

Pursuant to order dated 24.01.2020, Chairman Public Service Commission, Secretary Colleges and representative of Chief Secretary Sindh present. After hearing at length on question of finding the **Public Service Commission** as the best recruiting agency having a transparent and impartial standard of recruiting process of international standard which, he claims, to be their **motto** / object. All agreed and affirmed that recruitment process of 1500 posts of lectures, initiated at demand of College Education Department, shall be:-

1. That examination will be based on two components. It is contended that there are different categories of lecturers, therefore, separate screening test of each subject will be conducted comprising of 80% marks with relevant subjects and 20% Marks of general knowledge and aptitude.
 2. That test will be carried out in the four centers i.e. at Karachi, Hyderabad, Sukkur & Larkana.
 3. That test will be computer based (MCQs). Chairman Public Service Commission assures that they will seek help of **IBA Sukkur** with regard to preparation of MCQs (papers) on every subject. Accordingly, on the day of test Carbon copy of answering sheet will be provided to candidate and preferably answer key will be flashed on same day in the evening or on the next day. There will be a complete mechanism to rule out the impersonation with the help of **IBA Sukkur**. There will be CCTV on examination Hall having capability of video and audio recordings. 50% marks will be passing marks. Secretary Colleges and Chairman Public Service Commission also agreed that they will seek help with regard to assistance so as to ensure transparency through double check. Accordingly, Secretary Colleges and Chief Secretary Sindh and Chairman Sindh Public Service Commission shall ensure that IBA Sukkur shall be coordinated with assurance that at least two persons of IBA with regard to assistance duly equipped with necessary equipment so as to rule out the impersonation shall be available. After announcement of result of short listing, Public Service Commission will issue list releasing the name of passing candidates with their parentage, district and marks.
2. Second component will be the interview. There is no denial to the fact that person successfully, passing a fair and transparent written test(s), proves his eligibility but since the post of **lecturer(s)** demand a little more expertise which is not limited but includes way of expression (delivering piercing lectures), therefore, it is agreed that to choose the best, the second component should be:

“Interview will be based on 100% marks bifurcated in 75% plus 25%. The expert (subject specialists) will be competent to award upto 75 % marks as per merit of the person, appearing while 25% marks will be based on Aptitude and General Knowledge, to be given by rest of the members.”

There will be demo by every candidate for at least five to ten minutes to provide lecture or address his subject. Interview will be recorded through CCTV

having capability of video and audio as well which, needless to add, shall be part of record. It is undertaken by the Secretary Colleges that IBA experts (subject specialists) would be hired and available at the time of interview; in case any subject specialist is not available with IBA, college department will hire the same from Karachi University. It is also stated by the Chairman (SPSC) that minimum passing marks in interview would be 33%. (thirty three percent).

3. *The said consenting and agreed mechanism, I am to admit, shall ensure transparency and only the **diamonds** shall come out of sieve. The Court, can't help in acknowledging and appreciating the mechanism, helped out by all, in particular the Chairman, PSC and hopefully it (PSC) shall be known the best recruiting authority. According to Chairman Public Service Commission that he will prove as best selecting agency and there will be complete transparency which this Court openly takes as having substance, particularly in view of above mechanism, provided by all the present.*

Needless to mention that School Education Department shall also adopt this practice, as well as this order shall not be treated as precedent except education department as same is consent order. Report shall be submitted in Suit No. 1243 of 2015.

2. Before taking up the today's stand of Chairman SPSC, I find it in all fairness to say that the said order was not only a **consenting** one but, in fact, was a *binding compliance* of directives of Honourable Apex Court, so recorded in the Suo Moto Case No.18 of 2016 [2017 SCMR 637]. In the said case, the *importance* of the '**Commission**' was insisted as:-

15. The importance of the civil service can be gauged from the fact that the Constitution itself mandates (Article 242) that induction into the civil service be undertaken by an **independent commission** and provides for Federal and provincial public service commissions. Appointments in the civil service must be made in accordance with the Constitution. A serious challenge to the selection and appointment process is clearly, therefore, a matter of **public importance**. To be appointed as a civil servant is a **matter of great prestige and positions in the civil service** are coveted. The present case itself demonstrates this, for 182 advertised posts 28,000 applications were received in effect 154 applicants per post. We now need to consider whether this matter pertains to the enforcement of any of the Fundamental Rights.

