

IN THE HIGH COURT OF SINDH AT KARACHI.

Constitutional Petition No.D-6629 of 2016.

Present.

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Touseef Nazir Petitioner

Versus

The Province Sindh and others Respondents.

Date of Hearing: **20.11.2018**

Mr. Abdul Salam Memon, Advocate for the Petitioner.
Mr. Shehryar Mehar, Assistant Advocate General Sindh.
Mr. Raza Mian DSP Legal.
Ms. Humaira Jatoi, Internee A.G. Office.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- In the above captioned petition, Petitioner is seeking appointment for the post of Assistant Sub-Inspector in BPS-09, in Sindh Reserve Police, Government of Sindh on the basis that he qualified the written test and interview and was finally recommended for appointment against the aforesaid post vide Press Release dated 20.03.2015 issued by the Sindh Public Service Commission (SPSC). Petitioner has submitted that his candidature was cancelled vide letter dated 25.02.2016 by the SPSC on the premise that he is deficient in the measurement of chest by ½ inch and was over age by 9 months and 14 days. Petitioner being aggrieved by and dissatisfied with the Impugned cancellation of the recommendation by the SPSC has approached this Court on 02.12.2016.

2. Mr. Abdul Salam Memon, learned Counsel for the Petitioner has argued that the Petitioner had initially applied for the post of ASI in the year 2011 in the capacity of fresh candidate

reserved for direct recruitment quota. He added that Petitioner had undergone all the processes and qualified screening / pre-written test, physical test and interview / via voice test and finally was recommended by the SPSC vide Press Release dated 20.03.2015; that the SPSC has erroneously cancelled the recommendation of the candidature of the Petitioner for the post of ASI on wrong grounds; that the SPSC has ignored the various Notifications issued by the Government of Sindh from time to time regarding, allowing relaxation up to maximum 15 years in the upper age limit to all the applicants applying for the vacancies in all the department of the Government of Sindh; that the SPSC has ignored the fact that as far as Physical fitness (i.e. measurement of height and chest of the Petitioner) was conducted by Deputy Superintendent of Police in-collaboration with an officer of the SPSC therefore the question of error or mistake in the measurement sheet prepared for the aforesaid purpose under the supervision of the official of SPSC does not arise, which even otherwise was an afterthought after recommendation by the SPSC vide letter dated 20.03.2015. In support of his contention he relied upon Rule 12.15 of the Police Rules 1934 and argued that the qualification for the aforesaid post can be condoned / relaxed in special circumstances; that SPSC after recommendation had become functus-officio, therefore cannot cancel the recommendation of the Petitioner for the aforesaid post; that the Petitioner has been denied his fundamental rights by not issuing appointment letter to him; that grave injustice has been caused to the Petitioner with no fault on his part by depriving him of the post of ASI, for which he qualified all the pre-requisite tests. He lastly prayed for allowing the instant Petition.

3. Mr. Shehryar Mehar, learned A.A.G Sindh representing the Respondents has contended that the Sindh Public Service Commission invited applications for the post of ASI BPS-9 in Sindh

Police vide Advertisement No. 03/2011 dated 09.06.2011 and as per press release dated 04.02.2013 the date of receiving of application forms was extended from time to time; that the age limit prescribed in the advertisement for those candidates, who intended to apply for direct recruitment was minimum 18 years and maximum 28 years and for in service candidates it was fixed as minimum 18 years and maximum 33 years with a note clearly mentioning in the advertisement that no relaxation in age, education or Physical standard will be allowed to the candidates for direct recruitment. The Petitioner applied for the post of ASI (BPS-09) in the capacity of fresh candidate against direct quota and was allowed to appear in Screening/Pre-Interview written test including Physical Fitness Test along with other such candidates provisionally with the condition, clearly mentioned in his admission letter, that "Eligibility" of the candidates for the written Examination in terms of Recruitment Rules and conditions mentioned in the advertisement shall be determined after the conduct of Professional / Screening Test/ Examination. He has further added that the candidature of the Petitioner was recommended by the SPSC for appointment against the said post vide letter dated 20.03.2015 mistakenly. He next added that due to rush and no proper screening at the initial stage the Petitioner was called for interview, which he qualified but later on his candidature was cancelled and his recommendation was withdrawn vide letter dated 25.08.2016 after full screening. He next added that aforesaid factum was disclosed by the Superintendent of police SRP-Base I, Baldia Karachi, thereafter detail scrutiny was conducted by the SPSC and resultantly his candidature was cancelled, which was the right decision of SPSC, since the Petitioner on proper scrutiny was found not only to be over age but his chest measurement was also deficient.

Hence he was not eligible for selection and quite rightly his appointment was recalled.

4. At this stage we enquired from the learned AAG that under what law they have cancelled the candidature of the Petitioner after recommending him for the appointment against the post of ASI. He in reply to the query has submitted that it is clearly mentioned in the advertisement that the commission reserves their right to rectify any mistake at any stage if detected later on. He next submitted that the Petitioner did not qualify for the post of ASI, therefore his recommendation for appointment against the said post cannot be made being a disqualified candidate in all respects. He lastly prayed for dismissal of the instant petition.

