

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-166 of 2018

Petitioner

Sajid Ali

through:

Mr. Barkat Ali Metlo Advocate

Respondents No.1 to 3

Federation of Pakistan

& others through:

Mr. Muhammad Nishat Warsi,
DAG

Date of hearing:

10.05.2019

Date of decision:

15.05.2019

J U D G M E N T

Adnan-ul-Karim Memon, J. Through this petition, Petitioner is seeking direction to the Federal Public Service Commission ["FPSC"] to reschedule the date of his interview for the post of Inspector Inland Revenue in BPS-16. Petitioner has premised his case that in pursuance of an advertisement, published in daily 'Dawn' dated 02.11.2016, against various vacant posts, he applied for the post of 'Inspector Inland Revenue in BPS-16', mentioned at Serial No.257, Case No.F4-277/2016-R. The Respondent-Commission, after scrutinizing the candidature of the Petitioner, allowed him to appear in the written/screening test on 11.1.2017. Per Petitioner, he appeared in the written test and was declared successful candidate vide result sheet dated 14.7.2017. Subsequently, the Respondent-Commission announced the date for conducting the interview of those candidates who succeeded in written test, but he was not called for. Per Petitioner, he was neither served with any letter/notice nor sent any e-mail/SMS/intimation regarding fixation of the date of such

interview. However on 27.9.2017, he received a telephonic call from the Respondent-Commission to appear for interview on 27.9.2017, but at the relevant point in time, it was not possible for him to reach at the interview center at Karachi on the same day, having belonged to rural area of interior of Sindh. Petitioner has asserted that on the next day i.e. 28.9.2019, he rushed to the office of the Respondent No.3 and requested them to reschedule the date of his interview and also moved an application dated 28.9.2017 in this regard, which was ironically declined by the Respondent-Commission, without assigning any cogent reason. Subsequently, Petitioner repeated his applications dated 18.10.2017 and 03.11.2017 regarding his personal hearing with intention to clarify his position regarding non-appearance on the scheduled date of the interview, but to no avail. Petitioner has submitted that he is a disable person and on the day of interview i.e. 27.9.2017, he could not reach at the interview center, as he was living in remote area of interior of Sindh; that the Respondent No.3 has flagrantly refused such request of the Petitioner and on the other hand, they on their website clearly mentioned that 13 leftover/restored candidates would be entertained and their interview shall be conducted. Petitioner has added that the Respondent No.3 conducted the interview of 7 leftover candidates, who could not reach at the hall of interview at the relevant point of time, except the Petitioner. Petitioner being aggrieved by and dissatisfied with the discriminatory treatment meted out with him by the Respondent-Commission, has filed the instant petition on 08.01.2018.

2. Upon notice, the Respondents No.1 & 3 filed comments and denied the allegations leveled against them.

3. Mr. Barkat Ali Metlo, learned counsel for the Petitioner has contended that the Respondent No.3 has acted arbitrarily, capriciously and discriminating with the Petitioner as they have entertained 07 leftover candidates for their interview, but they totally ignored the Petitioner in spite of repeated applications and requests, which conduct on the part of the Respondent No.3 is absurd, capricious and not warranted under the law; that Article 4 of the Constitution provides that it is an inalienable right of every citizen of Pakistan to enjoy the protection of law and to be treated in accordance with law. In the present case, the Petitioner is being compelled to bow down before the Respondent No.3 or else to face serious consequences; that the Respondent No.3 have obviously misused their powers and exceeded in authority, although being public servants, they are under legal obligation to perform their duties within the mandate of law and the act of Respondent No.3 on the face of it appears to be mala fide, arbitrary and against the principles of natural justice and equity; that the Petitioner has successfully cleared his written test, verification of educational certificates and other documents. He lastly prayed for allowing the instant Petition.