3. The Honourable Apex Court, *prima facie*, insisted not upon the '**Commission**' but that of an '**Independent Commission**'. The word '*independent*' was always meant to ensure *integrity* of the

'Commission'. Not only this but found such *process* as matter of *public importance* and also held it as one, involving *fundamental rights*. The relevant para of said judgment reads as:-

16. If through a discriminatory selection process civil servants are selected and appointed it would infringe Article 27 of the Constitution which states that, "No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against." Article 25, prescribing the equality of citizens, is another Fundamental Right which is attracted if all those who are tested and interviewed are not treated equally. The present matter also involves the contravention of the Fundamental Right in Article 18 which mandates, that, "every citizen shall have the right to enter upon any lawful profession or occupation".

The Honourable Apex Court was also pleased enough to beautifully detailed the aspects of an *illegality* in recruitment process by the 'Commission'. The relevant para of judgment, being relevant, is reproduced hereunder:-

22. Great emphasis was placed by the learned counsel that if illegalities have been committed by either the Commission or the Government the successful candidates couldn't be blamed or made to suffer as a consequence thereof. This is not simply a case of the purported rights or expectations of the successful candidates; there is much more at stake. It would not be an exaggeration to categorize this case as the future of the civil service and good governance in the Province of Sindh. ...These legitimate concerns can be easily safeguarded, but before doing so it needs to be considered whether the written tests and interview conducted by the Commission were free, fair and transparent.

The use of the terms '*free; fair and transparent*' so deliberately used by the Honourable Apex Court, needs to be given much weight, at all material times. The responsibility whereof always rests upon none but the 'Commission'. Since, the *illegalities*, at the cost of what was detailed by Honourable Apex Court in para *supra*, were there, where it was also directed to 'Commission' as well to the 'Government' as:-

24. The Commission and the Government are obliged to ensure complete transparency in the process of selection and appointment respectively and anything less is unacceptable. If qualified and competent individuals are appointed their performance and work would be far superior to the inept allowed in through the back door of nepotism and/or corruption. Those who have earned the privilege yearn to

serve the nation and the people, unlike those whose loadstar is nepotism or corruption. Since tax payers are paying dearly to be served by the best they are entitled to get the best. If the incompetent or the corrupt ingratiate themselves into the civil service, citizens are deprived of their due. The hapless taxpayers foot a never ending bill which includes the salaries and other emoluments of civil servants till they retire, and after their retirement their pensions and other benefits. And they are denied the benefit of competent and honest individuals. Appointments which disregard merit, perpetuate bad governance, and drain the public exchequer; such appointments also erode the credibility of the Commission and the Government. The performance of the Government is also adversely affected, the consequences of which is borne by the public. Those given the responsibility to select the best candidates must acquit themselves of the trust reposed in them to the best of their ability and, needless to state, without any fear or favour.

25. ...The importance given by the Constitution and the Act to the manner in which induction into the civil service is to be made is being undermined. The Commission is not fulfilling its constitutional and legal mandate. Consequently, the pool of competent officers in the Government is shrinking, the public is being denied good governance and qualified and competent young men and women of the Province deprived of opportunities to enter into the civil service. If the Federal Public Service Commission can take examinations annually, including those of the central superior services ("CSS") and the provincial public service commissions of some provinces can also manage to have competitive examinations every year then there is no reason that the Sindh Commission cannot do so too.

An *illegality* in such process by the '*Commission*' was, even, viewed as never ending burden upon tax-payer (general public) but hurting the concept of '*good governance*' , therefore, to ensure transparency, the Honourable Apex Court, directed as follows:-

"26. Having determined that the petition was maintainable under Article 184(3) and that the results of written tests and the interviews were not free, fair or transparent... Those who participated cannot be blamed for the fault of the Government and the Commission. ... At the same time those who obtained an illegal advantage cannot be permitted to retain it. Therefore, balancing the lawful and genuine concerns of all concerned, safeguarding the legitimate concerns of the successful candidates, ensuring the credibility of the Commission and the integrity of

the selection process we dispose of this matter by issuing the following directions:

(1) A person of integrity and competence who meets the stipulated qualification for appointment as Chairman of the Commission be appointed in terms of Article 242 (1B) of the Constitution within two weeks from the date of the announcement of this judgment;

(2) It should be ensured that all Members of the Commission meet the prescribed qualifications;

(3) Persons of integrity and competence possessing the prescribed qualifications should be appointed to the vacant positions of Members of the Commission within four weeks of the announcement of this judgment;

(4) In view of the large scale illegalities / discrepancies committed in the written tests and interviews of CCE-2013 the same are set aside and cancelled. It is, however, clarified that *the screening tests* results are not cancelled/set aside;

(5) ..;

(6) ..;

(7) When the papers of the written tests are sent for checking/marking the identity of the candidates must be kept anonymous/secret;

(8) The marks of the written tests should be publicly displayed on the Commission's website, on the notice board in its premises and in one Urdu, English and Sindhi newspaper; disclosure should be made of the marks obtained in each subject as well as the cumulative total against the candidates' roll numbers;

(9) All those who obtain the prescribed minimum pass marks in the written tests must be invited for the interview;

(10) The marks allocated for the interview must be allocated to the interviewers equally, however, to avoid a fraction the Chairman, or in his/her absence, the senior most Member shall have the higher mark rounded off to avoid a fraction;

(11) The Commission shall keep a separate record of the marks awarded by each interviewer and each interviewer should sign and date the same as well as the combined results;

(12) The results of the interview should be displayed in the same manner as mentioned above in point (8) with respect to written tests;

(13)..;

(14) ..

(15) ...

(16)

4. *Prima facie*, the Honourable Apex Court had categorically instructed in ensuring '*credibility* of the Commission and the integrity of the *selection process*' which is not limited to *screening test and written test* but specifically includes '*interviewing process*' which, too, by preserving the record thereof. In addition, I would add that to ensure *transparency* this Court in CP Nos.D-228 of 2004 & others also directed to '*Commission*' as:

“xi. In the end, we also feel it our utmost sense of duty to direct Sindh Public Service Commission to uphold transparency, fairness and impartiality in all examinations conducted by them in future and make selection on merit alone which is keystone and foundation for maintaining their integrity and uprightness as an institution of repute.”

These had been the *binding* directives which, *prima facie*, had made the '*Commission*' for referred consenting order. However, at subsequent stage, through certain submissions, the Commission seeks amendments in above consent order, therefore, to understand the anxiety of SPSC referral of those submissions is necessary. Accordingly, the same are hereby reproduced:-

(a) Education Department may outsource the Screening Test to be conducted by IBA Sukkur as proposed by the Secretary College Education Department. The list of qualified candidates of the screening test shall be provided to SPSC for further recruitment process for the posts to Lecturers (BPS-17) in College Education Department.

(b) The allocation of marks shall be equally distributed amongst the Chairman of the Interview Committee, Member SPSC and the authorized Expert to be recommended by the Education Department. To avoid fraction, the remaining one mark shall be held by the Chairman of the Interview Committee. It is further submitted that the Chairman and the Member SPSC shall also invite questions from the respective subject as per prevailing practice.

(c) The requirement of Audio/Video Camera of the Interview may kindly be waived off.

Alongwith submissions, SPSC has appended a letter dated 27.02.2020 issued by FPSC to SPSC with regard to procedure of interview/viva voce of Advisor/Expert. Such letter is copied herein below:-



FEDERAL PUBLIC SERVICE COMMISSION
AGA KHAN ROAD, SECTOR F-5/1, ISLAMABAD

Annex 41

Islamabad, the 27th February, 2020

Phone: 051-9210217

The Secretary,
Sindh Public Service Commission,
Hyderabad.

Subject:- PROVISION OF MARKS IN INTERVIEWS/VIVA VOCE OF ADVISOR/
EXPERT.

Respected Sir,

Reference may be made to your letter No. PSC/Admn/2020/196 dated 26-02-2020 on the subject noted above.

