

IN THE HIGH COURT OF SINDH KARACHI

Present:-

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

1. C.P. No.D-2108/2018

Muhammad Asim Abbasi Petitioner
V.S

Government of Sindh through
Chief Secretary and others Respondents

2. C.P. No.D-2333/2018

Mujahid Hussain Petitioner
V.S

Government of Sindh through
Chief Secretary and others Respondents

3. C.P. No.D-2045/2018

Muhammad Ibrahim Abro Petitioner
V.S

Government of Sindh through
Chief Secretary and others Respondents

4. C.P. No.D-2149/2018

Amir Ali Suhag and others Petitioners
V.S

Government of Sindh through
Chief Secretary and others Respondents

5. C.P. No.D-2440/2018

Mir Muhammad and another Petitioners
V.S

Government of Sindh through
Chief Secretary and others Respondents

6. C.P. No.D-2311/2018

Akhtar Hussain & another Petitioners

V.S

Province of Sindh & others Respondents

Date of Hearing: **28.03.2018 & 29.03.2018**

Mr. Abdul Salam Memon, Advocate for the Petitioners
in C.P. Nos. 2108 & 2333 of 2018.

Petitioner Muhammad Ibrahim Abro
in C.P. No. D-2045 of 2018 present in person.

Mr. Liaquat Ali Khaskheli Advocate for the
Petitioner in C.P. No. 2149 of 2018.

Petitioners present in person
in C.P. No. D-2440 of 2018.

Petitioners present in person
in C.P. No. D-2311 of 2018.

Barrister Shahryar Mehar, AAG Sindh for
the Respondents along with Mr. Muhammad

Yousuf Alvi, Law Officer of

Sindh Public Service Commission/Respondent No.3.

JUDGMENT

ADNAN-UL-KARIM MEMON, J:-, All the above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common questions of law and facts are involved therein.

2. Brief facts of the case as averred in memo of the petitions are that the Petitioners in response to the advertisement bearing No. 01/2018 issued by Sindh Public Service Commission (SPSC), published in Daily DAWN on 19.02.2018 for conducting Combined Competitive Examination (CCE) (Executive Cadre)-2018, applied for the posts for participation in the examination. The Petitioners have averred that eligibility criteria shown in the advertisement includes that the candidates, who fall within the age

limit 21 years minimum and 30 years maximum age as on 1st September 2018 are eligible to compete in the combined competitive examination (CCE)-2018. The Petitioners contended that the Government of Sindh allowed the following general age relaxation vide order dated 14.03.2018 for the candidates desirous to compete in the CCE, 2018:-

S.#	Candidate	From	To
1.	General	30 Years	32 Years
2.	Scheduled Cast	31 Years	33 Years
3.	Government Servants	35 Years	37 Years

3. The Petitioners further contended that the Respondent/SPSC was advised by the Government of Sindh to enhance the closing date for submission of online application form as Friday 30th March 2018. The Petitioners have further averred that they have reasonable apprehension that their applications for CCE, 2018 would not be considered on the premise of being over age. The Petitioners have submitted that raising of upper age limit from 30 years to 32 years for the candidates, excluding scheduled castes and Government servant is not reasonable for the reasons that the CCE, 2018 has been conducted after a period of five years and in the meanwhile the Petitioners would become over-age. The Petitioners have averred that the candidates should not suffer on account of delay in conducting the Combined Competitive Examination by the Government after 5 years, which is violation of the fundamental right of the petitioners; hence, they being aggrieved have filed instant Constitutional petitions for directions to the Government of Sindh for enhancing the maximum age limit, as 32 years upper age limit is not reasonable.

4. Upon notice to the Respondents, para-wise comments were filed on behalf of Respondent No.3 in petition No. C.P D- of 2018 and the same are treated as comments in all the other petitions also to which the counsel for all the Petitioners in this petition as well as other petitions and the Respondents have no objection.

5. The learned counsel for all the Petitioners consented that the petition bearing No. 2108 of 2018 may be treated as leading petition and same may be disposed of at Katcha Peshi stage along with all the other connected petitions being identified in nature.

