

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.D-302 of 2012

[Asif Ali versus Secretary Board of Revenue & Others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:-

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Muhammad Faisal Kamal Alam

Petitioner: Through Mr. Sajjad A. Chandio, advocate
Respondents: Through Mr. Allah Bachayo Soomro, AAG
Date of hearing: 12.03.2020
Date of Decision: **19.03.2020**

JUDGMENT

MUHAMMAD FAISAL KAMAL ALAM, J:- This petition is filed to complaint about the alleged inaction of Respondents for not appointing Petitioner either as Assistant or Data Entry Operator. Petition contains the following prayer clause:

- A). *To declare that inaction of the respondents not to place the petitioner against vacant positions of Assistant and Data Entry Operator (Computer) after result of Grade A-I and recommendations is illegal, unlawful, un-constitutional, without jurisdiction and in violation of principles of natural justice, equity, fairness.*
- B). *To direct Respondent No.01 to 05 to issue appointment order on name of the petitioner in accordance with merit list.*
- C). *To permanently restrain the respondent No.01 to 05, their agents, employees or anybody working on their behalf from appointing any one against the positions of Assistant and Data Entry Operator (Computer) against the merit list.*
- D). *To grant any other relief as this Honorable Court deems fit and proper under Circumstances of the case.*

2. Mr. Sajjad Ahmed Chandio, learned Advocate for the Petitioner has argued that despite securing 'A-I' in interview for the post of Assistant and Data Entry Operator (Computer), the Respondents till date have not issued appointment letter and instead appointed other persons of their choice on '**extraneous consideration**'. Learned counsel has referred to the educational credentials of the Petitioner that he has done Master of Arts in

Economics and Bachelor of Computer Science from the University of Sindh. Photocopies of the relevant certificates are appended with the petition. He has referred to Annexure-‘C’ and ‘D’ of the petition, which are the result sheet of the job interview conducted with several candidates by Respondents on 17.02.2010; in these two Result Sheets ‘A-I Grade’ is mentioned against the name of the Petitioner, who is placed at serial number 1.

3. The above arguments are vehemently opposed by Mr. Allah Bachayo Soomro, Additional A.G. He has argued that the above two Annexures, ‘C’ and ‘D’ are fake documents and Petitioner was never selected for either of the posts. He has referred to parawise comments filed on behalf of different Respondents, according to which, successful candidates as declared by Departmental Selection Committee have already been appointed. Learned AAG has referred to the Notification dated 25.07.009 issued by Government of Sindh Revenue Department, viz. Respondent No.1 (**available at page-205 of the file**), to augment his arguments that even the successful candidates have been notified and the two persons, namely, Syed Mazhar Ali Shah and Muhammad Ibrahim Kalhoro have been appointed against the vacant seats of District Kambar – Shahdadkot, from where the present Petitioner belongs too. He has then referred to another document-Annexure-‘B’ with the parawise comments (**at page-209**), which is enclosed with the ‘*Statement/Report*’ of 16.10.2018 filed by AAG. With this ‘*Statement/Report*’ result of interview /viva voce held on 17.02.2010 is filed, in which number of persons are shown to have been recommended and subsequently appointed against the post of Data Entry Operator and Assistant, that is, the posts against which Petitioner is contesting. Mr. Soomro has laid much emphasis on the fact that in this result sheet for the post of Assistant, the present Petitioner has not been recommended as is obvious from the document itself. He argued that since the Petitioner has approached this Court with unclean hands and has committed forgery, in view of the afore-referred documents, thus this petition is liable to be dismissed, besides, it is hit by laches.

4. Arguments heard and record perused.

5. We have carefully examined different parawise comments filed by Respondents. Respondent No.5 (Deputy Commissioner), who has also filed his parawise comments through the learned Additional A.G vide his

Statement dated 28.08.2012 has neither disputed the stance of Petitioner, nor challenged the authenticity of above Annexures-“C” and “D”.

6. Undisputedly the interview for the post of Data Entry Operator (Computer) and Assistant was held on 17.02.2010 and reference to the Notification of 25.07.2009, by the learned AAG is completely misplaced, for the simple reason, that successful candidates cannot be notified before the date of interview; *secondly*, the successful candidates, who are referred to by the learned AAG from the Kambar Shahdadkot, as mentioned in this Notification, are selected (purportedly) for the posts of Superintendent (R&S) and Junior Clerk, *whereas*, the present Petitioner has applied for the two posts of Data Entry Operator (Computer) and Assistant.