2. The blue book for Interview Board of Federal Public Service Commission provides guidance with respect to interviews/viva voce of candidates. There is no specific allocation of marks to Departmental Representative/ Advisor/ Expert for interviews of candidates. However, Departmental Representative/ Advisor/ Expert plays an important role with his advice. The Chairman of Interview Board seeks opinion of Departmental Representative/ Advisor/ Expert after interviews of candidates before grading the marks. In this regard, the procedure as provided in the blue book is produced as under:-

“After the candidate has left the room the Chairman will first ask the Departmental Representative whether the candidate qualifies for the post. If the answer is ‘NO’ then a discussion will follow with the Commission to establish this fact. If the answer is ‘YES’ then a general discussion will follow to establish his grading and comparison with the other candidates who have qualified.”

3. The procedure stated above may be incorporated in your rules/ regulations with respect to role of Departmental Representative/ Advisor/ Expert in interviews of candidates.


(SYED AHMAD BABAR ZAIDI)
DIRECTOR (FS)

5. On query, Chairman SPSC admits that **SPSC regulations** are merely **draft regulations** though the same were drafted in 2006 and they are conducting examinations on their regulations which are not approved thus the same are without any legal sanctity, whereas on last hearing dated 24.02.2020 they referred mechanism of interview as provided in regulations whereby for any recruitment Chairman SPSC is competent to constitute a three members committee including subject expert/advisor having equal marks. Relevant to reproduce **draft regulations**, the same are reproduced as under :-

“PART II INTERVIEW COMMITTEE SYSTEM

0821 Constitution of Committees For the purpose of interview of candidates found thus far eligible, the Chairman constitutes interview Committees comprising one or more Members. The Committees are to be guided by rules set out in this Section of Recruitment Management Regulations and as per directives issued from time to time.

0822 Uniformity of Selection . In order to achieve uniformity in evaluation and process of selection during interviews, same Committee shall conduct such Interview for each post. However, If number of candidates is large and one Interview Committee cannot complete the process in reasonable period of time, Chairman SPSC, at his discretion, may constitute more than one Committee for the same post.

0823 Composition of the Committees for Interview of Candidates for Selection to Posts BPS 11 to BPS 18 A Committee shall normally be composed of **one or more Member(s) of the Commission**. In addition, one Advisor/Subject Specialist/Departmental Representative may assist each Committee during the interview. Scale/Grade-wise composition shall be as under:

a. Interview committees for BPS 11 to BPS 15. The Interview Committee for BPS 11 to BPS 15 shall normally **comprise of 2 Members from SPSC**. However, the Chairman has the discretion to reduce it to one only, if situation so warrants. In addition an **Advisor will be co-opted as Member**, and if required, **a Departmental Representative** may also be called upon to assist The composition shall be as follows:

- (1) Member SPSC as Chairman, Interview Committee.
- (2) Member SPSC as Member, Interview Committee.
- (3) Departmental Rep/Advisor as Co-opted Member.

b. Interview Committees for BPS 16 and BPS 17 The Interview Committees for BPS 16 and 17 shall always have at least two Members from the Commission and **an Advisor/Subject Specialist/Departmental Representative** as Co-opted Member, In case of CCE the number of Members nominated may be three. The composition of the Committee shall be as under:

- | | | |
|-----|--|---|
| (1) | Member SPSC | Chairman, Interview Committee |
| (2) | Member SPSC | Member, Interview Committee |
| (3) | Member SPSC | Member, Interview Committee
(For CCE only) |
| (4) | Departmental Rep/ -
Advisor/Subject
Specialist | Co-opted Member |

0824 Composition of Committees for Interview of Candidates for Selection to Posts BPS 18 and Above Candidates for all posts in BPS-18 and above will normally be interviewed by the Full Commission. However the Committees will never comprise less than three (3) Members of the Commission including the Chairman, Interview Committee, and **besides the Advisor/Departmental Representative/Subject Specialist.**

0825 Nomination of Advisor Nomination of Advisors for various Interview Committees will be **recommended' by the concerned Branch** from within the current list maintained, for **approval by Chairman, SPSC.** As a practice verbal availability of the Advisor must be obtained before a formal request is routed to him. This should be done at least two (2) weeks in advance of the interview date. After issuance of letter, Staff Officers from concerned Branch are to follow up polite telephonic reminders to the Advisor concerned.

