

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 216 of 2022

Date of hearing	Order with signature of Judge
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Fresh case

1. For orders on CMA No.973/2022 (U/A)
2. For orders on office objection at Flag-A
3. For orders on CMA No.974/2022 (Ex./A)
4. For hearing of main case
5. For orders on CMA No.975/2022 (Stay)

09-03-2022

Mr. Muhammad Saleem Mastoi, Advocate for the Petitioner.

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- 1.** Urgency is granted.
- 2.** Deferred.
- 3.** Exemption is granted subject to all just legal exceptions.

4 & 5. Through this Petition, the Petitioner has sought the following relief(s):

- i) *That this Honourable Court may be pleased to direct the concerned official respondents to issue the offers/appointment letters in favour of the petitioner, while declaring the act of the respondents for non-issuance of offer/appointment letters in favour of the petitioner, as illegal, ultra-vires and ab-initio in the eyes of law.*
- ii) *OR in the alternate, this Honourable Court may further be pleased to pass order for sending issue of appointment to the petitioner to the District Naushahro Feroze.*
- iii) *That, act of respondent No.5 is illegal, void and ab initio because who conducted the interviews of in-eligible candidate under Sr. No.8 and 14 of Merit List hence the interview is null and void.*
- iv) *That this Honourable Court may be also further be pleased to grant ad-interim/permanent injunction restraining the respondents from making any fresh appointment of Dental Surgeon till the disposal of instant constitution petition.*
- v) *Awarded any other relief(s) deems fit, just and proper by this Honourable Court under the circumstances.*

We have heard the Petitioner's Counsel. The Petitioner's case, as setup through instant Petition and as argued is that certain persons have been shown as successful candidates in the selection process initiated

pursuant to advertisement dated 06-11-2020 and are available at serial No.8 and 14 of the final merit list announced by the Sindh Public Service Commission on 14-02-2022; though they are not qualified to be appointed.

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. 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 others be disqualified. For the sake of arguments, even if we accept the contention of the Petitioner, 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.

On merits of the Petitioner's 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.”

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 is hereby **dismissed** in limine with pending application.

J U D G E

J U D G E

Abdul Basit