

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. D-6384 of 2014

PRESENT:

Mr. Justice Adnan-ul-Kareem Memon
Justice Mrs. Kausar Sultana Hussain

Date of hearing : 22.10.2018
Petitioner : Mr. Abdul Salam Memon, Advocate.
Respondent : Mr. Ali Safdar Depar, A.A.G along with
Mr. Imran Shaikh, Internee of A.G Office.

J U D G M E N T

Kausar Sultana Hussain, J.:- Through this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have challenged the impugned official press release dated 27.11.2014 issued by the Sindh Public Service Commission regarding appointment of Assistant Sub-Inspectors BS 09, District Quota in Sindh Police Department, Government of Sindh.

2. The concise germane facts of this petition are that the petitioners in response of advertisement bearing No.03/2011 dated 09.06.2011 from Sindh Public Service Commission (hereinafter referred to as SPSC) published in Newspapers, applied for the post of Assistant Sub-Inspector (hereinafter reference to ASI) in the police department carrying BS-09. Subsequently police department, Government of Sindh (Respondent No.5) through I.G Police Sindh again advertised the posts of ASI directing the candidates who applied earlier should submit their applications afresh by 24.12.2012. In terms of such advertisement the petitioners applied for the advertised post alongwith relevant documents. The petitioners and

other candidates appeared in Screening Test on 25.09.2013 conducted by SPSC and were declared successful vide press release dated: 05.11.2013 issued by respondent No.3 & 4. Subsequently, those who qualified in Screening Test were required to appear in pre-interview written test, which was conducted by the SPSC on 13.05.2014. In the said Test, petitioners were declared successful vide press release dated 11.07.2014, got published by SPSC. In the next step, all candidates who declared successful in pre-interview written test were required to appear in Physical Fitness Test / (measurement of height and chest) on various dates and upon completion of such Test, SPSC declared result and notified the names of those candidates who had been found physically unfit or absent vide press release dated 28.08.2014. Finally in October / November, 2014 SPSC conducted Interview / Viva Voce test of all those candidates who remained successful in all the preceding tests and issued press release dated 27.11.2014 spelling out the names of 253 candidates found fit and suitable for appointment against the post of ASI police in District Police for Karachi, Hyderabad and Sukkur Range(s). However, petitioners names did not find place in the result so released / announced by the respondent No.3 & 4 viz SPSC.

3. According to the petitioners, result announced vide impugned press release dated 27.11.2014 are maneuvered, manipulated and arranged illegally and malafide in order to deprive the petitioners of their legitimate right to be appointed as ASI (District Police) being the candidates having successfully passed all the pre-requisite tests and so also the interview and instead a number of such candidates were declared fit and suitable for appointment against the said posts who were declared fail in different tests and even did not appear in various tests as would appear from the documents which were

downloaded from the website of SPSC. The petitioners laid emphasize on their competence which according to them is proved, thus they have got right to be appointed against such post. Per Petitioners no law authorizes the respondent SPSC to declare failure candidates to be fit and suitable for appointment at the cost of successful candidates. It was stated that respondent had 148 clear vacancies of ASI (District Range) still they have recommended 127 candidates for appointment to the said posts in Karachi Range and for remaining 21 posts advertisements have been published merely to accommodate the remaining favourite candidates. It was alleged that there are around 23 candidates who have been given opportunity for interview twice which in any case is not warranted by law. It was also alleged that there are 07 candidates who were failed or absent in physical fitness test but still enlisted in interview schedule list which shows clear malafide on the part of SPSC. Petitioners prayed to declare impugned result dated 27.11.2014 announced by SPSC as illegal, declare petitioners as successful candidates and suitable for appointment against the post of ASI and to remove all those names which are mentioned in Annex-H of the petition (Candidate who were failed or absent in physical fitness test but they were incorporated in interview schedule according to version of Petitioners). Petitioners lastly prayed for suspension of impugned press release dated 27.11.2014.

