

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

BEFORE

Mr. Justice Zulfiqar Ahmad Khan

Mr. Justice Muhammad Saleem Jessar

(1) C.P. No. D-2252 of 2019

Amara Gohar and others v. ---- Petitioners
Federation of Pakistan and others ---- Respondents

(2) C.P. No. D-2362 of 2019

Asma v. ---- Petitioner
Federation of Pakistan and others ---- Respondents

(3) C.P No.D-2331 of 2019

Mst. Rubina Begum v. ---- Petitioners
Province of Sindh and others ---- Respondents

(4) C.P No.D-2411 of 2019

Naheed Akhrat v. ---- Petitioners
Province of Sindh and others ---- Respondents

(5) C.P No.D-840 of 2021

Abdullah & 6 others v. ---- Petitioners
Province of Sindh and others ---- Respondents

(6) C.P. No. D-2696 of 2019

Imtiaz Ahebo and another v. ---- Petitioners
Province of Sindh and others ---- Respondents

Date of hearing: 19.05.2021

Date of Judgment: 03.06.2021

Mr. Sajjad Ahmed Chandio, advocate for the petitioners in CP No. D- 2252 & 2362 of 2019.

Mr. Muhammad Arshad S. Pathan, advocate for the petitioners in CP No. D- 2696 of 2019

Mr. Irfan Ahmed Qureshi, Advocate for the Petitioners in CP No. D-2411 of 2019

Mr. Ghulam Shabbir Mari Advocate for the Petitioners in CP No. D-840 of 2021

Mr. Allah Bachayo Soomro, Addl. A.G

Mr. Muhammad Humayoon Khan, Deputy Attorney General

JUDGMENT

ZULFIQAR AHMAD KHAN, J.- By this common Judgment, we intend to dispose of the captioned constitutional petitions and at the same time address to the frequent causes compelling countless individuals to appear before this Court alleging nepotism, unjust, unfair and illegal conduct of the Sindh Public Service Commission. Facts of these petitions and prayers made to this court are summarized hereunder:

CP No. D-2252 of 2019

2. Petitioners Amara Gohar and others have filed this petition alleging therein that Sindh Public Service Commission through advertisement dated 19.07.2018 invited the applications for 1783 posts of Medical Officers & Women Medical Officers (BPS-17); as such, they applied for the posts of WMO and accordingly were called to appear in written test on 09.12.2018. They appeared and were declared successful and hence were again called for interview but were declared unsuccessful. It is further alleged that vide another advertisement dated 10.01.2019, Respondent Sindh Public Service Commission invited the applications calling the applicants to appear directly for interviews for an unknown number of posts of Medical Officers and for leftover posts of Medical Officers with reference to earlier advertisement dated 19.07.2018; that through a press release dated 08.01.2019 it was declared that only 477 Medical Officers passed the written test out of which 302 candidates qualified the interview and out of 1046 only 434 candidates were declared fit and suitable for the posts of Women Medical Officers. It is further alleged that Sindh Public Service Commission due to political influence illegally called the candidates directly for interview who failed to even qualify the written test held on 9.12.2018; that out of 446 posts of Women Medical Officers 434 have been selected in interview and still 12 posts are lying vacant and the perusal of documents attached with the petition show that Respondent Sindh Public Service Commission has miserably failed to adopt the fair procedure, hence the petitioners have mainly prayed as under:-

- a. Declare that the procedure adopted by respondent Nos. 2 & 3 is illegal & unlawful.
- b. Declare that the appointments for the posts of Medical Officer (BP-17) without written test is illegal and unlawful.
- c. Direct the respondents 4 & 5 to submit the details of marks secured / obtained by the petitioners in written test and interviews.
- d. Declare that the petitioners are eligible and successful candidates for the post of Women Medical Officer (BS-17) as they qualified the written test.
- e. Direct the respondent No. 02 to issue appointment orders in the name of petitioners for the post of Women Medical Officer (BP-17).

CP No. D-2362 of 2019

3. Petitioners Asma has filed the instant petition alleging therein that Sindh Public Service Commission through advertisement dated 19.07.2018 invited the applications for 1783 posts of Medical Officers & Women Medical Officers (BPS-17); as such, she applied for the posts of WMO and accordingly were called to appear in written test on 09.12.2018. They appeared and were declared successful, hence were again called for interview but were declared unsuccessful. It is further alleged that vide another advertisement dated 10.01.2019 Respondent Sindh Public Service Commission invited the applications calling the applicants to appear directly for interviews for unknown number of posts of Medical Officers and for leftover posts of Medical Officers with reference to earlier advertisement dated 19.07.2018; that through press release dated 08.01.2019 it was declared that only 477 Medical Officers qualified the written test out of which 302 candidates qualified the interview and out of 1046 only 434 candidates were declared fit and suitable for the posts

of Women Medical Officers. It is further alleged that Sindh Public Service Commission due to political influence illegally called the candidates directly for interview who even failed to qualify the written test held on 9.12.2018; that out of 446 posts of Women Medical Officers 434 have been selected in interview and still 12 posts are lying vacant and the perusal of documents attached with the petition show that Respondent Sindh Public Service Commission has miserably failed to adopt the fair procedure, hence the petitioners have mainly prayed as under:-

- a. Declare that the procedure adopted by respondent Nos. 2 to 5 is illegal & unlawful.
- b. Declare that the appointments for the posts of Medical Officer (BP-17) without written test is illegal and unlawful.
- c. Direct the respondents 2 & 5 to submit the details of marks secured / obtained by the petitioners in written test and interviews.
- d. Declare that the petitioner is eligible and successful candidate for the post of Women Medical Officer (BS-17) as she qualified the written test.
- e. Direct the respondent No. 02 to 05 to issue appointment orders in the name of petitioner for the post of Women Medical Officer (BP-17).

C.P No. D-2331 of 2019

4. Petitioner Mst. Rubina Begum in C.P No.D-2331 of 2019 has filed the petition alleging therein that Sindh Public Service Commission through consolidated advertisement No.05/2018 dated 19.07.2018, invited the applications for 1783 appointments as Medical Officer and Women Medical Officer (BPS-17), as such, she had also applied therein for the post of Women Medical Officer BPS-17 and accordingly, she was called to appear in written test. However, after the gap of about four (04) months, the SPSC through a press release bifurcated the total seats on gender basis. The Petitioner after declaring successful candidate called for interview along with relevant documents whereby she had appeared and answered all the question confidently however, thereafter very surprisingly the SPSC through advertisement dated 10.01.2019 invited the applications calling the applicants to appear directly for unknown number of posts of Medical officers and for leftover posts of Medical Officer with reference to earlier advertisement No.05/2018 dated 19.07.2018; that through press release dated 08.01.2019, it was declared that only 477 Medical Officers qualified the written test out of which 302 candidates qualified the interview and out of 1046 only 434 candidates were declared fit and suitable for the posts of Women Medical Officers. It is further alleged that SPSC due to political influence illegally called the candidates directly for interview who even failed to qualify the written test held on 09.12.2018; that out of 446 posts of Women Medical Officers 434 have been selected in interview and still 12 posts are lying vacant and the perusal of documents attached with the petition show that respondent /SPSC has miserably failed to adopt the fair procedure, hence the petitioner has mainly prayed as under:

- a. To declare that the procedure adopted by the respondent No.02 & 03 in the subject matter is illegal, unlawful.
- b. To declare that the appointments for the post of Medical Officer BPS-17 without written test is illegal, unlawful.
- c. To direct the respondents No.4 and 5 to submit the details of marks secured / obtained by the petitioner in written test and interviews.
- d. To declare that the petitioner is eligible, successful candidate for the post of Women Medical Officer (BPS-17) as she qualified the written test.

- e. To direct the respondent No.2 to issue appointment order in the name of petitioner for the post of Women Medical Officer (BPS-17).