6. Mr. Abdul Salaam Memon, learned counsel for the Petitioner in C.P. No. 2108 of 2018 and 2333 of 2018 has contended that the petitioners have not been treated in accordance with law and have been deprived of their vested rights to compete in the Combined Competitive Examination, 2018 advertised by Sindh Public Service Commission and they have been discriminated and on the contrary the Government of Sindh has relaxed the upper age limit up to 2 years to benefit certain class of people and the Petitioners have been ignored and the Petitioners cannot be held responsible for the delay caused in conducting the CCE-2018, as a result of which, they became over age. He continued and stated that reasons assigned by the Competent Authority for capping the age 30 years could be that the Government needs talented candidates in service, but it does not mean that the Petitioners should be ignored as they have waited for a long time to compete the competitive process as the combined competitive examination which could not take place within time

and the Petitioners should not suffer due to delay of 5 years in conducting the competitive examination by the Government functionaries; He referred to the honorable Supreme Court's direction to the Government of Sindh in Suo Moto case No. 18 of 2016 for conducting the competitive examination in time and alleged that the Government of Sindh did not follow the said directives and by not enhancing upper age limit to suit the petitioners is against the fundamental rights of the petitioner; thus can be looked into by this Court. The learned counsel in C.P No.D-2333 of 2018 has argued that in the aforesaid advertisement no age relaxation in the category of disable person has been provided for. The learned counsel for the Petitioners in support of his contention has relied upon the Hon'ble Supreme Court decision in Suo Moto case No. 18 of 2016 (2017 SCMR 637); Rashid Ali Channa & others Vs. Muhammad Junaid Farooqui (2017 SCMR 1519); JDW Sugar Mills Ltd and others Vs. Province of Punjab and others (PLD 2017 68); Ahmed Saeed Siddiqui and others Vs. Pakistan through Secretary Establishment and others (2015 PLC (C.S) 923; Muhammad Iqbal Vs. Government of Punjab through Chief Secretary (2015 PLC (C.S) 1503; Waqas Aslam and two others Vs. Lahore Electric Supply company through Chief Executive and 4 others (2018 PLC (C.S) 243; Ameer Taimoor and 7 others Vs. Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue and 3 others (2016 PLC (C.S) 106; Tariq Aziz uddin and others in re (2010 SCMR 1301); Muhammad Iqbal Rafi and 2 others Vs. The Province of Punjab Lahore (1986 SCMR 680), Zamir Ahmed Khan Vs. Government of Pakistan and another (1978 SCMR 327); Ahmed Abdullah and 62 others Vs. Government of the Punjab and 3 others (PLD 2003 Lahore 752); Dossani

Travels Pvt Ltd. and others Vs. Messrs Travesl Shop (PVT) Ltd and others (PLD 2014 SC 1) . Having argued the case as above, he prayed for allowing the instant petitions.

7. Petitioner Muhammad Ibrahim Abro in C.P. No. D-2045 of 2018 present in person, and Mr. Liaquat Ali Khaskheli Advocate for the Petitioner in C.P. No. 2149 of 2018 have adopted the arguments of Mr. Abdul Salaam Memon, learned counsel for the Petitioners in C.P. No. 2108 of 2018 and 2333 of 2018.

8. Petitioners in C.P. No. 2240 of 2018 appeared in person and submitted that upper age relaxation only to the Government Servant is in violation of Article 25 of the Constitution and discrimination in job opportunities against general categories. He further stated that Notification dated 14.03.2018 and Press release dated 16.03.2018 issued by Sindh Public Service Commission are also unconstitutional and illegal to the extent of the age of general category i.e upper age limit 32 years, is ultra vires the Constitution of Pakistan, 1973; that the Respondents are under obligation to accept the application of the petitioners to appear in CCE-2018 and extend same upper age limit of 37 years to the general category of youth, being their fundamental rights.

9. Petitioners in C.P. No. 2311 of 2018 appeared in person have submitted that the Notification dated 14th March 2018 issued by the Respondent No.3 is un-constitutional, void, illegal, mala fide and amounts to abuse of powers exercised by the Executive of the province; that Respondents are duty bound to

issue a new Notification, allowing 5 years of general age relaxation where the cut-off date is 31 December 2017.

10. Barrister Shaheryar Mehar, learned AAG argued that the Sindh Public Service Commission announced Combined Competitive Examination-2018 vide Advertisement No. 01/2018 published on 19.02.2018 with 22.03.2018 as the closing date for the submission of online applications with age limit prescribed for different categories of the posts as on 01.9.2017, the cut of date mentioned in para 02 supra. That in Combined Competitive Examination, 2013 the upper age limit age limit for the general category was 28 years and for schedule caste it was 29 years; which has been across the Board raised to 32 years and 33 years, respectively; which is a policy decision of the Government of Sindh for the entire Province and the SPSC is to conduct the examination accordingly. He concluded that the Petitioners contention that the maximum age limit prescribed does not suit them is not sustainable by any cannon of justice. He concluded that neither the Petitioners' contention of discrimination is sustainable nor any law has been violated or their any right has been infringed. Having explained the case as discussed above, the learned AAG prayed for dismissal of the instant Petition.

11. Mr. Muhammad Yousuf Alvi, Law Officer of Sindh Public Service Commission has adopted the arguments of the learned AAG.

12. We have heard the learned counsel for the parties, perused the material available on record and case law cited at the bar.

