

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2833 of 2017

Dr. Muhammad Waseem and 4 others.....Petitioners

Versus

Province of Sindh and others.....Respondents

C.P.No.D-2712 of 2017

Malak Asad Ali.....Petitioner

Versus

Province of Sindh and others.....Respondents

Date of hearing: 19.05.2017

Mr. Ahmed Ali Ghumro, Advocate for the Petitioners in C.P No.D-2833 of 2017.

Mr. Roshan Ali Azeem Mallah, Advocate for the Petitioner in C.P No.D-2712 of 2017.

Mr. Muhammad Yousuf Alvi, Law Officer, Sindh Public Service Commission along with Mr. Abdul Aziz, Assistant Director, Sindh Public Service Commission.

Mr. Abdul Jaleel Zubedi, A.A.G.

JUDGMENT

ADNAN-UL-KARIM MEMON,J:-In both the above mentioned Petitions similar points of law and facts are involved, hence the same are being disposed of by this common judgment.

2. Petitioners in both the captioned Petitions have impugned Letter dated 26.04.2017 issued by Assistant Director, Sindh Public Service Commission, Hyderabad. The Petitioners have voiced their grievance that they applied for the post of Medical Officers in BPS-17 in Health Department, Government of Sindh in pursuance of Advertisement bearing No.1/2016, dated 03.01.2016 and on the basis of Addendum dated 08.02.2016 issued by Secretary, Sindh Public Service Commission that all candidates who were appearing in final year of MBBS examination were eligible to apply for the post of Medical Officer BPS-17 on the basis of their Provisional / Appearance Certificate issued from their respective institutions. Petitioners have asserted that they produced their MBBS qualified Degrees / Pass Certificates and proof of registration with PMDC to Sindh Public Service Commission on or before the commencement of interview/written test. However, on 31.05.2016, Assistant Director, SPSC issued impugned Letters dated 26.04.2017 to the Petitioners intimating thereby that they do not possess the required qualification i.e. MBBS Degree up to date 26.04.2016 (written test date) and held that Petitioners are not eligible to appear in interview for the post applied for.

3. Notice was issued to Respondents who filed their para-wise comments and controverted the allegations leveled against them.

4. Mr. Ahmed Ali Ghumro, learned counsel for the Petitioners has argued that on the basis of Addendum dated 8.02.2016 Petitioners appeared in the examination for the post of Medical Officer (Male) in Health Department. Subsequently, Petitioners

were declared successful candidates and result was announced on 31.5.2016 by the Sindh Public Service Commission. Per learned counsel Petitioners have been refused by the Respondents to appear in the ensuing interview on the premise that Petitioners do not possess the required qualification i.e. MBBS Degree and Certificate of Registration with PMDC up to the date of written test i.e. 26.4.2016. He further contended that the last date of interview has been announced which is falling in the current month and if the Petitioners are not allowed to appear in the interview their career will be ruined. He next contended that Respondents on one hand allowed the Petitioners to appear in the examination and on the other hand denied them from the basic right to sit in the interview despite the fact that the Petitioners succeeded in the written test. The said act of denial of interview by the Respondents is illegal, unjustified and without lawful authority, thus the impugned Letters dated 26.04.2017 are nullity in the eyes of law. He next contended that Petitioners possess MBBS degree and are registered with Pakistan Medical and Dental Council (PMDC). Therefore, Respondents have no cogent ground/reason to disallow the Petitioners from appearing in the interview after passing the written test.

5. Mr. Roshan Ali Azeem, learned counsel for the Petitioner in C.P No.D-2712/2017 adopted the arguments of learned counsel for the Petitioners in C.P No.D-2833/2017.

6. Mr. Muhammad Yousuf Alvi, Law Officer on behalf of Sindh Public Service Commission has vehemently opposed the grant of

both the Petitions. He next contended that Petitioners were required to produce MBBS degree/Pass Certificate and proof of registration with PMDC on or before the commencement of pre-interview-written test. However, on scrutiny of documents the Respondents found that the Petitioners were not eligible because, they did not possess the required qualification that is, MBBS degree and Registration from PMDC up to 26.04.2016. Therefore, the candidatures of Petitioners were rightly rejected by Sindh Public Service Commission. He next contended that no fundamental right of the Petitioners is violated as the complete process of scrutiny has been done as per law, in fair and transparent manner.

7. Mr. Abdul Jalil Zubedi, learned AAG adopted the arguments of Mr. Muhammad Yousuf Alvi, Law Officer of Sindh Public Service Commission.

8. We have considered the submissions of the learned counsel for the respective parties and perused the material available on record.

