

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. Ps. No. D - 404,

424, 431, 440, 441, 446, 447, 452, 454, 457, 458, 462, 485, 492, 497, 498, 500,
504, 515, 526, 527, 532, 535, 537, 542, 549, 555, 556, 557, 571, 579, 589, 607,
620, 626, 631, 659, 680, 682, 708, 717, 728, 731, 736, 755, 783, 806, 828, 869,
872, 912, 921 & 964 of 2023

Date	Order with signature of Judge
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Before:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Petitioners:

Ali Hassan and others Through M/s. Sohail Ahmed Khoso, Sheeraz Fazal, Muhammad Raza Soomro, Achar Khan Gabol, Shabbir Ali Bozdar, Sundar Khan Chachar, Farhan Ali Shaikh, Farman Ali Rajput, Muhammad Aslam Gadani, Amanullah Bugti, Abdul Naeem Pirzada, Asadullah Arbani, Athar Hussain Abro, Deedar Ali M. Chohan, Hamid Ali Memon and Ajeebullah Junejo, Advocates

Federation of Pakistan:

Through **Mr. Ashfaque Hussain Abro**, Assistant Attorney General

Province of Sindh:

Through **Mr. Ali Raza Baloch**, Assistant Advocate General

Date of hearing: 24.08.2023

Date of Order: 31.08.2023

ORDER

ARBAB ALI HAKRO, J: Through this common order, we intend to dispose of captioned petitions as similar law questions, facts, and almost identical relief(s) are involved.

2. The matters in hand are related to the appointment of Prison Constables in the Sindh Prison & Corrections Service Department, Government of Sindh, besides facts of a similar nature are narrated in the memo of captioned petitions. Precisely, the Respondents invited applications for

appointment of Prison Constables (BPS-05) in Sindh Prison & Corrections Service Department, Government of Sindh, through consolidated advertisement published in Daily newspaper "Kawish" having cut of date i.e. 22.08.2022 for submission of applications. In pursuance of publication, ibid, the petitioners applied for the post of Prison Constable and submitted their testimonials documents accordingly. Thereafter, petitioners were called for physical test, scheduled to be held on 23.10.2022 at Sukkur, wherein the petitioners appeared and were declared successful, and results were also announced online. Subsequently, a date for the written test was announced, in which, likewise, the petitioners appeared and were declared successful candidates and obtained the highest marks against the passing ratio expressed for successful candidates. After being declared successful, petitioners were called for an interview, i.e. viva-vice, at the office of Inspectorate General of Sindh, Prison and Correctional Services, Pir Illahi Buksh Road, Muslimabad, Karachi on 02.02.2023, where they appeared; however, inspite of securing highest marks in former stages, i.e. physical as well as written test, their names were not flashed in the merit list issued by the Respondents, consequently such acts are challenged by the Petitioners, claimed to be illegal, unlawful and unconstitutional, hence these petitions.

3. At the very outset, learned Counsel representing the Petitioners, submit that the petitioners have successfully cleared physical as well as written tests and had secured the highest marks; despite that they were declared unsuccessful in the interview, whereas, successful candidates, as mentioned in the final list, are admittedly having lower score than the petitioners; besides such an act appears to be a violation of merit. It is next argued that the act of Respondents to appoint those candidates who obtained less marks than the petitioners seems to be an act of nepotism and favoritism under the influence of the ruling party is illegal, unlawful and in violation of fundamental rights of the

petitioners guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. Learned Counsel further argued that there is a clear discrimination in appointment of candidates having less marks than the petitioners, who have obtained the higher marks than those appointed. Lastly, they argued that the act of the Respondents by not selecting the petitioners for the post of Prison Constables (BPS-05) may be declared as illegal, unlawful and constitutional; besides, directions may be issued to the Respondents to appoint the petitioners for the post of Prison Constable (BPS-05) owing to having obtained highest marks in physical as well as written test, respectively.

4. Conversely, learned AAG, in his arguments, contends that Sindh Police Recruitment Policy, 2022 is not applicable to these cases; besides, allegations raised by learned Counsel for the Petitioners are vague in nature, that no specific case of favoritism or nepotism has been cited on the part of Selection Committee/ Penal; that appointment of 1253 candidates has been made by the Selection Committee transparently on merit basis and no vested right is created in favour of the petitioners. Lastly, he prayed for dismissing captioned petitions being devoid of merits.

5. Learned Assistant Attorney General has adopted the arguments made by learned Assistant Advocate General.

6. We have heard Counsel for the Petitioners, learned Assistant Attorney General, learned Assistant Attorney General and have perused the record with their assistance.

7. The main ground agitated in these petitions by the petitioners is that they secured higher marks in the written test than the successful candidates. However, the Respondents/ Selection Committee malafidely declared them failed in the interview/ viva-vice allegedly due to favoritism

and nepotism, and their second ground is that according to Sindh Police Recruitment Policy, 2022, the petitioners deemed to have secured passing marks in the interview/ viva-vice shall be declared as successful.

