

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**W.P. No.55270 of 2020**

Asad Abbas  
Versus  
Government of the Punjab through Secretary Co-operative  
Societies Department, Lahore & others

**J U D G M E N T**

Date of hearing:	20.09.2021.
Petitioner by:	Mr. Saif-ur-Rehman Jasra, Advocate.
Respondents:	Barrister Ameer Abbas Ali Khan, A.A.G. along with Usman Umar, District Officer Co-operative, Khushab and Muhammad Ilyas, Superintendent. Barrister Ameer Abbas Ali Khan, Assistant Advocate General on Court's call.
Research by:	Mr. Muhammad Imran Sh. Addl. District Judge / Senior Research Officer, LHCRC. Mr. Ahmad Zia Ch., Civil Judge / Research Officer, LHCRC.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** Through instant petition, petitioner has challenged order dated 06.02.2020, passed by Deputy Registrar (Admn.), Co-operative Societies, Punjab, Lahore / respondent No.3, whereby petitioner's application for his appointment as Sub-Inspector (BS-11), being next in merit, was turned down

2. Learned counsel for petitioner submits that petitioner being next in the list of waiting candidates is entitled to be appointed in place of the person who did not join service. He adds that petitioner's case is at par with Muhammad Naeem Akhtar, who has already been appointed, but he has been subjected to gross

discrimination in the matter. He further submits that directions of this Court vide order dated 28.11.2019, passed in **W.P.No.33726 of 2019**, which had attained finality, have also been violated. He argues that petitioner requested the department as well as Punjab Public Service Commission (“PPSC”) well within expiry of the merit list, therefore, petitioner cannot be penalized for the fault of the competent authority. He maintains that seat in question is still vacant and as per law laid down by the Hon’ble Apex Court in Dr. Sumera Tabassum v. F.P.S.C. etc. [2016 PLC (C.S.) 596], petitioner is entitled to be considered for appointment against the post in question, but there is inaction on the part of respondent-authorities to do the needful, which is unjustified. In the end, he submits that impugned order is unsustainable in the eye of law. He also relied upon Shabana Akhtar v. District Coordination Officer, Bhakkar and 2 others [2012 PLC (C.S.) 366].

3. Whereas learned Law Officer defends the impugned order and contends that respondent-department i.e. Cooperative Societies Department is not a competent forum to recommend a substitute candidate rather it is the PPSC who can recommend a substitute candidate. He adds that petitioner’s name is not included in the final merit list and recommendation received from respondent-PPSC through Administrative Department as substitute candidate. In support, he referred to The Secretary Punjab Public Service Commission, Lahore and others v. Aamir Hayat and others (2019 SCMR 124).

4. Arguments heard. Available record perused.

5. The facts of the case, as portrayed by respondents in the report and parawise comments, are that PPSC invited applications for recruitment against 04-posts of Sub-Inspector (BS-11) and petitioner was placed at Sr.No.8 of the merit list. The candidates appearing at Sr.No.1 to 4 were recommended for appointment.

Later on, the department requested PPSC to provide substitute candidates as already recommended candidates did not join the duties. Thereafter, PPSC issued revised recommendations by substituting one candidate namely Muhammad Naeem Akhtar, appearing at Sr.No.5 of the merit list. Later on, the department again requested for two substitute candidates in place of candidates appearing at Sr.No.1 & 3 of the merit list. In response, PPSC recommended substitute candidates appearing at Sr.No.6 & 7 of the merit list, as they did not join the duty, in this way all the four seats filled due to which petitioner could not be appointed.

6. The incidents presented by respondents though happened in the above sequence, however, there are lapses on part of the department as well as PPSC. The merit list was prepared on 24.09.2017 and the department, for the first time vide letter dated 20.03.2018, requested PPSC to provide substitute candidates by clearly mentioning that no one out of four recommended candidates joined the duty. In this view of the matter, petitioner came at Sr.No.4 of the waiting candidates, thus, his right to be considered for appointment being next in merit list accrued well within the validity of the merit list. In response, PPSC, vide letter dated 16.04.2018, only provided one substitute candidate and already recommended three candidates were again included. The admitted position of the matter is that the recommended candidates did not join duties and the department was willing to make appointment from waiting candidates then why four candidates in the waiting list, in which petitioner was at Sr.No.4, were not appointed simultaneously. It is also an established fact that three candidates from the waiting list were recommended as substitute candidates by the PPSC and two of them also decided not to join the department. In this scenario, what was the hurdle to consider petitioner for appointment as substitute candidate as he was very next in the

waiting list and seats were also vacant. It is clear from the above that the department was at fault in not actively completing the recruitment process and lingered on the matter without any legal justification. It is also notable that Muhammad Naeem Akhtar, a waiting candidate, had already been appointed but the petitioner has been subjected to discrimination in violation of equality clause contained in Article 25 of the Constitution of the Islamic Republic of Pakistan.

