

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-1695 of 2024

Before;

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioners : Muzamill and others
Through Mr. Sohail Ahmed Khoso,
Advocate.

Respondents : Government of Sindh and others
Through Mr. Ali Raza Balouch,
Additional Advocate General Sindh.

Date of Hearing: 04.03.2025.

Date of Judgment: 18.03.2025.

J U D G M E N T

Abdul Hamid Bhurgri, J.- This petition has been instituted seeking the following reliefs:-

- (a) *That this Honourable Court may please to direct the respondents to conduct the competitive exam of 2022 from cut of date 1st September 2021 as the respondents skip the CCE-2022 as per direction of Honourable Supreme Court of Pakistan to conduct CCE on yearly basis.*
- (b) *To direct the respondent to grant age relation to all the candidate of the Province of Sindh.*
- (c) *To direct the respondents to adjust those candidates who were deprived of CCE-2022 in the advertisement of CCE-2024, if they are not giving chance of CCE-2022.*

(d) Any other relief this Honourable Court may deem fit and proper in the circumstances of the instant case.

2. The facts leading to the present petition are that the petitioners, having fulfilled the requisite qualifications, intended to apply pursuant to Advertisement No.09/2023 dated 07.11.2023, issued by the Sindh Public Service Commission (SPSC), Hyderabad. The petitioners wished to apply for various posts in BPS-17; however, due to the upper age limit prescribed in the advertisement, with the cut-off date fixed as 01st September 2023, they were rendered ineligible and consequently could not submit their applications, which has prompted the filing of the present petition.

3. Learned counsel for the petitioners contended that the petitioners sought to apply for posts in BPS-17 across different departments under the Government of Sindh. He argued that the respondent No.3/SPSC had issued an advertisement on 07.11.2023 inviting applications for BPS-17 posts in various departments for the Combined Competitive Examination 2023 (CCE-2023), with the upper age limit (21 to 30 years) to be determined as of 01st September 2023. Since the petitioners had crossed the upper age limit as of that date, as such they were not eligible to apply. The learned counsel submitted that SPSC/Respondent No.3 did not comply with the directions of the Honourable Supreme Court of Pakistan passed in Suo Moto Case No.18 of 2016, wherein Respondent No.3/SPSC was directed to conduct competitive examinations on a regular basis, which they failed to do. He further contended that the respondent ought to have conducted the CCE examination of 2022 based on the cut-off date of 1st September 2021, in line with the directives of the Honourable Supreme Court of Pakistan in the aforementioned case.

He further argued that the upper age limit should be relaxed, allowing the petitioners to participate in the competitive examination. Ultimately, he prayed that the petition may be allowed.

4. Conversely, the learned AAG, representing the official respondents, opposed the petition and contended that the upper age limit of the petitioners cannot be relaxed in view of the notification dated 23.01.2023 issued by the Government of Sindh, Services, General Administration and Coordination Department. According to the learned AAG, the said notification withdrawing the relaxation of the age limit by fifteen years had been issued vide Notification No.SOII(SGA&CD) dated 16th October 2024, to take effect from 1st. January 2025. However, he submitted that the withdrawal shall have no bearing on the present petition as the cases of the petitioners are governed by the earlier notification. The learned AAG further submitted that there was no violation of the directions of the Honourable Supreme Court regarding the timely conduct of competitive examinations, as the delay was occasioned due to the judgment passed on 03.06.2021 in **C.P No.D-2362 of 2019 filed by Asma Mukhdoom vs. Province of Sindh and others** connected administrative reasons. Consequently, the SPSC initiated proceedings on the directions of the Honourable Supreme Court dated 06.09.2022, whereby the CCE 2023 was announced. He further argued that, although the advertisement was published on 07.11.2023, the petitioners filed the instant petition on 24.10.2024; hence, the petition suffers from laches. He also pointed out that the Honourable Court, in **CP No.D-74 of 2024 (Tariq Mubeen vs. P.O. Sindh)**, had dismissed a petition seeking similar relief. He further placed reliance on the judgment of the Honourable Supreme Court in **Civil Petition No. 231 and 183-K/2022 and Civil Petition No. 827 of 2023 (Re Ayaz & Others)**,

wherein similar claims were declined. In the end he prayed for the dismissal of the present petition.

5. Having heard the learned counsel for the petitioners as well as the learned Assistant Advocate General (AAG) and after perusing the available material, the Court proceeds to determine the matter as follows:

6. The primary grievance raised by the petitioners pertains to the alleged failure of the respondents to conduct the Combined Competitive Examination (CCE) 2022 on an annual basis, as mandated by the Honourable Supreme Court in *Suo Motu Case No.18 of 2016*.

