

**IN THE HIGH COURT OF SINDH, AT KARACHI**

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-6643 of 2018**

Shiraz Ali .....Petitioner

Versus

Province of Sindh and others.....Respondents

**Date of hearing: 19.09.2018**

Ms. Saira Sheikh, Advocate for the Petitioner.

**ORDER**

**ADNAN-UL-KARIM MEMON,J:-** Petitioner in the captioned Petition has impugned Letter dated 06.08.2018 issued by Assistant Director, Sindh Public Service Commission, Hyderabad. The Petitioner has voiced his grievance that he applied for the post of Inspector (Investigation) in BPS-16 in Home Department, Government of Sindh in pursuance of Advertisement bearing No.5/2016, dated 29.05.2016. Petitioner has asserted that SPSC conducted pre-Interview written test for the aforesaid post in the month of March 2018 and he qualified the written test announced on 27.04.2018. However, on 06.08.2018, Assistant Director, SPSC issued impugned Letter to the Petitioner, intimating thereby that he does not possess the required qualification i.e. MSC in criminology or LLB or M.A and held that Petitioner is not eligible to appear in interview for the post applied for.

2. Ms. Saira Sheikh, learned counsel for the Petitioner has argued that Petitioner has experience of five years in the field of investigation with effect from 28.05.2010 to 18.07.2016 and relied upon the experience certificate dated Nil issued by Senior Superintendent of Police Investigation-III, Korangi East Zone, Karachi; that Petitioner in sheer dismay, while waiting for the call of interview, received the impugned rejection letter from SPSC on the premise that Petitioner has less than 5 years' experience in investigation as well as lacks the qualification i.e. Degree in MSC (Criminology) or LLB or M.A, which act of the Respondent SPSC was uncalled for, for the simple reason that Petitioner qualified the pre-interview written test and a vested right is accrued in his favor; that the Petitioner is qualified MBA which is the requirement for the post of Inspector Investigation as the word "or" has been used, which means the candidate should have Master's Degree in any discipline, thus the impugned letter issued by SPSC is nullity in the eyes of law; that Petitioner preferred Departmental Appeal before the Respondent No.3 but till date no decision has been communicated to the Petitioner; that as per the policy / instructions, the SPSC should have scrutinized / completed the applications of the candidates before conducting pre-interview/ written test; that the act of the Respondent No.3 is in violation of Article 27 of the Constitution of Islamic Republic of Pakistan 1973. Per learned counsel, Petitioner has been refused by the Respondents to appear in the ensuing interview on the premise that Petitioner does not possess the required qualification and experience. She further contended that the last date of interview

has been announced, which is falling in the current month and if the Petitioner is not allowed to appear in the interview his career will be ruined. She next contended that Respondents on one hand allowed the Petitioner to appear in the examination and on the other hand denied him from the basic right to sit in the interview despite the fact that the Petitioner succeeded in the written test; that the said act of denial of interview by the Respondents is illegal, unjustified and without lawful authority, thus the impugned letter dated 06.08.2018 is a nullity in the eyes of law, therefore, Respondents have no cogent ground/reason to disallow the Petitioner from appearing in the interview after passing the written test.

3. We have considered the submissions of the learned counsel for the Petitioner and perused the material available on record.

4. Before proceeding on merits of the case, we would like to see the basic document that is, the rejection letter dated 06.08.2018 issued by the Sindh Public Service Commission whereby the Petitioner was not allowed to appear in the ensuing interview. For ready reference contents of the said letter are reproduced as under:-

**RECRUITMENT TO THE POST OF INSPECTOR (INVESTIGATION) BPS-16 IN HOME DEPARTMENT, GOVERNMENT OF SINDH.**

***With reference to your application for the above noted post I am to inform you that the Sindh Public Service Commission regrets to inform you that it is not possible to admit you for interview for the said post due to following terms:***

***You have failed to submit the following requisite attested documents within the stipulated time period as thereunder:-***

***Your Degree is MBA whereas requisite Degree is MSC (Criminology) or LLB or M.A.***

***However, if you feel aggrieved of rejection of your application, you may file an appeal within Ten (10) days from the date of issue of this letter with reasonable grounds duly supported with the documentary evidence against rejection order. Your appeal should be supported with the original treasury receipt of Rs. 250/- as appeal fee paid in the Head of Account "C02101 Organ of State Appeal Fee Sindh Public Service Commission". Otherwise the same will not be entertained".***