4. This Court vide order dated 21.01.2015 issued directions that three posts of ASI (BS 09) in District Police shall not be recruited/filled out till next date of hearing and that the Court will also examine as to whether appointment procedure and transparency has been maintained or not by the SPSC. Subsequently, on 05.11.2015, during the Course of hearing this Court was informed by

A.A.G and Assistant Director, SPSC that out of three petitioners, Engineer Jahanzaib has been declared successful in the test and interview conducted for recruitment to the post of ASI in Sindh Reserve Police (hereinafter referred to as SRP) as such he has been recommended for appointment in SRP. During the arguments, it was also informed that though the petitioner No.1 was eager to be appointed in the District Police, however, he agrees that if he is appointed on the basis of recommendations of SPSC even in the SRP, he would be satisfied and withdraw this petition. It was reiterated by the A.A.G and representative of respondents 3 and 4 (SPSC) that his name has already been recommended for appointment in SRP, therefore, his case would also be considered within 45 days and appointment letter will be issued in view of recommendation of SPSC as decided by this Court during the course of hearing in C.P No.D-2538 and 2342 of 2015. Consequently, this Court also modified earlier interim order to the extent that now till next date of hearing, two posts of ASI in BS-09 in District police shall not be filled. This interim order continued till the last date of hearing.

5. Respondents 3 and 4 through Secretary SPSC filed para wise comments dated 05.03.2015, wherein it was submitted that the petitioners could not qualify in interview / viva voce test therefore, they were not recommended for the post of ASI BS-09 in District Police. More so, petitioners were again called to appear for interview for the post of ASI in SRP, all petitioners appeared before the interview committee constituted for the said purpose by the SPSC, as such the allegations of the petitioners are baseless. The Secretary SPSC categorically denied all charges and allegations of petitioners being baseless and unfounded. It was also submitted that the recommendations of all the candidates who were declared successful

for the post of ASI BS-09 in District Police have been sent to concerned department on 22.01.2014 for further process. Subsequently on 02.12.2015, Secretary, Sindh Public Service Commission had filed additional comments on behalf of Respondent No.3 & 4 wherein it was stated that all the candidates who failed to qualify for the post of ASI (BPS-09) on District Quota were given an additional opportunity to avail themselves and get considered of the same post in Sindh Reserve Police (SRP) Quota including the petitioners. In the second interview for the post of ASI in SRP quota, main petitioner Jehanzaib turned out to be successful yet remaining two petitioners namely Falakzaib and Fahadzaib appeared before the interview Committee for the Interview / Viva Voce and declared fail due to their dismal performance. It was also stated that against 150 posts in SRP, 1100 candidates were short listed for final interview / viva voce and 150 candidates were recommended to the Department.

6. In response to further queries raised in the form of chart by the Counsel for the petitioners submitted before this court on 09.11.2016, respondent No.3 and 4 through Secretary SPSC filed reply on 12.01.2017 or thereabout wherein various clarifications, rebuttals and explanations were given. In rebuttal of first allegation SPSC clarified that due to typo error, the roll number of Candidate Bilal Ahmed Khan was displayed on SPSC website as 50337 instead of his actual Roll No.50332, the roll number 50337 was allocated to a candidate namely Aijaz Ahmed who did not qualify in the pre-interview written test and not called for interview, therefore the allegation that candidate having Roll No. 50337 was called for interview are false and baseless. The SPSC substantiated their claim with relevant document perusal whereof revealed that the instance of SPSC seems to be correct. Regarding second allegation which

pertains to inviting seven unfit candidates, it was clarified that these seven unfit candidates, alongwith many other candidates preferred appeal on various grounds before Mr. Justice (Rtd) Agha Rafique Ahmed Khan, the then Chairman SPSC who allowed such candidates to re-appear for physical Test. Copies of note sheets bearing orders of the then Chairman SPSC reveals that Chairman SPSC allowed 18 candidates for re-appearing in physical test, which was conducted in the presence of a Member and Secretary SPSC; with regard to remaining two candidates out of seven as mentioned above, it was clarified by the SPSC that these two candidates namely Muhammad Salman (40242) and Abdul Waheed (18412) were already declared fit in physical fitness test but due to typo error, they were shown absent in the test and not unfit as alleged by the petitioners.

7. In rebuttal of third allegation, SPSC clarified that both the candidates having Roll No.17554 and 43629 have passed all pre-requisite tests and finally appeared in viva voce / interview and were recommended on merit for appointment. So far as forth allegation is concerned, the SPSC took the same instance as was taken in second allegation and substantiated the same with documentary evidence.

8. In negation of allegation at Sr. No.5, the SPSC admitted that such twenty eight (28) failed candidates in the final interview / viva voce mentioned in the chart submitted by the petitioners alongwith all other candidates who failed in the final interview conducted by the SPSC for the post of ASI (District Police), were also extended second chance for the same post against Sindh Reserve Police (SRP) quota as a general policy without any discrimination. All the present petitioners were also provided with this opportunity as such they availed the opening and appeared in the interview second time but

only main petitioner Engineer Jahanzaib could turn out to be successful in the second interview whereas remaining two petitioners failed to qualify for the post even in their second interview as they failed to obtain required 33% passing marks.