4. Conversely, Mr. Muhammad Nishat Warsi, learned DAG appearing on behalf of the Respondents, has contended that on receipt of requisition from the Revenue Division, Federal Board of Revenue, the Respondent No.3-Commission advertised 471 vacancies of Inspector Inland Revenue (BS-16), Federal Board of Revenue Islamabad. The Petitioner applied and appeared in written examination for the above mentioned post and after written examination he was shortlisted for the interview, which was scheduled on 27.9.2017; that on the said date i.e. 27.9.2017, the Petitioner remained absent, later on he requested to reschedule the interview with the reason that he could not appear for interview at

Karachi Centre, since he was in Larkana on the date of interview; that interview letter was issued to him at the postal address on 24.8.2017, which was not received back in Federal Public Service Commission [FPSC] undelivered. I.T. Wing of the Respondent No.3-Commission also confirmed that an SMS was sent to him regarding conduct of his interview on his cell number, accordingly his request to reschedule the interview was regretted and he was informed telephonically; that the Petitioner has neither any locus-standi nor any cause of action to file the instant Petition. He, therefore, prayed for dismissal of the instant Petition.

5. The main grievance of the Petitioner is that he has fulfilled all the requisite formalities for recruitment to the post of Inspector Inland Revenue (BS-16), Federal Board of Revenue Islamabad, but his candidature had wrongly been cancelled on the premise that he failed to appear in the interview on the cut-of date i.e. 27.9.2018.

6. Foremost question involved in the present Petition is that whether the Respondent-Commission intimated the Petitioner about the date of his interview, for the post of Inspector Inland Revenue (BS-16) or otherwise?

7. To appreciate the aforesaid proposition, it is expedient to have a look at the Advertisement dated 11/2016. An excerpt of the same is reproduced as under:-

“Case No.F.4-277/2016-R. (11/2016). FOUR HUNDRED AND SEVENTY ONE INSPECTORS INLAND REVENUES (BS-16), PERMANENT, REVENUE DIVISION, FEDERAL BOARD OF REVENUE. MINIMUM QUALIFICATION: Second Class or Grade ‘C’ Bachelor’s degree with Economics/Business Administration/Commerce/ Statistics/ Law from a university recognized by HEC. AGE LIMIT: 20-28 years plus five (5) years general relaxation in upper age limit. DOMICILE: Merit= Thirty five, Punjab= Two hundred and thirty six (Open merit=Two hundred, Women quota= Twenty four and Minorities/Non-Muslims quota=Twelve), **Sindh (Rural) =Fifty five (Open merit=Forty six, Women quota=Six and Minorities/Non-Muslims quota=Three), Sindh(Urban)=Thirty five (Open merit=Thirty, Women quota=Four and Minorities/Non-Muslims quota=One), Khyber Pakhtunkhwa=Fifty four (Open merit=Forty five, Women quota= Six and Minorities/Non-Muslims quota=Three), Balochistan=Twenty eight (Open merit=Twenty four, Women quota=Three and Minorities/ Non-Muslims**

quota=One), GBFATA=Nineteen (Open merit=Sixteen, Women quota=Two and Minorities/ Non-Muslims quota=One) and AJK=Nine (Open merit=Eight and Minorities/ Non-Muslims quota=One). (Both male and female candidates are eligible).

