

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Saleem Jessar;

Mr. Justice Abdul Hamid Bhurgri.

C.P No.D-2516 of 2025

[Syed Naeem Hussain Shah V. Province of Sindh and others]

Petitioner : Through Mr. Qaim Ali Memon, Advocate.

Respondents 1 to 3 : Through Mr. Ali Ahmed Zaidi, Additional Advocate General Sindh.

Date of Hearing : 18.08.2026

Date of Order : 18.08.2026

J U D G M E N T

Abdul Hamid Bhurgri, J.- Through this Constitution Petition, the petitioner has prayed as under:-

- (a) *To direct the respondents for appointment of petitioner for the post of police constable in CTD. Sindh Police.*
- (b) *To declare that petition(er) has passed NTS examination two times, physically test as well as running test hence, he is entitled for the post of police constable in CTD. Sindh Police.*
- (c) *Or any other relief which this Hon'ble Court may deem fit and proper in favour of petitioner.*

2. The case of the petitioner is that he applied for the post of Police Constable in the Counter Terrorism Department [CTD], Sindh Police, Karachi, through NTS. He appeared in the written test on 24.12.2016 and was subsequently declared successful on 16.01.2017. According to the petitioner, despite having qualified the written, physical and running tests, he was not appointed. He thereafter approached the respondents on several occasions and also invoked the jurisdiction of the Provincial Ombudsman, Karachi South, for redressal of his grievance. His case; however, was not considered for appointment as he had secured 24.5 marks in the interview against the prescribed qualifying marks of 25. Hence, he has filed the instant petition seeking the reliefs reproduced above.

3. The respondents have filed comments, wherein they have stated that although the petitioner qualified the written test, he failed to obtain the minimum qualifying marks in the interview. According to them, the qualifying marks for the interview were 25 out of 50,

whereas the petitioner secured 24.5 marks and, therefore, did not qualify for appointment.

4. Learned counsel for the petitioner submits that the petitioner had successfully cleared the written, physical and running tests, but fell short of the qualifying marks in the interview by only half a mark. Learned counsel further contends that the respondents have declared successful certain candidates who had secured fewer marks in the written test than the petitioner. According to him, this demonstrates that the selection process was arbitrary and that undue favour was extended to preferred candidates (“blue-eyed boys”), thereby depriving the petitioner of his legitimate right to appointment. He further submits that, considering the marginal shortfall of only half a mark in the interview, the respondents ought to have condoned the same. He, therefore, prays that the petition may be allowed and the respondents may be directed to consider the petitioner for appointment by condoning the deficiency of half a mark in the interview.

5. Conversely, learned Additional Advocate General Sindh submits that passing the interview was an essential component of the recruitment process and that the petitioner admittedly secured 24.5 marks against the prescribed minimum of 25 marks. He further submits that neither the applicable recruitment rules nor the recruitment policy provides for rounding off or condonation of a deficiency in the qualifying marks. Therefore, according to him, no direction contrary to the prescribed recruitment criteria can be issued and the petition is liable to be dismissed.

6. We have heard learned counsel for the petitioner as well as learned Additional Advocate General Sindh and have examined the material made available before us on record.

7. It is an admitted position that the petitioner did not secure the prescribed qualifying marks in the interview. He obtained 24.5 marks against the minimum requirement of 25 marks. The entire case of the petitioner, therefore, rests upon the plea that the deficiency of half a mark ought to be condoned. We are unable to accept such contention. Neither any rule, policy nor other legal provision authorizing the appointing authority to condone or round

off the deficiency in qualifying marks has been brought to our notice. Once the recruitment criteria prescribe minimum qualifying marks for a particular stage of the selection process, the Court, in exercise of its constitutional jurisdiction, cannot alter, relax or substitute such criterion in favour of an individual candidate in absence of any enabling provision. Such a course would amount to rewriting the recruitment criteria after completion of the selection process and may also operate to the prejudice of other candidates who were similarly situated but did not approach the Court.

It is equally well settled that constitutional jurisdiction is available for enforcement of an existing legal or fundamental right; it cannot be invoked to create a right which does not otherwise exist under the applicable law or recruitment policy. The petitioner, having failed to qualify one of the prescribed stages of the selection process, did not acquire any vested or indefeasible right to appointment merely because he had successfully cleared the preceding stages. No mala fide, discrimination or departure from the prescribed criteria has been established from the record which may justify interference by this Court

8. It is trite law that securing higher marks in the written test does not, by itself, create a vested right to appointment unless the candidate also fulfills the prescribed criteria in the interview and other stages of the selection process. An interview is intended to assess qualities which may not necessarily be measurable through a written examination, including personality, aptitude, communication skills, judgment, maturity and overall suitability for service. This principle has been succinctly explained by the Hon'ble Supreme Court in case of **Asif Hassan and others v. Sabir Hussain and others (2019 SCMR 1970)**, by observing as follows:-

“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 case of **Arshad Ali Tabassum v. 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.”

