

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1455 of 2022

[Abdul Khalique and another v. Province of Sindh and others]

Before:

Justice Arbab Ali Hakro

Justice Nisar Ahmed Bhanbhro

Petitioners by : Mr. J.K Jarwar, Advocate

Respondents by : Syed Israr Ahmed Shah, Assistant Advocate
General, Sindh

Date of Hearing : 22.09.2026

Date of Announcement : 22.09.2026

ORDER

ARBAB ALI HAKRO, J. – Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners, who were candidates for the post of Police Constable (BPS-05) in District Naushahro Feroze, seek directions from the respondents to issue appointment orders in their favour. They contend that they qualified in the written test and the viva voce, whereas candidates listed in the same result were appointed and are serving.

2. In 2016, general recruitment for the posts of Police Constable (BPS-05) was initiated in all districts of the Shaheed Benazirabad Range. Applications were invited through an advertisement from candidates holding the domicile of the district concerned; the written test was outsourced to the Sukkur IBA Testing Services (hereinafter referred to as “the Testing Service”), and the process was conducted by a Departmental Recruitment Committee presided over by the Deputy Inspector-General of Police, Shaheed Benazirabad Range (hereinafter referred to as “the Recruitment Committee”).¹

3. The petitioners applied, received application acknowledgment slips and admit cards and appeared for the written test held on 04.09.2016 at Benazir

¹ Para-wise comments of respondent No.2, reply to para 3, forwarded under letter No.23363/EB-III/T-7/G.R/2023 dated 28.11.2023.

Public School, Qazi Ahmed Road, Nawabshah, with petitioner No.1 at seat No.4404 and petitioner No.2 at seat No.4082.²

4. Under the Sindh Police Recruitment Policy (hereinafter referred to as “the Recruitment Policy”), the minimum passing marks for the written test were 40%, that is, 40 marks out of 100.³ By Summary dated 14.11.2016, the Home Department placed two options before the Chief Minister, Sindh; para 4(i) proposed that for the recruitment of constables in 2016 alone the threshold be brought down to 35% for all districts of the Province, with candidates so qualifying to be appointed against the existing vacancies of their districts of domicile and the surplus to be adjusted against the vacancies of Traffic Police, Sindh. The Chief Minister approved para 4(i) and the approval was conveyed to the Inspector-General of Police, Sindh through the Home Department’s letter dated 05.12.2016 (hereinafter referred to as “the relaxation”).⁴

5 In implementing the relaxation, the Inspector-General of Police, Sindh, by letter dated 10.01.2017, accorded approval for the appointment of candidates who had secured 35% to 39% marks and directed that formal appointment orders be issued “as per merit strictly after fulfillment of all codal formalities”. The table appended to that letter shows that, against District Naushahro Feroze, 58 vacancies remained, 80 eligible candidates fell within the band of 35 to 39 marks, 58 of whom were to be adjusted against the district vacancies, and the remaining 22 against the vacancies of the Traffic Police.

6. Para-wise comments were furnished on behalf of respondent No.2 and a written statement was filed by respondent No.4. The stand taken is that the appointment orders were issued, in the first instance, to 225 candidates of the district who had obtained not less than 40 marks and thereafter, to those falling within the band of 39 to 35 marks and that the petitioners were not considered for appointment for the reason that each of them had obtained 31 marks.⁵

7. On 19.12.2023 the learned Assistant Advocate-General placed on record, under a statement, the complete merit-wise result of the written test

² Annexures “B” to “B-III” to the petition.

³ Para-wise comments (n.1 above), reply to para 5.

⁴ Summary for the Chief Minister, Sindh No.SO(POL-I)HD/Misc/2016 dated 14.11.2016; Home Department letter No.POL-I-HD/4-38/2016 dated 05.12.2016, Annexure “B” to the comments.

⁵ Written statement of the Superintendent of Police, Naushahro Feroze, paras 3 to 5; letter of the Deputy Inspector-General of Police, Shaheed Benazirabad Range No.DSP-Legal/DIG/5818 dated 08.11.2023, Annexure “D” to the comments.

conducted by the Testing Service on 04.09.2016 for District Naushahro Feroze (hereinafter referred to as “the result”). The result bears petitioner No.1 at serial No.442 with 31 marks and petitioner No.2 at serial No.432 with 31 marks; it is arranged in the descending order of marks and runs to serial No.868.⁶

8. Learned counsel for the petitioners contended that the petitioners had qualified the written test and were shortlisted for interview, their names appearing at serial Nos. 442 and 432 of the list annexed to the petition; that one Asad Ali, son of Mukhtiar Ali Rajper, borne at serial No. 277 of the very same list, was appointed on 23.01.2017, while the petitioners were passed over; that the petitioners underwent the prescribed medical screening and even performed duty with the police department during the General Election, 2018, without any compensation; and that the criteria of merit were ruined and appointments were made upon political recommendation, in violation of Articles 4, 18 and 25 of the Constitution.

