

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**

Constitutional Petition No. D- 849 of 2021

Before:

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

Petitioners: Mustafa Saeed and others through Mr. Ghulam Sarwar Baloch Advocate.

Respondents 8,9,: through Mr. Muhammad Arshad S. Pathan
10,11,13 & 14 Advocate.

Respondent-15 : Through Mr. Sajjad Ahmed Chandio,
Advocate

Mr. Muhammad Ismail Bhutto, Addl. A.G.

Assistant Director Sindh Public Service
Commission is present in person

Date of hearing & Decision: 23.12.2021

O R D E R

ADNAN-UL-KARIM MEMON, J.- Through this petition, the petitioner has prayed as under:-

- a. To declare that the procedure adopted by the respondent No.2 to 7 in the subject matter is illegal, unlawful, and against the principle of natural justice and law of the land.
- b. To declare that the appointment for the post of Assistant Conservator of Forests of Respondent No. 8 to 15 is illegal, ab-initio, null and void, and against the law, rules, and procedure.
- c. To direct respondents No. 2 to 7 to submit the R & Ps, Submitted Mark Sheets showing marks secured by petitioners and private respondent No. 8 to 15.
- d. To direct the respondent No. 1 to 3 to conduct the departmental inquiry for appointing the respondent No. 8 to 15 on the basis of nepotism whether the two seats were lying vacant for the post of Assistant Conservator of Forests as per advertisement dated 13-07-2020 and dated 08-09-2020.

2. Mr. Ghulam Sarwar Baloch learned counsel for the petitioner has mainly attacked the basic act of the respondent-SPSC on the premise

that initially two posts were announced through publication which, subsequently, were increased to seven (07) without any fresh advertisement, which act on the part of SPSC is illegal and against the directives given by Honourable Supreme Court in the case reported in (2017 SCMR 637). Learned counsel for the petitioners further contended that respondent No.11 had been directly appointed as Assistant Conservator Forests without any advertisement by Sindh Public Service which is against the Rules and Merit Procedure; that petitioners are well educated and professionals having vast experience in the department but they have been malafidely and dishonestly declared fail in interview otherwise they answered all the questions put to them by the interviewing committee; that previous record of Sindh Public Service Commission is also manifest with regard to political influence and corruption; and, the Honourable Supreme Court had already condemned such conduct and acts of the said department; that Sindh Public Service Commission has given age relaxation to private respondents 8 to 14 only, which is against the basic spirit of law; that it is a matter of fact that at large scale illegalities and discrepancies have been committed by Sindh Public Service Commission in conducting written tests and interviews for advertised posts which were witnessed, hence a Suo Moto action was taken by the honourable Supreme Court and gave certain direction to Sindh Public Service Commission, but admittedly the said directions have not been followed; that proper Marks of written tests and the result of interview have not been publicly displayed by Sindh Public Service Commission and only the role numbers of successful candidates were displayed; that respondent No.10 is close relative of Deputy Controller, Sindh Public Service Commission, respondent No. 11 has close terms with Forest Minister, respondent No.12 is the son of Ex-Secretary Sindh Public Service Commission Hyderabad and respondent No.13 is the nephew of Chief Conservator Forests (Inland and Riverine) Sindh at Hyderabad; therefore, their appointments by Sindh Public Service Commission is an act of assassination of merit and further the above said illegal and irregular selection of official respondents clearly shows that they have selected and declared the names of private respondents only on the ground of nepotism. Lastly, he prayed for allowing the instant petition.

