

2018 P L C (C.S.) Note 181**[Lahore High Court (Multan Bench)]****Before Muzamil Akhtar Shabir, J****MUHAMMAD WASIF KHAN****Versus****IG POLICE and others**

Writ Petition No.11877 of 2017, decided on 20th June, 2018.

Civil service---

----Appointment against the post of Sub-Inspector Police---Medical re-examination---Scope---Petitioner was declared medically fit and Public Service Commission recommended for his appointment---Department instead of complying with the recommendation of Public Service Commission passed a fresh order for medical re-examination of petitioner on the ground that he was deficient in height---Plea of petitioner was that once height test was cleared before the Selection Board then same could not be re-determined---Validity---Candidate got his height measured from Medical Superintendent DHQ Hospital wherein it was determined as five feet and seven inches---Application of petitioner was processed by the concerned authorities including Public Service Commission which recommended the appointment of candidate on merits---Terms and conditions for appointment contained in the advertisement did not mention that after selection process candidates could be medically re-examined---When petitioner's height was initially measured it was found to be corresponding with the requirement i.e. 5 feet and 7 inches---Candidate was not put to notice that his height would be re-measured---Authorities had no case to reject the appointment of petitioner on the basis of height---No illegality, mala fide or any other discrepancy had been pointed out in the report filed by Medical Superintendent DHQ Hospital---Measurement process could be defective in either of the stages and benefit, if any, would go to the person who was to be effected thereby---Once petitioner was found to have complied with the requirement of height in one measurement process then second measurement declaring him not complying with the height requirement was not justified---Second measurement was declared to be without lawful authority---Authorities were directed to proceed with the case of candidate by treating his height equal to five feet and seven inches as initially determined by the Medical Board---Constitutional petition was allowed accordingly. [Paras. 8, 9, 10 & 11 of the judgment]

Yousaf Haroon and others v. Punjab Public Service Commission, Agha Khan/Davis Road, Lahore through Secretary and others PLD 2001 SC 1012 rel.

Malik Muhammad Latif Khokhar for Petitioners.

Tanveer Haider Buzdar for Petitioner in connected matter (Writ Petition No.10125 of 2017).

Muhammad Aurangzaib Khan, A.A.G. with Riaz Ali Minhas, Inspector on behalf of District Police Officer, Lodhran.

ORDER

MUZAMIL AKHTAR SHABIR, J.---Through this single order, I intend to decide this petition along with Writ Petition No. 10125 of 2017 as common question of law and facts is involved.

2. Through this constitutional petition, the petitioner has made the following prayer:

"For the foregoing reasons, it is respectfully prayed that this petition may very kindly be graced with acceptance and the respondents Nos. 1 to 3 be directed to issue appointment letter to the petitioner as per recommendation of Punjab Public Service Commission regarding Case No.54-E of 2016 and accordingly appoint him on the recommended post in the region."

3. The brief facts of the case are that respondent No.4 invited applications for the posts of Sub-Inspectors in Punjab Police Department. The petitioner underwent a written test and qualified the same. Besides he was declared fit in physical test and then he appeared for interview and qualified the same. Thereafter respondent No.4 recommended the petitioner's case along with other candidates to the Provincial Government for their appointment against the posts of Sub-Inspectors, Multan Region. Respondent No.2 instead of complying with the recommendation of the PPSC passed a fresh order for medical re-examination of the petitioner on the ground that the petitioner is deficient in height. After re-measurement of the height of the petitioner, respondents Nos. 2 and 3 verbally refused to issue appointment letter to the petitioner. The petitioner claims that his height is 5 feet 7 inches and during recruitment process, the height of the petitioner was got measured from the office of the Medical Superintendent, DHQ Hospital, Vehari where it was found to be 5 feet 7 inches. The petitioner states that once height test was cleared before Selection Board, the same could not be re-determined to deny the petitioner's appointment against the post he has been selected for.

4. Report was called for wherein it is stated that 94 candidates were summoned for final interview. The commission considered 20 candidates suitable and recommended them for appointment against the above mentioned posts on open merit. The petitioner's name reflects at Serial No.7 of the said list. The IG, Police, Lahore before issuance of appointment letter directed that the candidates be medically re-examined. During medical re-examination, conducted by Standing Medical Board, Multan, the petitioner was declared unfit due to shortage of height, therefore, he could not be selected or appointed.

5. The learned counsel for the petitioner has argued that re-examination for the purpose of determination of height was not provided under the law. Moreover, the

selection by the PPSC could not be set-aside on the basis of said medical re-examination.