5. The pivotal question before us is as to whether the Petitioner was eligible to apply for the post of Inspector (Investigation) in BPS-16 in Home Department, Government of Sindh on the cut-off date that is, 29.05.2016. (Date of Advertisement). Perusal of the record clearly depicts that Petitioner was given offer to appear in the written test on the condition that he has to produce the original degree and experience certificate on or before the commencement of pre-interview written test. Admittedly, the Petitioner appeared and was declared successful in the written examination. However, Sindh Public Service Commission after the written test conducted the scrutiny of record of the Petitioner and found that at the time of written test the Petitioner was not possessing the qualification i.e. degree in MSC (Criminology) or LLB or M.A. Therefore, Petitioner was held to be not eligible for the subject post and his candidature was declined accordingly. Learned counsel for the petitioner has argued that once the Petitioner was allowed to appear in written test and declared successful, a vested right has been created in his favor. We, however, do not agree with the contention of the learned counsel

for the Petitioner, because on this point Regulation No.0514 is clear, which is reproduced as ready reference:-

**“0514 Conduct of Test for Short Listing prior to Scrutiny In case a large number of candidates have applied for a post, for which no examination is prescribed, and to save time, a written test may be held provisionally, all candidates and short list them before scrutiny of applications. After the result of provisional test or short listing or candidates is finalized, the applications of only successful candidates will be scrutinized before proceedings further to determine their eligibility under the relevant Service Rule for the Post applied for. The scrutiny of applications and handling thereafter will be in terms of regulations specified in Articles 0512, 0513, 0515 and 0516. Candidates, if found ineligible during the process of scrutiny will be rejected regardless of their qualifying the written test conducted for short listing. (Emphasis added)**

6. The above Regulation clearly stipulates that in case of large number of candidates the public service commission may allow the candidates to appear in the examination in order to save time. But, such appearance would be subject to scrutiny of eligibility of the candidates. By no means, the appearance of candidates and their passing of examination would create a vested right in their favor when the candidates are found to be not eligible in scrutiny process of their documentation, after the written test.

7. We are of the view that Respondents have processed the scrutiny of the documents of the Petitioner after written test in accordance with the above provision and no illegality therefore, appears to have been committed by them. Record further reflects that Petitioner was provisionally allowed to appear in the examination for the post of Inspector (Investigation) and it was clearly mentioned in the Advertisement / Admission Slip of the Petitioner that his eligibility would be determined after professional test. The same being relevant is reproduced herewith:-

**INSTRUCTIONS**

*iii) The candidate must have required age, qualification and experience with relevant certificates on closing date of the advertisement.*

*iv) The experience shall be reckoned from the date of acquiring minimum academic qualification required for the post.*

*v) Ineligible candidates and those not fulfilling the conditions or submitting incomplete application will not be considered.*

8. The record further reflects that Respondents rejected the candidature of Petitioner as per clause (13) of impugned Letter dated 06.08.2018, which is reproduced as under:-

**“Your degree is MBA whereas required degree is MSC (Criminology) or LLB or M.A.”**

9. We have noted that it is clearly mentioned in the instructions that if a candidate feels aggrieved from the rejection of the application, he may file an appeal within ten days from the date of issuance of rejection letter and the Petitioner has filed an appeal against the impugned letter and has approached this Court without waiting for the result of the appeal.

10. We are of the view that disqualification of Petitioner on cut-off date that is, 29.05.2016 cannot be converted into qualification to appear in the interview because the Petitioner was required to possess MSC degree in (criminology) and experience in the relevant field on the said cut-off date. Merely obtaining certificate from SSP Investigation-III cannot absolve the Petitioner from having experience of five years in the investigation. The Petitioner has taken plea that he was appointed as Constable against the vacancy of criminalist Division now forensic Division Sindh Karachi on

28.05.2010 and thereafter appointed as Assistant Sub-Inspector of Police on 20.05.2014 therefore he had experience of Investigation. We do not agree with the contention of the learned counsel for the Petitioner for the simple reason that under the Police Rules 1934 Constable, who is in BPS-5, cannot undertake the investigation of a crime; as it is the Assistant Sub- Inspector of Police, who can be assigned with the powers of Investigation under the law. As per record the Petitioner was appointed as Assistant Sub-Inspector in BPS-09 on 20.05.2014, whereas the requirement of the post of Inspector in BPS-16 is five years of experience in the investigation field. Prima facie the Petitioner lacks the qualification and experience for the post applied for. The posts advertised in the Newspapers, pertained to investigation, as such bare minimum qualification would not suffice in addition to which, experience of the relevant field is also a necessary requirement. Therefore, apparently, in absence of the requisite qualification and experience, the Petitioner was not eligible to participate in the interview. Even though the learned counsel for the Petitioner argued that the qualification mentioned in the advertisement in respect of the post applied by the Petitioner is either Masters or MSC in criminology, and she added that either of the qualification is required and not both as the word "or" is used. However, when confronted with the query, as to whether the Petitioner had the requisite experience of 5 years of investigation for the post applied for, the learned counsel for the Petitioner failed to give any satisfactory answer.

11. It is a well settled law that qualification and experience for the post cannot be relaxed under the law. 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 is meant to foster the cause of justice and fair play we do not find any valid reason for interference. Consequently, the Constitution Petition merit no consideration and stand dismissed in limine along with the listed application(s).

JUDGE

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