

ORDERSHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.
Constitution Petition No.D-1243 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on Office objection.
2. For Orders on CMA No. 5272/2022 (Ex./A)
3. For hearing of main case.

Present:-
Mrs. Justice Rashida Asad, J.
Mr. Justice Khadim Hussain Soomro, J.

Mr. Amanullah Bugti, advocate for the petitioner.

Mr. Ali Raza Baloch, Assistant Advocate General for
Province of Sindh

Date of hearing: 20-09-2023

Date of Order: 20.09.2023

ORDER

20-09-2023.

KHADIM HUSSAIN SOOMRO, J. Through the instant petition, the petitioner seeks direction to be appointed as constable in BPS-05 in the Sindh Prisons and Correction Service Department, Government of Sindh.

1. Succinctly, the facts leading to invoking extraordinary discretionary jurisdiction of this court are that the petitioner applied for the post of Constable (BPS-05) in the Department of Sindh Prisons and Correction Service (**the Department**) in response to the advertisement published in various Newspapers, including Daily Kawish, for which the closing date for submission of the application was 22-08-2022. He appeared and qualified the physical and written tests announced by respondent No. 02. Subsequently,

an interview was conducted by the respondents, and the petitioner was also called to appear in the interview. But, after the interviews/viva voce of candidates, the final merit list was announced by the respondents, in which the petitioner's name did not appear.

2. Learned counsel for the petitioner submits that the petitioner was called for a physical test (running) on 23.10.2022, and after qualifying the physical test, he was then required to appear in a written test held on 04.12.2022, which he also qualified by obtaining 67.5 marks. He was then asked for an interview at the office of Inspector General of Sindh, Prison and Correctional Services, Pir Illahi Buksh Road, Muslimabad, Karachi on 02.02.2023. Learned counsel for the petitioner further submits that the final merit list, announced by respondent No.03 on 01.03.2023, did not include the name of the petitioner after the conduct of the interview. Per learned counsel, the petitioner obtained the highest marks in the written test, but the respondents did not appoint/select him as constable (BPS-05) and appointed those candidates having less marks than the petitioner in the written test. To sum up, learned counsel contends that the act of not appointing the petitioner as constable (BPS-05) in the Department be declared illegal, unlawful, discriminatory, based on mala-fide, favoritism, nepotism, and in violation of the fundamental rights of the petitioner guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973 and sought the writ of this court to direct the respondents to appoint the petitioner as Prison Constable (BPS-05). Heard the learned counsel for the petitioner and perused the record.
3. Contrarily, the learned Additional Advocate General submits that allegations of discrimination, mala-fide and favoritism levelled by

the petitioner are without any substance and no specific pointaion on the selection committee on account of extending favoritism or nepotism has been made in order to establish such claim; hence allegations made are empty of substance. He further submits that 152 appointments have been made as per merit and transparency. He also submits that the rules encompassed under the Sindh Police Recruitment Policy, 2022, are not applicable to the appointments under these cases. Finally, he prayed for the dismissal of the instant petition being devoid of merits.

4. Reverting to appraising the merits of the instant case, the petitioner qualified the physical and written tests, making him eligible for an interview for the post of Constable (BPS-05). It is a well-settled principle that qualifying the written test itself is not the benchmark for guaranteeing the appointment; rather, it is a pivotal yardstick to shortlist/recommend the competing candidates based on their knowledge for which the post is advertised. Afterwards, the candidates are interviewed to assess proficiency and competency to be recommended or selected for appointment. Therefore, the fitness of a candidate is further scrutinized by the selection board/committee, and accordingly, marks are awarded to the candidates. The petitioner in the instant case so far has failed to point out any prejudice on the part of the selection committee/panel. We are guided by the dicta laid down in the cases of *Asif Hassan v. Sabir Hussain*, 2019 SCMR 1720; further reliance is made on 2019 PLC (CS) 1375.
5. Allegations of the petitioner, inter alia, of nepotism and favoritism is not supported by any material available on record; thus, we find no nexus of these allegations with the rejection of the petitioner in

interview/viva-voce. Petitioner has failed to prove illegality, impropriety or mala-fide on the part of the interviewing panel/committee and under these circumstances, this court can not step into the functions of executives. Needless to reaffirm the Constitutional scheme is based on the trichotomy of powers shared between the Legislature, the Executive and the Judiciary; each has its distinct and separate role to play and to act as a check and balance on the others while operating within its own defined sphere of power. We have sought guidance from the case of *Arsahd Ali Tabassum vs The Registrar, Lahore High Court, Lahore, 2015 SCMR 112*.

6. In the instant case, no defect has been pointed out in the interviewing selection committee, mere expectation of a petitioner to be selected/appointed cannot be attributed to illegality and interference of this court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Reliance is made on *Muhammad Ashraf Sangri vs Federation of Pakistan and others (2014 SCMR 157)*.
7. For the above-stated reasons, this petition having no force is dismissed, with no order as to costs.

JUDGE

JUDGE