C.P No. D-2411 of 2019

5. Petitioner Naheed Akhtar in C.P No.D-2411 of 2019 has filed the petition alleging therein that Sindh Public Service Commission through consolidated advertisement No.05/2018 dated 19.07.2018, invited the applications for 1783 appointments as Medical Officer and Women Medical Officer (BPS-17), as such, she had also applied therein for the post of Women Medical Officer BPS-17 and accordingly, she was called to appear in written test. However, after the gap of about four (04) months, the SPSC through a press release bifurcated the total seats on gender basis. The Petitioner after declaring successful candidate called for interview along with relevant documents whereby she had appeared and answered all the question confidently however, thereafter very surprisingly the SPSC through advertisement dated 10.01.2019 invited the applications calling the applicants to appear directly for unknown number of posts of Medical officers and for leftover posts of Medical Officer with reference to earlier advertisement No.05/2018 dated 19.07.2018; that through press release dated 08.01.2019, it was declared that only 477 Medical Officers qualified the written test out of which 302 candidates qualified the interview and out of 1046 only 434 candidates were declared fit and suitable for the posts of Women Medical Officers. It is further alleged that SPSC due to political influence illegally called the candidates directly for interview who even failed to qualify the written test held on 09.12.2018; that out of 446 posts of Women Medical Officers 434 have been selected in interview and still 12 posts are lying vacant and the perusal of documents attached with the petition show that respondent /SPSC has miserably failed to adopt the fair procedure, hence the petitioner has mainly prayed as under:

- a. To declare that the procedure adopted by the respondent No.02 & 03 in the subject matter is illegal, unlawful.
- b. To declare that the appointments for the post of Medical Officer BPS-17 without written test is illegal, unlawful.
- c. To direct the respondents No.4 and 5 to submit the details of marks secured / obtained by the petitioner in written test and interviews.
- d. To declare that the petitioner is eligible, successful candidate for the post of Women Medical Officer (BPS-17) as she qualified the written test.
- e. To direct the respondent No.2 to issue appointment order in the name of petitioner for the post of Women Medical Officer (BPS-17).

C.P No.D-840 of 2021

6. Petitioners in C.P No.D-840 of 2021 have filed the petition alleging therein that Sindh Public Service Commission through consolidated advertisement No.06/2016 dated 19.08.2016 invited the applications for 269 appointments as Sub-Inspectors BPS-9. The petitioners have applied for the said post and were issued admission letter with their roll number whereby they appeared in physical test and declared successful; that through press release dated 14.02.2020 it was declared that only 914 Asst. Sub-Inspector had qualified the written test and thereafter through press release dated 20.10.2020 it was declared that out of those 914 candidates only 269 candidates had qualified in interview and declared eligible to be appointed as Asst. Sub-Inspector. It is further alleged that that SPSC due to political influence illegally called the candidates directly for interview who even failed to qualify the physical test held on 08.03.2018; that the petitioners had qualified the physical test but malafidely declared as unsuccessful in interviews, therefore, they approached this Court and have mainly prayed as under:

- a. To declare that the procedure adopted by the respondent No.02 to 09 in the subject matter is illegal, unlawful.
- b. To direct the respondents No.2 and 6 to submit the details of marks secured / obtained by the petitioner in written test and interviews.
- c. To declare that the petitioner is eligible, successful candidate for the post of Asst. Sub-Inspector (BPS-09) as she qualified the written test.
- d. To direct the respondent No.2 to 6 to issue appointment order in the name of petitioners for the post of Asst. Sub-Inspector (BPS-09).

CP No. D-2696 of 2019

7. Petitioners Imtiaz Thebo and another have filed the instant petition alleging therein that they participated in Combined Competitive Examination (CCE) conducted by Sindh Public Service Commission and were declared successful, but the respondents have adopted perverse way in declaring the result, whereby on one hand they declared the result of candidates who participated but did not supply the mark sheets on the very day. However, the candidates who have been declared successful in both written as well as viva have been bifurcated into allocated and non-allocated and the mark sheets to non-allocated candidates were being supplied in one week while the mark sheets to the allocated candidates were being supplied as per their wish without considering any time frame, which proves *malafide* on the part of respondents. Such an act is also in violation of rules and bye-laws; furthermore, the respondents have issued list of allocated candidates which showed only their names, district of domicile, merit and roll numbers but did not show the percentage and their overall merit; that the respondents are bound to declare the result of candidates as provided under the law and the directions issued by Hon'ble Supreme Court; that the minimum passing marks for written test in CCE 2018 were 450 and the candidates who were declared successful in written test have obtained marks upto 600 marks but the said candidates in interview/viva voce secured more or less 100 marks which proves that the interview committee was possessing their mark sheets and they did not award much marks to those candidates deliberately so that they should be kept in bottom of merit list or declared fail. It is well settled that the interview committee should not have such information available with them, as the said marks of written test are always kept secret and thereafter combined or accumulated rather by the Secret Branch and the result being prepared but in the present case the respondents not only preempted the result but have chosen the candidates as apparent from the Press Release which is perverse, illegal and in violation of law; that the Hon'ble Supreme Court of Pakistan in Suo Moto Case No.18 of 2016 has observed that best qualified candidates were deprived and denied their due right which adversely affected the interest of province and its people, and the Hon'ble Supreme Court besides setting criteria for written test and announcement of result also surfaced the discrepancies committed by Sindh Public Service Commission and the same are continued till today and the respondents have not rectified themselves. Since the rights of petitioners are badly being affected due to continuous illegal acts of the respondents in spite of intervention of Hon'ble Supreme Court, the petitioners pray as under:-

- a. To issue writ declaring that the act of the respondents towards issuing the Press Release in perverse, illegal, unlawful manner without showing the required detail as given in para 10 of the petition as well as result of 2013 given by the respondents to Hon'ble Supreme Court, is illegal, unlawful and is untenable and the petitioners and contested candidates are entitled for announcement of such combined result as per the order of Honourable Supreme Court and annexed result given by respondents.
- b. To direct the respondents to submit the result of Combined Competitive Examination (CCE) 2018 in the manner as submitted under the orders of

Honourable Supreme Court with all required information and also the allocation of the seats and demand / requirement by Government of Sindh together with the recommendations.

- c. To declare the interview process of Combined Competitive Examination (CCE) 2018 is illegal, unlawful, being processed in discrimination and is liable to be annulled with directions to take / conduct fresh interview process to the successful candidates and the interview process to be recorded through CCTV Camera to promote transparency.
- d. To restrain the respondents No. 1 & 2 from processing the illegal, unlawful list of Press Release to the respondent No.1 for its further process as the same is illegal, unlawful, perverse, full of discrimination and of blue-eyed persons without having been declared their result in transparent manner and is liable to be suspended and the process of recommendations liable to be stopped.

8. Mr. Sajjad Ahmed Chandio, Advocate for the petitioner submits that the petitioner (s) applied for the post of Medical Officer / Women Medical Officer (BPS-17) in response to an Advertisement published by Sindh Public Service Commission and they appeared in the written test, who were declared successful candidates and qualified for interview. According to him, the petitioners appeared in the interview before recruitment committee and were hoping for their appointment being confident; however, they were surprisedly shocked that the SPSC again advertised for appointment of Medical Officer without showing the numbers of the posts, or announcing any schedule for written test, however the commission authorities have directly called the candidate (s) to appear in an interview. He further added that despite qualification of petitioner (s) for the MOs/WMOs the respondent Commission illegally, unlawfully and without acting in accordance with the guidelines made by Hon'ble Supreme Court of Pakistan have declared successful without conducting their written test and chose not to offer such option to the petitioners who have successfully passed the written examination. He also contended that the petitioner (s) are well educated successful candidates and very much interested to serve the people with their academic and professional experience, but the respondent commission dishonestly, illegally, unlawfully and malafidely declared them as failure in the interview without any substantial and tangible cause. He, therefore, prayed that the petitioners may be declared a successful candidate as the respondent commission failed to follow the directions of Apex Court to display a breakup of the results of candidates making the entire process non-transparent. Mr. Muhammad Arshad S. Pathan, Advocate appearing in connected petition No.D-2696 of 2019 by drawing attention to page-37 submits that petitioner got 557 in written test, but he was awarded 94 numbers in viva out of 300 and those who have 200, 350/400 marks in written test were given 294 and 325 marks due to the reason that they are belonged to a poor family and he annexed the mark-sheets.

9. Per learned counsel for the Petitioners the Sindh Public Service Commission, as can be seen from its conduct, has surpassed all norms of legitimacy and has become a beacon of illegal, unfair and unjust practices for the youth of the province of Sindh, as evident from the number of petitions filed against it, media reports^{1 2 3}, letter to editors [Titled Sindh Public Service Commission (SPSC) has successfully achieved all milestones of incompetence. Irregularities in examinations and corrupt practices in the SPSC are nothing new – Daily Dawn 8th April 2021] and endless press clippings. Per learned counsel the Commission has time and again given directions to bring transparency into its affairs by Superior Courts including the Suo Moto case of 2017, however to no avail. It was pointed out that Functions Rules 1990 of the Commission are in violation of the Commission's Act of 1898 and tangently opposed to Rules of the other provinces. It was submitted that on

¹ https://www.youtube.com/watch?v=Qh-GNVTT1Hw&ab_channel=TourtoBeautifulLandofSindh

² https://www.youtube.com/watch?v=m04U7gzsoZA&ab_channel=BOLNews

³ https://www.youtube.com/watch?v=x5jf5epX4Zo&ab_channel=DAwamiShow

account of widespread illegalities in the test and interviews for 1783 posts of Medical Officers & Women Medical Officers (BPS-17) as an outcome of advertisement dated 19.07.2018 results of those tests/interviews be set aside, and some just and trustworthy mechanism be setup for such purposes.

