

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Yousuf Ali Sayeed

Mr. Justice Abdul Mobeen Lakho

C.P. No.D-5367 of 2025

[Himat Aliv..... Govt. of Sindh & others]

Date of Hearing : 15.12.2025

Petitioner through : M/s. Muhammad Haseeb Jamali, Muzamil Hussain Jalbani, Gulzar Ahmed Soomro, Yasir Khaskheli, Syed Raza Mamnoon and Muhammad Nawaz, Advocates.

Respondents through : Mr. Abdul Jalil Zubedi, AAG a/w Mr. Agha Mustafa Durrani & Mr. Alqamah Bin Mehmood, Advocates.

Mr. Gada Hussain Abro, Incharge Additional MIT-I, High Court of Sindh, Karachi. Mr. Waseem Ahmed, OSD, Sindh High Court, Karachi.

ORDER

Abdul Mobeen Lakho, J:- This petition raises a conundrum as to whether petitioner being a contesting candidate for the competitive examination for the post of Civil Judge cum Judicial Magistrate is entitled for the grace marks of two defective questions?

2. The grievance raised in the memorandum of petition in brief is that the Petitioner having fulfilled the eligibility criteria for the post of Civil Judge cum Judicial Magistrate¹ appeared in the competitive examination reported to have held on 19th October, 2025 and secured 48 marks out of 100. Per petitioner, two questions being question No. 74 and 96 were out of course which fact was also admitted by the Respondents but despite that, he wasn't awarded the grace marks which were unanimously awarded to the contesting candidates.

¹ BPS-18, per advertisement published by the High Court of Sindh on 20th January, 2024, available at page 27 of the file.

Having faced such fact, the petitioner approached to the Respondent No.4 but he wasn't redressed, hence this petition was filed.

3. Having received the petition at hand, notices/summons were issued to the Respondents and in deference the notices the Respondents filed their respective comments denying the averments of the petitioner. The crux of comments filed by the Testing Service as well as Respondent No. 2 is that the initial criterion for passing the threshold was securing at least 50% marks, however, after discovery of two defective questions, the marks for both the erroneous questions were excluded from the count and the passing threshold was recalculated as 49 but the petitioner having awarded the two marks regarding the subject two defective questions was standing at 48 marks, hence not entitled for the second subjective test and was declared as "Failed" in the list, published and uploaded at the official websites of respondents.

4. Mr. Muhammad Haseeb Jamali, learned Counsel entered his appearance on behalf of petitioner and premised his case on the argument that petitioner secured 48 marks in multiple choice questions (MCQs) test but two questions being question No.74 and 96 were out of course which fact was admitted by the Respondent No.4 and in this regard two marks were awarded to every candidates, but petitioner was discriminately not awarded these two grace marks and if these two marks are awarded, the petitioner would definitely fall within the successful criteria of 50% marks for the second written subjective test, therefore, necessary directions in this regard are solicited. While concluding his submissions, learned counsel placed reliance on the precedents rendered in the case of Tehseen Mazhar v.

Vide Chancellor, University of Punjab, Lahore² and Aqib Javed v. Higher Education Commission of Pakistan³.

5. Learned AAG assisted by the official present in Court articulated at the outset that the petition as presented is not maintainable on the premise that the actions/policies of the Respondent No.1 are immune from challenge under the prescriptions of Article 199 of the Constitution, therefore, petition is liable to be dismissed on this score alone, however, on merits, learned AAG introduced on record that the marks which are being claimed regarding the two defective questions have already been awarded to the petitioner and now the petitioner stand at 48 marks and thus declared failed. The petitioner on both counts i.e. merits as well as maintainability of petition, not entitled for the discretionary relief, hence the petition be dismissed.

6. We have appreciated the arguments of the respective learned counsel and have also considered the law to which our surveillance was solicited. At the very outset, it is an admitted position on record that two questions i.e. Question Nos. 74 and 96 were subsequently found to be defective / out of course⁴. As a consequence thereof, the competent authority, in accordance with the established criteria governing the selection process, excluded the said questions from consideration. Resultantly, the total number of questions for the purpose of result compilation was reduced from 100 to 98 and the passing threshold was recalculated at 49 marks, representing 50% of

² PLD 2008 Lahore 19.

³ 2021 MLD 1559.

