

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D- 1559 of 2019**

*Dr. Wahid Bux & 06 others*

*Versus*

*Province of Sindh through Chief Secretary,  
Sindh and another.*

**Date of hearing: 29.05.2019**

**Date of Order: 29.05.2019**

Mr. Ali Tahir, Advocate for the Petitioners.

Mr. Abdul Jalil Zubedi, AAG.

Mr. Muhammad Yousuf Alvi, Law Officer, Sindh Public Service Commission.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:** - Basically, the Petitioners had applied for the post of `Medical Officers` [BPS-17]. Later on, they were issued interview call/admission letters by the Respondent-SPSC on 09.12.2018. The Petitioners in response thereto, did appear in `written test` and were declared successful candidates vide Press Release dated 08.1.2019. Besides they submitted all requisite qualification documents. They also fulfilled all other requisite formalities. Petitioners have submitted that the Respondent No.2 thereafter issued letter dated 31.01.2019 and rejected the candidature of the Petitioners on the ground that the Petitioners failed to submit Valid Registration Certificate showing all Medical Qualification from PM&DC & PRC form `D`. The Petitioners thus, on account of refusal to participate in the interview/via voce have called in question the aforesaid rejection letters and has filed the instant Petition on 06.03.2019.

2. Perusal of record shows that notice was issued to the Respondents vide order dated 06.03.2019 and the matter was fixed before this Court viz. 21.03.2019, 12.04.2019, 23.4.2019, 26.4.2019, 30.4.2019, 14.5.2019 & 28.5.2019 and posted today. Mr. Muhammad Yousuf Alvi, Law Officer has put his appearance on behalf of the Respondent-SPSC, and refuted the claim of the Petitioners and supported the stance of the Respondents vide letters dated 02.4.2019 and argued that the 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, Registration from PMDC up to the cut-off date i.e. 15.8.2018. Therefore, the candidatures of Petitioners were rightly rejected by the 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; that Petitioners are not entitled to participate in interview for the aforesaid posts on the ground that they do not possess the requisite qualification as required under the PMDC Rules.

3. We asked from the learned Law officer to show us any lawful justification for not considering the case of Petitioners for their appearance in the interview for the post of Medical Officer, on the premise that they had already been declared successful candidates in the pre-interview written test for the aforesaid post in the recruitment process initiated by the Respondent-SPSC and confronted with him the latest decision dated 23.05.2019 rendered by the learned Division Bench of Circuit Court at Hyderabad in CP No.D-557/2019, whereby the other candidates, whose

candidatures were rejected by the Respondent-SPSC on the same accusations are allowed to appear in interview / via voce being conducted by the SPSC. The relevant para of the Judgment is as under:-

“10. The upshot of the above discussion is that the Petitioners have requisite qualification as mentioned in the advertisement published by SPSC as well as general conditions appearing on their website and before the cutoff date, they were in possession of such qualification including their registration with PMDC, hence, we have no other alternate but to allow the Petitioners to appear in oral interviews/via-voce, for which they were given permission through our interim orders in different petitions, hence the Sindh Public Service Commission is directed to announce their result accordingly. However, the case of Petitioner No.2 Shiza Fatima in C.P No.D-744 of 2019 is distinguishable because her Registration with PMDC is beyond the cutoff date as such CP No.D-744 of 2019 is dismissed up to the extent of said Petitioner. With these observations these petitions are disposed of accordingly.”

4. Learned Law officer agreed with the reasoning set forth by the learned Division Bench of this Court in the aforesaid matters, however he argued that if the case of the Petitioners is at par with those candidate, their candidatures will be re-considered by the Respondent-SPSC, subject to the right of Appeal against the aforesaid decision if any, before the Honorable Supreme Court.

5. We have noticed that the Petitioners have been declared successful candidates in pre-interview written test for the posts of Medical Officers i.e. Male and Female [BPS-17], in Health Department, Government of Sindh vide Press Release dated 08.1.2019, thereafter Respondent-SPSC issued the impugned letters dated 31.1.2019, rejecting the candidature of the Petitioners on the ground that they failed to fulfill the requisite criteria for recruitment on the aforesaid posts, before the closing date i.e. 15.8.2018, but the record reflects contrary position. Following is the factual position of the case:-

- a) **Advertisement published on 19.7.2018 by SPSC for the posts of Medical Officer (BS-17) Male & Female.**

- b) Petitioners were provisionally admitted to appear in pre-interview written test vide letters (available at Page-41 to 53 of Court's file).**
- c) Press Release dated 08.01.2019 showing the Petitioners as successful candidates in pre-interview written test for the posts of Medical Officer/Woman Medical Officer (BPS-17) in Health Department, Government of Sindh.**
- d) Rejection letters of candidatures of the Petitioners dated 31.1.2019 (available at Page-57 to 63 of Court's file).**
- e) Application of the Petitioner for submission of documents (available at Page-65).**
- f) PMDC Certificate of Petitioner No.1 dated 02.4.2018, Certificate of PRC.**
- g) PMDC Certificate of Petitioner No.2 dated 09.3.2017, Certificate of PRC.**
- h) PMDC Certificate of Petitioner No.3 dated 12.4.2018, Certificate of PRC.**
- i) PMDC Certificate of Petitioner No.4 dated 29.5.2018, Certificate of PRC.**
- j) PMDC Certificate of Petitioner No.5 dated 07.11.2017, Certificate of PRC.**
- k) PMDC Certificate of Petitioner No.6 dated 16.3.2018, Certificate of PRC.**
- l) PMDC Certificate of Petitioner No.7 dated 25.1.2018, Certificate of PRC.**
- m) Final Press Release dated 28.2.2019 of successful candidates for appointment against the aforesaid posts (available at Page-101 to 115).**