3. Mr. Muhammad Arshad S. Pathan learned counsel representing respondent No. 8, 9,10,11,13 & 14 raised the question of maintainability of the instant petition and argued that SPCS

recommended the candidature of private respondents, who were subsequently appointed by the respondent – Department against the subject posts, thus no illegality and irregularity has been committed in the recommendation of the private respondents. He further pointed out that respondent No.11 had already completed M.Sc from Pakistan Forest Institute University of Peshawar on self-finance basis in the year 2014 and having such a degree, SPSC recommended his name, and the respondent – Department posted him as Assistant Conservator of Forest on the premise that he has already done his M.Sc (Forestry); and, so far as the procedure for appointment till recommendation is concerned, the same has been done under the law. Learned counsel pleaded the case of respondent No.13 and argued that he has adopted the same procedure as a successful candidate on the premise that he also completed his tenure of M.Sc; such certificate has also been issued in his favor by the competent authority and on such account, he has been posted as Assistant Conservator of Forest vide notification dated 01.07.2021, issued by Secretary Forest and Wildlife Department, Government of Sindh. He further pointed out that the petitioners are already serving as Range Forest Officer and some of the respondents have also served as Range Forest Officer before joining their new assigned posting and as such the allegations leveled against them are false, baseless. He lastly submitted that the petitioners have no legal character and locus standi against the respondents No.8 to 11 as well as 13 & 14, as no illegality surfaced against the said respondents, which may call for interference by this Court. He prayed for dismissal of the petition.

4. Mr. Sajjad Ahmed Chandio learned counsel for respondent No.15 has submitted that there were only seven posts of Assistant Conservator of Forest and SPSC recommended the candidature of the respondents vide press release dated 13.04.2021, but one of the successful candidates at Sr. No.05 did not join and accordingly vide letter dated 17.04.2021 on the request of Secretary Forest and Wildlife Department respondent No.15, who was next to the last qualified candidates in the merit list, was appointed, thus no illegality has been committed. He further pointed out that insofar as age relaxation is concerned, the same is the policy decision of the Government of Sindh, and respondent No.15 has nothing to do with that. In support of his contention, he relied upon an application dated 16.04.2021 moved by respondent No.15 to Secretary Forest and Wildlife Department, Karachi, regretting to attend the subject course at PFI, letters dated 17.04.2021

& 20.04.2021, and notification dated 27.07.2020. He also prayed for dismissal of the captioned petition.

5. Mr. Muhammad Ismail Bhutto learned Additional Advocate General Sindh has referred the comments of respondent –Department as well as respondent – Commission and submitted that this petition is not maintainable, as such the same is liable to be dismissed while adopting the arguments advanced by counsel of private respondents.

6. We have considered the submissions of learned counsel for the parties along with case law and have also gone through the entire record carefully with their assistance.

7. In view of the above, the pivotal questions before us are as under:-

- i) Whether the SPSC has violated the clear command of the Honorable Supreme Court in the case reported in (2017 SCMR 637) by recommending the candidature of the private respondents without recourse suggested in the judgment?
- ii) Whether the Petitioners can claim a right to be appointed for the post of Assistant Conservator of Forest (BPS-17)?
- iii) Whether the Respondent-commission could issue the addendum especially after the expiration of the period of submission of applications?
- iv) Whether the Respondent-commission could change the nomenclature of the posts from Urban to Rural and increase the two posts to seven posts and take away the accrued rights of the candidates under the prescribed rules for the post of the Assistant Conservator of Forest (BPS-17)?
- v) Whether the private respondents can be held qualified to be considered for the post of Assistant Conservator of Forest (BPS-17) by the recommendation of the SPSC?
- vi) Whether Age relaxation in the upper age limit for the subject post could be given to the candidates appearing through the competitive process?

8. To see from the aforesaid angle of the case, we have noticed that basically, petitioners are performing their duties as Range Forest Officer (BPS-16) at Forest and Wildlife Department, Government of Sindh since last 4 to 6 years, with further assertion that Sindh Public Service Commission (SPSC) announced Stipendiary Course for M.Sc Forestry-2019-2021, from Pakistan Forest Institute Peshawar; and, selected candidates have to complete M.Sc Course for joining as Assistant Conservator; that respondent No.11 had already completed his M.Sc

Forestry and he was directly appointed as Assistant Conservator Forests; that SPSC invited the applications for two posts of Assistant Conservator Forests (BPS-17) for the quota reserved for Rural and Urban each; and surprisingly, the age relaxation of 15 years as prevailed in Sindh Province, except in police department and in competitive examination were allowed in the case of private candidates; that the petitioners applied for the said posts and were declared successful in written test but were declared unsuccessful in interview as per version of SPSC; that in the said interview SPSC recommended seven (07) candidates for the subject two posts, who were issued offer letters, however in the intervening period, five more posts were increased as per version of SPSC, out of which respondent No.12 did not submit his acceptance; and, on that post the official respondents selected respondent No.15, who had already been declared failed candidate in the competitive examination. They have prayed for declaration to the effect that the recommendation made by Sindh Public Service Commission (SPSC) for the appointment of private respondents, including respondent No.15's direct appointment, is illegal, unlawful, and void-ab-initio, hence liable to be reversed.