Further guidance is available in case of **Muhammad Ashraf Sangri v. Federation of Pakistan and others (2014 SCMR 157)**, where the Hon’ble Supreme Court has 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 low 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.”

The ratio of the above judgments squarely applies to the present case. The petitioner has neither challenged the recruitment criteria itself nor demonstrated that the prescribed qualifying marks were applied selectively or discriminatorily. His request is essentially that the Court should direct relaxation of the prescribed qualifying marks exclusively in his favour, for which no legal foundation has been shown.

9. There is yet another independent aspect which disentitles the petitioner to the exercise of discretionary constitutional jurisdiction. The recruitment process in question pertains to the year 2016, whereas the present petition has been instituted in the year 2025, after a lapse of approximately nine years. No satisfactory or plausible explanation for such extraordinary delay has been furnished. Learned counsel has submitted that the petitioner had approached the concerned authorities and the Provincial Ombudsman; however, mere representations or pursuit of remedies which do not result in any subsisting legal proceeding cannot, by themselves, keep a concluded recruitment process alive indefinitely or satisfactorily explain such prolonged delay. Recruitment processes necessarily attain finality, appointments are made, candidates join service and rights of third parties intervene. Reopening such a process after nearly nine years, in the absence of exceptional circumstances or a continuing legal right, would defeat the requirement of finality in public appointments.

10. The petition is, therefore, also hit by the doctrine of laches. While delay by itself may not operate as an absolute bar in every case under Article 199 of the Constitution and has to be examined in the circumstances of each case, a person invoking the extraordinary and discretionary constitutional jurisdiction of this Court is nevertheless required to approach the Court with reasonable diligence and to satisfactorily explain an inordinate delay.

In case of ***Ahmed and 25 others Vs. Ghama and 5 others*** (2005 SCMR 119), Hon’ble Supreme Court of Pakistan has held as under:

“There is not cavil with the proposition that existence of laches is sufficient for dismissal of petition in limine”.

Likewise, in case of ***Asghar Khan and 5 others v. Province of Sindh through Home Secretary Government of Sindh and 4 others (2014 PLC (C.S) 1292)***, it was held as under:-

“We feel no hesitation in our mind to hold that the petition is hit by laches. The consideration upon which the court refuses to exercise its discretion where the petition is delayed is not limitation but matters relating to the conduct of parties and change in the situation. Laches in simplest form mean failure of a person to do something which should have been done by him within a reasonable time if remedy of constitutional petition is not availed within reasonable time the interference can be refused on the ground of laches. Even otherwise, grant of relief in writ jurisdiction is discretionary, which is required to be exercised judiciously. No hard and fast rule can be down for the exercise of discretion by the Court for grant refusal for the relief in the exercise of extra ordinate jurisdiction”.

In case of ***State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others (PLJ 2012 SC 289)***, the Hon’ble Apex Court has held as follows:-

“---Laches was a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its endorsement, if it was found by the Court of law that its case was hit by the doctrine of laches/limitation---Right remains with the party, but he cannot enforce it---Limitation is examined by the Limitation Act, 1908 or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of Limitation/laches, same right then vests/accrues in favour of the opposite party.”

The Hon’ble Supreme Court in case of ***Jawad Mir Muhammad and others v. Haroon Mirza and others (PLD 2007 SC 472)***, has held as under:-

“Article 199. Constitution petition. Laches. Principles. Laches per se is not a bar to the constitutional jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case. Question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing constitutional petition, the same cannot be

overlooked or ignored subject to facts and circumstances of each case”.

Likewise in case of **Chairman PCSIR v. Dr. Mrs. Khalida Razi (1995 SCMR 698)**, the Hon’ble Supreme Court observed as under:-

“Article 185. Constitution of Pakistan 1973, Employee's Constitutional petition before High Court suffered from gross laches. Such fact by itself was sufficient to deny her relief sought in the constitutional petition. Anyone seeking restoration to the office from which he/she had been removed in an illegal manner was required to show some measure of diligence which had been entirely wanting in the case”.

In the present case, no circumstance has been shown which could justify overlooking a delay of approximately nine years, particularly when the recruitment process stood concluded long ago and the petitioner had admittedly failed to secure the minimum qualifying marks in the interview.

11. For the foregoing reasons, we are of the considered view that the petitioner, having failed to secure the prescribed qualifying marks in the interview, acquired no vested or enforceable right to appointment. In the absence of any rule permitting condonation or rounding off of the deficiency of half a mark, no direction can be issued to the respondents to relax the prescribed recruitment criterion in his favour. Even otherwise, the petition, having been filed approximately nine years after the recruitment process, without any satisfactory explanation for such inordinate delay, is hit by laches.

Consequently, the instant petition, being devoid of merit as well as hit by gross and unexplained laches, is dismissed along with the listed application(s), if any.

JUDGE

JUDGE
HEAD OF CONST. BENCHES