13. The following Important questions of law are involved in the subject petitions:

- i) Whether this Court has jurisdiction to interfere in the policy matters?**
- iii) Whether Rule 12 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 provides 10 years relaxation in the upper age limit and this court can enhance the upper age limit of the petitioners enabling them to participate in the CCE-2018?**

14. In order to resolve the controversy in hand, it is expedient to discuss that Rule 12 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 provides as under:-

- 12. (1) a candidate for appointment by initial recruitment must possess the educational qualifications and experience and be within the Age limit laid down for that appointment.**
- (2) The age limit laid down for appointment to the posts mentioned in column 2 of the table below may be relaxed up to the extent shown in columns 3, 4 and 5 thereof by the authorities respectively specified in the said columns.**
- (3) Provided that the upper age limit in respect of a disabled persons as defined in the disabled persons (Employment and Rehabilitation) Ordinance, 1981, shall stand relaxed up to ten years in addition to the relaxation that may be granted under sub-rule (2).**

15. The above table shows that for posts in BPS-16 and above, 10 years relaxation can be made by Minister In charge or the Chief Secretary (Where there is no Minister).

16. Perusal of the advertisement No. 1 of 2018 dated 19.02.2018 explicitly shows that the candidate for the post

enumerated in the said advertisement must be within age limit as under:-

ELIGIBILITY

- (I) both male and female including special persons, who are citizens of Pakistan, domiciled and permanent residents of Sindh, having at least 2nd Division Bachelor's degree between the ages of 21 to 30 years as on 01 September 2018 are eligible.**
- (II) In case of candidates form the scheduled caste, the upper age limit limit shall be 31 years on 01 September 2018.**
- (III) In case of candidates Domiciled in Sindh who are serving in the Federal Govt/Sindh Govt. with a total service of at least four years on 01 September 2018, the upper age limit shall be 35 years.**

17. Record reflects that the Sindh Public Service Commission conducted combined Competitive Examination (CCE)-2017 and the upper age limit for the general candidates was fixed at 28 years and for the scheduled caste 29 years. The last CCE was held in the year 2008. However, In order to give a fair chance to the maximum number of candidates the Government of Sindh revisited the upper age limit and granted fifteen (15) years relaxation in upper age limit for all recruitments, except the Combined Competitive Examination and Police Service. Record further reflects that the Government of Sindh vide Notification dated 15.11.2017 revised the upper age limit for Combined Competitive Examination, 2017 and onwards (a) For General Candidates 30 years. (b) For Scheduled Cast Candidates 31 years. All the petitioners claim to have crossed maximum age of 32 years and have sought suitable age relaxation through this Court for CCE. 2018. The Govt. of Sindh's policy is in this regard is

embodied in office order dated 14.03.2018, which is reproduced below:-

SUBJECT: - REQUEST FOR AGE RELEXATION IN COMBINED COMPETITIVE EXAMINATION-2018

I AM DIRECTED TO REFER THIS DEPARTMENT'S LETTER No. SOII(SGA&CD) 11-6/2017 dated 15.11.2017 (Copy enclosed) and to forward herewith a copy of summary duly approved by Chief Minister, Sindh on the subject noted above and to inform that the Competent Authority i.e. Chief Minister Sindh has been pleased to revise the upper age limit in respect of General/Scheduled Cast/ Government Servants for all the candidates to make them eligible to appear in the Combined Competitive Examination-2018 as under:

S.#	Candidate	From	To
1.	General	30 Years	32 Years
2.	Scheduled Cast	31 Years	33 Years
3.	Government Servants	35 Years	37 Years

- 2. The Sindh Public Service Commission is also advised to enhance the closing date of submission of online application forms as Friday, 30th March, 2018 instead of Thursday, 22nd March, 2018, which is presently announced by Sindh Public Service Commission.**
- 3. In view of above, it is requested to take necessary measures for its wide publicity through all possible means of communication, so that all eligible candidates get a fair chance of participation.**

**(NAVEED SADIQ)
Section Officer-II**

18. As it could be seen from the above Notification that upper age limit for various categories of the candidates for competing in CCE-2018 has been raised as shown in last column of the above table.

19. Fair and meritorious appointment to public office is requirement and spirit of law under Article 18 of the Constitution

of Islamic Republic of Pakistan 1973. Accordingly, the Respondent No.2 has issued Notification dated 14th March 2018. The judgment rendered by the Hon'ble Apex Court in the case of **Ghulam Rasool vs. Government of Pakistan & others (PLD 2015 SC 6)** provides guiding principle in this regard.

20. As regards the contention of the learned AAG that the Courts may not interfere with the policy matters of Government, we completely agree with the said contention of the learned AAG. This proposition of law is enunciated by the Hon'ble Supreme Court in the case of Government College University, Lahore through Vice Chancellor and others Vs. Syeda Fiza Abbas and others.(2015 SCMR 445).

