

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.D-1938 & 1939 of 2025

[Mushraf vs. Province of Sindh and Others]

BEFORE:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE RIAZAT ALI SAHAR

Petitioner is present in person

Mr. Rafique Ahmed Dahri Assistant A.G Sindh a/w Deputy Director
(Recruitment) SPSC Akhlaque Ahmed and Assistant Jabir Jabbar

Date of hearing & decision: 27.11.2025

ORDER

ADNAN-UL-KARIM MEMON J . - Through captioned petitions, the petitioner seeks directions against respondent SPSC to consider him for appointment against anyone post of Assistant Prosecutor General and Assistant District Public Prosecutor respectively (Subject posts). Since a common question of law is involved in both these petitions, as such both are being decided by this single order.

2. The petitioner, a differently-abled person, applied through SPSC Advertisement No. 05/2024 for the post of Assistant Prosecutor General (APG BPS-17) against the 5% reserved quota. He passed the written test on 06.02.2025 with 64 marks, was interviewed in May 2025, but was not recommended in the SPSC press release dated 16.05.2025. His representation under Article 161 RMR 2023 was rejected on 25.06.2025, and his subsequent appeal filed on 10.07.2025, remains undecided. He contends that no seat was allocated for differently-abled persons for the APG post, contrary to the Disabilities Act, 2018 and settled law requiring quota calculation on total sanctioned posts. He further alleges discrimination, noting that candidates with lower written-test marks were given disproportionately high interview marks and that merit details of non-recommended candidates were withheld. He asserts that these actions violate his statutory and fundamental rights. The petitioner has also filed CP No. 1939/2025, stating that he similarly applied through the same advertisement for the post of Assistant District Public Prosecutor (ADPP BPS-17) on the disability quota. He secured 54 marks in the written test, was interviewed on 06.05.2025, but again was not recommended in the press release dated 16.05.2025. His representation (21.05.2025) and appeal (11.09.2025) were rejected or left undecided. He submits that although two seats were reserved for differently-abled persons, only one was filled and the other remains vacant. SPSC refused to adjust him on the ground that the vacant seat belonged to Urban category, which he argues is unlawful since

disability-quota seats cannot be divided into Rural/Urban under the Disabilities Act, 2018. He maintains that he met the required passing marks and should have been appointed. He reiterates concerns of arbitrary interview scoring and violation of his legal and fundamental rights, compelling him to seek constitutional relief.

3. Petitioner, who is present in person, states that he is law graduate and a differently abled person; that respondent SPSC pursuant to consolidated advertisement bearing No.05 of 2024 dated 26.06.2024 invited applications for various posts including the subject posts; that the petitioner applied for the subject posts on disable quota; that petitioner successfully qualified the written test and he was called for interview; that petitioner participated in interview process, result of which was announced through press release dated 16.05.2025, but the petitioner was deprived of his appointment; that respondent SPSC has miserably failed to implement the quota reserved for disable persons despite repeated directions by the Supreme Court as well as this Court; that entire process of recruitment conducted through subject advertisement is tainted with malafides since the blue eyed candidates having less marks in written test have been awarded high marks in interview while policy with regard to implementation of disable quota has not been taken into consideration; that petitioner being aggrieved preferred representation under Regulation No.161 of SPSC Recruitment Regulations, but the same met with the fate of rejection and then petitioner filed appeal, which has not yet been decided despite lapse of stipulated time, hence this petition.