9. We have noticed that SPSC announced various posts including two posts of Assistant Conservator of Forest (BPS-17) on Urban quota, vide advertisement No.04/2020 dated 13.07.2020. A scanned copy of the advertisement is appended below:

SINDH PUBLIC SERVICE COMMISSION
THANDI SARAK, HYDERABAD

CONSOLIDATED ADVERTISEMENT NO.04/2020 DATED: 13.07.2020

CLOSING DATE
20.08.2020

Online applications are invited for the posts of Assistant Engineer Civil, Mechanical, Electrical/Electronics and Chemical BPS-17 in Public Health Engineering and Rural Development Department, Assistant Engineer (Civil) and Electrical BPS-17 in Sports & Youth Affairs Department and M.Sc / B.Sc Forestry course in Forest & Wildlife Department, Government of Sindh to be filled through Competitive Examination.

A. PUBLIC HEALTH ENGINEERING AND RURAL DEVELOPMENT DEPARTMENT.
65 POSTS OF ASSISTANT ENGINEER BPS-17
AGE: MIN: 21, MAX: 28 YEARS

Sr. No.	Name of Post	No. of Posts R + U = T
1	Assistant Engineer (Civil) BPS-17	29 + 20 = 49
2	Assistant Engineer (Mechanical) BPS-17	04 + 03 = 07
3	Assistant Engineer (Electrical/Electronics) BPS-17	04 + 02 = 06
4	Assistant Engineer (Chemical) BPS-17	02 + 01 = 03

QUALIFICATION:
i. B.E in relevant subject at least in 2nd Division from a recognized University.
ii. Registered as professional Engineer with Pakistan Engineering Council.

Note: The Candidates who have already applied for the post of Assistant Engineer (Civil) BPS-17 vide advertisement No.05/2019 dated 05.04.2019 need not to apply again.

B. SPORTS & YOUTH AFFAIRS DEPARTMENT
03 POSTS OF ASSISTANT ENGINEER BPS-17
(MALE OR FEMALE)
AGE: MIN: 21, MAX: 30 YEARS

Sr. No.	Name of Post	No. of Posts R + U = T
1	Assistant Engineer (Civil) BPS-17	01 + 01 = 02
2	Assistant Engineer (Electrical) BPS-17	01 + 0 = 01

QUALIFICATION:
iii. B.E in the relevant subject at least in 2nd Division from a recognized University.
iv. Registered as professional Engineer with Pakistan Engineering Council.

C. FOREST & WILDLIFE DEPARTMENT.
(i) 02 (Urban) Posts of Assistant Conservator of Forests BPS-17
AGE: MIN: 21, MAX: 30 YEARS

QUALIFICATION:
B.Sc in Forestry or Agriculture or Physical Sciences atleast in 2nd class/equivalent from a recognized University.

(ii) 23 Posts of Range Forest Officer BPS-16
(13 Rural, 10 Urban)
AGE: MIN: 18, MAX: 26 YEARS

Intermediate in Science (F.Sc) or Intermediate in Agriculture atleast in 2nd class/equivalent from a recognized Board/University.

CONDITIONS:
On the completion of the M.Sc/B.Sc Forestry course the successful candidates will be appointed as Assistant Conservator of Forest (BPS-17) and as Assistant Range Officer (BPS-16) respectively in the Forest & Wildlife Department, Government of Sindh.

