

Order Sheet
**IN THE HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

C.P No.D-118 of 2021

Sajid Hussain Vs. Province of Sindh & others.

PRESENT

Mr. Justice Arshad Hussain Khan

Mr. Justice Irshad Ali Shah

1. For orders on MA No.690 / 2021.
2. For orders on office objection.
3. For orders on MA No.691 / 2021
4. For orders on MA No.692 / 2021.
5. For hearing of main case.

17.02.2021

Mr. Bakhtiar Ahmed Panhwar advocate for petitioner.

ARSHAD HUSSAIN KHAN, J.- Through instant constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has made the following prayers: -

A. *Direct the respondents to allow the petitioner to appear in the interview.*

Or

Pass an ad-interim status quo order whereby respondent No.4 & 5 SPSC may be restrained from conducting further interviews of all passed candidates till the final disposal of this instant petition.

B. *Any other relief which this Honourable Court deem fit and proper may pleased be awarded to the petitioner.*

2. The brief facts leading to filing of this constitutional petition are that pursuant to the advertisement published by Sindh Public Service Commission, Hyderabad, the Petitioner applied for the post of Assistant District Public Prosecutor (BPS-17) in Law, Parliamentary Affairs & Criminal Prosecution Department. Subsequently, the petitioner was issued admission letter with Roll No.38508, who appeared in the written test for the post applied, and was declared successful and qualified for the interview. However, respondent No.5 instead of calling for interview sent a rejection letter No.PSC-RS-

II/2020/38508 dated 22.09.2020 stating therein that the petitioner does not have five years standing at Bar (Experience Certificate countersigned by Sindh Bar Council Karachi). The Petitioner though preferred an appeal against the said rejection before respondent No.4, however, the same did not yield any fruitful result hence, he preferred instant petition.

3. Learned counsel for the Petitioner while reiterating the contents of memo of the petition has contended that the rejection of the petitioner's candidature is based on *mala fide*. He further contended that the Petitioner was enrolled as an advocate for lower courts on 19.12.2008 and then of this Court on 07.05.2011, however, subsequently, he joined government service as junior clerk on 07.07.2012 in Criminal Prosecution Service, Law Department, which is continued till today, hence, the petitioner was very much eligible for the interview. He, therefore, prayed for the relief as claimed.

4. Heard learned counsel and perused the record.

Perusal of the advertisement, annexed with the memo of the petition, whereby applications for Assistant District Public Prosecutor [ADPP] were invited, clearly shows that the qualification for the post of Assistant District Public Prosecutor BPS-17 was prescribed (a) Law Graduate from a HEC recognized University and (b) Having at least 05 years standing at the Bar. In the present case, it is an admitted position that the petitioner does not have five (05) years standing at the Bar. Whereas, as per the advertisement, it is a necessary condition for the post of ADPP that only those candidates will be considered, who have licence from the Bar Council and have been practicing for a period of at least five (05) years. The condition for appointment prescribed for the posts of ADPP cannot be relaxed on the ground that the petitioner's service period in the criminal prosecution department be counted towards his less period of standing at the Bar. Even otherwise, merely passing a written test, does not *ipso facto* give right to a candidate to be invited for an interview when he already lacks the required qualification. Insofar as the admission of the petitioner in the written test is concerned, the concerned authorities have rectified the same through the rejection letter.

5. In view of the above position, we are of the opinion that if any of the prescribed rules / conditions is causing hindrances to the

petitioner, it is for the concerned authority who has put that condition, to amend, modify or repeal the same. It is well settled that when language of the provision is plain and unambiguous the question of supplying *casus omissus* by the Court does not arise. In the present case the conditions prescribed for appointment of ADPP are very much clear and they do not provide an opportunity to the persons who do not meet to the criterion for the respective posts. Consequently, the petitioner who is lacking the required standing at the Bar is not entitled for any relief through instant petition as such the petition is **dismissed** in *limine* along with listed applications.

JUDGE

JUDGE

Abdullah Channa/PS