

**ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS**

Constitution Petition No.D-710 of 2024
(*Ghulam Murtaza Vs. Province of Sindh & others*)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Date of hearing & Order 12.08.2024

Mr. Munawar Ali Dal, advocate for petitioner a/w petitioner
Mr. Ayaz Ali Rajpar, A.A.G Sindh

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ORDER

Adnan-ul-Karim Memon, J. Through the instant Petition, the petitioner seeks direction to respondent No.02 to rectify the error in reducing his marks obtained in the written test from 46 to 37 and 44 to 32 for the post of Primary School Teacher BPS-14 (PST) and Junior Elementary School Teacher BPS-14 (JEST). He also seeks direction for the preparation of a fresh tentative list and his appointment on the subject post under the Teachers Recruitment Policy 2021.

2. The case of the petitioner is that the petitioner applied for both PST and JEST positions advertised by the Sindh Education and Literacy Department in February 2021. Aptitude tests were conducted by the Sukkur Institute of Business Administration (SIBA) Testing Services.

3. Initial results showed the petitioner scoring 46 marks for both PST and JEST. Subsequently, the petitioner's portal was blocked, and upon regaining access, the marks were reduced to 37 and 32 respectively. The qualifying threshold for both positions was set at 40 marks. The significant reduction in marks without a clear explanation raises questions about the accuracy and reliability of the scoring process. The unexplained blocking of the petitioner's portal and the subsequent alteration of marks indicate potential procedural irregularities. Due to the reduced marks, the petitioner failed to meet the qualifying threshold for both positions and this a reason the petitioner has approached this Court.

4. Potential submissions of the petitioner are that the sudden and unexplained reduction in marks constitutes a breach of fair play and good faith principles. The blocking of the petitioner's portal and the subsequent modification of marks without due process or notice can be considered procedural irregularities. In this regard, the petitioner is seeking the issuance of the writ of mandamus to compel the respondents to rectify the alleged errors and declare the correct marks obtained by him.

5. The petitioner's counsel raises points that denying access to examination records potentially violates the petitioner's right to information under Article 19-A of the Constitution of Pakistan. The counsel argues that SIBA's refusal to provide examination records allows drawing an adverse inference against them under this Article. He added that this means that since SIBA is not showing the evidence, the court could issue such a direction unfavorable to them. He added that SIBA is admitting manual checking of results opens the door for the court to verify the petitioner's marks against the answer key and exam sheet (assuming they are authentic). The counsel highlights that SIBA doesn't deny reducing marks initially, further strengthening the petitioner's case. SIBA's lack of substantial evidence to justify their actions weakens their position, he asserted.

6. The Assistant Advocate General (AAG) has submitted that SIBA Testing Services was brought into the case without proper justification. SIBA Testing Services is not responsible for reducing marks. The candidate's answer sheets have been verified both electronically and manually, and the marks awarded are correct. The candidate scored below the required 40 marks in both JEST and PST, thus not qualifying for additional marks based on their B.Ed. and M.Ed degrees. There is no basis for the legal challenge. The marking process was fair and accurate. The candidate simply did not meet the qualifying criteria. He further argued that the petitioner has secured 37 marks in JEST and 32 marks in PST out of 100. Now, he is asking for more marks and he intends to receive the offer letter for Junior Elementary School Teacher (BPS-14) & Primary School Teacher (BPS-14) in the School Education and Literacy Department, Government of Sindh. However, it is the policy of the Government of Sindh that the candidate must have to pass the written test on cut off 40 marks to obtain the additional marks on their professional degree i.e.,

B.Ed., and M.Ed. as per School Education and Literacy Department, Government of Sindh recruitment policy, which he failed a such this petition is liable to be dismissed.

7. We have considered the contentions advanced by learned counsel for the parties and have gone through the material available on record with their assistance.

8. The present case raises the question of whether merely passing a written test and interview creates any right/interest in the favour of the candidate and secondly whether such result can be challenged in the constitutional jurisdiction of this Court.

9. It is a settled principle of law that merely qualifying for the test/interview does not create any vested right for appointment to a specific post in favor of the candidate. In principle, an interview is inherently a subjective evaluation, and a Court of law does not have jurisdiction to substitute its opinion with that of the testing/selection Board to provide relief to anyone. The role of the testing/selection Board is to evaluate candidates based on a variety of subjective criteria, which may include interpersonal skills, presentation, and other intangible qualities that are difficult to measure objectively. These assessments are inherently qualitative and depend on the opinion of interviewers, who are appointed for their expertise and ability to make such evaluations. However, this does not mean that the decisions of the Selection Board are beyond scrutiny. If there were any indications of malafides, bias, or significant errors in opinion that are apparent from the record, the Court would certainly be compelled to intervene.

10. It is an admitted position that the petitioner failed to pass the written examination, which was a mandatory requirement. The written test measures a candidate's knowledge and expression skills but does not evaluate important personality traits like communication skills, leadership qualities, and decision-making abilities. These traits are assessed during the interview. The interview process allows evaluators to see how candidates interact and respond in real-time, offering a complete picture of their suitability for the job. In the instant case, however, the petitioner failed to pass the written examination as he did not meet the necessary

standards in the test, merely saying that his marks were reduced is not grounds to seek indulgence of this Court for directions to the respondents to correct their error if any, because there are so many candidates, who secured the higher marks than the petitioner could be accommodated first, but in the present case, petitioner has not placed on record any tangible evidence to show that earlier his marks were 40 in both the tests, which were subsequently changed in absence of such documentary evidence, this Court cannot come to rescue the petitioner at this stage when much water has flown under the bridge.

11. We have carefully examined the comments and find that the reasoning advanced by the respondent department is justified and plausible. Learned counsel for the petitioner has failed to point out any illegality or infirmity, hence, no case for interference has been made out. Consequently, this petition, being devoid of merit, is dismissed along with pending applications (if any).

JUDGE

JUDGE

“Ali Sher”