7. Adverting to the list of candidates, who were interviewed for the posts on 17.02.2010, which list is appended with the afore-referred Statement/Report of learned AAG, shows that present Petitioner, whose name is at Serial No.1, has been '*recommended*' for the post of Data Entry Operator (Computer). This list starts from page-18 to 21 for the category of Data Entry Operator (Computer) and besides Petitioner four (04) more candidates have been recommended. On each page Committee Members have signed and all pages bear original stamp of Assistant Secretary/DDO Board of Revenue, Sindh Hyderabad; *whereas*, the result of interview with regard to the post of Assistant shows that even though the name of Petitioner is there, but he has not been recommended.

8. The above discussion shows an apparent contradiction in the stance of official Respondents, which is unfortunate. It appears that official Respondents through their different parawise comments attempted to mislead this Court, particularly, when Assistant Secretary Board of Revenue, working under the control and supervision of Respondent No.1, has filed the Notification of 25.07.2009, which is prior in time of interview held on 17.02.2010, which is the subject matter of present dispute.

9. With regard to the arguments of learned AAG about laches, it is a settled rule, that the laches *per se* is not a bar to invoke the constitutional jurisdiction. The Hon'ble Supreme Court in the case of State Bank of Pakistan *versus* Imtiaz Ali Khan - 2012 PLC (C.S) 2018, has held, *inter alia*, that question of delay in filing a case/petition is to be examined with reference to the facts of each case.

10. Taking into account the discussion in the foregoing paragraphs and the conduct of Respondents, we are of the view, that the present petition is not hit by the doctrine of laches. Secondly, Petitioner was not custodian of official record and in the light of present discussion, the plea of learned AAG that Annexure-“C” and “D” annexed with the petition were manipulated by the Petitioner, cannot be accepted. Secondly, the official record produced by the learned AAG itself shows that the present Petitioner was recommended for the post of Data Entry Operator (Computer).

Both the reported decisions viz: (i) 2008 SCMR 629 [*Muhammad Akhtar versus District Returning Officer*] and (ii) 2005 SCMR 534 [*Secretary Finance and others versus Ghulam Safdar*] as cited by learned AAG, are distinguishable, because, in the first case the petitioner (of the reported case) did not even appear in examination and his educational certificate was reported to be bogus; *whereas*, in the second decision since the prior approval of Establishment Division under the Centralized System of Recruitment, prevailing at the relevant time, was necessary, thus it was held, *inter alia*, that petitioner (of the reported case) did not have vested legal right for maintaining a Writ Petition in the High Court. As already determined in the foregoing paragraphs, that the plea of filing fake documents is discarded and secondly the present Petitioner did not only cleared the interview/viva voce, but also *recommended* by the official Respondents for the post of Data Entry Operator (Computer). Undoubtedly, it is the executive function of Respondents to issue order of appointment after completing all legal requirements, as ruled in the case of Secretary Finance (*supra*), but that executive discretion is a ‘structured one’ as held in number of judicial pronouncements and is subject to Section 24-A of the General Clauses Act, 1897, enjoining the officials to act fairly, reasonably, justly and pass speaking order (with reasons). This element is missing in the present case. Petitioner has categorically averred discriminatory treatment; besides, as already stated hereinabove, that one of the Respondents did not even challenge the stance of the present Petitioner. Although it is not a vested right of the Petitioner to get an appointment order from the official Respondents, but at least he has a legitimate expectation, and for that matter any citizen, who is qualified and cleared different tests as prescribed by government functionary, to be dealt with fairly and considered for the post advertised, and in this regard an eligible candidate cannot be discriminated against or not considered,

merely on account of 'extraneous consideration', which includes political consideration and nepotism.

11. Consequently, we are of the considered view, that case of present Petitioner merits serious consideration by the official Respondents and while doing so, they (official Respondents) will also estimate/consider the time consumed in the present petition. Respondents should pass necessary orders in this regard, within three (03) weeks from today. This Petition in the above terms is accepted.

JUDGE

JUDGE

Sajjad Ali Jessar