10. Mr. Ishrat Lohar, learned private counsel for the respondents No.2 and 3 (whose appearing in the instant case was challenged by the counsel for the petitioners in the light of the famous judgment of the Hon'ble supreme court in the case of Rasheed Ahmad v. Federation of Pakistan reported as 2017 PLD 121 SC), submits that in compliance of this Court's order, the office of Secretary Sindh Public Service Commission has become defunct thereby its affairs have been ceased and the Chairman of Sindh Public Service Commission is on ex-Pakistan Leave (as he is also facing NAB inquiry) with effect from 10.05.2021 to 07.06.2021; as such, the entire functions of Sindh Public Service Commission have been stopped. He, therefore, prayed that since the Secretary Sindh Public Service Commission had no role in the recruit committee as well as the allegations leveled in the instant petition, therefore, he may set-free to function in accordance with law. This contention was immediately repelled by referring to the previous orders where the respondent was restrained only from taking any new examinations, tests, interviews and from posting any new results. The fact is that the respondents themselves sought one month's time to take measures to show transparency in the examinations and tests conducted for the above examinations/tests, and despite lapse of this time, not a single shred of confidence building measure has been shown to the court. On the earlier date of hearing this court asked the Secretary SPSC to show detailed breakdown of a single roll number (selected by us randomly) as to what grades the candidate obtained in written test and interview, but after searching for more than an hour with all material at their hand, such a simple question wasn't answered and it was then the respondents took time to bring such records to the court. On Court query as to how the worth Chief Minister is appointing members and chairman of SPSC in violation of the Sindh Government Rules of Business 1986, no convincing response came from the learned counsel/Addl AG.

11. Heard the learned counsel, Addl. Advocate General, Deputy Attorney General Sindh and perused the material on record.

12. Sindh Public Service Commission had its (un)fair share of taking superior courts' time over the decades. Being subject of the *Suo Moto* action taken by the Hon'ble Supreme Court after having been found that large scale illegalities and discrepancies were committed by the Commission while conducting written tests and interviews for the advertised posts, the Hon'ble Supreme Court issued the following directions to the Commission:-

(1) A person of integrity and competence who met the stipulated qualification for appointment as Chairman of the Commission be appointed in terms of Article 242(1B) of the Constitution within two weeks from the date of the announcement of present judgment;

(2)

(3)

(4) In view of the large-scale illegalities/discrepancies committed in the written tests and interviews of Combined Competitive Examination 2013 ('CCE-2013') the same were set aside and cancelled, however, the screening tests results were not cancelled/set aside;

(5) Fresh written tests for CCE-2013 for the posts as advertised be held as soon as possible after the appointment of the Chairman and Members of the Commission and after the verification of the credentials of the existing/remaining Members;

(6) Only the 2,813 candidates who had earlier taken the written tests of CCE-2013 for the 182 posts be permitted to take the fresh written tests even if in the meanwhile they had crossed the stipulated upper age, and without requiring payment of any additional fee/charge;

(7) When the papers of the written tests were sent for checking/marking the identity of the candidates must be kept anonymous/secret;

(8) The marks of the written tests and results of interviews should be publicly displayed on the Commission's website, on the notice board in its premises and in one Urdu, English and Sindhi newspaper; disclosure should be made of the marks obtained in each subject as well as the cumulative total against the candidates' roll numbers;

(9) All those who obtained the prescribed minimum pass marks in the written tests must be invited for the interview;

(10) The marks allocated for the interview must be allocated to the interviewers equally, however, to avoid a fraction, the Chairman or in his/her absence, the senior most Member, shall have the higher mark rounded off to avoid a fraction;

(11) The Commission shall keep a separate record of the marks awarded by each interviewer and each interviewer should sign and date the same as well as the combined results;

(12) The written tests, their checking/marking, interviews and display of results be completed as soon as was practicable since the matter pertained to CCE-2013;

(13) Candidates should be selected for all the advertised posts, unless they did not pass the written tests and the interview;

(14) The candidates who were selected by the Commission should be offered appointment by the Government as per applicable law, and if any candidate declined, the candidate who was next on the merit list be offered the same (2017 SCMR 637).

13. Candidates who appeared in the written test had legitimate right to get their marks re-counted within 15 days to assure their possibility of qualifying for the next phase of competitive examination. Commission had violated the petitioner's right to get his marks rectified within 15 days and qualify if possible as a result thereof. Hasty decision of Commission to start interview test before the cutoff date for making an application for re-totaling/re-counting of marks was an unfair and arbitrary. Such act of the Commission was not bona fide discharge of public duty assigned to it. Constitutional petition was allowed in circumstances. (2017 PLC(CS)N 3 Karachi).

14. In order to ensure merit and transparency in the process of the CCE-2020 examination, the said examination should be held at Karachi under the supervision of learned Official Assignee, and at Sukkur, Hyderabad and Larkana under the supervision of Additional Registrar Sukkur Bench and Additional Registrars of Circuit Courts at Hyderabad and Larkana, respectively. Learned Official Assignee and the above learned Additional Registrars of this Court shall ensure that the entire process of the CCE-2020 examination is held strictly in accordance with law, relevant rules and regulations and the directions given by Hon'ble Supreme Court vide judgment dated 13.03.2017 in Suo Moto Case No.18/2016, particularly sub-paragraphs 7 to 12, 14 and 15 of paragraph 26 thereof (IN THE HIGH COURT OF SINDH AT KARACHI Constitutional Petition No. D – 8033 of 2019).

15. Hence one is un-surprised by the fact that a search alone at <http://www.pakistanlawsite.com> lists 58 records on the query <Sindh Public Service Commission>. It seems that while the Courts finish rendering one judgment fixing an impropriety in Sindh Public Service Commission, new illegalities confront us. Through this

Judgment we wish to address this continuous issue and how we ended up here, can this problem be fixed?

16. Constitution of the Islamic Republic of Pakistan, 1973 through Article 242(1) created the possibility of the establishment of Public Service Commissions at Federal and Provincial levels. The language of the said Article is discretionary *viz-a-viz* the language used in the Indian Government Act, 1935 which for the first time created such Commissions, where the said Act made it mandatory to establish Public Service Commissions at Federal and Provincial levels. Full text of Article 242(1) is reproduced hereunder side by side with Section 264(1) of the 1935 Act for the reasons which will become obvious in the later part of this judgment.

Article 242(1) of the 1973 Constitution	Section 264(1) of the 1935 Act
Public Service Commission 242.-(1) Majlis-e-Shoora (Parliament) in relation to the affairs of the Federation, and the Provincial Assembly of a Province may , by law provide for the establishment and constitution of a Public Service Commission.	Public Service Commissions: 264.-(1) Subject to the provisions of this section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

[Emphasis supplied]

17. To have a grip on the problem faced by us through the instant and other countless constitutional petitions complaining of a slaughter of merit in recruitments within the province of Sindh, it is imperative that we look into the reasons and rational of setting up Public Service Commissions by Constitutions and governing laws over the century. This issue also becomes important since an independent Public Service Commission is always looked upon as a bulwark of democracy⁴, as well as when a number of institutions working in our country have lost their connection to the very purpose for which they were created and at the same time we are now unfortunately more attuned to what might appear to us as instances of jobbery and nepotism, a fresh re-start seems to be imperative to safeguard national institutions and to give the aspiring youth some hope that the premise of “**right man for the right job**” still hasn’t deluded. Coming back to the historical background, it is worth noting that the very first mention of a Public Service Commission in our part of the world traces its origin to the First Dispatch of the Government of India on the Indian Constitutional Reforms dated 5th March 1919 which recognized to the need for setting up *some kind of* permanent office charged with the regulation of service matters. The said paragraph read as under:

“In most of the Dominions where responsible government has been established, the need has been felt of protecting the public service from political influences by the establishment of some permanent office peculiarly charged with the regulation of service matters. We are not prepared at present to develop the case fully for the establishment in India of a public service commission; but we feel that the prospect that the services may come more and more under ministerial control does afford strong grounds for instituting such a body. Accordingly, we think that provision should be made for its institution in the new Bill. The Commission should be appointed by the Secretary of State, and its powers and duties regulated by statutory rules to be framed by the same authority⁵”. [Underlining is ours]

18. This concept of a body intended to be charged primarily with the regulation of service matters found a somewhat more practical shape through the Government of India Act, 1919 where its Section 96(c) made room for the establishment of a Public Service Commission to “*discharge, in regard to recruitment and control of the Public Services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council*”. After passing of the Act, 1919, in spite of a prolonged correspondence among

⁴ M.A. Muttaub, Study of the Indian Union Public Service Commission by Osmania University, Hyderabad - 1967.