⁴ Letter dated 19.10.2025 issued by Additional Member Inspection Team-I, High Court of Sindh, available alongwith comments of Respondent No.4, of the court file.

the effective total. It is considered expedient to reproduce the relevant excerpt hereunder:-

“The passing threshold was recalculated at 49 marks (50%) following the determination that two questions were defective. This adjustment was made in accordance with the established criteria from the selection process.

The initial criterion for passing the threshold was securing at least 50% marks, however after discovery of two defective questions, the marks for both the erroneous questions were excluded from the count and the passing threshold was recalculated as 49.

The defective questions were uniformly neutralized for all candidates, and the method adopted did not discriminate against any candidate. The advertisement explicitly stipulated 50% marks as the passing criterion; there was no commitment to the assignment of 100 marks or automatic award of grace marks.

The Answer keys’ for Two (02) Numbers 74 and 96 have been excluded as per the direction of the Honourable High Court of Sindh, Karachi. Consequently the total number of questions considered for result compilation is 98 instead of 100.”

7. The initial criterion prescribed in the advertisement was securing 50% marks. However, upon discovery of the defective questions, the marks allocated to those questions were excluded altogether and the passing benchmark was accordingly adjusted. The record reflects that the defective questions were uniformly neutralized for all candidates and the method so adopted was applied across the board, without any discrimination or preferential treatment to any individual candidate.

8. It is considered illustrative to mention here that the advertisement did not contain any stipulation guaranteeing evaluation on the basis of 100 questions nor did it provide for automatic award of any additional marks in the event of defective questions. The procedure adopted by the respondents strictly adhered to the notified criteria and the principles of equality,

fairness and transparency governing competitive examinations. It further transpires from the record that the answer keys of questions Nos. 74 and 96 were excluded in compliance with the directions of this Court. The said position was duly uploaded on the official websites of the High Court of Sindh as well as Respondent No.4, thereby ensuring due notice and transparency to all concerned candidates. The recalculation of the passing threshold and exclusion of the defective questions was a uniform administrative measure applicable to all candidates alike.

9. Even otherwise, the entire edifice of the petitioner's case rests upon challenging an administrative/executive decision taken by the Hon'ble Chief Justice of this Court in exercise of powers relating to recruitment and examination of Civil Judges. It is a well-settled proposition of constitutional law that administrative and executive actions of the Chief Justice of a High Court, particularly those pertaining to internal administration, examinations and recruitment of judicial officers, are not amenable⁵ to judicial review under Article 199 of the Constitution, unless shown to be tainted by mala fides, lack of jurisdiction or patent illegality. No such exceptional circumstance has been pleaded, much less established, in the present case.

10. The precedents relied upon by the learned counsel for the petitioner are clearly distinguishable on facts and do not advance the petitioner's cause, as those cases pertained to academic institutions and statutory bodies functioning under different legal regimes, whereas the present controversy arises out of an administrative

⁵ *Gul Taiz Khan Marwat v. Registrar, Peshawar High Court (PLD 2021 S.C. 391) and Order dated 21.04.2025 passed by a learned Division Bench of this Court in C.P. No.D-1499 of 2025 (Miss Sana v. Province of Sindh & others) and other connected petitions.*

decision of the High Court itself, approved by the Hon'ble Chief Justice, which enjoys constitutional sanctity and institutional immunity.

11. With regards to the plea of vested right by the petitioner is concerned, a vested right is free from contingencies but not in the sense that it is exercisable anywhere and at any moment. There must always be occasions at which and circumstances under which the right may be exercised. Such rights have peculiar characteristics of their own. Here the petitioner has failed to rationalize any vested right and its violation. So far as plea of discrimination, it always involves an element of unfairness and bias. The factum of bias could not be substantiated without any convincing evidence which the petitioner has failed to bring in this case. A Court of Law cannot exercise unfettered or unrestricted powers to administer equity not based on justiciable foundation but it must be satisfied before exercising its power that some illegal wrong has been inflicted or is about to be inflicted⁶.

12. In view of the foregoing discussion, we find that the petitioner has failed to make out a case for interference. The petition is devoid of merit both on the grounds of maintainability as well as substance, and no case for discretionary relief is made out.

13. It is for these reasons, the instant petition was heard and decided on 15.12.2025 by a short order. Above are the reason of our short order.

Dated:

JUDGE

Adil Arab

JUDGE

⁶ *Ms. Saba v. Province of Sindh & others (2020 PLC (C.S.) 113)*