

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1181 of 2023

(Farhan Ali Shaikh versus P.O. Sindh & others)

Present:

Mr. Zulfiqar Ahmad Khan, J.

Mr. Khadim Hussain Tunio, J.

Date of hearing : **15.10.2024**

Date of decision : **15.10.2024**

Petitioner Farhan Ali Shaikh, present in person.
Mr. Liaquat Ali Shar, Additional Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – Petitioner, a Junior Clerk, has been posted in the office of Deputy Commissioner, Sukkur since 2013. His claim is that he applied for Revenue Qualifying Departmental Examination ('RQE'), Session March/April 2023, to be conducted by the Sindh Public Service Commission ('SPSC') as per advertisement letter dated 13.03.2023. His application and the applications of other 08 candidates were forwarded by the Additional Deputy Commissioner-I, Sukkur to the Secretary (Revenue), Board of Revenue Sindh, Hyderabad through its letter dated 12.04.2023. It is alleged that on 01.08.2023, slips of 06 candidates were received in the office of Deputy Commissioner, Sukkur. However, neither any slip nor any rejection letter in favour of the petitioner was received. The petitioner moved an application before respondent No.6 with a copy to respondents No.1 and 4 for ascertaining the reason of not issuing his slip, but he did not receive any reply; hence, this petition.

2. Respondents No.1 and 2, in their comments have mentioned a letter dated 09.08.2023, whereby they informed the petitioner that as per provision of Rule XII (i) of Standing Order No.11, a candidate can only be permitted to appear in the RQE for 03 attempts and 4th attempt is only be allowed in case, a candidate must passed / cleared one group in his any previous

attempts. As the petitioner has already availed three normal attempts without clearing any group, he is not eligible for appearance in the RQE for 4th attempt; hence, his request for appearing in the RQE is rejected.

3. The respondents claim to have informed the petitioner about rejection of his application through a letter dated 09.08.2023, alleging that he concealed this from this Court. However, this claim is undermined by the fact that the letter was issued after this Court admitted the instant petition on 07.08.2023, and on the same day when it was, for the first time, fixed before this Court on 09.08.2023. This timing indicates that the petitioner was unaware of any rejection when he filed this petition and had no obligation to disclose it to this Court. Furthermore, the suggestion of mala fides implies that the respondents may not have acted in good faith, as sending the rejection letter after the petition's admission raises questions about their intentions. Overall, this situation highlights concerns regarding the fairness of the respondents' actions and the transparency of their communication with this Court.

4. Respondents have based their case on two orders dated 06.01.2021 and 16.01.2023 passed by a learned Division Bench of this Court at Hyderabad in C. P. No. D-1481 of 2020. The first order dated 06.01.2021 was passed in the following terms:

“Learned A.A.G. files statement signed by Assistant Secretary Board of Revenue Sindh which is incorporated as under:-

“Most respectfully it is submitted on behalf of Board of Revenue Sindh, while determining the Eligibility of Officials of Board of Revenue Sindh for Revenue Qualifying Examination the eligibility criteria fixed in standing Order No.11, Section-E of Revenue Department Sindh shall be strictly followed and no deviation for so ever shall occur in future times.”

At this juncture, learned counsel for petitioners seeks withdrawal of this petition since undertaking has been given by the department; hence, instant petition is disposed of with direction that official respondents shall be bound to act as per statement in case of failure contempt proceedings would be initiated against them.”

5. Seeking review of the above order, an application was filed, which was decided by the second order dated 16.01.2023. It is advantageous to reproduce the relevant portion of that order, which is as follows:

“Upon perusal of the order passed by this Court, which explicitly shows that we simply disposed of the captioned Petition in terms of the statement of Assistant Secretary, Board of Revenue, as well as Additional Controller SPSC. During arguments, we have been informed that Special Permission to appear in Revenue Qualifying Examination, the respondent Revenue Department vide letter dated 03.04.2004 informed the Sindh Public Service Commission to the effect that the Government of Sindh, in Revenue Department has amended Rule XII(I) Section-E of Standing Order No.11 vide Notification No.10-09-2003-Estt:I dated 31.05.2003 inserted the word “not more than three attempts and fourth attempt only in case of an official who has cleared the group in the last examination”. Besides, Standing Order No.11 Section E provides Special Permission.

In view of the above, if the case of petitioners falls within the aforesaid provision of law, the Sindh Public Service Commission shall look into the matter in terms of law, and if the law permits petitioners shall be allowed to appear in Revenue Qualifying Examination as a special case.”

6. A perusal of the aforesaid orders indicates that first order was passed upon an undertaking given by the respondents, which fact has been reflected in the second order observing that the petition was simply disposed of in terms of the statement of the respondents present. Moreover, in the subsequent order, it was observed that **Standing Order No.11 Section E provides Special Permission**, and on the basis of said

observation, the Court held that if the law permits, petitioners shall be allowed to appear in RQE as a '**special case**'.

7. As the respondents have admitted themselves through letter dated 09.08.2023 that the petitioner has already availed three normal attempts and is not eligible for 4th attempt, it means that relaxing the bar of clearing any group in the previous three attempts, the petitioner could have been considered as a special case in view of '**special permission**' provided in the Standing Order No.11, and as per the observations of a learned Division Bench of this Court given in the order dated 16.01.2023 (supra).

8. Now, turning to Standing Order No. 11 of the Revenue Department, where restrictions have been imposed on the candidates in active service regarding their participation in departmental exams. Specifically, it states that the candidates cannot take the exam after three attempts in normal circumstances and/or after four attempts if they have failed to qualify in the previous three, unless they have cleared one group in any of these attempts. This policy raises significant concerns regarding its fairness and constitutionality.

9. Critically, the rationale behind such restrictions appears to undermine the rights of individuals who are committed to their careers and striving for professional advancement. The candidates who have dedicated themselves to their service and have prepared diligently for an examination should not be penalized with a limit on attempts, especially when their ongoing employment demonstrates a commitment to their role and the department. The provision seems to create an arbitrary barrier to career progression, effectively discouraging continuous self-improvement and learning.

10. Moreover, from a Constitutional perspective, the right to seek advancement and better opportunities through examination is a

fundamental aspect of employment rights. Depriving someone of this opportunity based on a limited number of attempts contradicts principles of fairness and equality. The restrictions fail to account for individual circumstances, such as varying levels of preparation, personal challenges, or changes in job responsibilities that may impact performance in these exams. In essence, the policy appears to be unjustified and may be seen as an infringement on the rights of employees to pursue growth within their careers. A more equitable approach would allow for multiple attempts without punitive restrictions, recognizing the effort and dedication of those in active service while fostering a culture of continuous professional development.

11. In light of the above discussion, the petition is **allowed**. The respondents are directed to consider the petitioner as a special case under the current policy and permit him to appear in the RQE. Additionally, it is expected that future developments will align with the observations made herein. Let a copy of this order be sent to the Secretary to Government of Sindh, Revenue Department through learned Additional Advocate General Sindh for information and compliance.

J U D G E

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Abdul Basit