

**ORDER SHEET**

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

**C. P. No. D – 481 of 2017**

Date of hearing	Order with signature of Judge
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**Hearing of case**

1. For orders on office objection at Flag-A
2. For hearing of main case

**16-03-2022**

Mr. Liaquat Ali Shar, Advocate for the Petitioner.  
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

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Through this Petition, the Petitioner has sought the following prayers:

- a. *That this Honourable Court may be pleased to direct the official respondents to issue appointment order to the petitioner for the post of police constable on the basis of merit list referred above.*
- b. *To restrain the official respondents not to appoint any other candidate on the post of the petitioner, during pendency of the petition.*
- c. *To award any other relief, this Honourable deems fit and proper under the circumstances of the case.*
- d. *To award costs of the petition.*

2. The Petitioner's case as setup through instant Petition is that he appeared in the Written Test for selection to the post of Police Constable and was declared successful. It is his further case that his name was placed at serial No.288 of the merit list, but while ignoring him, Respondent No.4, who was placed at serial No.291 of the said merit list, has been selected though he is not qualified to be appointed.

3. Learned AAG has taken us to the comments of Respondents, wherein it is stated that though the Petitioner had qualified the Written Test, but he could not succeed in the Interview / Viva-voce and his name was not available in the final merit list; whereas, the Respondent No.4 has been appointed on the basis of his successful qualification in all the process including the physical and written tests as well as the Interview / Viva-voce.

4. Apparently, it is a 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 the Petitioner is now trying to seek a relief on some other pretext that another candidate 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.

5. 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 Interview / Viva-voce 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 an Interview / Viva-voce Examination 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**.

J U D G E

J U D G E

Abdul Basit