NOTE: Age relaxation in upper age limit for vacancies in all departments is subject to Policy / Notification of the Government of Sindh whereas there is no age relaxation in Police Service and the posts to be filled through Competitive Examination that includes Engineering Cadre and M.Sc / B.Sc Forestry by Sindh Public Service Commission.

I. Candidates are required to pay examination fee of Rs. 1,000/- (Rupees One Thousand only) for each post separately through challan in the Head of Account "C02101-Organ of State-Exam Fee (SPSC Receipts)" in any branch of State Bank/National Bank of Pakistan situated in Sindh. The original Bank

10. Prima-facie the entire exercise undertaken by the SPSC for the post of Assistant Conservator of Forest (BPS-17) is not sustainable

under the law for the reasons that the date for submission of applications for the subject post had already expired on 20.8.2020; and, issuance of addendum on 8.9.2020 by changing the status of the posts from Urban to Urban/Rural with the relaxation of age is tainted with malice; even fresh applications could not be entertained by increasing the number of posts by the SPSC at the behest of respondent-department; as criteria had already been outlined in the advertisement before addendum. Therefore, apparently, in absence of requisite qualification and experience, including the age limit as prescribed under the law, the candidate cannot be held to be eligible to hold the post of Assistant Conservator of Forest (BPS-17); that because of the settled principle of law, the retrospective effect could not be given to the subsequent addendum. It is a settled law that rules or procedures operate retrospectively but if the rules create or take away one's vested right, then the operation of rules is prospective and not retrospective. Surprisingly, the SPSC deviated from the normal procedure with a change in the nomenclature of two posts of Assistant Conservator Forest (BPS-17), which earlier were indicated to be on the Urban quota; however, the same was changed as one for Rural and one for Urban. For ease of reference, the addendum dated 08.09.2020 is reproduced below:

No. PSC/EXAM: (C.S)/2020/123 Dated: 08.09.20

ADDENDUM

Reference Section C of the Consolidated Advertisement No.04/2020 dated: 13.07.2020, relating to posts under Forest & Wildlife Department, it is notified that the 02 posts of Assistant Conservator Forests (BPS-17) which earlier were indicated to be Urban may be read as 01 Rural and 01 Urban.

Furthermore, the NOTE in the CONDITIONS part may be read as follows:

“Age relaxation in upper age limit vacancies in all Departments is subject to Policy/Notification of the Government of Sindh. It is further notified that there is general age relaxation up to (fifteen) 15 years in the upper age limit for vacancies in all the departments of Government of Sindh to be filled during the period from 1st July 2020 to 30th June 2022 as per Notification NO.SO-II(SGA&CD)5-64/2011 dated 27.07.2020”.

Accordingly, the date for submission of online applications is extended up to 25.09.2020.

11. The above facts lead us to the conclusion that the respondent-commission had changed the entire scenario of the subject post with

new requirements, by issuing the addendum without completing the exercise already undertaken in pursuance of the first/original advertisement.

12. We asked learned Counsel for the respondents to explain whether relaxation up to fifteen years in upper age limit, under sub-rule (2) of Rule 12 of the Sind Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, applies to the appointments against the posts in BPS-16 and 17 to be filled through SPSC Competitive Examination-2021.

13. Learned Counsel replied that the Government of Sindh has allowed both male and female for such relaxation vide addendum dated 08.09.2020 as provided under sub-rule (2) of Rule 12 of the Sind Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974; we do not agree with the aforesaid assertion for the reason that the general relaxation of 15 years is allowed in all Government Departments as per Government policy, however, that relaxation is not applicable and cannot be extended to the candidature of the private respondents, which is barred under the recruitment rules notified vide Notification dated 27.07.2020. For the sake of convenience, notification dated 27.07.2020 is reproduced herein below:

**GOVERNMENT OF SINDH
SERVICES, GENERAL ADMINISTRATION
AND COORDINATION DEPARTMENT**

Karachi dated the 27th July 2020

NOTIFICATION

*SO-II(SGA&CD)5-64/2011: In continuation of this Department's Notification of even number dated 14th September 2018 and with the approval of Chief Minister, Sindh, notwithstanding the contents of the 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 behalf, Government of Sindh are pleased to allow relaxation upto maximum of **Fifteen (15) years** in the upper age limit to all the applications applying for the vacancies in the Departments of Government of Sindh (**except Police Service & the posts to be filed through Combined Competitive Examination by the Sindh Public Service Commission**) to be filled during the period from **1st July, 2020 to 30th June, 2022** in relaxation of Rules.*

