

2020 P L C (C.S.) 645

[Lahore High Court]

Before Ayesha A. Malik, J

MAKHDOOM NAWAZ and others

Versus

PAKISTAN ELECTRIC POWER COMPANY (PVT.) LIMITED and others

W.P. No. 67866 of 2019, heard on 4th February, 2020.

Constitution of Pakistan---

---Art. 199---Government posts in Electricity distribution companies (DISCOs)--- Recruitment process --- Recruitment policy, change in---Weightage ratio for academic qualification, written test and interview---Increase in weightage given to interview and written test in changed policy---Admittedly, the petitioners applied for the various different posts offered by the DISCOs pursuant to the new changed policy---Recruitment process was under way and interview stage had not arrived, hence the challenge was premature--- Interview marks did play a decisive role in the recruitment process, however at present stage there was nothing available on the record on the basis of which the petitioners could assert that the increased percentage allocated for interview in the changed policy was not structured, reasoned or objective---Grounds of challenge against the changed policy were based on apprehensions of the petitioners---Weightage ratio of written test was increased and made equal to that of academic qualification so as to broaden the base of applicants for the purposes of recruitment---As such it was a policy decision and there was no basis to challenge the policy such that it favoured graduates of a particular university---Petitioners did not have any data to show how they had been prejudiced at present stage given that the new changed policy had just been introduced and the recruitment process was still underway---High Court directed that the DISCOs should proceed with the recruitment process as the petitioners' entire case was based on apprehensions---Constitutional petitions were dismissed.

Barrister Haris Azmat, Barrister Maryam Hayat and Muhammad Faizan Azhar for Petitioners (in W.P. No.67866 of 2019).

Barrister Lamia Niazi for Petitioners (in W.P. No.69022 of 2019).

Ambreen Moeen, DAG for Respondent.

Muhammad Shahzad Shaukat and H.M. Zeeshan Khan for Respondent PEPCO along with Farrukh Aftab Khan, Director PEPCO.

Mehar Shahid Mehmood for LESCO along with Muhammad Yusaf Raza, Chief Law Officer, LESCO and Muhammad Yasin Badar, Legal Consultant, LESCO.

Muhammad Javaid for IESCO and PESSCO.

Ms. Erum Masood Chughtai for HESCO.

Date of hearing: 4th February, 2020.

JUDGMENT

AYESHA A. MALIK, J.----This common judgment decides upon the issues raised in W.P. No.67866/19 and W.P. No.69022/19 as both the Petitions raise common questions of law and facts.

2. Through these Petitions, the Petitioners have impugned the recruitment policy of the Respondents as prescribed by Respondent Pakistan Electric Power Company ("PEPCO") for the post of amongst others, Junior Engineers. The Petitioners are all Electrical Engineers, B.Sc. graduates of University of Engineering and Technology, Lahore. It is their case that the Respondents were guided by the recruitment policy of 28.7.2016 which essentially gave a ratio of 85:15 for academics and interview respectively. However, this policy was changed on 16-8-2019 where the ratio was changed to 40:40:20, such that 40% marks for academic qualification, 40% marks for a written test and 20% marks for the interview. The petitioners are collectively aggrieved by this change in policy as they believe that 20% marks for interview suggests arbitrariness, excessive delegation due to lack of structure. They state that 20% marks for the interview means that the Respondents are able to manipulate the recruitment process and hire candidates of their liking. They are also aggrieved by the distribution of marks between academic qualification and written test as they are all of the opinion that candidates with higher marks from better universities are not catered to since the overall ratio for academic qualification has been reduced to 40% from 85%.

3. Learned counsel for the Petitioners argued that unstructured discretion has always been questioned through judicial review by the Courts and the arbitrariness and colourful excise of authority has always been struck down by the constitutional Court. In this regard, reliance has been placed on Syed Muhammad Raza v. General Manager, WAPDA and others (1994 MLD 1647), Muhammad Tanveer v. Government of Pakistan and others (2012 PLC (C.S.) 807), Muhammad Asif Jan and others Chairman Selection through Chairman and others (2013 PLC (C.S.) 502) and Qazi Mustafa Kamal v. Federation of Pakistan through Secretary Establishment Division and others (PLD 2014 Islamabad 123). They also argued that change in recruitment policy during pending recruitment process is illegal. In this regard, reference was made to Respondents Nos.6, 8 and 10 ("DSICOs") where the recruitment process started in June, 2019 before the policy was announced on 16.8.2019.