⁵ Proceedings of the Public Service Commission for the year, 1926-27, Vol. 1, 2nd Meeting— 8th October 1926.

various levels on the functions and machinery of the body to be set up, no decision was taken on setting up of the said body. The subject was then referred to the Royal Commission on the Superior Civil Services (also known as Lee Commission) which in its report of the year 1924 recommended that the statutory Public Service Commission contemplated by the Government of India Act, 1919 should be established without any further delay. It was thus on 1st October 1926 when the very first Public Service Commission was set up consisting of four Members in addition to its first Chairman Sir Ross Barker. The functions of the Public Service Commission were not laid down in the Act, 1919, but were regulated by the Public Service Commission (Functions) Rules, 1926 framed under sub-section (2) of Section 96(c) of the Act, 1919. Henceforth the Government of India Act, 1935 envisaged a Public Service Commission at the Federal level and Provincial Public Service Commissions for each of the Province. The very purpose of such Commissions, as envisaged by Lord Macaulay's Report of the Select Committee, was to develop a **merit based modern system with entry through thorough and competitive examinations** opposed to the earlier patronage-based system and to afford protection to the civil servants from political influences and "to give it that position of stability and security which is vital to its successful working as an impartial and efficient instrument by which Government of whatever political complexion may give effect to their politics⁶". Thus, from 1923 competitive examinations were recommended for entry into the public service to constitute a "merit-oriented career service which can bring in loyalist, neutral and anonymous public servants..."

19. While Pakistan inherited the Act, 1935 as its first (Interim) Constitution which contained detailed and elaborated provisions regarding the composition, role and functions of Public Service Commission, which provisions were followed broadly through the Constitutions of the year 1956, 1962 and 1972 (Interim), this issue eventually took the shape of Article 242 in the 1973 Constitution (as reproduced in the earlier paragraphs). **It must be kept in mind that in the 1973 Constitution, it was for the first time that a departure was made from specifying a detailed structure** (prescribing composition, safeguards, terms of condition of service etc.) of the Commission (and its members) to the level of its mere reference having made been through singular Article 242 to the extent that it wasn't even mandatorily provided that Federal or Provincial Public Service Commission must be formed. Research reveals that the said conscious step was taken as a part of the reform package introduced by the then Government to restructure civil service. Hence it does not come as a surprise that while the 1973 Constitution took effect from 14th August 1973, the Civil Servants Act 1973 (Act No. LXXI of 1973) was only enacted a month after on 26th September 1973. As well as Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 were put in place at the same times.

20. At the moment, while a Public Service Commission is working at the Federal level under the Federal Public Service Commission Ordinance 1977, at each provincial level respective Commissions are in operation through their *sui generis* legislature. Punjab Public Service Commission was established under the Punjab Public Service Commission Ordinance, 1978 and presently functioning within the ambit of the said statute alongwith its Functions Rules of 1979, whereas Khyber Pakhtunkhwa Public Service Commission was created through an Ordinance in 1978 and Balochistan Public Service Commission having been established through the Balochistan Civil Servants Act, 1974 (now operating under Balochistan Public Service Commission Act, 1989). It was however not until 1989 when Sindh Public Service Commission was created through the Sindh Public Service Commission Act, 1989. The Federal Public Service Commission Act, 1973 provided that Commission shall be composed of no fewer than three members (and one of such members to be appointed as its Chairman) by the President of Pakistan for a term of three years. Section 5 prescribed functions of the Commission as under:-

⁶ Lee Commission Report (1924), p. 13.

“5. Functions of the Commission.- The functions of the Commission shall be-

- (a) to conduct tests and examinations for recruitment to-
 - (i) the All-Pakistan Services and such posts in connection with the affairs of the Federation: and
 - (ii) such posts in or under a corporation or other body or organisation set up but the Federal Government under any law, as may be prescribed: and
- (b) to advise the President on such matters as may be prescribed relating to the terms and conditions of service of persons who are members of All-Pakistan Service or hold civil posts in connection with the affairs of the Federation.”

21. However, the said Federal Public Service Commission Act, 1973 was repealed and replaced by the FPSC Ordinance 1977 on 22 December 1977 after the incident of 5 July 1977, where a number of the members of the Commission and their terms and conditions of service were left at the discretion of the President exercised through regulations. The tenure of the members remained 3 years however the functions of the Commission were enlarged to the present extent as reflected by Section 7 and reproduced hereunder:-

7. Function of the Commission._

(1) The functions of the Commission shall be,---

- (a) to conduct tests and examinations for recruitment of persons to All-Pakistan Set services, the civil services of the Federation and civil posts in connection with the affairs of the Federation in basic pay scale 16 and above or equivalent.
- (b) to advise the President,---
 - (i) on matters relating to qualifications for and method of recruitment to, services and posts referred to in clause (a);
 - (ii) on the principles to be followed in making initial appointments to the services and posts referred to in clause (a) and in making appointments by promotion to posts in BS 18 and above and transfer from one service or occupational group to another; and
 - (iii) on any other matter which the President may refer to the commission; and
- (c) to hold examination for promotion for such posts as the Federal Government may, from time to time, by notification in the official Gazette, specify.

Explanation.- In this section, “recruitment” means initial appointment other than by promotion or transfer”.

(1a) the recruitment to the post in basic pay scale 11 to 15 made by any authority or person on or after 28th May, 2003, other than through the Commission, shall, notwithstanding any provisions of this Ordinance or any other law, rule, notification or any order, decision of judgment of any court or forum, be deemed to be, and always to have been, validly made, taken or done and shall not be called in question in any court or forum or any ground whatsoever.

(2) Recruitment to the following posts shall be outside the purview of the Commission: -

(i) in the President’s Secretariat;

(ia) in the Directorate General of Inter Service Intelligence (ISI);

(ii) filled by appointing a person on contract for a specified period;

(iii) filled on adhoc basis for a period of six months or less:

Provided that,---

(1) no adhoc appointment shall be made before placing or requisition with the commission for regular appointment; and

(2) before filling the post on adhoc basis prior approval shall be obtained from the Commission;

(iv) filled by re-employing or retired officers, provide that re-employment is made for a specified period in a post not higher than the post in which the person was employed on regular basis before retirement; and

(v) filled by the employment or re-employment of persons on recommendations of the high powered selection board, constituted by the President who are, or have been, officers of the Armed forces and hold, or have held, such post therein as or declared by the President to the equivalent to the posts to be so filled.

(3) (a) A Candidate aggrieved by any decision of the Federal Public Service Commission may, with in thirty days of such decision make a representation to the Commission and the Commission shall decide the representation within fifteen days after the giving the candidate or reasonable opportunity of hearing. The decision of the Commission, subject to the result of review petition, shall be final.

(b) A Candidate aggrieved by the decision of the Commission made under paragraph (a) may, with in fifteen days of the decision, submit a review petition to the Commission, and the Commission shall decide the review petition within thirty days under intimation to the petitioner.

(c) Save as provided in this Ordinance no order made or proceeding taken under this Ordinance or rules made thereunder by the Commission shall be called in question in any court and no injunction shall be granted by any court in respect of any decision made or taken in pursuance of any power conferred by, or under, this Ordinance.

(d) Any candidate aggrieved by a decision of the Commission under paragraph (b) may within thirty days of the decision, prefer an appeal to the High Court.

22. This colossal change in the structure of the Federal Public Service Commission led **Pakistan Law Commission** to undertake a Study of Post-1977 changes, which were reflected in the form of its Report No. 13⁷ titled **Report on Reformation and Modernization of Service Laws** which came up with the following recommendations: -

“In democratic societies, recruitment to civil service as well as the terms and conditions of service of the civil servants are regulated through a free, impartial and independent institution. Such institution is generally referred to as Civil Service Commission. The institution of Civil Service Commission is designed to serve mainly two purposes:

- (i) to induct merit, calibre and efficiency into the service; and
- (ii) to help the civil service free of political influence and maintain it as an independent and impartial institution, geared to executing the laws and implementing the policy objectives of the government.