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

6. The primordial questions in the subject Petition is that:-

i) Whether qualification viz age and Physical Standard for the post of Assistant sub Inspector of Police can be relaxed.

ii) Whether Petitioner is over age viz for 9 months and 14 days and also deficient in chest measurement by $\frac{1}{2}$ on the closing date i.e. 11.07.2011 specified in the advertisement thus his candidature was rejected by the Sind public Service Commission being over age.

7. As per record Sindh Public Service Commission invited applications for the post of ASI in BS-09 in Police department, Government of Sindh vide Advertisement No. 03/2011 dated 09.06.2011. The qualification for the post of ASI is prescribed as under:-

AGE:

Min: 18, Max 28 years for direct Recruitment.

Min: 1, Max 33 years for Graduate constable & Head constable.

QUALIFICATIONS:

- i. Intermediate with 2nd Division from any recognized Board/ University for General Recruitment.
- ii. For In-Service head Constable/Police Constables of Sindh Police Department, candidate should be Graduate.

PHYSICAL STANDARD

A candidate must be in good mental & physical health and should fulfill the following conditions:

Male **Height 5 X 5" (minimum)**
Chest 33 X 34 ½ (minimum)

Female: **Height 5 X 2" (minimum)**
Sound Health

Note:

"No relaxation in age, education or physical standard will be allowed to the candidates for direct recruitment.

8. Record reflects that Petitioner applied for the post of ASI in BPS-09 in the capacity of fresh candidate against direct quota and was allowed to appear in screening / pre interview written test including fitness test along with other such candidates provisionally with the condition mentioned in his admission letter as follows:-

IMPORTANT INSTRUCTIONS

Instruction given below are for strict compliance.

"Eligibility of the candidates for the written Examination of English Essay, Sindhi/ Urdu Essay, General Knowledge, 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 if 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 applicants' 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 "C 02101 organ of state appeal fee Sindh Public Service Commission otherwise the same will not entertained.

This admission is "PROVISIONAL" subject to verification of all conditions of illegibility after the conduct of professional/Screening Test/ Examination."

9. In view of the above eligibility criteria, Petitioner did not fulfill the requirement of the age limit as well as deficiency in chest and his candidature was thus rejected vide order dated 25.02.2016

as he was found to be over age by 09 months 14 days and deficient in chest measurement by ½ inch on the closing date i.e. 11.07.2011.

10. We have noticed that the Petitioner has been declared successful candidate by Sindh Public Service Commission vide Press Release dated 20.03.2015, however he has to meet the eligibility criteria for the aforesaid post, which in our view he had failed to meet. We are fortified with the decision of the Hon'ble Supreme Court in the case of Kashif Maqsood Vs. Provicneof Sindh & others passed in civil Petition No. 261-K of 2015. The Hon'ble Supreme Court has held as under:-

“ In our opinion it does not appear from any provision of the Rules thereby the education qualification or age etc. can be relaxed for persons applying from the public in so far as the police department is concerned. Consequently the commission correctly cancelled the candidature of the Petitioner. This petition being devoid of merit is therefore is dismissed.”

11. In our view the qualification viz age and Physical Standards for the post of ASI cannot be relaxed under Rule 12.6 & 12.15 of Police Rules 1934, so the contention of the learned counsel for the Petitioner that Government of Sindh Services, General Administration and Coordination Department issued various Notifications by allowing relaxation up to maximum 15 years in the upper age limit to all the applicants applying for the vacancies in all the Department of Government of Sindh. Suffice it to say that Notification dated 26.02.2014 issued by the Chief Secretary Government of Sindh clearly spells out that this relaxation is not applicable to Police service which reads as follows:-

NOTIFICATION

No. SO11 (S& GAD) 5-64/2011: In continuation of this Department's Notification No. SO11 (S&GAD 6-12/2004, dated 02.10.2012 and with the approval of Chief Minister, Sindh notwithstanding the contents of table given under Rule 12 (2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the orders contained in this Department's Standing Order No. SORI (SGA & CD) 6/4/85, dated 19.04.2004, Standing Order No. SORI (SGA & CD) 6/4/85 dated 15.06.2004 and Corrigendum dated 02.07.2004 issued in this behalf, Government of Sindh are pleased to allow relaxation upto maximum of 15 (fifteen) years in the upper age limit to all the applicants applying for the vacancies in all the years in the upper age limit to all the applicants applying for the vacancies in all the departments of Government of Sindh (except Police Service & the posts to be filled through combined competitive examination by the Sindh Public Service Commission to be filled during the period with effect from 1st July 2013 to 30th June 2014 in relaxation of Rules.

SALIM SAJJAD HOTIANA
CHIEF SECRETARY
GOVERNMENT OF SINDH

12. In the light of above discussion, the instant constitutional petition along with pending application(s) is dismissed on the ground that the relief prayed for in the instant petition is not available to the petitioner.

Karachi

JUDGE

Dated:- 23.11.2018.

JUDGE

Shafi Muhammad /P.A