4. Report and parawise comments have been filed by the Respondents. Learned counsel for the Respondent PEPCO and for other Discos argued that a policy was floated by PEPCO for the purposes of creating uniformity in the recruitment process among all the DISCOs. As per the policy a written test is required for which 40% marks have been allocated, 40% marks for academic qualification and 20% marks for the interview. Learned counsel stated that the process has just begun when the Petitioners challenged the same even though they participated in the recruitment process. Therefore at this stage no case of arbitrariness is made out as the recruitment process has not been finalized and the Petitioners' contention that it is not structured discretion is based on apprehensions and not on any data.

5. On behalf of the Federation Ms. Ambreen Moeen, DAG argued that the Petitioners have all participated in the recruitment process and they are challenging a policy decision calling it arbitrary and stating there is lack of structure whereas there is nothing to support their contentions as the recruitment process has not been completed. She has placed reliance on an earlier decision of this Court dated 9.1.2010 passed in W.P. No.360/2020 titled Toqir Ajmal v. Chairman Pakistan Electric Power Company and others wherein the same policy

was challenged and the petition was dismissed on the ground that PEPCO has provided the quantification and distribution of marks on the basis of academic qualification, written test and interview giving weightage to the three different cadres. Furthermore she argued that this is a policy decision and does not call for any interference as no illegality is made out. She argued that the Petitioners have participated in the recruitment process and at the same time have challenged the process obtained an interim order from this Court on 14.11.2019 on the basis of which the entire recruitment process has been stopped.

6. Heard. Record perused.

7. The Petitioners have challenged the guidelines provided by PEPCO for recruitment to DISCOs for the purposes of creating uniformity in the recruitment Process for technical and non-technical posts. The Respondent DISCOs adopted this policy and proceeded to advertise on the basis thereof. Admittedly the Petitioners applied for the various different posts offered by the Respondents pursuant to the policy of 16.8.2019. However, the Petitioners subsequent to applying for the posts have challenged the policy on the ground that it lacks structure and that the policy was changed during the recruitment process, hence this policy cannot be made applicable to them. All the Petitioners are aggrieved by the weightage given to academic qualification, written test and interview. There is no cavil to the assertion that interview marks play a decisive role in the recruitment process, however at this stage there is nothing available on the record on the basis of which the Petitioners can assert that the 20% marks allocated for interview are not structured, reasoned or objective. The process of recruitment is underway and in fact has been stopped on account of an interim order passed by this Court at the behest of the Petitioners. The Respondents have stated that there is a structure, and reasoning objective prescribed for the interview, however that stage has not arrived hence it is premature to question it at this stage. They have placed reliance on letter dated 10.10.2019 issued by PEPCO which gives detailed breakdown for the 40% academic marks. Essentially the grounds of challenge against the policy are based on apprehensions of the Petitioners that they will not be duly considered and that the Respondents may exercise arbitrariness at the stage of the interview. Hence on this account no ground is made out.

8. With respect to marks given to academic qualification and written test, the Petitioners are that aggrieved greater weightage should be given to the academic qualification so that students with higher GPAs and from better universities have a stronger chance to be recruited. There is no justification in this ground whatsoever. The Respondents have allocated 40% marks for the academic qualification and 40% marks for the written test so as to broaden the base of applicants for the purposes of recruitment. As such it is a policy decision and there is no basis to challenge the policy such that it favours UET graduates. There is no data available with the petitioners to show how they have been prejudiced at this stage given that the policy has just been introduced and the recruitment process is still underway. So far as Respondents Nos.6, 8 and 10 are concerned, they state that the meeting in which this decision was made was held on 15.7.2019 and the advertisements do not provide for any process that will be adopted. Moreover it mentions that a test will be taken and interview and states the given educational requirements. Hence the contention that the Petitioners are being misled by changing the policy is without basis. At this stage it is still premature as the process is still underway. The Respondents should proceed with the recruitment process as the Petitioners' entire case is based on apprehensions. There is nothing on the record to show why they have applied and with which DISCO, hence no case for interference is made out.

9. Under the circumstances and what has been discussed above, both the Petitions are dismissed.

MWA/M-69/L

Petitions dismissed.