

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No. D- 3239 of 2013
Const. Petition No. D- 3283 of 2013

Present:

Mr. Muhammad Shafi Siddiqui J.
Mr. Khadim Hussain Tunio J.

28.08.2018.

Mr. Shamsuddin Rajper, Advocate for petitioner in C.P No.D-3283/2013.

Nemo for petitioner in C.P. No D-3239/2013.

Mr. Mehboob Ali Wassan Assistant Advocate General Sindh

JUDGMENT.

Khadim Hussain Tunio (J). Through this common Judgment we intend to dispose of above captioned petitions whereby the petitioners seek their appointment as Assistant Sub-Inspector (BPS-09) in police department.

Precisely , the relevant facts as set out in both petitions are that;

C.P No. D-3239/2013 the facts are that the petitioner is serving as police constable in Police Department and applied for the post of Assistant Sub-Inspector (BPS-09) in Sindh Police through proper channel, after acceptance of his application by the respondent No.1 (Assistant Director Recruitment Section, Sindh Public Service Commission), he was called for screening Test to shortlist the candidates for written test. He appeared in the said test and vide press release dated 18.02.2014 Controller of Examinations, Sindh Public Service Commission), he was declared as successful. Subsequently petitioner appeared in Pre-Interview Written Test and was declared

successful vide press release dated 11.07.2014, thereafter on 24.7.2014 petitioner received rejection letter, accordingly he was informed that due to over age his name has been excluded from the list of candidates who have to appear in the Viva Voce scheduled to be held on 01.11.2013. The petitioner finding no other alternate and efficacious remedy has filed this petition and prayed as follow:-.

- a) To declare that the petitioner is entitled for appearing in the Viva Voice Test, as per Age Relaxation of 06 years granted by worthy Chief Minister of Sindh to the petitioner so also as per Notification dated 30.06.2012, allowing 15 years Age Relaxation.
- b) The act and action of respondents for not issuing the letter for appearing in the Via Voice for the post of ASI and by ignoring the petition is in violation against the merit, be declared as illegal, unlawful and against the fundamental rights of the petitioner.
- c) That the respondents may specifically be directed to issue letter to the petitioner to appear in the Viva Voice Test to the petitioner, which is scheduled to be held on 01.11.2013 to 09.11.2013, as the petitioner has qualified Pre-Interview Written Test and is entitled to appear in the Viva Voice Test.
- d) To grant stay order, restraining the respondents not to initiate any further proceedings for conducting the Viva Voice of other candidates, for the post of ASI BPS-09, till final disposal of the petition.

In C.P No.D- 3283/2013 all the facts are similar, there is difference in dates of moving application, screening test and of period of over age. The petitioner prayed for the following reliefs:-

- a) To declare the act of Respondent No.4 for excluding the name of petitioner from list of qualified candidates for the post of Assistant Sub-Inspector (BPS-09) on the ground of overage, is illegal, malafide, null, void, without any lawful authority and justification.
- b) To direct that the petitioner is eligible for his appearance in the last and final round of Viva Voce for the post of Assistant Sub-Inspector (BPS-09) though he has qualified the Pre-Interview Written Test and his Seat Number is appearing in the Merit list, displayed by the Respondent No.4.

- c) To grant ad-interim injunction, thereby directing the Respondent No.4 to allow petitioner to appear in the Last Round of Via Voce for the Post of Assistant Sub-Inspector (BPS-09) till final disposal of the instant petition, as such concession of like nature has already been granted to other candidates by Honourable High Court circuit Court Hyderabad.

We have heard learned counsel for the petitioner and learned Assistant Advocate General Sindh.

Learned counsel for the petitioner appearing on behalf of petitioner submits that the petitioner is government servant serving in Police department as constable since 2010. In the year 2008 and 2011 Sindh Public Service Commissioner invited the applications from in-service Head Constables / constables in Sindh Police, Government of Sindh on Graduation Quota, whereby, the SPSC announced the posts of ASIs, BPS-09; that the petitioner being eligible for the said post applied for the post of ASI (BPS-09); that the application of the petitioner was received and he was issued Roll No. 02036 to appear in the Pre-Interview Written Test for the post of ASI and Admission Letter with Roll No.02036 to appear in the Pre-Interview Written Test for the post of ASI; that the petitioner qualified Pre-Interview written test and he was declared as successful candidate; that the petitioner was shocked when he received letter from SPSC Hyderabad vide No. PSC-RB/2013/2036 dated 20.8.2013, subject as 'REJECTION LETTER' wherein objection has been raised that the petitioner is over age of 03 years, 03 months and 03 Days on closing date i.e 11.07.2011 and petitioner was advised to file appeal within 07 days from the date of issuance of letter with reasonable grounds supported with documentary evidence, then he requested that this Court may consider the question of condonation of age limit since he has qualified Pre-interview written test. He further submits that the petitioner had applied for the post of ASI through proper channel he was entitled for relaxation of his age being government servant as such, the petitioner is an eligible candidate for the post of ASI but the respondent No.1 has illegally rejected him. He has further submitted that even otherwise Services and General Administration and