It is commonly acknowledged that an efficient and impartial civil service, based on merit, is a sine qua non for the success of democratic system. It is the civil service which gives stability and continuity to the democratic system. In England the recruitment of civil servants and their placement in various departments is made

⁷ http://www.ljcp.gov.pk/Menu%20Items/Reports_of_LJCP/02/13.pdf

by the Civil Service Commission. The British Civil Service Commission is an independent institution whose members are appointed by the Crown. In the United States, prior to 1883, the civil servants were appointed on the discretion of government in power. This system called, the "Spoils System" was based on the principle of political patronage. However, this system led to several abuses and was ultimately scrapped. Instead the Civil Service Commission was established in 1883. This Commission is responsible for recruitment to civil services. Similarly, in Canada, Australia and India, appointment to the civil service and laws and rules concerning the terms and conditions of civil servants are regulated through their respective Civil Service Commissions.

After independence, Pakistan adopted the 'Government of India Act, 1935' as an interim Constitution. This Constitution had provisions for Public Service Commission. Such Commissions were established both at the federal and provincial levels. The composition, role and functions of the Commission were also laid down in the Constitution where the same provisions were retained, *mutatis mutandis*, in the subsequent (1956, 1962 and 1972 (Interim)) Constitutions. The Constitution of 1973, however, departed from this practice and authorised the Parliament and Provincial Legislatures to provide a Public Service Commission in their respective jurisdictions. Thus, both the Federal and Provincial Governments made statutes for the establishment of Public Service Commissions. Since their establishment the Public Service Commission maintained a fairly good reputation and kept reasonably high profile and image in the public. Its members were generally known for their integrity, impartiality and objectivity. The selection procedure for the appointment of civil servants had generally been fair. There were hardly any complaints of the Commission members resorting to nepotism or favouritism or accommodating any outside influence or pressure. The result was that the members of the civil service, being selected on merit, were generally speaking, competent and efficient. However, of late, the situation has changed. There are complaints of the Commission members, being appointed through political influence. It is alleged that such members lack calibre, integrity, and are vulnerable to influence/pressure from outside. There are also complaints of the Commission staff being inefficient, because of which delays occur in finalizing the selection procedure. Furthermore, there are reports of leakage of examination papers and involvement of the Commission staff in the scandals of selling the question papers.

The successive governments, both central and provincial, through a variety of techniques, ventured to ignore as well as by-pass the Commission and make direct appointments, sometimes in relaxation and other times violation of rules. One favourite technique adopted by the successive governments, has been to appoint persons on ad-hoc or temporary basis and subsequently regularise their services through an Act or Ordinance. As a result, thousands of people, with low calibre and inferior qualifications have been inducted into the civil service.

The recruitment was largely on the basis of nepotism or political patronage. Similarly, favouritism and patronage, rather than merit and efficiency, were the determining criteria for promotion and placement in civil service. Tragically, some of the appointees were such, that having failed to qualify the Commission's test, their candidatures were rejected by the Commission, however, such rejected candidates entered into the civil service through back door. Since bulk of appointments are made by the Ministers and the criterion of selection is anything but merit, most of the appointees are incapable, incompetent and inefficient.

The end result has been the lowering of standards in the civil service, giving rise to inefficiency, incompetency and even corruption. The service has been politicised. Political links and connections play a major role in the appointment, promotion and placement of civil servants. Consequently, there is a lot of heart-burning and grumbling going on among the civil servants. Honest, efficient, dedicated and hard working employees find it difficult to get a free and impartial environment so very essential for their functions. There is a deep sense of insecurity among the civil servants. There is a widespread feeling of frustration among them. This state of

affairs has adversely affected their performance and consequently, there are widespread complaints of inefficiency, incompetency and corruption among the civil bureaucracy.

This downward slide which is gaining momentum each passing day needs to be checked. The government cannot afford to let its executive branch cripple and crumble. The people would not want the administrative set up to come to a complete halt, thereby increasing their problems and add to their miseries. The nation would expect of its representatives, to repair the damage and improve the administration. Apart from other measures, one important factor which can help in improving the administrative machinery is to restore the image and status of the Public Service Commission and improve its functions so that this institution is enabled to play its role more effectively and give a better civil service and quality administration to the nation.

The results of this change have been extremely distressing and disappointing. The successive governments have sought to by-pass the Commission and make appointments in violation of rules and laws. Consequently, inept, inefficient and undeserving persons have been inducted into the civil service. There have come to light cases when candidates having failed the Commission's test, were appointed through back door, in some cases even to higher posts. The role of the legislatures have been extremely unhelpful. The politicians, lacking courage and foresight, relented under pressure and recommended appointments and promotions of inept, inefficient and incapable persons. The situation is fast deteriorating. All efforts to stop this practice have ended in fiasco. Even legal safeguards have proved ineffective. It is, therefore, recommended that through an amendment in the Constitution the erstwhile character of the Public Service Commission be restored.

In line with the previous practice, the members of the Commission should be given an oath by the Hon'ble Chief Justice of Pakistan in the following form:

I, do solemnly swear that I will bear true faith and allegiance to Pakistan: That, as a member or Chairman of the Public Service Commission, I will discharge my duties and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the solidarity, integrity, well-being, and prosperity of Pakistan. That I will not allow my personal interest to influence my official conduct or my official decisions and that in the performance of my functions I will act without fear or favour, affection or ill-will".

23. Coming back towards Provincial Public Service Commissions, the following Table compares essential features of the respective statutes of each of the province.

	Punjab	Sindh	Khyber Pakhtunkhwa	Balochistan
Principal Statute	Punjab PSC Ord. 1978	Sindh PSC Act, 1989	KPK PSC Ord. 1978	Balochistan PSC Act, 1989
Appointing	Governor	Provincial	Governor	Governor in

Authority of Chairman and Members		Government		consultation with the Chief Minister
To whom advice be sent	Governor	Provincial Government	Governor	Not Specified
Membership from	50% ⁸ Past G-21 officers One Retired Judge from (Superior Judiciary) One Retired Officer n/b Major General (or eq) One Woman One Retired Govt G-20 Technologist	Not specified*	Not specified Except at least one Woman	Not specified
Right of Appeal	Yes	No	Yes	Yes
Term of Office	3 years	5 years	3 years	5 years
Age Restrictions	Not over 65 years	Not specified*	Not over 65 years	Not below 55 years
Ineligibility for further employment	Omitted vide Notification dated 11.02.2012	None	Not be eligible for further employment in the Service of Pakistan upon ceasing to hold office	Not be eligible for further employment in the Service of Pakistan upon ceasing to hold office
Re-employment	No	3 years	No	N/A
Oath	Chairman & Members	None	Chairman & Members	None
Report	Yearly	Yearly	Yearly	Yearly
"Test" Definition per respective Functions Rules	include written examination; psychological test, appraisal of record, interview and viva voce	include either one or more from amongst the following as determined by the Commission, (a) written examination (b) interview (c) viva voce	include single paper screening test in the relevant field/general knowledge and interview/ viva voce	include written examination, interview and viva voce
(Functions) Rules	The Punjab PSC (Functions) Rules, 1978	The Sindh PSC (Functions) Rules, 1990	The KPK PSC (Functions) Rules, 1983	The Balochistan PSC (Functions) Rules, 1995

*Sindh Public Service Commission (Appointment of Chairman and Member) Rules 2017 have attempted to make some provisions for these matters, however in the absence of any statutory provisions left void in the principal Act, enforceability of conditions imposed by these 2017 Rules are questionable at the Constitutional plane, according to one view.

24. An examination of the above Table shows that Sindh Public Service Commission has **alarming anomalies** as it is the only Public Service Commission in Pakistan, where,-

- (i) the Provincial Government appoints Chairman and Members of the Commission;
- (ii) the Commission is answerable to the Provincial Government;
- (iii) No right of appeal is provided to an aggrieved person;
- (iv) the candidates could be selected only on the basis of Interview or *Viva Voce*;
- (v) No restrictions on the age of the Members/Chairman of the Commission by the principal statute;
- (vi) Members can be reappointed for an additional term of 3 years; and
- (vii) where (other than Balochistan) neither the Members nor the Chairman is required to take an oath of the office.

