

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No. 100-Q of 2023

On appeal from the Judgment dated
14.03.2023 passed by the High Court of
Balochistan, Quetta in Constitution
Petition No.2080/2022

The Government of Balochistan through, ...Petitioner(s)
Additional Chief Secretary Development,
P&D Department, Quetta and another

Versus

Muhammad Akhtar and others ...Respondent(s)

For the Petitioner(s) : Mr. M. Ayaz Swati, Addl.AG.
Balochistan
Mr. Tahir Khattak, Addl.AG,
Balochistan

For the Respondent(s) : Mr. Taimoor Aslam Khan, ASC
Syed Rifaqat Hussain Shah, AOR
a/w Ahmad Raza, in person

Date of Hearing : 03.12.2024

Judgment

Muhammad Ali Mazhar, J: This Civil Petition for leave to appeal is brought to challenge the judgment dated 14.03.2023 passed by the High Court of Balochistan, Quetta, in the Constitution Petition No.2080/2022.

2. According to the sequence of events, the respondents filed a Constitution Petition No. 2080/2022 in the High Court of Balochistan, wherein they alleged that, despite succeeding in the recruitment process, a vested right was created in their favour. Thus, the non-issuance of offer letters to them by the appointing authority was illegal. It was further alleged that the department wanted to appoint persons of their choice to deprive the respondents/petitioners. The learned High Court of Balochistan,

Quetta, *vide* the impugned judgment, allowed the Constitution Petition and held that the respondents/petitioners are entitled to be appointed against the vacant posts on a priority basis, and the department was directed to issue appointment orders as recommended by the Selection Committee.

3. The learned Additional Advocate General, Balochistan ("AAG") argued that the learned High Court failed to note the defects in the recruitment process, which was scrapped for certain reasons, and that no other person was appointed to the posts on which the respondents/petitioners are claiming a legitimate expectation for appointment. He further argued that no appointment/offer letter was issued; rather, as soon as the defects in the recruitment process were highlighted, the process was scrapped. On a factual lateral, the learned AAG argued that, against the post of Driver (B-4) in the Planning and Development Department, five vacant posts were advertised for zonal allocation, i.e., Zhob, Nasirabad, Mekran, Quetta, and Sibi. However, in the Minutes of the Meeting, one additional vacant post was added and placed at S. No. I. Likewise, only two posts of Statistical Assistant (B-14) were advertised, i.e., one for open merit and the second for Zhob Zone. However, in the minutes of the Selection Committee, the post allocated for merit was illegally shifted to Sibi Zone. Furthermore, against three posts of Stenographers (B-14) for Nasirabad, Mekran, and Quetta Zones, one more candidate was recommended against a post that did not exist. It was further contended that even the composition of the Selection/Recruitment Committee was changed by inducting a junior officer, i.e., Assistant Director (B-17) in place of a senior member, i.e., Director (B-19) from the Bureau of Statistics. He further argued that, while passing the impugned judgment, the learned High Court failed to note the violation of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, in the recruitment process and wrongly applied the principle of legitimate expectation on the basis of the judgment rendered by this Court in the case of Uzma Manzoor and others Vs. Vice-Chancellor Khushal Khan Khattak University, Karak and others (2022 SCMR 694).

4. The learned counsel for the respondents argued that the appointment of the respondents was recommended on the basis of the Minutes of the Meeting of the Selection/Recruitment Committee after observing all codal formalities. Hence, the respondents are

entitled to be appointed against their posts, such as Junior Clerk (BPS-11), Statistical Assistant (BPS-14), Naib Qasid (contract basis), and Driver (contract basis), respectively. It was further contended that all the respondents applied against vacant positions in response to the advertisement dated 16.05.2022 published in daily newspapers. All the respondents appeared in the test and interview, and were subsequently qualified, but the department was reluctant to issue appointment orders without any cause and reason. Therefore, the respondents approached the High Court and prayed that, upon being declared successful in the recruitment process, vested rights had been created in their favour. However, the learned counsel neither denied the assertion of the learned AAG that no other person was appointed on the posts in question nor denied the defects in the recruitment process pointed out by the learned AAG.

5. Heard the arguments. The exercise of recruitment is an onerous and conscientious duty, and if it is assigned to a person or committee, they are obligated to conduct the process fairly and squarely and according to the mandate given by the recruitment agency/department to recommend suitable candidates for filling up the vacant positions/posts advertised for applications by interested candidates. The Selection/Recruitment Committee cannot travel beyond its mandate. Neither can it subtract any post nor add any post in the selection process, but it is obligated to adhere to the terms of reference and conduct the recruitment process strictly for the sanctioned posts allowed to be included in the written test and interview by the candidates. The Selection Board or Recruitment Committee can only recommend the candidates for issuing offer or appointment letters who are strictly selected on merit for the sanctioned posts, without deviating from the terms and conditions of the advertisement published for the information of the general public. No doubt, the predominant task of the Recruitment Committee should be the selection of suitable candidates, which is the substratum of a fair, transparent, and efficient recruitment process. The key responsibilities of the Recruitment Committee are to first determine how many positions have been advertised for inviting applications; to scrutinize all applications for shortlisting; and to examine whether all required antecedents and credentials have been attached and vetted for the purposes of the initial shortlisting of applications; whether the applicant joined the

competitive process and qualified the written test, if any such conditions is required to be complied with, then to assess the marks on merits; and subsequently, conduct the interview according to the merit list, awarding interview marks. The Recruitment Committee may also consider granting additional marks for additional/value-added qualifications or experience as mentioned in the advertisement inviting applications.

