

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 658 of 2024

(*Faheem Ahmed Maitlo versus P.O. Sindh & others*)

Present:

Mr. Zulfiqar Ahmad Khan, J.

Mr. Abdul Mobeen Lakho, J.

Date of hearing : **02.10.2024**

Date of decision : **02.10.2024**

M/s Muhammad Haneef Maitlo and Waqar Ali Phulpoto, Advocates for petitioner.

Mr. Liaquat Ali Shar, Additional Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – Mr. Ishrat Ali Lohar, Advocate files *vakalatnama* and preliminary legal objections on behalf of respondents No.1 to 3 / Sindh Public Service Commission ('**SPSC**'), taken on record.

2. Case of the petitioner is that the petitioner appeared in the Combined Competitive Examination-2020 ('**CCE-2020**'), and as per the result, he was declared 'pass' in nine papers out of ten, and the subject wherein he has been declared 'fail' is IR Paper-II, in which he secured 31 against the minimum passing marks of 33. He has alleged that after moving an application to Controller SPSC, he appeared before a Committee where the Committee demanded Rs.60,00,000/- as bribe for issuing him appointment order, and on his refusal, the Committee rejected his application vide order dated 03.04.2024. It is the claim of the petitioner that he had earlier attempted in Combined Competitive Examination-2018, in which he had cleared both the papers of IR-I and IR-II, but due to the mala fide and grudge he has been disqualified by the respondents in CCE-2020. Hence, he has filed this petition.

3. A perusal of the comments filed by the respondents as well as order dated 03.04.2024 passed by the Member SPSC shows that the

petitioner while appearing before the Commission with a view that his case may be considered on the pattern of Federal Public Service Commission ('FPSC') as he has secured 60 out of 100 marks in IR Paper-I while he could get 31 out of 100 marks in IR Paper-II, but collectively, his marks come to be 91 out of 200 i.e. 45.5% cumulative percentage, which is a passing percentage, was confronted with two fundamental documents; one was the syllabus given through the SPSC's website being part of the application for CCE-2020 and the other was SPSC (Recruitment Management) Regulations, 2023 ('the Regulations'). In first document, Note-10 and Note-2, and in the second document, Note No.2 and 8 of Regulation 81 were shown to him.

4. In the first document, Note-10 mentions that no candidate would be summoned for viva voce unless he secures at least 33% marks in each individual paper and Note-2 indicates that there would be two papers of 100 marks each from the subjects carrying 200 marks. The Note No.2 and 8 of Regulation 81 *ibid* are reproduced below:

2. *In Group-I, a candidate has to select one subject carrying 200 marks (Paper I and II, 100 marks each).*
8. *No candidate shall be summoned for Interview unless he/she obtains at least thirty three percent (33%) marks in each individual written paper and fifty (50%) marks in the aggregate of the written portion of the overall examination. No candidate shall be considered to have qualified in the examination unless he/she also obtains at least forty percent (40%) marks in the interview and failure in or absence from interview shall mean that the candidate has failed to qualify for appointment and his/her name will not be included in the merit list.*

5. The Commission in the aforesaid order further held that SPSC is a distinct constitutional entity established under the SPSC Act, 2022, and under its authority as mentioned in Section 13, the Commission has

framed its regulations, managing its process of recruitment, and the functions of SPSC have been laid down in Section 8. Therefore, there can be no way that in presence of expressed statutory provisions, as is the case here, the SPSC is obligated to follow FPSC, and thus application of the petitioner was rejected.

6. It is an admitted position that petitioner has failed by two marks in the IR Paper-II; he moved an application to the Controller of SPSC, on which he was called to appear before the Member SPSC, who passed an order dated 03.04.2024, but he instead of preferring an appeal to the Chairperson of SPSC against that order, as mandated under Regulation 161 of the Regulations, filed this Constitutional Petition on 08.05.2024 after more than one month of passing of the aforesaid order. It is advantageous to reproduce the contents of Regulation 161 *ibid*, which are as follows:

161. Right of Representation & Appeal. *A candidate aggrieved by any decision of the Commission or the nominated Member under the proceeding regulations may, within 15 days of the communication of such decision, prefer a representation addressed to the Chairperson and submitted to the Secretary of the Commission adducing evidence in support of his/her claim. The Secretary, upon receipt of such representation, shall forthwith seek nomination of a Member from the Chairperson. The Member so nominated shall, within the next 15 days, hear the aggrieved candidate, evaluate the evidence produced by him/her, seek any counter evidence or explanation by the concerned Branch/Section of the Commission and announce his/her decision through a speaking order mentioning therein the respective versions of the parties and weighing them against the relevant provisions of law, rules and regulations. Any party aggrieved by the decision of the member may, within 10 days of the announcement of such decision, prefer an appeal to the Chairperson. The Chairperson, upon receipt of the appeal, shall constitute a*

committee comprising at least two Members to hear the appeal. The Member against whose decision the appeal is preferred, shall not be a Member of the Appellate Committee. The Appellate Committee shall, after giving an opportunity of hearing to the parties concerned, dispose of the appeal through a speaking order within the next 10 days. The decision of the Appellate Committee shall be final and binding on the parties.

7. Seemingly, the remedy available under the law has not been availed by the petitioner. This petition is thus **disposed of** along with pending application by giving him opportunity to approach the appellate authority (Chairperson). He to first avail such remedy and let the above authority pass a speaking order on the petitioner's appeal, and if still aggrieved, he may use vehicle of this Court to seek appropriate orders as dictated by law and the Constitution.

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Abdul Basit