25. Before we proceed any further, we find it pertinent to study the work of M.A. Muttaub titled "Study of the Indian Union Public Service Commission" Osmania University, Hyderabad, 1967 where he examined as to how far the Public Service Commission as an

⁸ This high proportion of the official members, also kept similarly by the Sindh PSC (Appointment of Chairman and Members) Rules, 2017, has been long challenged on the ground of obsolescence, because as per one school of thought, the longer the period a person has been in government service, the more conservative he becomes and develops the whims, caprices and even the idiosyncrasies of that class; gets out of touch with public opinion and the changing needs of the society. This percentage is critical as composition of a Public Service Commission tends to serve two important purposes of a service agency: (a) to act as the "expert authority" on service matters with which it is concerned; and (b) at the same time to tender advice along **non-partisan lines**. Ideally the system is recommended to combine the specialist and the generalist approaches, avoiding both excessively narrow specialization and superficial familiarity with specialized aspects of personnel functions.

independent institution has been able to fulfil its important role as an **impartial and expert adviser** to the governments and as a **watchdog of the merit system**. J. Khosla Director of the Institute writes about the just reasons behind creating a Public Service Commission in the following words:

”It would be interesting to recall that the main objective sought to be achieved when a Public Service Commission was first set up in India in 1926 was to protect from all personal influences recruitments to the All India Services... In order to assist Governments to maintain and manage an efficient public service, the Constitution has created Public Service Commissions and endowed them with status and dignity. To the authors of the Constitution the existence of an independent Public Service Commission was an essential prerequisite for securing good administration”. [Underlining is ours]

26. To ensure that **merit alone is the criterion in the management of the public service** a Public Service Commission is to protect the administration against the possible excesses of democratic institutions by furnishing it with an impartial instrument by which Government, whatever its political complexion, may give effect to its policies. Furthermore, by securing independent consideration of service matters, it helps the Executive in maintaining an essential balance between politics and bureaucracy, a basic problem of democratic administration — the problem implicit in the political scientists’ phrase “*political sterilization of civil servants*”, as M.A. Muttaub writes.

27. Being part of British India where under the Government of India Act 1935; India, Pakistan and later on Bangladesh inherited the same administrative structure and civil service system, Bikram Biswas chose to examine these three regimes in his paper titled “Composition of Public Service Commission in Three Developing Countries in South Asia” ISSN 2409-6938 Vol.22-2016 thoroughly looking at weaknesses and strengths of Public Service Commissions of these countries, however no such study is available on the comparison of Federal Public Service Commission *viz-a-viz* the four provincial Public Service Commissions of Pakistan. The famous article written on the subject by Shahid Javed Burki titled “Twenty Years of the Civil Service of Pakistan: A Reevaluation” published in Asian Survey Vol. 9, No. 4 (April 1969) by University of California Press makes a good reading as to the *near collapse* of Civil Service in Pakistan after the Oct-1958 incident.

28. Coming back to the issue of **political neutrality** of a Public Service Commission, extensive material and research work is available^{9 10 11} on this issue. In fact, the very purpose of creating a Public Service Commission as discussed in the foregoing was to keep public servants away from the clutches of the politicians (Lee Commission *supra*)¹². It’s a well-preserved truth that public servants ought to act in the course of their duties in a politically neutral manner. This includes the requirement to act impartially while implementing the Government’s policies¹³. Since the Northcote and Trevelyan Report of 1864, civil service neutrality has been a *sine qua non* of a permanent civil service¹⁴ across the globe. If there were a general belief that political motivation existed within the civil service on a large scale, not only would the system be placed under strain, **but it would in fact need to be fundamentally altered**¹⁵.

⁹ <https://www.oecd.org/gov/39125861.pdf>

¹⁰ Pakistani Bureaucracy and Political Neutrality: A Mutually Exclusive Phenomenon? By Maryam Tanwir and Shailaja Fennell, The Pakistan Development Review, Vol. 49, No. 3 (Autumn 2010), pp. 239-259 (21 pages) Published by: Pakistan Institute of Development Economics, Islamabad

¹¹ The Politics of Civil Service Reforms in Pakistan by Andrew Wilder Journal of International Affairs, Vol. 63, No. 1 (Fall/Winter 2009)

¹² The paramount importance of securing as members of the Commission, men of the highest public standing, who will appreciate the vital and intimate relationship which should exist between the State and its servants. These Commissioners should be detached so far as practicable from all political associations and should possess, in the case of two of their number at least, high judicial or other legal qualifications. These should be men of the highest public standing detached so far as practicable from all political associations.

¹³ <https://www.publicservice.govt.nz/resources/political-neutrality-guidance/>

¹⁴ Civil Service Neutrality by Robert Hazell, Ben Worthy and Mark Glover by Springer ISBN 978-1-349-32124-7

¹⁵ Committee on Political Activities of Civil Servants 1978: para. 69, quoted in Daintith pp. 1999: 90

29. Provincial Government(s) having a lesser tenure (maximum of 4 years) are held to be a customer of a Commission that has to recruit Public Servants for more than 40 years, hence both these institutions have divergent interests and are globally kept away from each other in the interest of political neutrality of such Commissions. It is for that reason at the Federal level appointments of the Members and Chairmen of the respective Public Service Commissions are made by the President and in the province of Punjab and KPK, the appointments of the Members and Chairmen of the respective Public Service Commissions are made by the Governors and not by the Provincial Governments. Coming to the province of Sindh, at this juncture its worth examining **whether the Government of Sindh was even competent to make such appointments** or not? This aspect could be determined with absolute certainty by examining the Sindh Government Rules of Business, 1986 made under the provisions of Article 139(3) of the Constitution of the Islamic Republic of Pakistan, 1973. Rule 5(ii) of these Rules provides as under:-

“Notwithstanding the provisions made in these rules, where in terms of any provision of the Constitution any function is to be performed or any orders have to be issued by the Governor in his discretion, the department concerned shall submit the case to the Governor through Chief Minister in the form of a self-contained, concise and objective Summary titled as SUMMARY FOR THE GOVERNOR stating the relevant facts and points for decision prepared on the same lines as those prescribed in these rules for a summary for the Cabinet except that only one copy will be required which may not be printed. This procedure will not, however, be applicable where the case is initiated by the Governor himself and decided in consultation with the Chief Minister. **The cases to which this sub-rule applies are enumerated in Schedule-III.** [Emphasis supplied].

30. Schedule – III (created under Rule 5(ii)) is reproduced in the following, from where it could be seen that under her own Rules of Business, Government of Sindh is incompetent to make appointments of the Chairman and Members of Sindh Public Service Commission, as power of making such appointments rests with the Governor of Sindh, per Sr. No. 3 of the said Schedule.

SCHEDULE - III Rule 5 (ii) LIST OF CASES TO BE SUBMITTED TO THE GOVERNOR FOR ORDERS IN HIS DISCRETION		
Sr. No.	Cases	Article of Constitution
1	Appointment of the Chief Minister	130(2A)
2	Appointment of Household staff at the Governor's House	
3	Appointment of Chairman and Members, Sindh Public Service Commission	
4	Dissolution of the Provincial Assembly as provided under the Constitution	112(2)
5	Appointment of care-Taker Cabinet with the Previous approval of the President	105(3)
6	Appointment of Chief Administrator Zakat	
7	Appointment of Chairman and Members, Zakat Council	

31. At this juncture it would not be out of place to examine contents of Sindh Public Service Commission (Appointment of Chairman and Members) Rules 2017 made under Section 10 of the Sindh Public Service Commission Act, 1989, however only so made after the judgment rendered in the case of SUO MOTU ACTION REGARDING ELIGIBILITY OF CHAIRMAN AND MEMBERS OF SINDH PUBLIC SERVICE COMMISSION AND OTHERS (*supra*) where the Hon'ble Supreme Court directed Government of Sindh to make these Rules whilst holding that:-

“12. While hearing these proceedings, we have noticed that the Commission created under Article 242 of the Constitution is a constitutional body responsible for recruitment in public sector. The Act empowers the Sindh Government to appoint the Chairman and Members of the Commission, for which no formal mechanism for their selection has been

delineated. Section 10 of the Act provides that the Government should make rules for carrying out the purposes of the Act, but till date no such rules have been framed by the Government for determining the mode through which the Chairman/Members would be selected although there is reference of qualification under section 3 of the Act, providing the eligibility of the Chairman and Members which needs further clarity by the rules stipulating the mechanism. The wisdom behind the provision of Section 10 empowering the Government to frame rules appears to be that the posts of Chairman and Members, which is left at the discretion of the Government under the statute, has to reach out such a group of eminent and dignified personalities who would otherwise not apply for these posts. The Chairman/Members of this constitutional body, who enjoy the constitutional protection, need to be selected from amongst noble individuals possessing incomparable competence, exalted caliber, unblemished track record, impeccable integrity and unquestionable impartiality. They should be the persons who can be entrusted with the responsibility of selecting the most deserving candidates who will be holding key positions in the public sector a decade down the path.