7. Admittedly, petitioner was not at fault and he made requests for his appointment as per law but needful was not done by the department due to which petitioner is still suffering. Needless to say that petitioner cannot be penalized for a wrong, lapse or ignorance on part of the department. Reference can be made to Collector of Customs, Lahore and others v. Messrs S. Fazal Ilahi and Sons through Proprietor (2015 SCMR 1488), Dr. Farhat Naz v. Chairman Selection / Promotion Board, Ayub Teaching Hospital, Abbottabad and others (2017 MLD 1842), Muhammad Arshad v. Province of Sindh through Chief Secretary, Government of Sindh and 9 others [2018 PLC (C.S.) Note 2], Managing Director, Public Procurement Regulatory Authority (PPRA) and another v. Muhammad Zubair and 6 others [2019 PLC (C.S.) 1348] and Kh. Aamir Ahmed v. Azad Government of the State of Jammu and Kashmir through Chief Secretary and 6 others (2021 YLR 1313).

8. The grounds prevailed upon respondent No.3 in dismissing petitioner's application are that petitioner's name is not included in the final merit list as well as recommendations of substitute candidates, and that validity of the merit list has expired. It is evidently clear from above discussion that petitioner's name was apparent in the merit list at Sr. No.8 and in the waiting list at Sr.No.4, therefore, he could have been appointed as recommended candidates did not join the duty. Non-inclusion of petitioner's name

in the recommendation of PPSC of waiting candidates is not understandable and is a lapse on part of PPSC. At the cost of repetition, it is again observed that petitioner agitated his grievance when the merit list was valid and it is the department who waited for expiry of the merit list. In earlier round of litigation, this Court vide order dated 28.11.2019, passed in **W.P.No.33726 of 2019**, clearly directed respondent No.3 to look into grievance of petitioner and if his case is at par with the person who has already been appointed from the waiting list, extend same relief to petitioner but direction of this Court has not been kept in view while rejecting petitioner's application. The material aspects of the matter and real facts of the case were not appreciated by respondent No.3 while deciding the matter, hence, impugned order is unsustainable in the eye of law.

9. Admittedly, the superior Courts of the country, in a plethora of judgments, have held that when any of the selected candidates does not join the service, the department should consider the next candidate in the merit list for appointment against said post. The Hon'ble Supreme Court in case reported as Government of N.-W.F.P. through Secretary, Education Department, Peshawar and others v. Qasim Shah (2009 SCMR 382) ruled as under:-

“4. Having consider the matter from all angles, we are of the view that when some of the selected candidates do not join the service, such posts remain vacant and it was imperative for the department to have considered the remaining candidates for appointment against said posts. Such posts cannot be kept vacant till the next process of recruitment, if some selected candidates were still available on the waiting list.”

10. So far as reference to the case of Aamir Hayat supra, by learned Law Officer is concerned, suffice it to say that said case is based on quite distinguishable facts. In the said case, the department had not exercised the discretion of asking for an alternate candidate instead a large

number of vacant seats were filled through fresh advertisement. However, in the instant case, the department itself requested for provision of substitute candidates for more than one time and one of the waiting candidate was also issued appointment letter and did not opt to publish any fresh advertisement. In the given circumstances, dictum of law laid down in the case of Aamir Hayat supra is not applicable in the instant case.

11. In view of the above, this writ petition is allowed. Consequently, impugned order is declared to be illegal and without lawful authority, therefore, same is set aside. Respondent No.3 is directed to redress petitioner's grievance strictly in accordance with law and applicable case law, by taking all necessary steps in liaison with respondent-PPSC, preferably within a period of thirty days from the date of receipt of certified copy of this order. Compliance report shall be furnished to this Court through Deputy Registrar (Judicial).

**(Muhammad Sajid Mehmood Sethi)**  
**Judge**

*\*Sultan\**