9. Before proceeding on merits of the case we would like to see the basic document that is, Addendum dated 08.02.2016 issued by Sindh Public Service Commission whereby Petitioners were provisionally allowed to appear in the subject examination. For ready reference contents of said Addendum are reproduced as under:-

“ADDENDUM

This is with reference to the Sindh Public Service Commission advertisement No. 01/2016 dated 01.01.2016, which was placed on the official website and also published in leading newspaper on 27.01.2016. It is informed that all the candidates, who are appearing in final year M.B.B.S Examination, can also apply for these posts on the basis of Provisional / Appearance Certificate from their respective institutions. However, all such candidates have to produce their MBBS qualified Degree/Pass Certificate and proof of registration with PMDC on or before the commencement of Pre-interview written test.” (Emphasis added)

10. The pivotal question before us is as to whether the Petitioners were eligible to apply for the post of Medical Officer (Male) BPS-17 in Health Department, Government of Sindh on the cut-off date that is, 26.04.2016 (date of written test). Perusal of record clearly depicts that Petitioners were given offer to appear in the examination on the condition that they have to produce the MBBS degree along with Registration Certificate with PMDC on or before commencement of pre-interview written test. Admittedly, Petitioners appeared and were declared successful in the written examination. However, Sindh Public Service Commission after the written test conducted the scrutiny of record of the Petitioners and found that at the time of written test the Petitioners were not awarded MBBS degree yet. Therefore, Petitioners were held to be not eligible for the subject post and their candidature was declined accordingly. Learned counsel for the petitioners have argued that once the petitioners were allowed to appear in written test and declared successful, a vested right has been created in their favour. We, however, do not agree with them, because on this point

Regulation No.0514 is clear, which is reproduced as ready reference:-

“0514 Conduct of Test for Short Listing prior to Scrutiny *In case a large number of candidates have applied for a post, for which no examination is prescribed, and to save time, a written test may be held provisionally, all candidates and short list them before scrutiny of applications. After the result of provisional test or short listing or candidates is finalized, the applications of only successful candidates will be scrutinized before proceedings further to determine their eligibility under the relevant Service Rule for the Post applied for. The scrutiny of applications and handling thereafter will be in terms of regulations specified in Articles 0512, 0513, 0515 and 0516. Candidates, if found ineligible during the process of scrutiny will be rejected regardless of their qualifying the written test conducted for short listing. (Emphasis added)*

11. The above Regulation clearly stipulates that in case of large number of candidates the public service commission may allow the candidates to appear in the examination in order to save time. But, such appearance would be subject to scrutiny of eligibility of the candidates. By no means, the appearance of candidates and their passing of examination would create a vested right in their favour when the candidates are found to be ineligible in scrutiny process of their documentation, after the written test.

12. We are of the view that Respondents have processed the scrutiny of the documents of the Petitioners after written test in accordance with the above provision and no illegality therefore, appears to have been committed. Record reflects that Petitioners were provisionally allowed to appear in the examination for the post of Medical Officer (Male) and it was clearly mentioned in the Admission Slip of the Petitioners that their eligibility would be

determined after professional test. The same being relevant is reproduced herewith:-

“IMPORTANT INSTRUCTIONS

Instructions given below are for strict compliance.

Eligibility of the candidates in terms of Recruitment Rules and conditions mentioned in the advertisement shall be determined after the conduct of Professional/Screening Test/Examination. On detailed scrutiny of the applications as well as documents of they are found ineligible, their candidature will be cancelled irrespective of the fact whether they have appeared in the examination/test or even qualified therein. On rejection of the applicant’s candidatures on the basis of their ineligibility the applicant would be informed by the Commission defining the reasons of their ineligibility. However if they feel aggrieved of rejection of their applications, they may file the appeal within seven days from the date of issuance of REJECTION LETTER with the documentary evidence against rejection of their candidature. Their appeal should be supported with the original treasury receipt of Rs.250/= as appeal fee in the head of account “C02101 organ of state appeal fee Sindh Public Service Commission” otherwise the same ill not be entertained.”

13. The record further reflects that Respondents rejected the candidature of Petitioners as per clause (ix) of impugned Letter dated 26.04.2017, which is reproduced as under:-

“You do not possess required qualification i.e. MBBS Degree up to the 26.04.2016 written test date.”

14. We have noted that it is clearly mentioned in the instructions that if a candidate feels aggrieved from the rejection of the application, he may file an appeal within seven days from the date of issuance of rejection letter. But the petitioners have not filed any appeal against the impugned letters and have directly approached this court.

15. We are of the view that disqualification of Petitioners on cut-off date that is, 26.04.2016 cannot be converted into qualification to appear in the interview because the Petitioners were required to possess MBBS degree on the said cut-off date. This being the

position coupled with the fact that exercise of jurisdiction by this court under Article 199 of the Constitution is purely discretionary in nature and meant to foster the cause of justice and fair play we do not find any valid reason for indulgence. Consequently, both the Constitution Petitions merit no consideration and stand dismissed with no order as to costs.

JUDGE

JUDGE