9. Learned Assistant Advocate-General supported the comments and submitted that the petitioners never crossed the qualifying threshold, whether 40% or the relaxed 35%; that no right accrued to them; and that the petition, brought nearly six years after the recruitment had come to a close, is barred by laches.

10. Heard learned counsel for the parties and, with their assistance, perused the record.

11. The petitioners were never appointed and are therefore not civil servants. The bar in Article 212(3) of the Constitution does not apply. No other equally efficacious remedy has been shown, and the petition is competent. We accordingly proceed to examine it on its merits.

12. Rule 3(2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 (hereinafter referred to as “the Rules of 1974”) leaves the method of appointment and the qualifications and other conditions applicable to a post to be laid down by the Department concerned. Rule 11 requires that initial appointment to posts in Basic Scales 1 to 15 be made on the recommendations of the Departmental Selection Committee after the

⁶ Statement dated 19.12.2023; Police Department letter No.23727/EB-III/T-7/G.R/2023 dated 05.12.2023 forwarding the complete result in eleven leaves.

vacancies have been advertised.⁷ The prescription of a qualifying threshold for the written test was thus well within the competence of the Department, and its relaxation from 40% to 35%, confined to the recruitment of the year 2016, was ordered by the competent authority. Neither the Recruitment Policy nor the relaxation is under challenge before us.

13. The petitioners each scored 31 marks. They did not exceed either the originally prescribed threshold or the relaxed threshold. The petitioners have not challenged the correctness of the result, nor have they placed any material before us to show that the entries for the two seat numbers are erroneous. The record establishes no more than that the petitioners applied, received an admit card, and sat the test. Nothing on the file shows that they were at any stage declared successful, recommended by the Recruitment Committee, or approved for appointment by any authority.

14. The document on which the whole case is built is captioned “Shortlisted Candidates for Interview”; however, in the contents, it lists seat numbers, names, parentage, computerized national identity card numbers, gender, domicile and sequence; it is the very document placed on record by the learned Assistant Advocate-General as the result.⁸ Serial Nos. 442 and 432 are, therefore, the petitioners' positions in a list of 868 candidates set out in descending order of marks and not an act of short-listing; a list that descends to a score of 4 could hardly be a list of candidates called to interview. Apart from the caption, the marks recorded against the names of the petitioners are 31.

15. It is now settled that mere selection in a written examination and interview does not, by itself, confer on a candidate a right enforceable in the constitutional jurisdiction and that the question of appointment to a particular post falls within the exclusive domain of the public functionaries.⁹ If that is the position of a candidate actually selected, the case of one who never qualified stands on an even weaker footing. It is equally settled that the conditions, qualifications and criteria prescribed by the competent authority are those by which the case of a candidate is to be judged and that no candidate has a vested right to be governed by any other set of conditions.¹⁰ Appointment in

⁷ Rules 3(2) and 11 of the Rules of 1974.

⁸ Annexure “C” to the petition, read with the result (n.7 above).

⁹ Secretary Finance v Ghulam Safdar 2005 SCMR 534.

¹⁰ Imtiaz Ahmed v Punjab Public Service Commission PLD 2006 SC 472.

the Sindh Police, moreover, can be made only through a competitive process on merit as provided by the recruitment rules and not otherwise.¹¹

16. The relief claimed is, in substance, a writ of mandamus. Such a writ issues to enforce a duty imposed by law. No law obliged the respondents to appoint a candidate who had failed to secure the prescribed minimum marks. Appointing the petitioners would have been to depart from the very criterion approved by the competent authority and to do so at the expense of candidates who had earned their places on merit.

17. Article 25 of the Constitution secures equality amongst those who are similarly situated; he who alleges its breach must show that he has been treated differently from persons similarly circumstanced and that such differential treatment rests upon no reasonable basis.¹² The petitioners with 31 marks and Asad Ali with 38 marks were not similarly circumstanced, the difference between them being the very criterion on which the recruitment turned.¹³ His appointment, far from establishing discrimination, shows that the criterion was, in fact, applied.

