

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE SYED MANSOOR ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL MISCELLANEOUS APPLICATION NOS. 1824, 2357 & 2358
OF 2021 IN CIVIL PETITION NOS. NIL OF 2021 AND CIVIL
PETITION NOS. 802 & 979 OF 2021**

(CMAs have been filed seeking permission to file and argue the civil petitions)
(On appeal against the judgment dated 12.02.2021 passed by the High Court of Sindh, Karachi in
Constitutional Petition Nos. D-7382/2019, D-7625/2019, D-7809/2019, D-4704/2020 & D-
5755/2020)

Ghayasuddin Shahani etc	(In CMA 1824/2021)
Abdul Ghani etc	(In CMA 2357/2021)
Mohammad Yaseen etc	(In CMA 2358/2021)
Mukhtiar Ahmed etc	(In CP 802/2021)
Rahamdil etc	(In CP 979/2021)
...Applicants/Petitioners	

VERSUS

Akhtar Hussain etc	(In CMA 1824/2021)
Qadir Bux etc	(In CMA 2357/2021)
Abdul Majeed etc	(In CMA 2358/2021)
Province of Sindh through Chief Secretary etc	(In CP 802/2021)
Shah Murad etc	(In CP 979/2021)
...Respondent(s)	

For the Applicants / Petitioners:	Mr. M.M. Aqil Awan, Sr. ASC (In CMAs 1824, 2357 & 2358/2021 & CP 979/2021)
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For the Petitioners:	Mr. Mukhtiar Ahmed, petitioner No. 1 in person
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For Respondent (1-8):	Mr. Javed A. Khan, ASC (In CMA 1824/2021)
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For other Respondents:	N.R.
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Date of Hearing:	19.05.2021
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JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.-

**CIVIL MISCELLANEOUS APPLICATION NOS. 1824, 2357 & 2358/ 2021
IN CIVIL PETITION NOS. NIL/2021**

1. Subject to all just exceptions, these CMAs are allowed. Let
the petitions be numbered and fixed today.

CIVIL PETITION NOS. 3111, 3112, 3113, 802 & 979/2021

2. Through these petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have called in question the legality of the judgment of the High Court of Sindh dated 12.02.2021 whereby the Constitutional Petitions filed by the respondents were 'disposed off' while directing the Health Department, Government of Sindh to follow the instructions issued therein strictly in accordance with law in the interest of safe dispensation of justice.

3. Briefly stated the facts of the matter are that an advertisement was published in the newspapers on 22.03.2018 wherein 1733 vacancies of Vaccinators (BPS-6) were announced by the Health Department, Government of Sindh in order to expand the program on 'immunization' in Sindh and as such applications were invited from the residents of the union councils where the posts exist. As per the contents of the advertisement, the basic qualification for induction as Vaccinator was matric or equivalent, however, preference was to be given to the candidates seized with vaccination certificate from a recognized institute. The passing marks were prescribed as 60. However, during the process, only 1611 candidates could meet the criterion of obtaining 60 or higher marks. In order to fill the remaining vacancies, the Health Department under the directions of Minister for Health, Government of Sindh relaxed the criterion of 60 marks to 55 marks and thereby the number of qualified persons arose to 3245. Thereafter, a Selection Committee headed by the Additional Chief Secretary (Health), Additional Secretary (Services), SGA&CD and Project Director EPI was constituted vide notification dated 19.12.2018. It is noteworthy that during the process, the Additional Secretary (Services), SGA&CD did not participate in the selection process by absenting himself from interviews of the candidates. The final selection was made on the recommendation of the two members' committee, as a consequence of which, a list was prepared and finally 1733 candidates including the petitioners were appointed. Some of the candidates who could not succeed during selection, being aggrieved, challenged the selection process before the High Court of Sindh by filing the Constitutional Petitions, which have been disposed of vide impugned judgment with following observations/directions:-

- a) All the successful candidates who obtained 60 marks and above in the written test conducted by NTS (1611

candidates) are required to undergo a fresh interview by the committee constituted by the competent authority vide notification dated 07.08.2019; and, the rest of posts shall be re-advertised in accordance with the recruitment rules. AND

b) The appointment of successful candidates in the interview is subject to Union wise seats as outlined in the terms of advertisement published in daily newspapers dated 33.2.2018. AND

c) The competent authority is directed to establish an Institute for training of Vaccinators within three (03) months. In the meanwhile, the successful candidates of the interview are required to undergo training of Vaccinator for the post within a reasonable time from any recognized institute of Nursing and/or Government Hospital before administering the subject vaccine to the public at large.

d) The petitioners who obtained less than 60 marks have to participate in fresh recruitment process, thus their petition(s) stand dismissed."

4. The petitioners being not satisfied with the outcome of the Constitutional Petitions have challenged the same before this Court by filing the present civil petitions for leave of the court.

5. At the very outset, learned counsel for the petitioners contended inter alia that the petitioners were appointed as Vaccinators after due process of appointment but they were neither arrayed as respondents before the High Court of Sindh nor provided an opportunity of hearing and were condemned unheard; that the impugned judgment is not sustainable in the eyes of law as the same is devoid of due process and has violated the salutary principle of natural justice; that since there was no such institute in existence, which could give training for vaccination and issue certificate, the condition precedent in the advertisement to this effect was unjustified and as such the same cannot be made basis for discarding the credentials of the candidates; that the selection of candidates union wise is uncalled for as this has to be on a larger canvas i.e. district wise or provincial level. He lastly prayed for interference by this Court by setting aside the judgment impugned before us.

