

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6803 of 2018

Mian DadPetitioner

Versus

Province of Sindh and others.....Respondents

Date of hearing: 28.09.2018

Mr. Ali Asadullah Bhullo, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON,J:- Through the captioned Petition,

the Petitioner is seeking the following relief(s):-

i. Direct the respondent No. 3 & 4 to implement chief Minister order to grant relaxation in experience;

ii. Direct the respondent No.3 to 4 that the petitioner fall in category of fresh candidate;

iii. Direct the respondent No. 3 to 4 that and the petitioner be given benefits of suitability of in police;

iv. Direct Authority to issue notification in respect of proceeding within to be initiated against civil servant in accordance who refuse to comply order of competent authority.

2. The basic grievance of the Petitioner is 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 04.05.2018, 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 experience and held that Petitioner is not eligible to appear in interview for the post applied for.

3. Mr. Ali Asadullah Bhullo, learned counsel for the Petitioner has argued that Petitioner has experience in the field of investigation; 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 to bring relaxation certificate from the Competent Authority as he has less experience in investigation as well as lacks the qualification i.e. Degree in MSC (Criminology) or LLB, 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 has accrued in his favor; that the Petitioner is postgraduate and a qualified person, 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 or five years’ experience in the relevant field which experience has not been condoned by the competent authority, thus the impugned letter issued by SPSC is a nullity in the eyes of law; that Petitioner preferred application to the worthy Chief Minister Sindh, requesting for relaxation in experience for the post of Inspector Investigation in BPS-16, which was allowed vide endorsement dated 22.05.2018 in the following terms:-

“Relaxation in experience is accorded”;

He further added 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. He 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. He 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 04.05.2018 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; that the competent authority once accorded relaxation in experience, the Respondent SPSC cannot refuse to implement the directives of the competent authority i.e. Chief Minister, Sindh.

4. During the course of arguments, we asked from the learned counsel for the Petitioner whether the Petitioner has qualification i.e. Master of Science in criminology or LLB in second division, he replied in negative by saying that Petitioner is having "Master's

Degree” in other discipline. We again asked from him as to whether the Petitioner has five years’ experience in the field of Investigation, he however replied that Petitioner has experience of one year in investigation being Assistant Sub Inspector in BPS-9, for which he applied to the competent authority for relaxation in experience and the Worthy Chief Minister, Sindh accorded such permission on 22.05.2018 but the Respondent SPSC is not implementing the directives of the Competent Authority, therefore he has filed the subject petition for redressal of his grievances. In support of his contention he relied upon the case of Yousuf Haroon & others Vs. Punjab Public Service Commission & others (PLD 2001 SC 1012) and argued that the experience can be relaxed in order to process the selection / appointment of candidates as Inspector of Police which has been thwarted by the Respondent SPSC.

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

6. Before proceeding on merits of the case, we would like to see the basic document that is, the rejection letter dated 04.05.2018 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.

***11. You are under / over age by year---Month---days
---on closing date i.e. ---.***

***12. You possess--- whereas the required
qualification is MSC (Criminology) or LLB at least
2nd division from recognized university in any***

discipline with five years' experience in the field of investigation in case of serving police NAB or FIA officer."

7. 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 the 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 experience in the relevant field. 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 candidate, 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 eligibly 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)

8. 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 the time. But, such appearance would be subject to scrutiny of the 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 on the scrutiny process of their documentation, after the written test.

9. 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. Record reflects that Petitioner was only provisionally allowed to appear in the examination for the post of Inspector Investigation in BPS-16 and it was clearly mentioned in the Admission Slip of the Petitioner that his eligibility would be determined after the professional test. The same being relevant is reproduced herewith:-

“IMPORTANT INSTRUCTIONS

Instructions given below are for strict compliance.

Eligibility of the candidates in terms of Recruitment Rules and conditions mentioned in the advertisement shall be determined after the conduct of Professional/Screening Test/Examination. On detailed scrutiny of the applications as well as documents of they are found ineligible, their candidature will be cancelled irrespective of the fact whether they have appeared in the examination/test or even qualified therein. On rejection of the applicant's candidatures on the basis of their ineligibility the applicant would be informed by the Commission defining the reasons of their ineligibility. However if they feel aggrieved of

rejection of their applications, they may file the appeal within seven days from the date of issuance of REJECTION LETTER with the documentary evidence against rejection of their candidature. Their appeal should be supported with the original treasury receipt of Rs.250/= as appeal fee in the head of account "C02101 organ of state appeal fee Sindh Public Service Commission" otherwise the same ill not be entertained.
This admission is PROVISIONAL subject to verification of all conditions of illegibility after conduct of professional / screening test/ examination"

10. The Advertisement shows 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.

11. The record further reflects that Respondents rejected the candidature of Petitioner as per clause (12) of impugned Letter dated 04.05.2018. 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 not filed an appeal against the impugned letter and has approached this Court without availing the remedy.

12. 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 order for relaxation in experience from worthy Chief Minister, Sindh cannot absolve the Petitioner from having experience of five years in the investigation. The Petitioner has taken plea that he was appointed as Assistant Sub Inspector in BPS-09 in Sindh Reserve Police Hyderabad on 29.02.2016; 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 Petitioner was appointed as Assistant Sub-Inspector of Police in the year 2016, whereas the requirement of the post of Inspector Investigation in BPS-16 is five years of experience in the investigation field. Prima facie the Petitioner lacks the very 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 he 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 furnish any satisfactory or plausible answer.

13. Reverting to the plea taken by the learned counsel for the Petitioner that the worthy Chief Minister, Sindh has accorded permission by relaxing the experience of the Petitioner in the relevant field in exercising his powers conferred under Rule 12(2) of Sindh Civil Servant (Appointment, Transfer, and Promotion) Rules 1974.

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 Chief Secretary (Where there is no Minister). In this regard, 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. SOII (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

16. 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.

17. In the light of foregoing, we are not impressed by the argument of the learned counsel for the Petitioner on the aforesaid proposition to endorse his submission for the simple reason that the Rule 12(2) of Sindh Civil Servant (Appointment, Transfer, Promotion) Rules 1974 provides general relaxation in age and not experience. We are of the considered view that qualification and experience for the post cannot be relaxed under the law.

18. 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

JUDGE