9. Heard Mr. Abdul Salam Mehar, learned counsel appearing for the petitioners and Mr. Ali Safdar Depar, learned A.A.G for the State. Learned counsel for the petitioners argued with vehemence that the case of petitioners is based on un-deniable facts which are evident from pertinent information(s) downloaded from the website of SPSC. He emphasized that from the information(s) so retrieved from the website of SPSC and plain reading of "Chart" so submitted on behalf of the petitioners in compliance of directions of this Court, it is abundantly clear that gross mal-practice and maneuvering has been done in the selection process of ASI District Police thus invites interference by the Court to provide efficacious remedy to the petitioners.

10. Conversely learned A.A.G opposed the arguments put forth on behalf of the petitioners adducing more or less same locus standi already brought on record of this Court through the advocate of petitioners 3 and 4 (SPSC).

11. A careful analysis of what jot down above is that the case of petitioners is mainly based **firstly** self-assessment and evaluation of their ability and brilliance which according to themselves render them fit and entitle for appointment in District Police as ASI which itself is misconceived notion as it mar the whole idea and purpose of conducting test, interviews and viva voce. The assumptions of petitioners is also against the established principle of "nemo iudex causa sua" and **secondly** alleged manipulation of results by the

SPSC; however minute scrutiny of record provided by the SPSC revealed that in few cases there were typo errors or misprints which are logically responded by and duly substantiated with relevant record furnished by the SPSC. More so while conducting screening test and written examination of such a large number of candidates errors, omissions and mistakes may occur which cannot be termed unfair as such cannot vitiate the whole process. As far as provision of second chance for physical test is concerned, it is evident from the record provided by the SPSC that it was allowed by the then Chairman, SPSC on the appeals of failure/absentee candidates after due consideration of their plea(s) which is also substantiated by the record produced / annexed by the SPSC with the written additional points dated: 12.10.2017 submitted on the directions of this Court. It was also noted that in anticipation of such situation, the SPSC provided opportunity of appeal at every stage of selection process, initially at the stage of screening test there was written provision in the admission letter that "if candidate feel aggrieved of rejection of their application, they may file appeal within seven days from the date of issuance of rejection letter". Similar provision is also provided in admission letter for conducting pre-interview written test. Various press releases issued by the SPSC concerning or relevant to selection process of ASI (BPS-09) also contain the clause which authorizes the SPSC to modify / correct the result at any stage if any error is detected later on. It is apparent that the main focus of the petitioners was to assail the second interview conducted by the SPSC of failure candidate. The SPSC did not deny of having extended second chance to all the candidates who failed in interview / viva voce for the post of ASI (BPS-09) against District Police for the identical post in SRP Quota. It was also admitted by the SPSC that such chance was offered to every failure candidate of District Police quota as a general

policy so that posts / positions of ASI (BPS-09) in Sindh Reserve Police could be filled without inviting fresh applications from the inspiring candidates for the same posts / positions as they were otherwise found completely eligible for the interview / viva voce after undergoing lengthy scrutiny process involving screening test, written test and physical fitness test. Interestingly, all the three petitioners themselves appeared in second interview to avail opportunity for the post of ASI (BPS-09) in Sindh Reserve Police and the main petitioner Jahanzaib turned out to be successful and during proceeding of instant case got the appointment letter and had also joined such post. Remaining two petitioners continued to proceed with the present case, however all of them during court proceedings tried not to disclose that they were also the beneficiary of avilment of the second chance, which seems misleading in circumstances and tantamount to suppression and concealment of material facts. Another malafide on the part of petitioners is that petitioner No.1 having been recommended for the post of ASI in SRP, thus they have chosen not to dispute the appointments of ASI in Sindh Reserved Police.

12. In view of above discussion, it is evident without any reasonable shadow of doubt that the case of petitioners is devoid of merit as such do not invite interference by this Court in its Constitution Jurisdiction. Consequently, instant petition stands dismissed with no order as to costs. Two posts of ASI in BPS-09 with held by the orders of this Court are hereby released to be filled on merit in accordance with applicable rules / law.

Karachi:

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Dated: 06.12.2018

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