

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 6868 of 2019

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Muhammad Arsalan & 06 others V/S Province of Sindh and 04 others.

Date of hearing : 17.03.2020

Date of decision : 07.04.2020

Ms. Sana Saleem, advocate for the petitioners.

Mr. Ali Safdar Depar, Assistant Advocate General.

ORDER

Adnan-ul-Karim Memon, J. Through this petition, the petitioners have prayed that the respondents may be directed to recall / cancel the result for the post of Assistant Sub Inspector (BPS-09), for Karachi range and reschedule test / interview for the aforesaid posts.

2. The case of the petitioners is that they applied for the posts of Assistant Sub Inspector (BPS-09), through advertisement No.6 / 2016 dated 19.08.2016. Per petitioners, after observing all the legal and codal formalities, they were called for physical test on 21.03.2018 and were declared successful candidates, thereafter they were called for pre-interview written test on 20.01.2019 and were called for a final interview on 29.08.2019. Petitioners have emphasized that in the final result the respondents-commission declared them failed without disclosing the reason.

3. Ms. Sana Saleem, learned counsel for the petitioners, has argued that the entire process of appointment for the post of ASI (BPS-09) conducted by respondent-commission was illegal, malafide and based on a pick and choose policy, hence the result, so announced by the respondents for the said posts is liable to be annulled and fresh test / interview ought to be conducted in a transparent manner. It is further contended that the assessment of a candidate at the interview is the collective responsibility of the Board and of its Members taken together as such essential qualities of the candidate which ought to have been kept in mind during the interview and the same factum has been ignored, which resulted in grave miscarriage of justice ; that direction may be given to

respondent-commission to place before this court the minutes of meetings held at times from the date of final result sheet inclusive of the marks assigned by the Commission to the candidates in viva-voce. Learned counsel lastly contended that this Court may remand the matter to the respondent-commission with direction to provide proper hearing to the petitioners and thereafter a well-reasoned order be passed, which will meet the ends of justice. In support of her contentions, she relied upon the case of *Suo Motu Action Regarding Eligibility of Chairman and Members of Sindh Public Service Commission etc., 2017 SCMR 637.*

4. Mr. Ali Safdar Depar, Assistant Advocate General, has placed on record statement dated 02.03.2020 showing the marks of interview awarded by the Interviewing Committee to the petitioners, whereby they have failed to clear the interview for the aforesaid post.

5. We have heard learned counsel for the parties and perused the record with their assistance. Statement dated 02.03.2020 showing the marks of interview awarded by the Interviewing Committee to the petitioners is as under:

Merit No.	Roll No.	Name of Candidate	Father's Name	Domicile	Obtained Marks	Remarks
337	12322	Mr. Muhammad Arsalan	S/o Muhammad Sohail	Karachi	25	
20	19438	Ms. Shahzadi Tahmena	D/o Hakim Ali	Karachi	35	
399	12302	Mr. Muhammad Saleem	S/o Hafiz Allah Bux	Karachi	18	
24	19414	Ms. Hira Saleem	D/o Muhammad Saleem	Karachi	34	
28	19402	Ms. Aleesha Saleem	D/o Muhammad Saleem	Karachi	15	
318	12146	Mr. Fazal Ur Rehman	S/o Muhammad Sharif	Karachi	28	
36	19436	Ms. Saima	D/o Muhammad Idrees	Karachi	10	

6. It is an admitted position that although the petitioners had cleared the written examination but they had failed in the interview / viva voce which was a pre-condition before they could be appointed to the posts applied for. Essentially the written test is designed to gauge a candidate's familiarity with the subject plus his power of expression etc. In our view, the written test does not gauge the personality of the candidate or his communication skills or his leadership or decision making abilities which are left to be examined at the time of interview. For this proposition, our view is supported by the decision rendered by the

Honorable Supreme Court in the case of Muhammad Ashraf Sangri vs. Federation of Pakistan and others, 2014 S C M R 157.

7. Principally, an interview is a subjective test and it is not possible for a Court of law to substitute its own opinion for that of the Interview Board. Obviously, if any, malafide or bias or for that matter error of judgment were floating on the surface of the record, we would have certainly intervened as Courts of law are more familiar with such improprieties rather than dilating into question of the fitness of any candidate for a particular post which as observed above is subjective matter and can best be assessed by the functionaries who are entrusted with this responsibility, in the present case, the Sindh Public Service Commission. For this proposition, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani, 2011 SCMR 1198.

8. In view of the foregoing findings, we cannot agree with Ms. Sana Saleem, learned counsel for the petitioners, for the aforesaid submissions made by her for the simple reason that per the conditions of the Sindh Public Service Commission examination, a candidate had to achieve a minimum of marks in the interview in order to be declared successful which the petitioners failed to do.

9. For all the foregoing reasons we find that this petition has no merit and hence same is dismissed with no order as to costs.

JUDGE

JUDGE

Nadir*