6. The Baluchistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979, framed pursuant to Section 25 of the Baluchistan Civil Servants Act, 1974, manifestly elucidate under Rule 3 that the appointments to posts shall be made by the method of promotion or transfer or by initial appointment. However, the pre-condition is that the method of appointment and the qualifications 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 ("S&GAD"). This means that the Recruitment Committee must undertake the recruitment process according to the conditions outlined by the concerned department, in consultation with the S&GAD and they are bound to strictly follow the criteria fixed for appointments with the required number of posts, and they are obligated to complete the process and send recommendations without deviating from or departing from the benchmarks to achieve the goal.

7. The bone of contention in this matter is why the recruitment process was scrapped, and the recommendations forwarded by the recruitment committee were not accepted. First of all, we would like to make it clear that only recommendations were sent, and no offer letter or appointment letter was issued by the competent authority. Secondly, there were certain valid reasons for which the entire recruitment process was declared null and void. The blunders of the Recruitment Committee messed up the entire process. For instance, against the post of Driver (B-4), five vacant posts were advertised for zonal allocation, but in the Minutes of the Meeting, the Recruitment Committee added an additional post. Similarly, against the two posts of Statistical Assistant (B-14), the post allocated for merit was shifted to the Sibi Zone. Furthermore, for three posts of Stenographers (B-14), one additional candidate was recommended against a post that did not exist. At the same, the competent authority also noted defects in the composition of the Selection/Recruitment Committee,

whereby a junior officer (Assistant Director, B-17) was inducted instead of the senior member (Director, B-19) from the Bureau of Statistics. Additionally, the second member from the P&D department, i.e., the Section Officer Admin was also swapped without approval. Another discernible shortcoming was that the posts were to be advertised in five newspapers in line with the guidelines issued by S&GAD, but for the recruitment in question, the advertisement was only published in three newspapers. It is a ground reality, which was not denied by the learned counsel for the respondents, that the recruitment process conducted for the aforesaid posts was annulled upon the disclosure of these flaws, and the recommendations forwarded by the Selection Committee were not acted upon. No person was issued any offer or appointment letter.

8. The learned High Court relied upon the judgment authored by one of us in the case of Uzma Manzoor (*supra*). The minutiae of the case reflects that the grievance lodged by Uzma Manzoor (petitioner) in the High Court was that candidate Hameed-ur-Rehman was unlawfully given 10 additional marks on account of some experience, as no such condition was mentioned in the advertisement to consider past experience. The learned High Court decided the writ petition and set aside the recruitment process with directions to the university to conduct fresh interviews of candidates who qualified in the written test. In the above case, this Court also held that the mere submission of an application for joining recruitment process in response to an advertisement does not create any vested right to claim the job, come what may. It was further held that the selection process should remain within the specified spectrum and attributes and due to a breach of this protocol, the doctrine of legitimate expectation may arise to rescue, and ventilate the sufferings of, the candidates who were under the bona fide belief that their applications for appointment would be considered without experience marks being a precondition. If any additional marks are added or considered beyond the advertised conditions, it would be highly discriminatory to candidates without past experience. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law, custom, or established procedure followed in regular and natural sequence. Such an expectation should be justifiably legitimate and protectable. Even in the above case, this

Court directed the Selection Board to consider the candidatures for the post in accordance with the qualifications mentioned in the advertisement and not otherwise.

9. In the present controversy, the dictum laid down in the case of Uzma Manzoor (*supra*) does not provide any assistance to the respondents' case; rather, it is distinguishable on all fours. As far as the present case is concerned, although the recruitment process has been declared null and void by the competent authority, it does not debar the respondents from participating in the competitive process initiated afresh by the department for the appointment to the same required posts. Therefore, for all intents and purposes, all respondents may apply afresh in response to the advertisement published in the newspaper inviting applications for aforesaid vacant situations.

10. In light of the above discussion, the aforementioned civil petition is converted into an appeal and allowed. As a consequence, thereof, the impugned judgment passed by the learned High Court is set aside and the Constitution Petition filed in the High Court is dismissed.

Judge

Judge

Judge

Islamabad
03.12.2024
Khalid
Approved for reporting.