6. Mr. Ali Tahir learned counsel for the Petitioners has argued that the Respondents have violated the basic rights of the Petitioners by failing/delaying to issue interview letters, despite the fact that the Petitioners have successfully passed the prescribed pre-interview examination; that after successfully clearing the examination, the Petitioners have acquired a vested right and interest to be called for interview to be conducted by Respondents on the posts of Medical Officer BS-17, which cannot be nullified/denied by the whimsical and arbitrary rejection letters issued by the Respondents; that the Respondents are acting in violation of the prescribed Rules as mentioned in Regulation Management System; that the action of the Respondents is in violation of the Fundamental Rights of the Petitioners guaranteed under Articles 18, 24, 25 and 27 read with Articles 4 and 8 of the

Constitution; that due to omission/failure of the Respondents to fulfill their legal obligations and timely discharge of their duties/functions, the Petitioners are being deprived of their lawful rights to be called for pre-interview test for appointment against the aforesaid posts; that the stereo type rejection letters are contrary to the law, discriminatory and against the fundamental rights of the Petitioners thus not sustainable in law; that the Petitioners have completed all the codal formalities and qualified pre-interview written test conducted by SPSC; that the Petitioners' right to seek job is their fundamental right for the particular post and that cannot be snatched by rejecting their candidature on whimsical grounds of lacking certain qualification which is violative of principle of natural justice and nobody including the Respondents can curtail such rights of the Petitioners as guaranteed under the Constitution; that the Respondents are acting beyond the mandate of law. He lastly prays for allowing the instant Petition in the light of latest decision dated 23.05.2019 rendered by the learned Division Bench of Circuit Court at Hyderabad passed in CP No.D-557 of 2019, supra.

7. Mr. Abdul Jalil Zubedi, learned AAG representing the Respondent No. 1 has raised the issue of maintainability of the captioned Petition and argued that Petitioners did not qualify the terms and the condition as set forth in the advertisement. He lastly prayed that the instant Petition may be dismissed.

8. We have heard learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

9. First of all we take up the issue of the maintainability of the instant Petition under Article 199 of the Constitution. We are of the view that the grievance of the Petitioners does not relate to the

terms and conditions of service, but they have sought relief of appointment, therefore the Petition is not barred by Article 212 of the Constitution and is maintainable to be heard and decided on merits.

10. The primordial question raised in the present proceedings is as under:-

**i) Whether the Petitioners possess the required qualification for the post of Medical Officer (BS-17) in Health Department, Government of Sindh to claim right to participate in interview to be conducted by SPSC?**

11. To address the aforesaid proposition, we have to look at the matter in its entirety. Perusal of the record clearly depicts that the 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 and other documents on or before commencement of pre-interview written test. Admittedly, the 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 PMDC Certificates before the cut-off date. Therefore, the 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 the aforesaid assertion, 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)

12. 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.

13. 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 by scrutinizing the relevant record. Record reflects that Petitioners were provisionally allowed to appear in the examination for the post of Medical Officer (Male and Female) 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 INSTRUCTION”**

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 will not be entertained.”

14. The record further reflects that Respondents rejected the candidature of Petitioners as per clauses (vi and viii) of impugned common Letter dated 31.01.2019, which is reproduced as under:-

You have failed to submit the following requisite documents within the stipulated time period as hereunder:-

- vi) Valid Registration Certificate showing all medical qualification from PMDC upto 2018.
- Viii) P.R.C. on form D of your own.

15. We have scanned the file, prima-facie it appears that the PMDC registration certificates issued in favour of the Petitioners were before the cutoff date i.e 15.8.2018, as per advertisement, thus reached the conclusion that merely submission of aforesaid documents with SPSC with a little bit delay do not disqualify them to appear in the interview, until it is shown that the Petitioners are suffering from inherent disqualification. 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 find valid reason for our indulgence in the matter.

16. Learned AAG, thus in our view has failed to justify the impugned action of the Respondent-SPSC.

17. In view of the foregoing legal position, we are of the considered view that the Petitioners have made out a case for their participation in the interview to be conducted by SPSC for the aforesaid posts.

18. In result of foregoing discussion, we dispose of the instant petition along with pending application(s), with directions to the competent authority of SPSC to allow the Petitioners to participate in the Interview for the post of Medical Officers (BS-17) and if the Petitioners qualify in the interview, their result be announced accordingly.

**JUDGE**

**JUDGE**