

**HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**CP No. D- 94 of 2023**

[Maryam Khan versus Province of Sindh & Ors]

**CP No. D- 95 of 2023**

[Asad Ali versus Province of Sindh & Ors]

**BEFORE:**

**MR. JUSTICE MUHAMMAD JUNAID GHAFAR  
MR. JUSTICE ADNAN-UL-KARIM MEMON**

Mr. Muhammad Humayoon Khan, Advocate for petitioner(s)  
Mr. Rafiq Ahmed Dahri, Asstt: A.G.  
Rasool Bux Hingoro, Assistant Director, SPSC

Date of hearing  
& order : 21.03.2023

**ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Through listed petitions, the petitioners have impugned the letters issued by the Sindh Public Service Commission (SPSC) whereby their candidature for the post of Lecturer (English) in the College Education Department (BS-17) has been rejected.

2. Facts of the matter as disclosed in the memo of the petition are that, respondent- SPSC through its consolidated Advertisement dated 24.11.2019 invited applications for various posts in the Education & Literacy Department, Government of Sindh and the petitioners applied for the post of Lecturer (English) against Urban quota and accordingly they were issued Admission Slip and later on they appeared in the pre-interview written test held on 14.3.2021, and as per press release dated 11.3.2022 issued by respondent- SPSC, the petitioners were declared as successful candidates. It is also claimed that petitioners also fulfilled all other requisite formalities; however, vide impugned letters dated 19.9.2022 and 18.10.2022, their candidature was rejected on the ground that they had failed to submit the required degree of BS-English / documents within the closing date i.e. 10.01.2020. The vires of said letter were assailed by the petitioners through Departmental Appeals before respondent No.2 which were also dismissed orally.

3. Mr. Muhammad Humayoon Khan learned counsel for the Petitioners argued that once the Petitioners were allowed to appear in the written test and declared successful candidates, a vested right has been created in their favor to participate in the interview. Per learned counsel, this is not the requirement of law, if, the documents are submitted at belated stage as they had qualified for the subject exam before the cutoff date as envisaged in the advertisement, however, their degree was issued belatedly by the university due Covid-19 pandemic, as such they were not at fault. Learned counsel argued that the petitioners participated in the competitive process and were declared successful candidates vide press release dated 11.3.2022; besides this court allowed them to appear in the interview vide order dated 7.2.2023 and the respondent commission has to announce the result. In support of his contentions, he relied upon the judgment rendered by Hon'ble Supreme Court in the case of Jahanzaib Malik Vs. Baluchistan Public Procurement Regulatory Authority and others (2018 SCMR 414).

4. Mr. Rafiq Ahmed Dahri learned Assistant AG has raised the issue of maintainability of the captioned Petitions and argued that the Petitioners did not qualify for the terms and conditions as outlined in the advertisement. He further argued that in case of large number of candidates, the SPSC allows the candidates to appear in the examination to save time. But, such an appearance would be subject to scrutiny of eligibility of the candidates. He added that by no means, the appearance of candidates and their passing of examination would create a vested right in their favor when the candidates are found to be ineligible in the scrutiny process, after the written test; that respondents have processed the scrutiny of the documents of the Petitioners after written test as per law and no illegality has been committed by scrutinizing the record; that Petitioners were provisionally allowed to appear in the examination for the post of Lecturer (English) in the College Education Department (BS-17) and it was mentioned in the Admission Slip of the Petitioners that their eligibility would be determined after the professional test. He supported the impugned letters and prayed for dismissal of the Petitions.

5. We have heard learned counsel for the parties and perused the material available on record with their assistance.

6. First of all we take up the issue of maintainability of the Petitions under Article 199 of the Constitution. We are of the view that the grievance of the Petitioners does not relate to the terms and conditions of service, but they have

sought relief of appointment; therefore the Petitions are not barred by Article 212 of the Constitution and are maintainable before this Court.

7. The question raised in the present petitions is whether the Petitioners possess the required qualification for the subject post to claim the right to participate in the competitive process initiated by SPSC on 14.11.2019?

8. To address the aforesaid proposition, we have to look into the matter in its entirety. A perusal of record depicts that the Petitioners were given offers to appear in the examination on the condition that they have to produce the degree and other documents on or before the commencement of pre-interview written test. Admittedly, the Petitioners appeared and were declared successful in the written examination. However, Sindh Public Service Commission after the written test conducted scrutiny of the record of the Petitioners and found that at the time of the written test, the Petitioners were not awarded degree Certificates i.e. before the cut-off date. Therefore, the Petitioners were held to be not eligible for the subject post and their candidature was declined accordingly.

9. We have scanned the file, prima-facie, it appears that the petitioners had supplied the requisite documents at the stage when the scrutiny process was set in motion and as such, their right to participate in the interview ought not to have been taken away by the respondents merely on technical basis; therefore, the rejection of candidature of the petitioners is against the dicta laid down by Hon'ble Supreme court in the case of Jahanzaib Malik vs. Balochistan Public Procurement Regulatory Authority through Chairman Board of Directors and others (2018 SCMR 414). The facts of Jahanzaib Malik's case are identical to the facts of the case in hand, wherein the following principle has been laid down:-

“7. There is no denial of the fact that the petitioner was at the top of the list on the basis of his performance in the test and interview. Further, he was selected on the basis of his MBA degree. The documents examined by us also indicate that the petitioner has completed his degree in January, 2014 with an cumulative Grade Point Average (“GPA”) of 3.19. However, the degree was formally issued on 7th of March, 2015 for reasons beyond the control of the petitioner. The degree itself shows that the petitioner has successfully completed the requisite coursework and examination in the academic year 2014. The transcript issued by the Institute of Business Administration, Karachi also verifies the fact that the petitioner had completed his degree in January, 2014. That being the case, Respondents Nos.1 and 2 were justified in considering the petitioner as duly qualified on

the basis of his MBA degree from IBA. 8. The fact that the degree was formally issued in year 2015 is not in the facts and circumstances of the present case of much significance. The degree itself shows that the petitioner had successfully completed the requisite coursework and examination in the academic year 2014. This is further substantiated by the Transcript of Credit issued by the Institute of Business Administration, Karachi which shows that the petitioner had completed his degree in January 2014 with a cumulative GPA of 3.19.”

10. From the above, we infer that the degree certificates issued in favor of the Petitioners were before the cutoff date i.e 10.01.2020, as per the extended date of submission of applications in terms of advertisement, thus we conclude that merely submission of aforesaid documents with SPSC with a little bit delay, if any, does not disqualify them to appear in the interview until it is shown that the Petitioners were / are suffering from inherent disqualification. This being the position coupled with the fact that the exercise of jurisdiction by this court under Article 199 of the Constitution is purely discretionary and meant to foster the cause of justice and fair play, we do find the valid reason for our indulgence in the matter.

11. Learned AAG, thus in our view has failed to justify the impugned action of the respondent-SPSC; therefore, we are of the considered view that the Petitioners have made out a case for their participation in the interview being otherwise eligible and in pursuance of the order dated 7.2.2023 they appeared in the interview and their result is only awaited to be announced for the aforesaid posts.

12. As a result of foregoing discussion, we dispose of the instant petitions along with pending application(s) with directions to the competent authority of SPSC to announce the result of the Petitioners for the post of Lecturer (BS-17) which was withheld in terms of order dated 7.2.2023, and if they are successful their cases shall be recommended for appointment.

13. These constitutional petitions stand allowed of in the above terms.

JUDGE

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