4. Learned Assistant A.G Sindh argued that there were no specific posts for differently abled person according to requisition of administrative department; therefore, the petitioner was considered under general rural quota; that SPSC is an independent entity having no grudge with any candidate and always use to recommend the candidates, who clear the recruitment process in accordance with law; that petitioner obtained low marks in interview while the last candidate recommended against subject posts obtained high marks than petitioner according to available posts; that mere passing of written test with even high marks does not create any vested right in favour of any aspirant; therefore the claim of the petitioner is baseless and liable to be rejected; that petitioner was called for personal hearing and after affording him ample hearing and perusing the material the Member (Appeals) vide Order dated 25.06.2025 rejected his representation while assigning cogent reasons; that against such order petitioner moved appeal on which petitioner was also called for personal hearing and he was heard on 12.11.2025 and decision whereof will be announced soon, but the petitioner without waiting decision on appeal rushed before this Court, however, the law officer of SPSC has pointed out that two posts i.e. Assistant District Public Prosecutor and Assistant Prosecutor General were advertised; that only two posts were reserved for differently abled persons for the post of ADPP one for Urban

and one for Rural. The candidate on Rural side was appointed on differently abled post while no candidate was available on urban side but since the petitioner holding domicile of Rural area and due to non-availability of post on Rural side he was not considered and further since there was no post reserved for differently abled persons for the post of APG; therefore, these petitions are not maintainable and liable to be dismissed accordingly.

5. We have heard learned counsel for the parties and perused the material available on record.

6. The questions for determination are: (i) whether SPSC is bound to implement the disability quota even if the requisition did not separately mention it; (ii) whether a vacant Urban disabled-quota seat must be offered to the petitioner; (iii) whether interview marks were applied arbitrarily; and (iv) whether pendency of departmental appeal bars constitutional jurisdiction.

7. That the post of Assistant District Public Prosecutor (BPS-17) requires the qualification of Law Graduate from a recognized university with at least five years' standing at the Bar. The quota breakup for the post is as under:-

- Open Merit (Male/Female): 19 (Rural) | 12 (Urban)
- Differently-Abled Persons Quota: 02
- Minority Quota: 01
- Female Quota: 04 (Rural) | 07 (Urban)

Total Vacancies: 42

Age Limit: 28–35 years

That the post of Assistant Prosecutor General (BPS-17) requires the qualification of Law Graduate from a recognized university with at least five years' standing at the Bar. The quota breakup for the post is as under:-

- Open Merit (Male/Female): 03 (Rural) | 22 (Urban)
- Differently-Abled Persons Quota: 01
- Female Quota: 00

Total Vacancies: 06

Age Limit: 28–35 years

8. The law is well settled that reserved quotas are mandatory and must be enforced regardless of departmental omissions. The Supreme Court has held that failure to implement quota violates Articles 4, 9 and 25 of the Constitution. Non-identification of disabled-quota posts in the requisition or advertisement does not extinguish the statutory quota, and SPSC remains duty-bound to allocate it. Therefore, if even one Urban disabled-quota seat is vacant, the petitioner, being a qualifying disabled candidate, has a fundamental right to be considered against it. He must be assessed within the disabled-quota pool, and lower interview marks

relative to general-quota candidates are irrelevant. If no disabled candidate secures higher aggregate marks within that quota, the petitioner becomes the rightful nominee.

9. It is also settled principle that interview marks cannot be manipulated to defeat merit or favour preferred candidates; any disproportionate award of marks renders the process vulnerable to judicial review. Further, pendency of departmental appeal does not bar the constitutional jurisdiction of this Court where quota misapplication or constitutional rights are involved. Accordingly, the disability quota must be enforced as per law; the vacant Urban disabled-quota seat must be considered for the petitioner as he is the only candidate for the subject post; and the petition is maintainable despite pending appeal, as the violation of a statutory quota amounts to infringement of fundamental rights.

10. In view of the above, the petitioner is entitled to consideration and, if eligible, a recommendation be made against the vacant Urban Disabled-Quota post of Assistant Prosecutor General / Assistant District Public Prosecutor. The competent authority of SPSC is therefore directed to apply the disabled quota strictly in accordance with law, re-evaluate the petitioner's candidature within the disabled-quota pool only, and recommend him if he stands highest on merit within that quota. This exercise shall be completed within one month.

11. The petition stands disposed of in the above terms.

JUDGE

JUDGE