

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2216 of 2019

Abdul Khalique Panhyar

.....Petitioner

Versus

The Secretary,

Sindh Public Service Commission and others

.....Respondents

Date of hearing: 10.04.2019

Date of order: 10.04.2019

Petitioner present in person.

ORDER

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition, the Petitioner seeks direction to the Secretary, Sindh Public Service Commission, Hyderabad to admit him for written test/interview for the post of Registrar (B-19) and Deputy Registrar (B-18) in Environment, Climate Change Coastal Development Department, Government of Sindh scheduled on 11.04.2019.

2. Brief facts of the case as averred in memo of the petition are that the Petitioner in response to the Advertisement bearing No.8/2018, dated 11.09.2018, issued by Sindh Public Service Commission (SPSC), published in Daily DAWN on 11.9.2018 for conducting Competitive Examination (CE) 08-2018, he applied for

the aforesaid posts for participation in the examination. Basically, the Petitioner has impugned the Letter dated 28.03.2019 issued by Assistant Controller HR & Examinations, Sindh Public Service Commission, Hyderabad, whereby he has rejected the candidature of the Petitioner on the premise that he does not possess the required five years' experience in the relevant field and he is over age by 04 years 05 months and 14 days on the closing date i.e. 15.10.2018, he being aggrieved by the decision, preferred Appeal which is still pending, compelling him to approach this court on 2.4.2019.

3. We queried from the petitioner that how this petition is maintainable, when he is not qualified to compete, for the posts of Registrar (B-19) and Deputy Registrar (B-18) in Environment, Climate Change Coastal Development Department Government of Sindh. The Petitioner who is present in person has voiced his grievance that he has not been treated in accordance with law and has been deprived of his vested right to compete in the Competitive Examination, 2018 advertised by Sindh Public Service Commission and he has been discriminated; that he fulfilled all the conditions and criteria according to Advertisement. Per petitioner, he is eligible to appear in written/test/interview for both the posts as per letter dated 14.09.2018. However, on 30.03.2019, Assistant Director, SPSC issued impugned Letter dated 29.3.2019 to the Petitioner intimating thereby that he does not possess required Five [05] years` experience in the relevant field as well as he is overage by 04 years 05 months and 14 days on closing date i.e.

15.10.2018; that the aforesaid decision is discriminatory, malafide and against the principle of natural justice; that the last date of interview has been announced which is 11.04.2019 and if the Petitioner is not allowed to appear in the written test/interview his career will be ruined; that the said act of denial of interview by the Respondents is illegal, unjustified and without lawful authority, thus the impugned Letter dated 29.03.2019 is nullity in the eyes of law. He next submitted that the Respondents have no cogent ground/reason to disallow the Petitioner from appearing in the test/interview. Petitioner has further added that he possesses more than 10 years post qualification job experience as required by Commission. Furthermore, he completed Masters in International Relations in 2006, Law Degree in 2007 and finally qualified to obtain Master's Degree in Public Policy from School of Public Policy Management Seoul South Korea in 2016. He next added that he joined Pakistan Air Force in 1995 and left in 2009 after getting the post of Public Relations Officer in Board of Investment, Islamabad through Federal Public Service Commission. Having argued the case as above, he prayed for allowing the instant petition.

4. We have considered the submissions of the Petitioner who is present in person and perused the material available on record.

5. The following Important questions of law are involved in the subject petition:

- i) **Whether the Petitioner is eligible to apply for the posts of Registrar (BS-19) and Deputy Registrar (BS-18) in Environment, Climate Change and**

Coastal Development Department, Government of Sindh on the cut-off date that is, 15.10.2018?

- ii) 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 petitioner enabling him to participate in competitive Examination No.08/2018 dated 11.9.2018, conducted by SPSC?**

6. In order to resolve the controversy in hand, it is expedient to have a look at the rejection of the candidature of the Petitioner by SPSC vide letter dated 29.3.2019. We have noted that Sindh Public Service Commission after the scrutiny of record of the Petitioner found him disqualified for the aforesaid posts on the premise that the Petitioner does not possess required Five [05] years` experience in the relevant field as well as he is overage by 04 years 05 months and 14 days on closing date i.e. 15.10.2018.

