

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 2368 of 2017

Khalid Hussain Moosani v. Province of Sindh and others

Before:

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

Date of hearing: **29-03-2022**

Date of decision: **29-03-2022**

Mr. Niazuddin N. Memon, Advocate for the Petitioner.
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

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ORDER

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioner has sought the following prayers:

- (a) *To direct the Respondents to produce the record of successful candidates of Police Constable before this Honourable Court in order to ascertain the truth that who successfully qualified the tests and who could not qualify the same and to whom the appointment orders have been issued by secrete way without issuing the Final Merit List.*
- (b) *To direct the Respondents to issue appointment order to the Petitioner for his recruitment to the post of Police Constable, as he has successfully qualified the required tests, and the Respondent No.4 issued appointment orders to the candidates who secured less marks than the Petitioner.*
- (c) *To grant any other relief, which this Honourable Court deems fit and proper in circumstances of the case.*
- (d) *To award the costs of this Petition.*

2. Learned Counsel for the Petitioner has contended that the Petitioner had qualified in the written test and appeared for interview and it is his case that despite passing the same, neither the results of interview were announced; nor any appointment letters were issued. He has further argued that directions be issued to produce all results of the interview and thereafter appropriate appointment order be issued in favour of the Petitioner.

3. On the other hand, learned AAG has opposed this Petition on the ground that as per comments of the Respondents, the Petitioner has failed in the interview / viva voce examination; hence, no case is made out and the Petition is liable to be dismissed.

4. We have heard the Petitioner's Counsel as well as AAG and perused the record.

5. It appears that pursuant to some job vacancies, an advertisement was published and the Petitioner applied and was called for physical fitness test which he qualified and thereafter was called for pre-interview written test which again was qualified by the Petitioner. It is his case that he had qualified in the interview; whereas, despite being successful in the interview, neither results have been announced nor any justification has been given as to non-issuance of appointment letters. On the other hand as per comments of the Respondents, the Petitioner appeared before the Selection Board / Interviewing Committee; but his performance before the said Board / Committee was unsatisfactory; hence, he has not been able to pass the interview / viva-voce examination.

6. As to the facts so pleaded on behalf of the Petitioner, it appears that though he did pass his written test, but admittedly as per comments, he was unsuccessful in the interview and therefore, a question arises as to how and in what manner any right accrues to him to claim appointment by filing this Petition. It has also been alleged that unfair means were adopted in the appointment process and others have been appointed. As to alleged illegal appointment of others, it would suffice to observe that neither those persons have been joined as Respondents; nor any specific prayer has been made to this effect. In that case either the Petition was required to be amended or after withdrawal permission should have been obtained to file a fresh Petition. None of these has happened and therefore, we cannot look into this aspect of the matter as it would seriously prejudice others.

7. As to the result of the interviews being illegal and subject to challenge in these proceedings, we have not been able to persuade ourselves as to how the relief being sought can be granted in respect of Viva-voce/Interview Examination of the Petitioner, in which, according to him, he ought to have been declared successful, whereas, the Respondents have failed him, as apparently the verbal response of the Petitioner in a Viva-voce Examination and Interview cannot be looked into by us in our Constitutional jurisdiction,

as it is entirely dependent on the factual determination and the contention of the parties. Even otherwise, what answer is given by a candidate in an Interview/Viva-voce Examination, the same is a matter of verbal response and no record is apparently required to be maintained by the concerned appointing authority. In these circumstances, we are of the considered view that this Petition is not maintainable. Reliance in this regard may be placed on the case reported as Muhammad Ashraf Sangri v. Federation of Pakistan (2014 SCMR 157), wherein the Hon'ble Supreme Court has been pleased to observe as under:

“Essentially an interview is a subjective test and it is not possible for a Court of law to substitute its own opinion for that of the Interview Board in order to give the petitioner relief. What transpired at the interview and what persuaded one member of the Board to award him only 50 marks in something which a Court of law is certainly not equipped to probe and to that extent we cannot substitute our own opinion with that of the Interview Board. Obviously if any mala fides or bias or for that matter error of judgment were floating on the surface of the record we would have certainly intervened as Courts of law are more familiar with such improprieties rather than dilating into question of fitness of any candidate for a particular post which as observed above is subjective matter and can best be assessed by the functionaries who are entrusted with this responsibility, in the present case, the Public Service Commission. For this proposition the case of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani (2012 SCMR 1198) can be referred to.”

8. Accordingly, Petition being misconceived is hereby **dismissed**.

J U D G E

J U D G E

Abdul Basit