13. The application of ultimate wisdom in selection of the Chairman and Members of the Commission is extremely important, as it should have been a symbol of excellence, which is at the brink of losing its traditional grace. We have also noticed the controversy recently generated by the examinations/interviews and recommendations undertaken by the Commission headed by the Chairman namely Muhammad Saleem Bhanour, which was talk of the town.

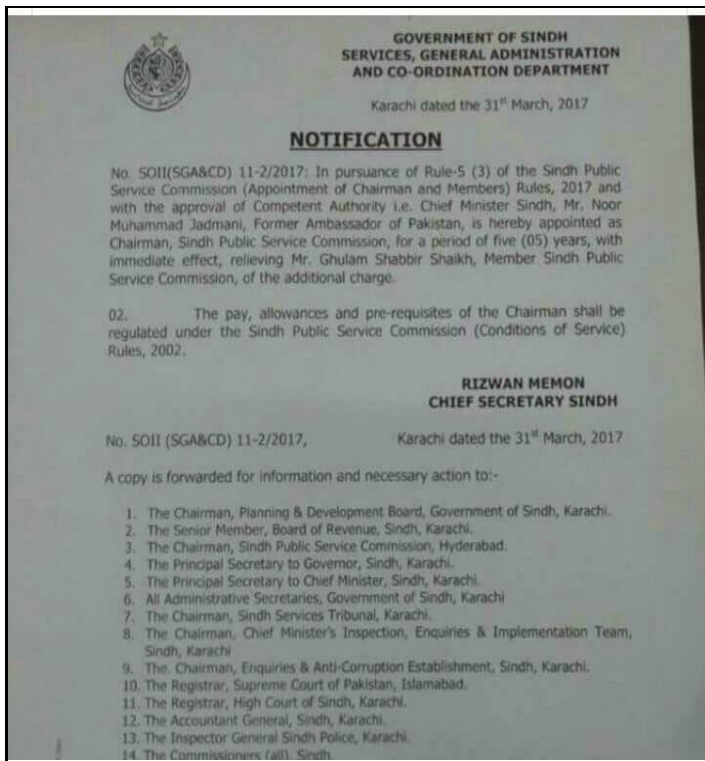
14. The appointment of the Chairman and Members of the Commission has far reaching effects as observed by us hereinabove and the inherent disqualification that we have noticed in their appointments was willfully overlooked by the relevant forum, as there is no yardstick provided for scrutinizing the caliber of the persons before their appointment. The discretion of the competent authority in making the appointments of the Commission needs to be structured through the rules, which need to be framed by the Government in terms of section 10, suggesting a high-powered permanent committee to examine the service profiles of the Chairman and Members to be selected under section 3(3) and the qualifying standards provided therein. Likewise, the high-powered committee needs to scrutinize the eminence of the persons in the private sector before the selection as Member in consonance with the terms used in section 3(4) of the Act.

15. This Court in the case of *Muhammad Yasin v. Federation of Pakistan* (PLD 2012 SC 132), which view was affirmed in the case of *Muhammad Ashraf Tiwana v. Pakistan* (2013 SCMR 1159), has provided the guidelines for appointment to the public office, which read as follows:-

"(a) whether an objective selection procedure was prescribed; (b) if such a selection procedure was made, did it have a reasonable nexus with the object of the whole exercise, i.e selection of the sort of candidate envisaged in [the law]; (c) if such a reasonable selection procedure was indeed prescribed, was it adopted and followed with rigour, objectivity, transparency and due diligence to ensure obedience to the law".

16. These guidelines should be made basic criteria for appointment to the office of Chairman and Members of the Commission. The proposed rules need to be framed in a manner where the selection to the posts of Chairman and Members should be transparent and confined to the persons who enjoy high standards of integrity and honesty. The rules should further provide that the proposed appointee has a clean service record without any adverse entry in his P.E.Rs throughout his career."

32. It seems that under Rule 5(2) of these Rules, 2017, the Chief Minister Sindh is not only given powers to select the intended candidates, he under Rule 5(3) has even been empowered to issue the notification of such appointment for which he is neither competent nor qualified under the Rules of Business. Ironically, in utter disregard of such *de facto* disability and in excess of any statutory authority, Notifications of such appointments have been made over the years to the extent the current Chairman of the Commission was so notified on 31st March 2017 by the following Notification:-



33. Now coming to Sindh Public Service Commission (Functions) Rules, 1990. The conscious effort to deviate from intent and purpose of a fair merit-based recruitment process is also evident in these Rules. While Section 7(1) of the Sindh Public Service Commission Act, 1989 prescribe the function of the Commission to **conduct tests and examinations** for recruitment for initial appointments, the Functions Rules, 1990 have completely twisted this key ingredient chosen to describe functions of the Commission under Rule 3(1) to conduct **tests for initial recruitment**. The difference between 'examination' and 'test' is that of mountain and a rock. A test is usually a smaller and less imperative assessment as compared to an examination. With a test one can measure intermediate knowledge level of a student intermittently in order to adjust the learning material accordingly to ensure that the student learns the subject as per the course contents, whereas an examination is the end result of students' knowledge acquired after classes and tests calibrations to see whether the student has learned enough and has gained the sufficient knowledge to declare him a pass or fail, and in the latter case the student has to retake the examination. A good teacher adjusts his/her course material according the results of the tests they give. So students can improve. The results can point the educator to the parts of their course material that aren't clear or well understood. Or whether the student needs some extra attention so they could pass the final examination. Hence intents, purposes and methodologies of conducting test and examinations are totally different. It is also worth pointing out that the original 1926 Function Rules provided recruitments to be made on the basis of examination with or without viva voce. The Oxford dictionary and other sources compare "test" and "examination" as under:

	Test	Examination
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Definition per Oxford Dictionaries	A procedure intended to establish the quality, performance, or reliability of something, especially before it is taken into widespread use.	A detailed inspection or study. A formal test of a person's knowledge or proficiency in a subject or skill.
Description	An assessment to see how much one remembers or understands.	An inspection to see how well one is doing, i.e. how proficient it or they are.
Type	Noun, verb	Noun
Etymology	Late Middle English (denoting a cupel used to treat gold or silver alloys or ore): via Old French from Latin testu, testum 'earthen pot', variant of testa 'jug, shell'. The verb dates from the early 17 th century.	Late Middle English (also in the sense 'testing (one's conscience) by a standard'): via Old French from Latin examination(n-), from examinare 'weigh, test.'
Types	Class test Blood test Medical test	Class examination (Education) Physical examination (Medical)
Formality	More informal	More Formal
Assessment	Checks shorter period of study, e.g. a few lessons	Checks longer duration of study, e.g. end of the year examinations
Medical	Short assessment to test for something specific, e.g. blood test	Longer, more general test just to ensure that nothing is wrong, e.g. physical examination.

34. The apparent mischievousness doesn't stop here. While defining the term "Test" in Rule 2(g) of the Functions Rules 1990, the scope of test has been capriciously narrowed down to mere Interview/Viva Voce. The fundamental difference between test and interview is that, while the objective of testing is to let a candidate pass through an exercise by which analysts or other individuals make a nonjudgmental assessment of the candidate's individual's skills or his suitability for some specific task/job, whereas interviewing relies on the judgment of the individuals who are conducting the interview. As a result there is a great danger that if an interviewer has lesser knowledge than the least knowledge of a candidate being interviewed, as he may pass the candidate notwithstanding that the candidate's knowledge of the subject was lot lesser than what the job requirement demanded. Hence narrowing down examination to a test, and then a test to an interview, is an extremely slippery path which will always yield to errors in selection of candidates in contrast to the job requirement. Wished that the said merit-slaughtering recruitment process would have stopped here however, our attention is immediately drawn towards Rule 6 of the Functions Rules, 1990 where the interviewing panel may comprise of mere **two individuals**. From the above disclosure, it can be (sadly) concluded that The Functions Rules, 1990 are in gross violation of the provisions of the 1989 Act, and it is no wonder candidates selected with this *tunnel vision* would hardly be a fit for job anticipated from them.