**MUMTAZ ALI SHAH
CHIEF SECRETARY SINDH**

SO-II(SGA&CD)5-64/2011 Karachi, dated the 27th July 2020

14. However, SPSC continued with the examination process and announced the official result vide press release dated 05.04.2021 in which a total of 28 candidates was said to have qualified the written

part of the examination, including the petitioners. Thereafter, SPSC constituted interviewing Committee and conducted the interview process of the candidates, and announced the final result of the subject post on 13.04.2021, declaring the petitioners as failed candidates while private respondents as successful candidates. An excerpt of the press release dated 13.04.2021 is reproduced below:

SINDH PUBLIC SERVICE COMMISSION

PRESS RELEASE

The Sindh Public Service Commission conducted interviews on 10.04.2021 of written qualified candidates of Competitive Examination for selection of stipendiary candidates for M.Sc Forestry Course 2020-2022 to be carried on at Pakistan Forest Institute Peshawar, for appointment as Assistant Conservator of forest (BPS-17) in Forest and Wildlife Department, Government of Sindh, and found following candidates fit and suitable for the course.

<i>MERIT NO.</i>	<i>ROLL NO.</i>	<i>NAME OF CANDIDATE</i>	<i>FATHER'S NAME</i>	<i>DOMICILE</i>
01	90263	Miss. Memoona Islam	Haji Islamuddin	Rural
02	90218	Mr. Imran Ali	Nazakat Hussain	Urban
03	90264	Mr. Ahmed Uddin	Jamal Uddin	Rural
04	90382	Mr. Ayaz	Muhammad Usman	Urban
05	90259	Syed Muhammad Ali Shah	Syed Shafi Muhammad Shah	Rural
06	90378	Mr. Iltaf Ahmed	Imamuddin	Rural
07	90207	Mr. Muhammad Hassan Ali	Shahid Ali	Urban

15. It appears from the record that one candidate/respondent No.12 namely Syed Muhammad Ali Shah expressed his inability to attend M.Sc (Forestry) Course, 2020-22 at Pakistan Forest Institute Peshawar due to some personal problems. Surprisingly the Forest Department vide letter dated 17.04.2021 requested SPSC to convey one candidate, who is next in merit but could not be considered on account of non-availability of the seat, consequently, SPSC conveyed the name of candidate Abdul Aziz son of Shah Murad next on the list of candidates, who was later on appointed on the subject post.

16. Primarily, the respondent-Commission was not authorized either to increase or decrease the number of posts, in its capacity and if the parent Department intended to do the same, they ought to have re-advertised the post for such appointment, so that the public at large should be aware of clear vacancy and apply for the subject post, but unfortunately, the respondent-Commission, prima facie, acted in hand

and glove with the respondent-Department; and, firstly issued addendum dated 08.09.2020, illegally and without lawful authority by notifying the two posts i.e. one for Urban and one for Rural, though the original advertisement explicitly shows both posts of Assistant Conservator of Forest reserved for Urban quota, secondly the age relaxation was erroneously extended to the candidates applied for the competitive examination for the subject posts, though Notification dated 27.07.2020 explicitly shows that this relaxation is not available for the candidates appearing in the competitive examination. These glaring illegalities on part of respondent, which are apparent on the face of record, cannot be condoned under the law. Besides, the respondent-Commission acted on behalf of the respondent-department and allowed to increase the number of posts from two to seven vide letter dated 27.10.2020 without re-advertising the same; however, the illegalities, as pointed out supra, continued to be perpetuated either by the respondent-Commission and/or respondent - Forest & Wildlife Department by allowing the next candidate, who even did not qualify for the subject post, was allowed and recommended for such appointment vide letter dated 20.4.2021.