21. It is a settled principle of law that for the purpose of maintaining a Constitution Petition it is the duty and obligation of the Petitioners to point out that the action of the Respondents was in violation of their Rules and Regulations, which the Petitioners have failed to point out and as such has failed to make out their case for discrimination as well.

22. Learned counsel for the Petitioners while laying emphasis on Rule-12(2) of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974) argued that Petitioners cannot be non-suited on the ground of overage as there is general relaxation of upper age limit in all the departments of Government.

23. We are not impressed by the contention of learned counsel for the Petitioners that Services, General Administration and Coordination Department, Government of Sindh issued

various Notifications by allowing relaxation up to 15 years maximum in the upper age limit to all the applicants applying for the vacancies in all departments of Government of Sindh. Suffice it to say that Notification dated 26.02.2014 issued by the Chief Secretary, Government of Sindh clearly spells out that this relaxation is not applicable in combined Competitive Examination, which reads as follows:-

NOTIFICATION No. SO11 (S& GAD) 5-64/2011:

In continuation of this Department's Notification No. SO-II (S&GAD 6-12/2004, dated 02.10.2012 and with the approval of Chief Minister, Sindh notwithstanding the contents of table given under Rule 12 (2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the orders contained in this Department's Standing Order No. SORI (SGA & CD) 6/4/85, dated 19.04.2004, Standing Order No. SORI (SGA & CD) 6/4/85 dated 15.06.2004 and Corrigendum dated 02.07.2004 issued in this behalf, Government of Sindh are pleased to allow relaxation upto maximum of 15 (fifteen) years in the upper age limit to all the applicants applying for the vacancies in all the years in the upper age limit to all the applicants applying for the vacancies in all the departments of Government of Sindh (except Police Service & the posts to be filled through combined competitive examination by the Sindh Public Service Commission to be filled during the period with effect from 1st July 2013 to 30th June 2014 in relaxation of Rules). (Emphasis added).

**Sd/- SALIM SAJJAD HOTIANA
CHIEF SECRETARY GOVERNMENT OF SINDH**

24. The Provincial Government issued Notification dated 02.09.2016 an excerpt of the same is reproduced as follows:

"No. SO-II (S& GAD) 5-64/2011: In continuation of this Department's Notification of even number dated 29th October, 2014 and with the approval of Chief Minister Sindh, notwithstanding the contents of table given under Rule 12 (2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the orders contained in this Department's Standing Order No. SORI (SGA & CD) 6/4/85, dated 19.04.2004, Standing Order No. SORI (SGA & CD) 6/4/85 dated 15.06.2004 and Corrigendum

dated 02.07.2004 issued in this behalf, Government of Sindh are pleased to allow relaxation upto maximum of 15 (fifteen) years in the upper age limit to all the applicants applying for the vacancies in all the departments of Government of Sindh (except Police Service & the posts to be filled through combined competitive examination by the Sindh Public Service Commission) to be filled during the period from 1st July, 2016 to 30th June 2018 in relaxation of Rules)". (Emphasis added).

24. In the light of forgoing clear provisions of the policy of the Government of Sindh contained in the Notification dated 14th March 2018 and dictum laid down by the Hon'ble Supreme Court of Pakistan in the case of Ghulam Rasool Vs. Government of Pakistan and others (PLD 2015 SC 6) that ordinarily the Courts should refrain from interfering in the policy making domain of the executive.

25. It is well settled law that even where appointments were to be made in exercise of powers conferred upon the competent authority, such powers are to be exercised reasonably and in a justified manner.

26. The case law cited by the learned counsel for the Petitioners are distinguishable on the facts and circumstances of the case in hand.

27. There is no material placed before us, by which, we can conclude that discretion has been wrongly exercised by the Government of Sindh by revising the upper age limit in respect of General/Scheduled Cast/ Government Servants for all the candidates to make them eligible to appear in the Combined Competitive Examination-2018.

28. We do not find any substance in the contention of the learned counsel for the Petitioners and Petitioners present in person, for interference in policy making domain of the executive unless the policy ipso facto seems to be violative of mandate given to the Courts by the Constitution of the Islamic Republic of Pakistan, 1973, which aspect in our view in the present petitions is totally lacking and it has not been demonstrated that the policy in any manner is mala fide or arbitrary which is across the board for all deserving candidates and also has been relaxed to the extent found suitable to accommodate the prospect candidates.

29. In result of foregoing discussion, we do not find any merit in the instant Petitions, which are hereby dismissed along with listed application(s).

Karachi
Dated: 30.03. 2018

JUDGE

JUDGE

Shafi Muhammad P.A