

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 91 of 2021

Saleem Ahmed Magsi v. Province of Sindh and others

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of hearing: **08-03-2022**

Date of decision: **08-03-2022**

Mr. Shabbir Ali Bozdar, Advocate for the Petitioner.

Mr. Qurban Ali Malano, Advocate for Respondents No.5 & 6.

Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh along with
Paras Balouch, Assistant Director, Sindh Public Service Commission.

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ORDER

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioner has sought the following relief(s):

- a) *That this Hon'ble Court may be pleased to declare the act of the respondents by recommending the Candidates on Urban Area/ Quota for the Posts of Inspector (Law), as they are belonging to Rural Quota/Area [Rohri] mentioned in the Ground No.10 supra as per their comments submitted in CP No.D-1239/2019, is illegal, unlawful and against the norms of justice, hence the said act of the respondents may be declared as null and void.*
- b) *That this Hon'able Court may be pleased to call the respondents in persons before this Hon'able Court and enquire about their illegal act by not verifying the Domicile of the Candidates, who belong to Rural Area and recommended their names on Urban Quota/Area mentioned in Ground No.10 supra and others (if any).*
- c) *That this Hon'able Court may be pleased to initiate enquiry in respect of illegalities and irregularities committed by the respondents with malafide intention and some ulterior motives by recommending the names of Candidates on Urban Area/Quota, through reputed Agencies viz; FIA or NAB, so that they may conduct the enquiry in respect of corrupt practices of the respondents and misuse of authority.*
- d) *That this Hon'able Court may be pleased to direct the respondents to prepare the fresh merit list/Result Sheet after removing the names of the Candidates who belong to Rural Area/Quota (Rohri City), but their names were recommended for the post of Inspector (Law) on Urban Area/Quota.*
- e) *That this Hon'able Court may be pleased to restrain the respondents from issuing the Appointment Orders to Successful Candidates of Sindh Urban Quota till the finalization of the merit be updated after verifying and removing the names of persons, who belong to Rural Area/Quota mentioned in Ground No.10 supra, and others (if any), through themselves or any other competent authority of Government of Sindh, either directly or indirectly, till the final decision of the instant petition in hand before this Hon'able Court.*

- f) *That this Hon'able Court may be pleased to direct the respondents to issue the appointment order in favor of the petitioner after removing their names from the merit list/Result Sheet.*
- g) *To grant any other relief which deems fit and proper under the circumstances of the petition.*
- h) *To award the cost of petition.*

2. We have heard the Petitioner's Counsel as well as learned AAG and the Respondents' Counsel.

3. The Petitioner's case, as setup through instant Petition and as argued is that Respondents No.5 & 6 have been shown as successful candidates in the selection process initiated pursuant to advertisement dated 07-01-2019 and are available at serial No.36 & 39 of the final merit list announced by the Sindh Public Service Commission. According to the Petitioner's Counsel, they are residents of Rohri, which is a Rural area, whereas, in the final merit list they have been listed against Urban area; hence, are disqualified. Though very extensive arguments have been made by all learned Counsel including learned AAG on this controversy; however, in our considered view, we are not required to attend to all such arguments in the given facts and circumstances of this case.

4. We have confronted the Petitioner's Counsel as to how this could support the case of the Petitioner, and to this, he has argued that if these two persons are disqualified, the Petitioner may have a chance of being successful as he holds a domicile of Urban area. This apparently is entirely misconceived inasmuch as it is matter of record that though the Petitioner had passed the written test, but could not qualify in the Interview / Viva-voce. This is an admitted position, and apparently, the Petitioner is now trying to seek a relief on some other pretext that Respondents No.5 & 6 be disqualified. For the sake of arguments, even if we accept the contention of the Petitioner vis-à-vis Respondents No.5 & 6, this would not automatically result in Petitioner being declared as a successful candidate; hence, the exercise would be academic in nature, which this Court is not required to carry out in its Constitutional jurisdiction. The same can be attended to in an appropriate case wherein the aggrieved person is actually being affected with the proposition so raised in this petition.

5. On merits of the petitioners case and 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 Petitioner, in which, according to him, he ought to have been declared successful, whereas, the Respondents have failed him, as apparently the verbal response of the Petitioner 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 this Petition is 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.”

6. Further reliance can also be placed on the case of ***Arshad Ali Tabassum v The Registrar Lahore High Court (2015 SCMR 112); Miss Gulnaz Baloch v The Registrar Baluchistan High Court [2015 PLC (CS) 393] and Altaf Hussain v Federal Public Service Commission [2022 PLC (CS) 92]***. Accordingly, this petition being misconceived was **dismissed** with pending application vide a short order announced in the earlier part of the day and these are the reasons thereof.

J U D G E

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Abdul Basit