoned speaking order but the department again rejected his application vide order dated 06.02.2020, which led to filing of yet another Writ Petition No. 55270/2020 before the learned Lahore High Court, which has been allowed vide impugned order and the order dated 06.02.2020 passed by the department was set aside. Hence, this petition seeking leave to appeal.

3. *The crux of the arguments advanced by the learned Additional Advocate General is that under Regulation No. 59 of the Punjab Public Service Commission Regulations, 2016, only the concerned department can ask for substitute in case a candidate fails to join the post, tenders his resignation or is declared unfit. Contends that first recommendation in this matter was sent on 26.09.2017 and in light of Regulation No. 62 of the Punjab Public Service Commission Regulations, 2016, after one year of the first recommendation the merit list expired on 25.09.2018 and since before the expiry of the merit list, the department had never asked for the substitution of fourth selected candidate, therefore, the request of the respondent was rightly rejected by the department. Lastly contends that requesting a substitute from waiting list is the sole prerogative of the department and the appointment as substitute from waiting list cannot be claimed as a matter of right.*

4. *We have heard learned Law Officer at some length and have carefully perused the available record.*

The perusal of record clearly reveals that for the four posts of Sub-Inspector (BPS-11) at Khushab Region, the Punjab Public Service Commission after conducting test and interview had prepared a seniority list of eligible candidates wherein the name of the respondent was at Serial No. 8. Vide letter dated 26.09.2017, the Commission recommended the names of first four persons to be appointed as Sub-Inspector (BPS-11) but as the candidate at Serial No. 1 was selected for the higher post of Inspector (BPS-14), therefore, he did not join the duty as Sub-Inspector (BPS-11); the person at Serial No. 2 refused to join the duty whereas the person at Serial No. 3 subsequently resigned on 30.04.2018 and only one vacancy could be filled in. To fill the remaining three vacancies, ultimately the names of persons from waiting list i.e. at Serial Nos. 5, 6 and 7 were recommended by the Commission but the record shows that the candidate at Serial No. 6 of the waiting list joined police department whereas the other at Serial No. 7 of the waiting list joined Education Department and refused to join the petitioner Department as Sub-Inspectors (BPS-11). In these circumstances, the name of the respondent eventually came at Serial No. 3. It is an

admitted position that the person at Serial No. 5, who was also a waiting candidate, was appointed as Sub-Inspector. When there were vacancies available and after the refusal of the other candidates, who were above the respondent in the seniority list, the respondent came at Serial No. 3 and one waiting candidate was also appointed, denying the relief to the respondent is violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, which ensures equality before the law and equal protection of law and states that there shall be no element of discrimination. Merely for the fault of the department that it did not apply to the Commission to get the name of the respondent as substitute within the stipulated period of time, the respondent cannot be left to suffer for an irreparable loss. The learned High Court has rightly relied upon the judgment of this Court passed in Government of NWFP Vs. Qasim Shah (2009 SCMR 382) wherein this Court has candidly held that when some of the selected candidates do not join the service, such posts remain vacant and it is imperative for the department to consider the remaining candidates for appointment against the said posts because these posts cannot be kept vacant till the next process of recruitment, if some selected candidates are still available on the waiting list. The learned Law Officer put much stress on the point that at the time of expiry of the merit list i.e. 25.09.2018, no vacancy was available. However, as discussed above, this was not the case and the vacancies were available. This fact has been noted by the learned High Court in paragraph 6 of the impugned judgment and according to the dictates of Article 91 of the Qanun-e-Shahadat Order, 1984, judicial proceedings have got sanctity and a presumption of correctness is attached to the proceedings before a judicial forum. This Court in the case of Muhammad Ramzan Vs. LDA (2002 SCMR 1336) has categorically held that strong presumption of correctness and sanctity of high order is always attached to judicial proceedings. Reliance is also placed on Fayyaz Hussain Vs. Akbar Hussain (2004 SCMR 964) & Waqar Jalal Ansari Vs. National Bank of Pakistan (2008 CLD 1202). Mere the bald statement of the learned Law Officer without any documentary proof cannot overturn the judicial finding. Even otherwise, the expiry of time, if any, was not attributable to the respondent and could not be

counted against him to deprive him from the post in question for which he was fully qualified and till date the post was vacant and had not been re-advertized. Learned Law Officer has raised this issue before this Court for the very first time and even did not agitate the same in the memo of petition. We have noticed that the learned High Court vide impugned order dated 20.09.2021 had directed the petitioner department to redress respondent's grievance by taking all necessary steps in liaison with Punjab Public Service Commission within a period of thirty days but despite lapse of more than three months, no heed has been paid by the department, which clearly reflects its lethargic attitude.

5. *For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.*

JUDGE

JUDGE

Lahore, the
27th of December, 2021
Approved For Reporting
Khurram