17. In the instant case as noted above the respondent- Commission was/is not required preparation of a waiting list of candidates who failed to meet the merit; nor is there any requirement or provision in the Law, Rules or Regulations governing SPSC or the concerned Department, for maintaining the waiting list for the simple reason that the candidate who did not meet the threshold of marks and declared fail in the final merit list of competitive exam thus he cannot be adjusted lateron as he cannot be declared as successful candidate as portrayed by the respondent-commission vide letter dated 20.4.2021 (page 59).

18. In absence of both the said requirements, no right of appointment had accrued in favor of private respondent No.15. The basic law on the subject has been laid down by the Hon'ble Supreme Court in the case of Munir Hussain and three others v. Province of Sindh and Others in **Civil Petition No.404-K of 2019** vide un-reported judgment dated 27.10.2021. The law laid down in the aforesaid judgment of the Hon'ble Supreme Court is the settled law on the subject.

19. We also find support from the decision of Honorable Supreme Court rendered in the above case, and hold that the appointment of a

waiting list candidate was/is an erroneous decision either on the part of the respondent–Commission and/or respondent–Department [except paragraph 12(iv)] in the light of ratio of the Judgment passed by the Honourable Supreme Court in the above referred case. An excerpt of the judgment dated 27.10.2021 is reproduced as under:

“12.

- i) *in matters of competitive examination held by Public Service Commission all vacancies are required to be filled up in one go. Even if the filling up is staggered, the competitive examination is one and has to be treated as one selection for the purpose of recruitment.*
- ii) *In posts remaining vacant on account of non availability of suitable candidates, failure of the recommended candidates to occupy or falling vacant by reason of the qualified candidates quitting the posts after joining need to re-advertised and subjected to open competition;*
- iii) *The practice in the matter of recruitment/promotion etc must always be fair, transparent and open to competition in order to hire the best available human resource to foster, competence, excellence and efficiency in public service; and*
- iv) *Only in exceptional cases and provided the rules and regulations provide for waiting list of the qualified candidates who did not in the first place meet the merit, to be maintained for a limited time (maximum of three months) on the request of the department by the relevant Public Service Commission or the department (in case recruitment is made by the department under the law, rules and regulations through an open and transparent recruitment process involving test and interview) in order to ensure that in case of an urgent need to fill the vacancies, the qualified candidates may be recommended and offered the available seats from such “waiting list” strictly following the rule of merit. However, it is re-emphasized that such practice must always be limited to exceptional and provided the laws, rules and regulations of the Public Service Commission and/or the concerned departments so permit.*

20. Coming to the facts of the instant case, we find that there is no such provision in SPSC regulation based on which the respondents could have claimed any such right for appointment against the advertised posts; and, even the respondent-commission ought not to have accepted the suggestion of the respondent-department vide letter dated 27.10.2020, without formal requisition; and the respondent-department ought to have issued a formal request to SPSC for the new advertisement of newly created five posts for the recommendation, rather than sending five posts and subsequent merging in the same

advertisement No. No.04/2020 dated 13.07.2020; after closing date i.e. 20.8.2020 is based on malafide intention for the simple reason for those posts the public at large was not taken into confidence, through public notice.

21. For the reasons recorded above, we do find merit in this petition and it is accordingly allowed. The examination conducted by the Sindh Public Service Commission via advertisement bearing No.04/2020 dated 13.07.2020 to the extent of posts of Assistant Conservator of Forest (BPS-17) and subsequent recommendation and appointment of private respondents is held to be illegal and without lawful authority, therefore, is declared nullity in the eyes of law. The respondent – Commission is directed to re-advertise the subject posts afresh and allow all the inspiring candidates to participate. The aforesaid exercise shall be undertaken within two months. The cost incurred on the training of private respondents shall be recovered by the Chief Secretary Sindh jointly from the respondent – Department as well as from private respondents being beneficiaries of illegal process. The Government of Sindh is directed to tack stock of functioning of SPSC and take appropriate measures to save the public at large from the irony of SPSC.

22. Petition stands disposed of in the above terms.

JUDGE

JUDGE