

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

CP. No. D- 770 of 2021

Salman Qureshi v. Province of Sindh & others

**BEFORE :**

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

Petitioner: Salman Qureshi through  
Mrs. Razia Ali Zaman, Advocate

Respondents 1-3: Province of Sindh and others through Mr.  
Allah Bachayo Soomro, Addl. A.G.

Respondent-4: Muhammad Adnan through Mr. Muhammad  
Arshad S. Pathan

Date of hearing  
& decision: 28.10.2021

**O R D E R**

**ADNAN-UL-KARIM MEMON, J:-** Through instant petition, the petitioner is seeking appointment to the post of Assistant Sub-Inspector of Police (ASI-BPS-09) on the ground that he successfully passed the Sindh Public Service Commission (SPSC) Examination, for the post of ASI, for Hyderabad Range, in the year 2013. Petitioner has averred that he is a deserving candidate as his name appears at serial No.67 of the merit list issued by the respondent-police department; and, after elimination of names of two candidates i.e. Rasheed Memon and Ms. Tanzeela; one on account of overage; and, the 2<sup>nd</sup> on account of her death, as such his name stood at serial No.65 out of total 65 seats for ASI, therefore he is entitled to be considered for the subject post fell vacant for the reason discussed supra.

2. Brief facts of the case are that the petitioner was appointed as police constable vide appointment order dated 14.05.2002; after his appointment, he acquired higher educational qualification as well as completed different training courses and other related short training of police department under the Police rules; that Sindh Public Service

Commission, through advertisement dated 19.09.2011 advertised 65 posts of Assistant Sub-Inspector, for in-service graduate Police Constables / Head Constables, Hyderabad; and, 148 posts for Karachi and 631 posts for Sukkur, Ranges; that petitioner being graduate, from Hyderabad Range, appeared in the examination and stood at serial No.67 of the merit list, however failed to seek threshold marks within the sphere of available seats.

3. Mrs. Razia Ali Zaman, learned counsel for the petitioner has submitted that the last successful candidate was at S.No.65, who was unfortunately eliminated being overage. The next candidate at S.No.66 was one Muhammad Adnan Solangi, who is respondent No.4 before this court, had filed CP No. D- 395 of 2014 which was allowed in his favor vide order dated 8.12.2020; and, succeeded in obtaining the job of ASI, however in the intervening period, all of sudden on account of death of one candidate namely Tanzeela daughter of Ghulam Sarwar Lund on 18.4.2014, the second seat fell vacant; and, as such petitioner deserves to be appointed on the leftover seat; besides that respondent No.4 secured 72 marks and petitioner also secured 72 marks, but fortunately respondent No.4 was selected, however, he was left out without assigning cogent reason; that this court has already directed the respondents to consider the candidatures of those candidates who stood at serial No. 66 to 71 of the Merit list under law after hearing them; that nothing has been done so far as the case of the petitioner is concerned. An excerpt of the order is as under:-

“Admittedly, the candidate at serial No.65 was eliminated from the contest as being overage. This is not denied by anyone in attendance. Now from the available lot from serial No.66 onward who have secured 72 marks are to be considered for the appointment of ASI as a last post available and reserved by this Court.

The Commission has already done their job and they have sent their reports along with the marks obtained by the candidates. It is now up to Appointing Authority to deal with it in accordance with law.

Accordingly, we dispose of this petition with direction that all those deserving candidates at serial No. 66 to 71 of the list submitted before us along with a statement of 12.10.2017, be considered and appointment letter be issued to the deserving candidate in accordance with law after hearing them.

The petition stands disposed of.”

4. Mr. Muhammad Arshad S. Pathan learned counsel for respondent No.4 has submitted that the respondents have complied with the direction of this court and recommended the candidature of

the petitioner for one reserved post of ASI for Hyderabad Range vide letter dated 14.4.2021.

5. Learned A.A.G. has endorsed the viewpoint of the Competent Authority and argued that the candidate who finally qualifies the subject Examination is to be recommended in order of the merit against the number of advertised vacancies announced by the respondent-police Department Government of Sindh.

6. Since, a pure question of law involved in the present proceedings is whether a waiting list candidate, not declared successful, can be recommended for appointment against any vacancy occurring due to non-joining of any successful candidate.

7. We have heard the learned counsel for the parties and gone through the record with their assistance. Prima facie, it appears from the record that the respondent-Police department had advertised 65 vacancies of ASI in Police Department, relating to direct recruitment as well as for selection from amongst in-service graduate Police constables and Head constables vide advertisement dated 19.9.2011, the result was announced by the SPSC vide press release dated 12.7.2013. There were 65 vacancies against 64 candidates, who were declared qualified /selected in the final result and the result of last candidate at merit No.65, who was overage, was withheld as per the order of this court in CP No. D- 395 of 2014. Subsequently, the same post was offered to the next candidate i.e. respondent No.4 on the merit list, who has now been appointed accordingly.

8. Adverting to the request by the petitioner for an alternate candidate is concerned, a perusal of relevant record explicitly shows that there is no provision /policy for maintaining a waiting/revise list. There was neither malafide nor ulterior motive involved on the part of SPSC in the matter to call in question the recommendation so made by SPSC. Therefore, we are not persuaded by the argument of learned counsel for the petitioner on the aforesaid analogy.

9. In the circumstances of the case, we are of the considered view that **clause 0329** of Recruitment Management Regulation 2006 of SPSC explicitly provides that when a post is advertised and suitable candidates are not available, the post should be re-advertised within 45 days without reference to the Department.

10. In view of above, the competent authority ought to have re-advertised the leftover posts, after exhausting the merit list, subject to, if any successful candidate declines the post, the candidate, who is next on the merit list, is required to be offered the post, subject to all just exceptions as provided under the law. Therefore, in the facts and circumstances of this case, we are of the considered view that petitioner was never declared as successful candidate by SPSC on the premise he failed to obtain threshold marks within the allocation of seats as such interference by this Court, at this stage, even after lapse of considerable time is uncalled for; and, to substitute our viewpoint. Our view is covered by the decision of Hon'ble Supreme Court, rendered in the cases of the Secretary Punjab Public Service Commission, Lahore and others v. Aamir Hayat and others, **2019 SCMR 124** and Suo Motu Action Regarding Eligibility of Chairman and Members of Sindh Public Service Commission, etc., **2017 SCMR 637** and Province of Sindh Vs. Ghulam Hussain Bughio **2014 SCMR 643**, so far as leftover posts are concerned.

10. Adverting, to the question raised by the petitioner that he succeeded in the subject examination/interview, thus vested right existed in his favor. This assertion is misconceived. Prima-facie, this petition is not maintainable for the simple reason that no offer of appointment order had been issued in his favor, thus no vested right had /has accrued in favor of the petitioner. It is well-settled law that even a successful candidate does not acquire an indefeasible right to be appointed and that it could be legitimately denied. The notification inviting application for the appointment has been held only to be an invitation to the qualified candidates to apply for recruitment. On their mere submitting application or offer/selection, they do not acquire any right to the post.

11. The jurisdiction of this Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required by law to do and refrain from doing what they are prohibited by law to do. Unless an act or omission of a state functionary falls within the above parameters, it is not liable to be interfered with.

12. For reasons recorded above, this petition is dismissed with no order as to costs, leaving the petitioner to participate in fresh

recruitment process, if, initiated in future, subject to all just exceptions as provided under the law.

JUDGE

JUDGE

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