Co-ordination Department (SG&CD) Govt. of Sindh vide its notification dated 19.7.2011, has given relaxation upto maximum of 15 years in upper age limit to all the applicants applying for the vacancies in all the Departments of Govt of Sindh to be filled during the period with effect from 1st July 2011 to 30th June 2012 in relaxation of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the closing date for the post of ASIs i.e 11.7.2011 falls under the period in which relaxation has been allowed; hence the impugned rejection letter issued by respondent is liable to be declared illegal, void and ab-initio.

Mr. Mehboob Ali Wassan Assistant A.G Sindh has vehemently opposed this petition and stated that the petitioner miserably failed to fulfill the condition mentioned for the post of ASIs in the advertisement No.3 of 2011 dated 09.06.2011 for the post of Assistant Sub-Inspectors in police department under Article -7 (3) of Police Order, 2002 from the eligible candidates having minimum 18 and maximum 28 years age for direct recruitment and minimum 18 and maximum 33 years age for Graduate Constables and Head Constables in which the closing date for submission of the application forms was 11.07.2011, and no relaxation of the age of upper limit was allowed to the candidates who already employed in government service. The applications of the petitioners were considered by the Commission and rejected as they have failed to fulfill the required terms and conditions of the said posts in advertisement No. 03 of 2011 and 3 of 2013 as they were over age by 03 years, 03 months and 03 Days and 06 years, 04 months and 05 days on closing date i.e 11.07.2011. Case of petitioners was / is of over age has not been denied by them. Moreover the petitioners have failed to file appeal within 07 days from the date of issuance of rejection letter with reasonable grounds duly supported with the documentary evidence. Rejection order has been appended as Annexure E-I page 29 and Annexure 'B', page 15 respectively.

From perusal of the record it is *prima facie* evident from the said advertisement that it was made clear to all that no relaxation in age, education or physical standard will be allowed to the candidates for

recruitment and that the candidates should have required age and qualifications on the closing date for submitting the application form. The age shall also be determined on the basis of closing date of submitting the applications. The petitioners, *no where*, take any exception to the fact that they had applied for the post on basis of *criterion*, detailed in the advertisement, therefore, legally the petitioners cannot take any exception thereto even at subsequent stage. The *eligibility*, if detailed in *advertisement*, would be binding not only upon the department but also upon candidates, applying thereunder (*advertisement*) particularly when same is not in conflict with relevant rules and instructions, applicable to such *recruitment*. A reference to the case of Govt. of Punjab v. Zafar Maqbool Khan 2012 SCMR 686, being material, is made hereunder:-

“8.The eligibility of a candidate has to be determined in accord with the advertisement for the post, service rules governing the appointments and any amendment or instruction backed by law.

There can also be no denial to the fact that appointments in ‘**Law enforcing agencies**’ have always objective therefore, fixing a *criterion*, in particular of ‘**age limit**’ and **physics** would always be their *prerogative* as per policy and relevant rules. The *nature* of recruitment in police department is also aimed to ensure sense of protection which may fail if criterion of **age** and **physics** is allowed to be relaxed. The petitioners also seek no exception to legal effects of Article -7 (3) of Police Order, 2002, so insisted by the learned A.G. Sindh, therefore, we are of the clear view that petitioner (s) *legally* cannot seek an exception to such *agreed* criterion (under which applications were moved).

Thus we are of the view that the notification dated 19.07.2011 issued by (SGA&CD) Government of Sindh, providing *general* relaxation upto maximum of 15 years in the upper age limit for the vacancies in the department of Government of Sindh would not be available to petitioners (police department) particularly when relevant *rules* and *particular* nature of job in police department does not permit so. The bar specifically provided in the advertisement regarding

relaxation of age to the candidates for recruitment in service Sindh Police, nature of job and relevant rules would have binding effect.

For the aforesaid discussion and reasons, we are of the opinion that the petitioners being over age on closing date i.e 11.7.2011 by 03 years, 03 months and 03 Days and 06 years, 04 months and 05 days were not eligible for the post of ASI in police department and they were not entitled for the relaxation in upper age limit, therefore, the petitioners have miserably failed to make out their case for issuing directions for consideration. Accordingly, present petitions are dismissed. There will be no order as to costs.

These are the reasons of our short order dated 28.08.2018.

JUDGE

JUDGE

Irfan/PA