7. In response, respondent No.3/SPSC has contended in its comments that in compliance with the directions issued in *Suo Motu Case No.18 of 2016* on 13.03.2017, the CCE has been conducted on a regular basis. However, the CCE for the year 2022 could not be held due to administrative reasons and on account of the judgment dated 30.06.2021 passed in ***CP No.D-2362 of 2019 (Asma Mukhdoom & Others v. Province of Sindh & Others)*** by the Honourable High Court of Sindh, Hyderabad. It was only after the SPSC resumed its functions following the directions of the Honourable Supreme Court, vide order dated 06.09.2022, that the CCE 2023 was duly announced. Respondent No.3/SPSC has sufficiently justified its inability to conduct the CCE on an annual basis through its reply, which provides plausible reasoning. It can thus be safely concluded that there exists no element of malice or ill intent on the part of the SPSC in delaying the CCE examination. The contention raised by the petitioners' counsel, alleging malafide conduct on the part of the respondents for failing to conduct the annual examination, lacks merit and is without substance.

Consequently, no irregularity or illegality is found on the part of respondent No.3/SPSC.

8. The other relief sought by the petitioners is the grant of an age relaxation to enable them to participate in the examination. Upon examining the relevant statutory provisions, it is observed that The Sindh Public Service Commission (Recruitment Management) Regulations, 2023 govern the process. Regulation 8(6)(a)(ii) stipulates that:

“(i) A candidate must be a graduate from a recognized university;

(ii) A candidate must not be less than twenty-one (21) years of age and not more than thirty (30) years of age as of 1st September of the advertisement year.”

9. A plain reading of the aforementioned provision establishes that respondent No.3/SPSC has adhered to the procedure prescribed under the applicable statute, which is lawful, just, and proper. Therefore, this Court finds no basis to declare the said process as illegal or tainted with mala fide intent, as such an act would amount to unwarranted judicial overreach.

10. Furthermore, it is an established principle that judicial intervention in policy matters must be exercised with caution, ensuring that governance remains within its constitutional domain without undue interference. The judiciary plays a crucial role in upholding citizens' rights and ensuring checks on executive action. However, excessive judicial overreach may pose risks to governance and democratic stability. A delicate balance must be maintained to ensure that all three branches of the government function effectively within their constitutional limits. Judicial interference should, therefore, be limited to instances requiring legal

interpretation and must not unduly encroach upon executive or legislative discretion. In the case of ***Mian Irfan Bashir v. Deputy Commissioner (D.C) Lahore and others reported in PLD 2021 SC 571***, the Honourable Supreme Court has held as under:-

“Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. This is totally uncharacteristic of the role of the judiciary envisaged under the Constitution and is most undesirable in a constitutional democracy. Judicial overreach is transgressive as it transforms the judicial role of adjudication and interpretation of law into that of judicial legislation or judicial policy making, thus encroaching upon the other branches of the Government and disregarding the fine line of separation of powers, upon which is pillared the very construct of constitutional democracy. Such judicial leap in the dark is also known as “judicial adventurism” or “judicial imperialism”. A judge is to remain within the confines of the dispute brought before him and decide the matter by remaining within the confines of the law and the Constitution. The role of a constitutional judge is different from that of a King, who is free to exert power and pass orders of his choice over his subjects. Having taken an oath to preserve, protect and defend the Constitution, a constitutional judge cannot be forgetful of the fact that he himself, is first and foremost subject to the Constitution and the law. When judges uncontrollably tread the path of judicial overreach, they lower the public image of the judiciary and weaken the public trust reposed in the judicial Institution. In doing so they violate their oath and turn a blind eye to their constitutional role. Constitutional democracy leans heavily on the rule of law, supremacy of the Constitution, independence of the judiciary and separation of powers. Judges by passing orders, which are not anchored in law and do not draw their legitimacy from the Constitution, unnerve the other branches of the Government and shake the very foundations of our democracy”.

11. The Honourable Supreme Court in cases of ***Muhammad Anwar v. Government of Khyber Pakhtoonkhwa reported in***

2019 SCMR 1021 and in case of Mubarik Ali Babar reported in 2023 SCMR 518 had conclusively held that grant of upper age relaxation is not absolute right and remains subject to the discretion of the relevant authorities.

12. Having considered the foregoing, we have also examined the judgment rendered in *Tariq Mubeen v. Province of Sindh, reported in 2025 PLC (C.S.) 136*, which constitutes a precedent horizontal ('stare decisis'). The reliance is placed in **C.Ps No.2314, 2317 and 2318 of 2022 (Muhammad Hamid Mughal vs. Fazal-e-Subhan and others)** in which the Honourable Supreme Court has observed as under:-

“The doctrine of Stare Decisis is a Latin term that connotes “let the decision stand” or “to stand by things decided”. Similarly, the Latin maxim Stare decisis et non quieta mover means ‘to stand by things decided and not to disturb settled points’. This represents an elementary canon of law that Courts and judges should honour the decisions of prior cases on the subject matter which maintains harmony, uniformity and renders the task of interpretation more practicable and reasonable while adhering to it for resolving a lis based on analogous facts”.

13. Since the facts and circumstances of the present petition are identical to those in the aforementioned case of **Tariq Mubeen v. Province of Sindh**, there exists no reason to deviate from the earlier judgment.

14. In light of the above discussion, this Court, after thoroughly evaluating the material available on record, finds no element of mala fide intent on the part of the respondents. Consequently, the present petition is devoid of merit and is, therefore, dismissed along with all pending applications.

Judge

Judge

ARBROHI