6. The learned AAG has defended the orders passed by the respondents not to appoint the petitioner.

7. Heard. Record perused.

8. Initially as a result of advertisement issued by the respondents, applications for recruitment of 21 posts of SIs (including 03 posts reserved for women and 01 post reserved for minority quota) in the police department were invited by the PPSC, wherein the conditions of eligibility were notified in the advertisement which included height for male 5 feet 7 inches (170.18 cm). In the said advertisement, it was stated that candidates are required to mention physical standard in their online application form as per certificate of physical standard obtained from the Medical Superintendent of the District Headquarter Hospital or Services Hospital, Lahore or DHQ, Hospital from respective regions with further condition that relaxation in age, qualification and physical standard shall not be granted in any case. As per the requirement, the petitioner got his height measured from Medical Superintendent, DHQ Hospital, Vehari wherein it was determined as 5 feet 7 inches and his application was processed by the concerned authorities including PPSC which recommended the appointment of the petitioner on merits. The said advertisement attached with the comments and terms and conditions did not mention that after the selection process, the candidates would be medically re-examined after appointment to determine their physical measurements. On the particular date when the petitioner's height was initially measured, it was found to be corresponding with the requirement for appointment i.e. 5 feet 7 inches. In similar circumstances, the Hon'ble Supreme Court in the case titled Yousaf Haroon and others v. Punjab Public Service Commission, Agha Khan/Davis Road, Lahore through Secretary and others (PLD 2001 SC 1012) has held as under:

"16. There is force in the arguments addressed at the Bar on behalf of the appellants that they were not put under notice when the respondent authorities decided to 'recheck' the measurements in question. The observations by this Court in Zafar Ahmad (supra) that:.... Nevertheless, the general consensus for judicial opinion seems to be that, in order to ensure the "elementary and essential principles of fairness" as a matter of necessary implication, the person sought to be affected must at least be made aware of the nature of the allegations against him, he should be given a fair opportunity to make any relevant statement putting forward his own case and "to correct or controvert any relevant statement brought forward to his prejudice." Of course, the person, body or authority concerned must act in good faith, but it would appear that it is not bound to treat the matter as if it was a trial or to administer oath or examine witnesses in the presence of the person accused or give him facility for cross-examining the witnesses against him or even to serve a formal charge sheet upon him. Such a person or authority can obtain information in any way it thinks fit, provided it gives a fair opportunity to the person sought to be affected to correct or contradict

any relevant statement prejudicial to him. In other words, "in order to act justly and to reach just ends by just mean" the Court insist that the person or authority should have adopted the above "elementary and essential principles " unless the same had been expressly excluded by the enactment empowering him to so act"..... go a long way in support of their case in that behalf

17. We are inclined to consider yet another question which has a great bearing on the instant cause viz., whether the respondent-authorities had any power under any law/rule to undo the effect of the appellants having made it to their induction into service on the grounds, among others, of the measurement of their height by the Health Department? Consideration of this above-question falls in line with the observation made by this Court in Lahore Improvement Trust v. Custodian of Evacuee Property PLD 1971 SC 811 by referring to The Chairman, East Pakistan Railway Board v. Abdul Majid Sardar PLD 1966 SC 725 that before striking down an action of the functionaries of the Government all the avenues for maintaining the same should be explored by the Courts. Further, this question also has a direct nexus with the availability or otherwise of the powers with the respondent-authorities to put spanners in the wheel leading to the induction into service of the appellants. It has been noticed in the above that the action on part of the respondent-authorities in calling upon the appellants to submit to the questioned measurements before the Police Department without first putting the blame atop their shoulders regarding the alleged deficient measurement and/or without calling upon them to put forward their case in that behalf is tantamount to not following the "elementary and essential principles" laid down by this Court in Zafar Ahmed (supra). The effect is that the result of the alleged acts/efforts of the respondent-Authorities cannot but be held to thwart the smooth conclusion of the process of selection/ appointment of the appellants as Inspectors of Police in BS-16, which is liable to be struck down. That is exactly what was done by the learned Judges in Chambers of the High Court but such results were not brought to bear upon the facts and circumstances of the instant cause by the learned Members of the Division Bench of the High Court."

9. While relying upon the principles laid down in the afore referred judgment, it is observed that the petitioner was not put to notice that his height would be re-measured nor it was mentioned in the advertisement or consolidated advertisement, therefore, the respondents have no case to reject the appointment of the petitioner on the basis of height. It has been argued by the learned AAG that in the advertisement, it was mentioned that person who is not found to be fit in any manner would not be appointed despite the fact that he has cleared the examination. Be that as it may, the Medical Board had initially cleared the petitioner as having the requisite height. No illegality, mala fide or any other discrepancy has been pointed out in the report filed by Medical Superintendent, DHQ Hospital, Vehari. Moreover, the measurement process could be defective in either of the stages, the benefit if any is to go to the person who is to be effected thereby.

10. Resultantly, it is held that once having been found to have complied with the height requirement in one measurement process, the second measurement declaring him not to comply with the height requirement was not justified. Resultantly the second measurement is declared to be without lawful authority and respondent No.1 is directed to proceed with the case of the petitioner by treating his height equal to 5 feet and 7 inches as determined by the Board initially.

11. The petition is allowed in the foregoing terms.

ZC/M-116/L Petition allowed.

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