

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 7958 of 2019 : Muhammad Adnan & Others vs.
Government of Pakistan & Others

C P D 4141 of 2020 : Waseem Hassan vs.
Federal Board of Revenue & Others

For the Petitioners : Mr. Arslan Wahid, Advocate
(CP D 7958 of 2019)

Mr. Malik Naeem Iqbal, Advocate
(CP D 4141 of 2020)

For the Respondents : Mr. Syed Yasir Ahmed Shah
Assistant Attorney General

Dr. Shahab Imam, Advocate
Mr. Syed Asif Ali, Advocate
Ms. Asma Zehra, Advocate
Mr. Zafar Imam, Advocate

Date/s of hearing : 29.09.2022

Date of announcement : 03.10.2022

ORDER

Agha Faisal, J. The pivotal question before us is whether the appointment process of sepoy in the Federal Board of Revenue could be set to naught on the premise that the law where under such appointments were made was unlawful; without such law having been assailed.

2. Briefly stated, a recruitment process was initiated vide advertisement/s dated 27.07.2019 and pertinent appointments pursuant thereto were made by recourse to balloting, then permissible, and since rescinded¹, per Rule 16 of the Civil Servants, Appointment, Promotion and Transfer) Rules 1973 ("Rules"). The petitioners participated in the process till its conclusion, however, objected to the process only after it was concluded and the petitioners were not included in the list of those successful.

¹ The pertinent modification was carried out in the Rules Vide Notification dated 17.06.2019 ("Notification"); however, the same was rescinded on 11.03.2020.

3. The crux of the petitioners' arguments was that balloting could not be employed as the determinant factor for employment in the public sector. Reliance was placed on *obiter* in a Division Bench Judgment of this Court at Sukkur in CP D 121 of 2021, authored by one of us *Muhammad Junaid Ghaffar J*, wherein recourse to balloting in public sector appointments was deprecated. It was the petitioners' case that the entire recruitment process be declared void *ab initio*.

4. The respondents articulated that the appointment process, with recourse to balloting, was in consonance with the Rules, as were in force at the relevant time. It was submitted that the process was considered expedient in view of the sheer volume of shortlisted applicants. Learned counsel also provided an analogy whereby similar recourse was adopted by the august Supreme Court for appointments of *naib qasids* vide advertisement dated 15.12.2019. The *locus standi* of the petitioner/s² was also challenged and it was asserted that the petitioner had failed the physical test and was never part of the subsequent process, hence, could not be aggrieved.

5. Heard and perused. Admittedly, the relevant appointments in BPS-05 were predicated upon a balloting process, then sanctioned per Rule 16(i) and (ii) of the Rules. The lead petition was filed while the Rules permitted recourse to balloting, however, neither the Notification nor the Rules, as they stood at the time, were ever assailed. The question before us essentially would stand circumscribed to consider whether a belated challenge to the appointment process could be entertained, when the supervening law in itself has never been challenged.

6. At the very onset it merits mention that the challenge to the *locus standi* of the petitioner raises a factual controversy. Investigation in the factual realm pertaining to the claimed antecedents / credentials of the petitioner ought not to be conducted by us as it is settled law that entertaining of a fact finding exercise, requiring appreciation of evidence and adjudication of conflicting claims, is discouraged in the exercise of writ jurisdiction³.

7. We remain cognizant of the guiding observations of the earlier Division Bench⁴ with regard to balloting, however, it is apparent that the very law that sanctioned recruitment by balloting is not under challenge before us. While it does not behoove us to travel beyond the pleadings, even otherwise no notice

² In CP D 4141 of 2020. Documentation assailing the antecedents and *bona fide* of the petitioner were submitted vide statement dated 26.05.2022.

³ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

⁴ In CP D 121 of 2021, authored by one of us *Muhammad Junaid Ghaffar J*.

to the Attorney General per Order XXVII-A of the Code of Civil Procedure 1908 could be demonstrated before us.

8. It is also noted with disquiet that while the petitioners had sought for the entire recruitment process to be set at naught, however, had omitted to implead the very persons whose livelihood could be impacted by any orders rendered herein. In the lead petition the relevant persons have not been impleaded till date, whereas, in the connected CP D 4141 of 2020 an amended title was belatedly filed pursuant to Court orders.

9. The writ jurisdiction of this Court is discretionary⁵ in nature and we are constrained to observe, in view of the reasoning as aforesaid, that the petitioners have failed to set forth a case for exercising such jurisdiction. Therefore, these petitions are found to be misconceived, hence, dismissed along with pending applications.

JUDGE

JUDGE

⁵ Per *Ijaz Ul Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.