18. The record further shows that the entire band of 35 to 39 marks in the district, comprising 80 candidates, was accommodated, with 58 against the district vacancies and 22 against the vacancies of the Traffic Police. No candidate securing less than 35 marks has been named, and no document has been produced to show that any such person was appointed. Even if such an instance were shown, Article 25 does not envisage negative equality and a wrong concession made in favour of one person does not entitle another to claim the benefit of a wrong decision.¹⁴

19. Allegations of malafides, ulterior motive, and the appointment of influential persons upon the recommendation of politicians have been made in the abstracts. No name, date, particulars, or document supports them. Malafides is easily alleged and hard to prove; it must be pleaded with particularity and established by cogent material. Assertions of this character cannot be permitted to displace a documented record. Nor is the assessment made by a recruitment body ordinarily open to scrutiny in this jurisdiction

¹¹ Mir Hassan v Province of Sindh 2024 PLC (C.S.) 967.

¹² I.A. Sharwani v Government of Pakistan 1991 SCMR 1041.

¹³ Annexure "F" to the petition; serial No.277 of the result (n.7 above).

¹⁴ Chief Secretary, Government of Balochistan v Adeel-ur-Rehman 2024 SCMR 145.

unless malafides, bias, or error floats upon the surface of the record¹⁵, a stage which the present case does not reach, the petitioners having stumbled at the written test itself.

20. The two remaining planks carry the petitioners no distance. The blood test reports of Aga Khan University Hospital of September, 2016 are marked “Self Referred” and bear no requisition from the department; under Rule 17 of the Rules of 1974, medical fitness is a condition precedent to appointment, not a source of entitlement to it.¹⁶ The duty cards for the General Election, 2018 describe the petitioners as members of the “Auxiliary Force” deployed at named polling stations and, upon the petitioners’ own showing, that duty was performed without any compensation. Engagement for polling duty is neither appointment, nor probation, nor service; it gives rise to no relationship of master and servant and confers no right to be enlisted as a constable.¹⁷

21. The cause of action, at the latest, arose on 23.01.2017, the date of the appointment order annexed by the petitioners themselves, by which date the recruitment had concluded. The petition was presented on 17.11.2022, after a lapse of nearly six years. Paragraph 11 of the petition asserts that the petitioners approached respondents Nos. 3 and 4; no application, reminder or reply has been placed on the file, and a bare verbal assertion of vigilance is no explanation of delay.

22. Relief under Article 199 of the Constitution is discretionary, and the rule of laches is applied with particular strictness where a person seeks employment or restoration to office.¹⁸ A Division Bench of this Court, in a recent pronouncement, declined, on this very ground, to entertain a challenge to a recruitment brought after four years, holding that once rights have accrued in favour of others, a belated challenge cannot be entertained.¹⁹ Here rights have accrued to the candidates appointed in 2017; the sanctioned vacancies of that recruitment stand exhausted, and the process is now nine years old. The petitioners slept on such rights as they conceived themselves to possess,

¹⁵ Muhammad Ashraf Sangri v Federation of Pakistan 2014 SCMR 157.

¹⁶ Annexures “D” and “D-I” to the petition.

¹⁷ Annexures “E” and “E-I” to the petition; para 8 of the memorandum of petition.

¹⁸ Chairman, Pakistan Council of Scientific and Industrial Research v Dr. Mrs. Khalida Razi 1995 SCMR 698; Chairman, District Screening Committee, Lahore v Sharif Ahmad Hashmi PLD 1976 SC 258 quoted therein.

¹⁹ Salman Ahmed v Province of Sindh 2025 PLC (C.S.) 1117.

and this Court cannot exercise its discretion to unsettle appointments held by persons who are not before us.

23. For the reasons recorded above, the petitioners, having secured 31 marks each in the written test held on 04.09.2016, that is, below the minimum of 40% prescribed by the Recruitment Policy and below the 35% threshold relaxed by the competent authority, acquired no right to be appointed as Police Constables; the candidate with whom they compare themselves secured 38 marks and was, therefore, not similarly circumstanced; the charge of mala fides remains unsubstantiated, and the petition, brought nearly six years after the recruitment had come to a close and after rights had accrued to others, is in any event barred by laches.

24. The petition is accordingly dismissed along with the pending application(s), with the parties to bear their own costs.

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Naveed Ali