Closing date....., 21.11.2016

“IMPORTANT INSTRUCTIONS FOR SUBMISSION OF APPLICATIONS

1. All cases will be processed as per Commission’s policy laid down in General Instructions as displayed at FPSC’s Website. Candidates are advised to go through the General Instructions particularly para-16 of the same to update themselves before applying.
2. All applications for General Recruitment in BS-16 and above must be submitted online through FPSC’s website www.fpsc.gov.pk. Detailed General Instructions/ guidelines to apply online are available on the website. No hardcopy of online application is required from the applicants. However, those applicants who do not have access to internet facility, are allowed to submit their applications on or before the closing date, addressed to Secretary FPSC on plain paper giving detailed particulars in the light of prescribed conditions for the post applied for, intimating difficulties in submission of online applications. Such applications will be accepted subject to approval of the Commission.
3. It will be mandatory for the candidates to bring original CNIC, Treasury Receipt and downloaded copy of Admission Certificate at the time of Screening/ Written Test. (The candidates should realize that nothing except original Treasury Receipt would be admissible as a valid document. It is reiterated that the candidates must preserve the original T.R and do not send the same to FPSC office in advance, so as to avoid any inconvenience at the time of entry in the Examination Halls).
4. The Pre-selection criteria for interview will be as per policy of the Commission contained in para -16 (A,B&C) of General Instructions, the candidates will be required to furnish attested copies of requisite documents viz: two photographs, Matric, Intermediate certificates, Bachelor, Master, M.Phil, Ph.D Degrees, CNIC, Experience Certificate(where required) showing nature of job/ detailed job description issued by an authorized officer of the Ministry/Division/Department concerned, Domicile Certificate, Departmental Permission Certificate (in case of government servant) as well as Original TR (in non-test cases) etc. within 15 days of the Notice from FPSC by post, SMS and E-mail. The candidates who fail to furnish the requisite documents within stipulated time or furnish incorrect/incomplete information their candidature shall be liable to rejection. Therefore, they are advised to keep their documents ready for submission to FPSC by the due date. From requisition of documents it should not be presumed that the candidate is preselected.
5. Eligibility of the candidates in all respects shall be reckoned upto the closing date.
6. The Application Fee for posts (BS-16 & 17 = Rs. 300/- ; BS 18= Rs. 750/- ; BS-19 = Rs. 1200/- ; BS-20 and above= Rs. 1500/-) may be deposited on or before the closing date in the nearest Government treasury or in a branch of National Bank of Pakistan or in a State treasury authorized to transact business on behalf of Government under head “C02101-ORGANS OF STATE EXAMINATION FEE REALIZED BY FPSC”. Bank draft / Cheque/ Postal Order is not acceptable.
7. **Admission Certificates for Screening (MCQ’s Test) for BS-16 & 17 posts and Written (Descriptive Test) for BS-18 & above posts, for General Recruitment Cases will be placed on the website of FPSC i.e. www.fpsc.gov.pk on 26th December, 2016 tentatively. Candidates are advised to frequently visit this website. They will be intimated through SMS as well. However, no information in this regard shall be sent through post.**
8. **Conduct of Test:**
 - (i) **The Screening (MCQ)/Written (Descriptive) Test for Consolidated Advt. No. 11/2016 will tentatively be held from 8.1.2017 onwards. However, in small cases such tests can be conducted even in the very next month or as early as possible, so candidates are advised to frequently visit FPSC website for the updates.**

- (ii) (a) Tests for the post of Assistant Private Secretary (BS-16), will be held at Islamabad, Lahore, Karachi, Peshawar and Quetta centers only, if sufficient number of candidates at each center are available.
- (b) Candidates for the post of APS will first be called for typing test and those who qualify the Typing Test by producing required typing speed as mentioned in the advertisement will be allowed to appear in Shorthand Test. While those who will not qualify typing Test will be relieved without subjecting them to Shorthand test.
- (c) It will be mandatory for the candidates of APS that minimum 80% of the Shorthand Test passage has been written by them in shorthand outline. Otherwise, the candidate will be declared as Fail.
9. Change of Centre: No request for change of center shall be entertained except only in genuine hardship cases. The candidates can apply for change of center with proper proof latest by 30.11.2016. Thereafter no such request shall be entertained.
10. Closing Date for submission of applications is Monday, 21st November, 2016.

**AMIR TARIQ ZAMAN SECRETARY
FEDERAL PUBLIC SERVICE COMMISSION**

8. The Petitioner has admitted in the pleadings that he received the telephonic call from FPSC for his interview on 27.9.2017, but he failed to appear on the very day and took the plea that he lives in far-flung area that's why he could not appear in the interview on the very day. The learned DAG has refuted the claim of the Petitioner and categorically stated that the interview letter was issued to the Petitioner at his postal address on 24.8.2017, which received back in Federal Public Service Commission [FPSC] with the endorsement "undelivered". I.T. Wing of the Respondent-Commission also confirmed that an SMS was also sent to him regarding conduct of his interview on his cell number, accordingly his request to reschedule the interview was regretted and he was informed telephonically. Prima-facie, the aforesaid allegations and counter allegations cannot be gone into by this Court in exercising of its constitutional jurisdiction.