0826 Nomination of Departmental Representative In case Chairman, SPSC decides to co-opt a Departmental Representative on the Interview Committee, **Advisor shall not normally be nominated as Co-opted Member.** Concerned Branch is to recommend a name of the official of the Department for approval of Chairman, SPSC. Procedure for nomination and subsequent reminder shall be same as specified in **Article 0825."**

6. At this stage, it is worth reiterating that **SPSC is a recruitment agency, meant to provide best civil servants** thereby helping the government in *good governance*; have no direct concern with regard to performance of qualified officers while performing their official

duties even they are not liable to pay them monetary benefit including their salary etc. For such recruitment, every department, as per its need, will send requisition to SPSC and on the basis of such requisition SPSC [recruitment agency/institution] will fulfill the requirement as well re-submit a list of successful candidates whose actions or omissions shall make the concerned *department* accountable. **It is alarming that since inception of SPSC, all its recruitments as recommended are without regulations.** They have made no mechanism to conduct interview. Even it has come on record that :

- a. Interview / result is not reflecting any opinion or marks of subject specialist/expert;
- b. In all examinations conducted by SPSC there is no mechanism that how marks will be awarded whether there will be separate marks with regard to questions on subject/professional skills;
- c. Admittedly interview is not based on any computer based test.
- d. Though Chairman SPSC has emphasized that they will follow the opinion/guidelines of FPSC but admittedly rules of SPSC do not provide any right of appeal by unsuccessful candidates whereas in the rules of FPSC there is right of appeal which lies to the High Court.

Therefore, the rules / regulations need to be framed strictly keeping in view the directives of Honourable Apex Court and that of this Court.

7. However, in order to escape the compliance of consenting order, today, Chairman SPSC is taking refuge under the letter of FPSC whereby they have sought opinion of FPSC with regard to

subject specialist/expert. I am unable to understand that in the absence of any *legal* rules / regulations, the 'Commission' is bent upon to take control of whole '*interview process*' which, even, appears to be in negation to categorical directions of the Honourable Apex Court with regard to '*interview process*'. The relied upon rules / regulations (though having no legal sanctity), even, speak of role of the *expert* but the referred letter, nowhere, suggests what role the *expert* shall play when even his 'NO' is of no significance for *Commission* and they can competently overturn it. The referred letter, however, nowhere, gives legal reasoning that as to how a 'NO' by an expert of concerned department can be undone? This gives rise to certain questions i.e:-

- a) What legitimate role the *expert* has in such interviewing process?
- b) Whether a 'NO' by an *expert* would require an explanation from the *expert* when, *prima facie*, he (expert) has no role to play in interview process as well his 'NO' can be over turned?
- c) Whether authority of over-turning the 'NO' would require reasoning or otherwise?
- d) Whether the *expert* enjoys the status of a **member** of the *interviewing committee* or not?

8. These questions, *prima facie*, beg for some legal justification which, however, are not provided in the existing referred rules / regulations (which do not have any legal sanctity). The absence of *answers* to above, not only leaves the room of *illegality* (observed in said referred cases) but also are in complete negation to categorical direction of Honourable Apex Court with regard to '*preserving the record of interview process*' which, otherwise, are meant to ensure *free, fair* and *transparent* process of recruitment. Thus, referral to

letter of FPSC is also of no help to escape the directives of Honourable Apex Court whereby every participant(s) of Committee has to play his *role* which, too, in writing.

9. At this juncture, it is germane to mention that SPSC has serious reservation over CCTV Camera. According to them this will create confusion to the candidates. The reservation, being referred *solely* to confusion of candidate, is not making any sense because confidence in a *civil servant* is also a requirement so as to resist an illegal order. There has been placed not a single legal justification to exclude use of CCTV camera. However, against such reservation, Secretary Colleges, Representative of Chief Secretary Sindh, Secretary Schools, and learned Advocate General Sindh contended that since the '*interview process*' is one of the vital part of recruitment process and record whereof is to be preserved (as directed by Honourable Apex Court); there is no harm if there will be audio and video recording of interview as the same shall not only serve purpose of directives but also shall uplift the *integrity* of the '**Commission**' which was found by Honourable Apex Court as well this Court, as not upto the mark. Thus, such reservation, being *likely* to prejudice the vitality of such important part of recruitment process, is held to be not tenable.