7. Petitioner who is present in person has emphasized that he has sufficient experience for the relevant field and referred to the documents available at page-43-47. These documents prima facie show that petitioner has worked in the Organization i.e. Benazir Income Support Program, Government of Pakistan, Sindh Region Karachi and succeeded to obtain Experience Certificate but we are unable to digest the assertion of the Petitioner for the simple reason that the post of Registrar and Deputy Registrar in Environment, Climate Change Coastal Development Department is a special field and experience of Five years in the relevant field is required and not in the field of Benazir Income Support Program. In our view, petitioner has hardly a ground to sustain the instant petition on the aforesaid pleas.

8. Record further reflects that Petitioner has also been shown to be disqualified to compete for the aforesaid posts on the ground that he is over age by 04 years 05 months and 14 days. At this stage, the petitioner has referred the Notification dated 14th September, 2018 [available at page-27 of Memo of Petition] and submitted that the Government of Sindh has issued the beneficial Notification for relaxation up to maximum of 15 years in the upper age limit to all the applicants applying for vacancies in all the departments of Government of Sindh.

9. To elaborate on the aforesaid proposition, it is expedient to discuss the Rule 12 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, which 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).

10. 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).

11. Perusal of the advertisement No. 8 of 2018 dated 11.09.2018 explicitly shows that the candidate for the post enumerated in the said advertisement must be within age limit, qualification and experience as prescribed in the recruitment rules.

12. We have noted that the Sindh Public Service Commission conducted combined Competitive Examination (CCE)-2018 and the upper age limit for the candidates was fixed at minimum 35 years and maximum 45 years and still petitioner is overage by 04 years 05 months and 14 days. We are clear in our mind that, in order to give a fair chance to the maximum number of candidates to compete the public posts, the Government of Sindh vide Notification dated 14.09.2018 revisited the upper age limit and granted fifteen (15) years relaxation in upper age limit for all recruitments, except police service and the Combined Competitive Examination conducted by SPSC, during the period from 1st July, 2018 to 30th June, 2020.

13. 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.3 has issued Notification dated 14. 9. 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.

14. It is a settled principle of law that for the purpose of maintaining a Constitution Petition it is the duty and obligation of

the Petitioner to point out that the action of the Respondents was in violation of their Rules and Regulations, which the Petitioner has failed to point out and as such has failed to make out his case for discrimination as well.

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

16. We are not impressed by the contention of the Petitioner 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 14.09.2018 issued by the Chief Secretary, Government of Sindh clearly spells out that this relaxation is not applicable in combined Competitive Examination. On the aforesaid position, 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.

17. 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.

18. We do not find any substance in the contention of the Petitioner 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 petition 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.

19. Reverting to the contentions of the petitioner as discussed in the preceding paragraphs, we are of the view that Respondents have processed the scrutiny of the documents of the Petitioner in accordance with the law and rejected the candidature of Petitioner as per clauses (11 & 14) of impugned Letter dated 29.03.2019 and no illegality therefore, appears to have been committed. For convenience sake an excerpt of the letter dated 29.03.2019 is reproduced as under:-

“You do not possess required 05 years’ experience in the relevant field till closing date i.e. 15.10.2018 after acquiring minimum qualification. You are over age by 04 years 05 months and 14 days on closing date 15.10.2018.”

20. We have noted that it is clearly mentioned in the rejection letter dated 29.3.2019 that if a candidate feels aggrieved from the

rejection of the candidature, he may file an appeal within seven days from the date of issuance of rejection letter and the petitioner has preferred Appeal dated 29.3.2019 against the impugned letter and without waiting the outcome of the Appellate order has directly approached this court.

21. In the light of forgoing, we are of the view that disqualification of Petitioner on cut-off date that is, 15.10.2018 cannot be converted into qualification to appear in the written test/interview for the aforesaid posts because the Petitioner was required to possess the requisite experience in the relevant field on the said cut-off date. Besides above, he is overage by 04 years 05 months and 14 days, whereas the relaxation in upper age as granted by the Sindh Government vide Notification dated 14th September, 2018 is not applicable in the case of Petitioner. This being the position coupled with the fact that exercise of jurisdiction by this court under Article 199 of the Constitution is purely discretionary in nature and meant to foster the cause of justice and fair play we do not find any valid reason for indulgence. Consequently, the instant Constitution Petition merits no consideration and stands dismissed in *limine* along with pending application(s) with no order as to costs.

JUDGE

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