35. The legal principal **Interest republicae ut sit finis litium** enshrines that it is advantageous to the public that there be an end to litigation. It requires courts to take steps bringing an end to litigation in public interest. In the case at hand every new examination, test and results thereof opens a flood gate of litigation as there are inherent and fundamental errors in the legal foundations of the Commission detailed in the foregoing. Courts in these circumstances are armed with the power to force the legislative organ of the government that laws ultra vires to the Constitution and Rules of Business are stripped of the Code. In this regard we must not fail mentioning Article 4(1) of the Constitution of the Islamic Republic of Pakistan titled Right of individuals to be dealt with in accordance with law, etc. which provides that it is every citizen's inalienable right to enjoy the protection of law and to be treated in accordance with law. To be treated in accordance with law, in our humble view, also includes right to be treated fairly, as law is nothing but fairness and certainty¹⁶. Article 27 of the Constitution also leads us to the belief that when considered for appointments, every citizen should be treated equally, and be given fair opportunity to participate in the selection process at least (unless restricted by the law itself). We see that Sindh Public Service Commission has over the years failed to provide equal playing field and fair opportunities to the youth, resulting in mushroom growth of litigation, least to say.

36. At this juncture we wish to address the issue of the fiduciary duty of law makers. As seen from the foregoing, law makers are bound under Article 4 of the Constitution to only make laws aimed to foster fairness and public good. The Constitution mandates law makers to act as fiduciaries, i.e., persons who has a duty, created by their undertaking to act for the benefit of their constituents as they voluntarily seek and assume such positions and take oath to support the Constitution. Upon them willingly assume the responsibility of representing people, people trust them with public money, property, liberty and fair implementation of laws. In the case of Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (2012 PLD 1089 SC) where the petitioner sought disqualification of members of Majlis-e-Shoora (Parliament) and Provincial Assemblies having dual citizenship the Hon'ble Supreme Court held that "all State authority was in the nature of a "sacred trust", and its bearers should therefore be seen as fiduciaries. Parliamentarians, while acting as trustees and the chosen representatives of the people, take decisions which were often of grave consequence for the protection of the economic, political and over-all national interests of the people where foremost obligation of a fiduciary was to show complete loyalty to the principal and to scrupulously avoid situations which might create a conflict of interest in the performance of such duty. Constitution inter alia required constitutional functionaries including members of the National Assembly, Senators and members of Provincial Assemblies to act "*always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan.*" (Third Schedule of the Constitution). In the most respectable paper published on this topic titled "Politicians as Fiduciaries"¹⁷ D. Theodore Rave writes that "*political representatives should be treated as fiduciaries, subject to a duty of loyalty....courts can thus check incumbent self-dealing in gerrymandering by taking a cue from corporate-law strategies for getting around their institutional incompetence. As in corporate law, courts should strictly scrutinize incumbent decisions that are tainted by conflicts of interest (such as when a legislature draws its own districts). But when the taint is cleansed by a neutral process (such as an independent districting commission), courts should apply a much more deferential standard of review. The threat of searching review should serve as a powerful incentive for legislators to adopt neutral processes for redistricting, allowing a reviewing court to focus not on the substantive political outcomes, but on ensuring that the processes are free from incumbent influence — a role for which they are institutionally well-suited*". It could be thus safely drawn from the foregoing that law makers should be tested with the same litmus test which courts use while scrutinizing deeds of the corporate and public sector leaders with regards their fiduciary duties to run

¹⁶ The Constitution, Government and Politics in India By Patil S.H. Vikas Publishing House Pvt. Ltd.

¹⁷ Harvard Law Review, Vol. 126, p. 671, 2013 Theodore Rave

affairs on behalf of the shareholders. In exact circumstances, the Hon'ble Supreme Court in the case of Sabir Iqbal v. Cantonment Board Peshawar (2019 PLD 189 SC) held that Courts mandated to guard the legality of the acts of the executive was competent to perform judicial review over these acts while examining that whether they fulfilled the tests of proportionality. The Apex Court held that such acts be seen as part of fiduciary duty of the executive, from which the administrative duty of fairness and administrative reasonableness were derived and demanded administrative proportionality as well". We sadly see that while making the subject Sindh Public Service Act, 1989 and Sindh Public Service Commission (Functions) Rules, 1990 thereunder, a serious breach of fiduciary duty casted on the legislators is witnessed.

37. Last but not least, some discussion on Courts' power to strike down laws is also important in the present context where we are intending to do so. Courts' have assimilated such powers at least from 1918 when the US Supreme Court for the first time struck down a federal law regulating child labor¹⁸. Our Supreme Court most recently in the case of Sui Southern Gas Company Ltd v. The Federation of Pakistan (2018 SCMR 802) dilated on the possibility of the Courts setting aside laws failing to pass the test of constitutional scrutiny. A more detailed discussion on the issue could be found from the study of the famous case of Lahore Development Authority v. Imrana Tiwana (2015 SCMR 1739) details not included here in the interest of brevity. In the case of Baz Muhammad Kakar v. The Federation of Pakistan through Ministry of Law and Justice (2012 PLD SC 923) the Hon'ble Supreme Court passed orders striking down the Contempt of Court Act, 2012. Hence this court finds itself competent to safely charter this path.

38. Having come to the irresistible conclusion that, when **(a)** the framers of the Constitution consciously chose to abstain from making provisions for mandatory creation of Public Service Commission; **(b)** the Chief Minister of Sindh having no powers to appoint Chairman and Members of the Commission under Rule 5(ii)/Schedule-III/Entry(3) of the Sindh Government Rules of Business 1986; **(c)** the appointments of Chairman and Members of the Commission made under Rule 5(2) and (3) of Sindh Public Service Commission (Appointment of Chairman and Member) Rules 2017 being violative of the Rules of Business and made with utter disregard to the maintenance of political neutrality of the Commission; **(d)** No right to appeal having been provided to an aggrieved person; **(e)** Chairman and Members having taken no oath of office; **(f)** function of "Examination" of candidates restricted to Testing and then narrowed down to Interviewing under the Sindh Civil Servants (Functions) Rules, 1990 being *ultra vires* to the provisions of 1989 Act; **(g)** no Annual Reports as required by Section 9(1) of the Act, 1989 having been made available to the Public; **(h)** no data having been made available with regards advice refusal of the Commission under Section 8 of the Act, 1989 then how could one expect that any legit and useful fruit could be borne by this skewed and merit-throttling recruiting process; that's why Courts are kept engaged by Commission's Members and operatives constantly on a permanent basis since inception of the Commission in the year 1989 when the said Act was enacted for no Constitutionally compelling reasons in the presence of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974; the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975; the Sindh Civil Servants Act, 1973 and half a dozen alike laws/rules; and whereas, the Province (to a great extent) had been well served by honest, qualified and motivated civil servants before 1989 when this institution in its present form was born - according to one view, to serve as "**one window facility to foster whole-sale corruption**", has lost every shred of legitimacy and ought to be brought to a nullity in its present form. Accordingly for these reasons:

- (i) Implementation of Sindh Public Service Commission Act, 1989 (in its present form) being *ultra vires* to the Constitution, Sindh Public Service Commission (Appointment of Chairman and Member) Rules

¹⁸ Hammer v. Dagenhart, 247 U.S. 251 (1918)

2017 being violative of the Sindh Government Rules of Business, 1986; Sindh Public Service Commission (Functions) Rules, 1990 being *ultra vires* to the Sindh Public Service Commission Act 1989 are suspended forthwith.

- (ii) All test, interviews, selection, appointments, tenders etc. or any act doable under the Sindh Public Service Commission Act, 1989 or the Rules/Regulations made thereunder are suspended forthwith. Individuals suspended by our order dated 15.04.2021 shall remain so.
- (iii) In case the Provincial Government wishes to re-enact these laws/rules, it may draw some inspiration from such laws enacted in developing countries like Australia¹⁹ or New Zealand²⁰ to deliver the premise of “**right man/woman for the right job**” without fear or favour.
- (iv) In the meanwhile, all new recruitments **strictly on merit** be made in the same manner as those appointments were made prior to the enactment of the Sindh Public Service Commission Act, 1989, as if the said Act never existed.
- (v) In view of the foregoing, results and proceedings ensued in respect of Combined Competitive Examination 2018 are set aside and cancelled.
- (vi) Results of the 1,783 posts of Medical Officers & Women Medical Officers (BPS-17) purported to be appointed through advertisement dated 19.07.2018 are set aside and cancelled.
- (vii) The Petitioners, affecties and all those interested to apply to the concerned departments for the relevant jobs after these departments place *de novo* advertisement in accordance with law for such appointments and the department(s) to consider received applications purely on merit, following all applicable formalities.

Let a copy of this order be sent to all Heads of Departments listed in Column 4 of Schedule-I (Rule – 3 (i)) of the Sindh Government Rules of Business, 1986 forthwith and let website of the Sindh Public Service Commission (where none of the laws, rules or regulations pertaining to the Commission were made available) be immediately taken off the Internet.

Judge

Judge

¹⁹ <https://www.legislation.gov.au/Details/C2019C00057>

²⁰ <https://www.publicservice.govt.nz/>