6. Mr. Mukhtiar Ahmed, petitioner, who appeared in person adopted the arguments advanced by Mr. M.M. Aqil Awan, learned counsel for the petitioners. He added that he has been discriminated on flimsy grounds, which are not sustainable and as such he has a right to be retained in service. He lastly stated that till the finalization of the

process of selection in pursuance of the observations/directions of the High Court, no adverse order may be passed against him.

7. *We have heard learned counsel for the petitioners and petitioner in person at some length and have gone through the available record.*

8. *The moot points for consideration of this Court are as under:-*

- (i) whether the process of appointment was according to the criterion set out in the advertisement;*
- (ii) whether the process of appointment was transparent and all codal formalities justiciable under the law were followed;*
- (iii) whether the observations/directions issued by the High Court have encroached upon the 'legal rights' of the petitioners without providing them an opportunity of hearing; and*
- (iv) whether the observations/directions issued by the High Court would actually sensitize the appointment process with transparency/clarity of process for the entire satisfaction of the candidates.*

9. *As far as the basic qualification for induction as vaccinator is concerned, it is not disputed. There are certain reservations qua possessing of the vaccination certificate as it is an admitted fact that till finalization of appointment process there was no institute available in Province of Sindh exclusively for this purpose. However, there are other quarters working under the Health Department i.e. DHO Office with the collaboration of District Headquarter Hospital where this training process is available as such it cannot be denied straightaway that there is no such arrangement to get vaccination training to meet the requirement as disclosed in the advertisement. The learned High Court took notice of a summary dated 03.05.2019 moved to the Chief Minister Sindh by Secretary Health wherein certain observations of the Services Wing on the process of recruitment were mentioned i.e. (i) the recruitment rules for the post of Vaccinator require qualification of matric together with certificate in vaccination from a recognized institute*

whereas in the advertisement the certificate in vaccination has been published as preference instead of mandatory, (ii) the threshold of minimum marks has been reduced from 60 marks to 55 marks without any approval/justification, (iii) a number of candidates have been declared 'failed' or not selected despite having secured more marks in the recruitment test than the candidates declared as selected by the Selection Committee, and (iv) few candidates who secured passing or more than passing marks have been declared as "does not read/write". Upon these discrepancies found in the recruitment process, the Selection Committee was reconstituted by the competent authority and it was decided that the threshold of minimum marks as 60 shall be adhered to and no relaxation in this regard will be allowed and the condition of certificate in vaccination from recognized institute shall be compulsory and not relaxable as the same is requirement of Rules for the post of vaccinator. However, no re-interview was done by the department and the selection process was completed as was undertaken by the earlier Selection Committee. We have noticed that the learned High Court after detailed scrutiny and inquiry has only identified certain flaws in the recruitment process and directed for removal of those flaws. The impugned judgment is not against the petitioners rather it only bounds the department to strictly follow the criterion laid down in the advertisement for the appointment of vaccinators. The High Court has addressed to all the issues those were brought forth in the recruitment process. The recommendations made by the High Court are in furtherance of clarity in the process and certainly would defeat any chance of nepotism, favouritism and undue enrichment of individuals. The learned High Court has also directed to establish an institute for training of vaccinators and in the meanwhile, the successful candidates of the interview have been required to undergo training of vaccinator. This direction of High Court was specifically very timely and beneficial to public at large when these vaccinators are primarily to deal with infants and young generation. As far as other limb of queries is concerned, those are interconnected, hence are pondered upon conjointly. The learned High Court was seized with the extraordinary power under Article 199 of the Constitution of Islamic Republic of Pakistan to entertain any matter if it is brought into notice that any act done by the public functionaries has encroached upon the basic rights of the people as enshrined in the Constitution of Islamic Republic of

Pakistan. No fundamental right of the petitioners has been infringed because the recruitment process was initiated through advertisement with certain terms and conditions and only those who fulfill those conditions are eligible to be appointed. So far as the argument of learned counsel for the petitioners that the appointment cannot be made according to union council basis is concerned, the basic purpose of Expanded Program on Immunization (EPI) was to control the spread of Vaccine Preventable Diseases among infants/children and this target cannot be achieved unless it goes to grass roots level, which means that it needs to be spread over the union council level by making appointments of the vaccinators from the concerned union councils enabling the public at large to be benefited from it. Secondly, it was specifically mentioned in the advertisement that applicant must be resident of the same union council and it has time and again been held by this Court that whatever the terms of the advertisement are the appointments must follow the criterion as disclosed therein without any departure so that no one can raise any objection regarding its transparency.

10. For what has been discussed above, we are of the considered view that the learned High Court has passed a well reasoned judgment to which no exception can be taken. These petitions having no merit are accordingly dismissed and leave to appeal is refused.

11. The above are the detailed reasons of our short order of even date.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
19th of May, 2021
Approved For Reporting
Khurram