10. After a detailed hearing of relevant parties as well confronting them with binding directives of Honourable Apex Court and objective thereof, it has been agreed that :

a. SPSC will prepare regulations in the light of judgments passed by apex court reported as 2017 SCMR 637, judgment of this Court in CP.No.D-228 of 2004 and this consent order whereby it is agreed and insisted by all stakeholders including learned A.G. Sindh regarding recording of interview through CCTV as well as regulation would be in comparison of other Public Service Commissions of other provinces including Federal services commission within six [6] months. Such

regulations will also provide **prometric examination** system in order to lessen the human error. Such draft regulations before placing to the Law Ministry for vetting will be shared with learned Advocate General Sindh who will also examine the same and will ensure that the same are in accordance with the judgments of this Courts as well as apex courts and at par with other Public Service Commissions` regulations.

b. Chairman BIS, Karachi and Chairman BIS, Hyderabad being educationists and examiners would be at liberty to submit their suggestions to the Chairman SPSC with regard to qualifications of the required recruitment (s) as well as they will share the same with learned Advocate General Sindh. Needless to mention that submissions of these experts would not be having any binding effect except to support in this exercise..

11. With regard to recruitment in education department it is pertinent to mention that every appointment from Primary School Teacher to Subject Specialist is the domain of IBA as directed by Sindh Government since in education department there are many stakeholders including foreign funding agencies like Jica, World Bank and others, hence to earn their trust that every appointment is through IBA or NTS in similar fashion.

12. It is pertinent to mention that all education departments agreed in CP No.D-1817 of 2016 and in the case reported as Muhammad Sammi Abro v. Province of Sindh and others [2017 PLC (CS) 419] to ensure that all the appointments through SPSC shall go through initial test/screening through IBA. Being relevant para 12 of order passed in CP No.D-1817 of 2016 is reproduced hereinbelow:

“12. It has come on record that around 25 posts of principals are lying vacant in higher secondary schools. The importance of the post of principal in a school or college cannot be denied as he is supposed to ensure proper functioning of the school or college; thus, Secretary Schools shall ensure

that such posts are filled in accordance with law. At this juncture, Secretary Education contends with regard to appointment of all teaching staff up to grade 16 as provided by education policy of foreign donors, recruitment process is initiated through third party, whereas for above the 17 grade posts Sindh Public Service Commission is required to recruit every post. Since education is more important and any compromise with regard to recruitment process cannot be accepted, hence, Secretary Schools and College Education undertakes that before initiating recruitment process by the Sindh Public Service Commission there will be screening test through third party contract. Needless to mention that in the case of Muhammad Sami Abro and others vs. Province of Sindh and others [2017 PLC (CS) 419], the Chairman Public Service Commission was directed by the Division Bench of this Court to ensure that all recruitments in education department shall be initiated after screening test through third party (IBA Sukkur/NTS)."

13. Since anxiety of Chairman SPSC is that the parallel involvement of IBA in screening test would not serve the purpose that may be completely outsourced. Accordingly, with regard to first portion as ordered on 28.1.2020, SPSC would be at liberty **to conduct examinations in that manner or completely outsourced screening test through IBA.** With regard to extra expenses to be incurred, if any, on such exercise, Secretary Finance, present, undertakes that the same will be provided without any delay.

14. With regard to the examinations i.e. viva voce it is agreed that the same shall be carried out by three members including one subject specialist having equal marks. Every member will be bound to put questions from the relevant field. There will be a chart of 100 marks i.e. 60 marks of relevant subject, 20 marks of communication skill and 20 marks of general knowledge. However, to fill the fraction, remaining marks will go to the Chairman of that committee. Needless to mention that expert in this complete exercise will be hired from IBA Sukkur and in case any specialist is not available with IBA Sukkur, IBA Sukkur will arrange the substitute thereof. Besides, as discussed above, SPSC shall ensure CCTV recording of interview having capacity of audio and video recording, that shall be preserved as part of record.

15. Accordingly order dated 28.01.2020 is modified in the above terms.

Office shall communicate this order to all the concerned as well as learned Advocate General Sindh.

J U D G E

Mush/PS