

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**C. P. No. D – 810 of 2017**

**Fakhar-un-Din Kolachi and others v. Province of Sindh and others**

**C. P. No. D – 420 of 2018**

**Munwar Ali and others v. Province of Sindh and others**

**Before:**

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Zulfiqar Ali Sangi

Date of hearing: **24-02-2022**

Date of decision: **24-02-2022**

Mr. Rukhsar Ahmed M. Junejo, Advocate for the Petitioners.  
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh along with  
P.I Nadeem, CTD Sukkur.

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**ORDER**

**Muhammad Junaid Ghaffar, J.** – Through both these Petitions, the Petitioners seek directions against the Respondents for issuing appointment orders in their favour.

2. Learned Counsel for the Petitioner has contended that after an advertisement, the Petitioners appeared in written tests and interview, which they had successfully passed; whereas, despite all these formalities, no appointment orders have been issued. He has also referred to comments and the results, and submits that the Petitioners are entitled for the relief.

3. On the other hand, learned AAG has opposed the Petitions and submits that the Petitioners have failed in the interview, and even if they have passed their written tests, no case is made out. As to Petitioner No.13 in C. P. No. D-810 of 2017 is concerned, learned AAG has referred to corrigendum to the comments and submits that in fact the passing marks were 25; whereas, the said Petitioner was awarded 23 marks, but inadvertently, the same were recorded as 30; hence, no case is made out.

4. We have heard the Petitioners' Counsel as well as learned AAG.

5. It appears that pursuant to some job vacancies, the Petitioners applied and were called for written tests and interview. It is their case that in the written tests, they had qualified and had also appeared in the interview; whereas, despite being successful in the interview, according to the Petitioners' case, they have been shown as failed in the interview / viva-voce examination.

6. As to the facts so pleaded on behalf of the Petitioners, it appears that though they did pass their written test, but admittedly as per comments, they were unsuccessful in the interview and therefore a question arises as to how and in what manner any right accrues to them to claim appointment by filing these Petitions. Learned Counsel for the petitioners has also made an attempt to argue that the interviews were conducted in haste and others have been appointed illegally. As to illegal appointment of others, it would suffice to observe that neither those persons have been joined as respondents; nor any specific prayer has been made to this effect. In fact, it appears to be an afterthought, and may have surfaced after filing of response to these petitions. In that case either the petitions were required to be amended or after withdrawal of these petitions permission should have been obtained to file fresh petition. None of these has happened and therefore, we cannot look into this aspect of the matter as it would seriously prejudice others.

7. As to the result of the interviews being illegal and subject to challenge in these proceedings, we have not been able to persuade ourselves as to how the relief being sought can be granted in respect of Viva-voce/Interview Examination of the Petitioners, in which, according to them, they ought to have been declared successful, whereas, the Respondents have failed them, as apparently the verbal response of the Petitioners in a Viva-voce Examination and Interview cannot be looked into by us in our Constitutional jurisdiction, as it is entirely dependent on the factual determination and the contention of the parties. Even otherwise, what answer is given by a candidate in an Interview/Viva-voce Examination, the same is a matter of verbal response and no record is apparently required to be maintained by the concerned appointing authority. In these circumstances, we are of the considered view that these Petitions are not maintainable. Reliance in this regard may be placed on the case reported as Muhammad Ashraf Sangri v. Federation of Pakistan (2014 SCMR 157), wherein the Hon'ble Supreme Court has been pleased to observe as under:

*“Essentially an interview is a subjective test and it is not possible for a Court of law to substitute its own opinion for that of the Interview Board in order to give the petitioner relief. What transpired at the interview and what persuaded one member of the Board to award him only 50 marks in something which a Court of law is certainly not equipped to probe and to that extent we cannot substitute our own opinion with that of the Interview Board. Obviously if any mala fides or bias or for that matter error of judgment were floating on the surface of the record we would have certainly intervened as Courts of law are more familiar with such improprieties rather than dilating into question of fitness of any candidate for a particular post which as observed above is subjective matter and can best be assessed by the functionaries who are entrusted with this responsibility, in the present case, the Public Service Commission. For this proposition the case of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani (2012 SCMR 1198) can be referred to.”*

8. Accordingly, both Petitions being misconceived are hereby **dismissed** with pending application(s).

J U D G E

J U D G E

Abdul Basit