8. As far as the first ground of the petitioners that they secured better marks in the written test, but were declared failed in the interview/ viva-vice by the Selection Committee is concerned, merely securing better marks in the written test would not create a vested right in favour of the petitioners unless they have secured required marks in the interview as well. Suffice to say that it is the exclusive domain of the Interview Committee/ Penal to judge a candidate and grant him marks as per its assessment, and this Court in constitutional jurisdiction cannot substitute its opinion for that of the Interview Committee/ Penal. The authority and wisdom of the Selection Committee cannot be challenged, unless gross negligence tainted with malafide is discernible on a mere glance on the record. The Selection Committee is the best Judge at the given time to form an opinion and decide the abilities and capabilities of candidates, their academic knowledge, attitude, aptitude and personal information. This Court will not interfere and thrust its opinion, subsequently, changing the verdict of the Selection Committee, except when it has been other than the capabilities etc, of the petitioners which has weighed with the Selection Committee or where exercise smacks of malafide as noted above. Assessment of candidates is an exercise that is made on the basis of specific criteria, i.e. human judgment or perception and it is mainly based on objective criteria, i.e. which are evaluated and secured at the time of undertaking such exercise and could not be checked or analyzed by this Court through a judicial review. In the case of **ASIF HASSAN and others vs SABIR HUSSAIN and others (2019 SCMR 1970)**, the Hon'ble Apex Court has observed as under:-

“On the other hand, learned Counsel for the respondent No.1 has contended that the respondent as it would appear from the short listed candidates that he was more qualified and had a very long experience and, therefore, the official respondents ought to have given preference to respondent No.1 upon the petitioners. However, we note that the respondent’s objection could neither be examined by this Court nor could have been done so by the High Court for the simple reason that the Court cannot take upon itself the function of the appointing authority in order to judge the suitability of a candidate.”

Similarly, in the case of **ARSHAD ALI TABASSUM vs The REGISTRAR, LAHORE HIGH COURT, LAHORE (2015 SCMR 112)**, the Apex Court observed as under:-

“As far as the contention of the petitioner that he was not recommended for appointment by the committee due to the malice on the part of the members of the Interview Committee for the reason that his services were terminated as Civil Judge on the charge of misconduct, is concerned, suffice it to observe that according to the established principle of law this Court cannot substitute opinion of the Interview Committee on the bald allegation after losing the chance in the interview.”

9. Although the petitioners have also raised the allegations of favouritism and nepotism on the part of Respondents, but it is a mere accusation as no material in support thereof has been produced before this Court. They have rather prayed for declaring the recommendations made by the Respondents regarding 1253 candidates, being discriminatory and violating the law and Constitution, without impeading them as a party.

10. Learned AAG placed on record the breakup of candidates who appeared in an interview and were selected as Prison Constables. Allowing this relief would mean that the persons appointed/ selected based on such recommendation would be placed out of service, although they are not before this Court. Without affording them the opportunity of hearing, admittedly no such order could be passed, which undoubtedly would affect their right.

11. As far as the second ground of the petitioners is concerned, according to Sindh Police Recruitment Policy,

2022, the petitioners are to be deemed to have secured passing marks in interview/ viva-vice. In this regard, it would be appropriate to reproduce the relevant rule, i.e. 4(b)(i) of SPRP, 2022, as under:-

b. Function of SPRB

“The SPRB shall act ‘only’ as policy guideline forum for recruitments to be made in Districts/ Regions/ Ranges of Sindh Police.”

12. The above Rule clearly shows that it only applies to the recruitment of Sindh Police and not to Sindh Prison and Corrections Service Department, Government of Sindh, hence on this point even, we are afraid, the petitioners must fail.

13. Needless to add, the criteria for appointment are to be formulated and fixed by the Selection Committee, and no vested right is created in favour of the petitioners on the basis of grounds raised if they have been declared failed in the interview. Even otherwise, it is settled that Court ought not to intrude in the matters of candidates’ fitness for a particular post as this is best assessed by the functionaries entrusted with the responsibilities, such as the Public Service Commission as held in the case of ***Muhammad Ashraf Sangri vs Federation of Pakistan and others (2014 SCMR 157)***, it has been held as under:-

“136. It is an admitted position that although the petitioner had cleared the written examination but he had failed in the interview/viva voce which was a pre-condition before he could be appointed as a member of the Central Superior Service of Pakistan. It would be seen that the written test is designed essentially to gauge a candidate’s familiarity with the subjects which he has chosen to offer for this purpose plus his power of expression etc. Hence the written test does not gauge the personality of the candidate or his communication skills or his leadership or decision making abilities which are left to be examined at the time of interview. The Central Superior Service of Pakistan is not merely any type of service but should only admit such persons in its fold who have a well-rounded personality, a grasp over

national and international affairs, balanced sense of judgment, maturity and stability, good communication skills and leadership as well as decision making abilities. This is for the simple reason that very important matters of the State and the country are entrusted to the members of the Central Superior Service and if persons of law intellectual quality or feeble personalities enter the same, the entire country suffers. When the petitioner sat for the SSC Examination he knew very well that not only did he have to pass the written test (when he did) but also the interview in which he failed. 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 is 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 (2011 SCMR 1198) can be referred to.”

14. In view of the above discussion and exposition of the law, the petitioners have not been able to make out any case of issuance of desired writ by this Court; therefore, captioned petitions, being devoid of force, are accordingly **dismissed** along with listed applications.

15. Above are the reasons for our short order announced in Court by us on 24.08.2023.

JUDGE