9. We have seen that the Respondent-Commission in the instructions at paragraph No.7 of the Advertisement No.11 of 2011 has disclosed that "Admission Certificates for Screening (MCQ's Test) for BS-16 & 17 posts and Written (Descriptive Test) for BS-18 & above posts, for General Recruitment Cases will be placed on the website of FPSC i.e. www.fpsc.gov.pk on 26th December, 2016

tentatively. Candidates are advised to frequently visit this website. They will be intimated through SMS as well. However, no information in this regard shall be sent through post.” The Clause 10, 15 and 18 of **GENERAL INSTRUCTIONS**, issued by the FPSC for the aforesaid purpose, explicitly provides regarding postponement of interview, which reads as under-

10. POSTAL ADDRESS

Postal address including the postal code must be written in Capital letters. Change in address should be reported to the FPSC immediately. If a reference has to be made to the Commission, the name of the post applied for, advertisement number, case number, full name (Roll Number) if issued and the new postal address (telephone number, etc.) must be mentioned. The candidates must also arrange for communications sent to them at their old address to be re-directed to the new address or collected. It should be clearly understood that the Commission accepts no responsibility for postal delays/letter received undelivered.

15. EXAMINATION/TEST CENTERS

a) Besides Islamabad, the FPSC holds Examinations/Tests at Provincial Headquarters i.e. Lahore, Karachi, Peshawar and Quetta and Regional Offices at Multan, Sukkur, D.I. Khan and Gilgit in addition to above at Skardu, if there are sufficient numbers of candidates for these places. If not, candidates will be required to appear at other centres at the discretion of the Commission. The Commission does not pay any traveling or daily allowance or any other expenditure incurred by a candidate. b) Appearance in the screening (MCQ) test/ written (descriptive) test and in the interview(s) as and when fixed, as specified under Para-16 below, shall be mandatory for all candidates including those who applied with foreign addresses against all BS-16 and above/ equivalent posts advertised by the FPSC.

“18. The Government sometimes announces public holidays at short notice. The Commission’s Examination/Test/Interview will not be affected by such announcements, unless a decision on postponement of the examination/test/interview is conveyed to the candidates”

10. We are cognizant of the fact that Courts cannot interfere in lawful exercise of discretion by the concerned departments and substitute lawful decisions of the departments, by their own. The jurisdiction of the High Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required by law to do and refrain from doing what they are prohibited by law to do. Unless an act or omission of a state functionary falls within the above parameters, it is not liable to be interfered with.

11. In the light of forgoing, in our view, the plea taken by the Petitioner, not to appear in the interview for the post applied for is not justiciable; therefore no premium can be given to the Petitioner on the grounds taken by him in the instant Petition, for the simple reason that as per, General Instructions of FPSC, issued for candidates as discussed supra, the Petitioner was served with the Telephonic call and a letter dated 24.8.2017 was sent to his postal address vide office endorsement No.Dy.No.12855 dated 25.8.2017 [*available with the report / comments filed on behalf of Respondent No.3*], which was returned undelivered and the FPSC has mentioned in the instructions that the candidate should provide complete postal address, therefore, they cannot be saddled with liability of malafide on their part.

12. Reverting to the plea taken by the Petitioner that other seven candidates were allowed to appear in the interview and he was left out. The aforesaid plea of the Petitioner cannot be considered as a valid ground to appear in the interview; therefore we do not see any discrimination on their part as discussed supra. The Petitioner has failed to make out a case on the basis of discrimination.

13. In view of the above discussion, this Constitutional Petition is dismissed along with the pending Application[s].

JUDGE

JUDGE