

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
C.P. No.D-828 of 2020**

**Before:
Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon**

Shaukat Ali ----- Petitioner

VERSUS

Province of Sindh through Chief Secretary
& others ----- Respondents

Date of hearing & Decision: 19.08.2020

Mr. Ghulam Nabi Jarwar advocate alongwith petitioner.

Mr. Allah Bachayo Soomro Additional Advocate General, Sindh alongwith Javed Mahar Secretary SPSC on behalf of respondent No.4 and Abdul Latif Jarwar Additional Secretary on behalf of respondent No.2.

ORDER

ADNAN-UL-KARIM MEMON, J: - Basically, this petition has arisen out of the advertisement dated 13.7.2020, issued by Sindh Public Service Commission (SPSC) Hyderabad and the petitioner is a potential candidate for the post of Assistant Engineer BPS-17 in Public Health Engineering & Rural Development Department, Government of Sindh.

2. In principle, the petitioner has assailed the legality of the aforesaid advertisement, whereby Respondent-SPSC changed the qualification of the candidates i.e. upper age limit from 30 to 28 years for the posts enumerated in the previous advertisement dated 5.4.2019 issued by Respondent-SPSC.

3. Notices were issued to the Respondents who filed their para-wise comments and controverted the allegations leveled against them.

4. Mr. Ghulam Nabi Jarwar, learned Counsel appearing on behalf of the petitioner has vehemently contended that the petitioner is a proposed candidate for recruitment against the post of Assistant Engineer (Civil) BPS-

17. It has been argued that on 5.04.2019, Respondent-SPSC issued Advertisement No.05/2019, whereby the applications were invited for 60 posts of Assistant Engineer (Civil) BPS-17 (36 Rural. 24 Urban) in respondent-department. It is further contended that on 13.07.2020, Respondent-SPSC issued another advertisement No. 04/2020 for the same posts changing the upper age limit from 30 to 28 years, on the premise that Recruitment Rules for the aforesaid post were amended. Per learned counsel the amendment in the Recruitment Rules for the post of Assistant Engineer (Civil) BPS-17 in Public Health Engineering and Rural Development Department, Government of Sindh, does not, in any manner abridge the right of the candidates; that the right which had already been accrued to the candidates could not be snatched later on; that constitutional jurisdiction of this Court to judicially review the re-advertisement No.04/2020, cannot be curtailed; that Respondent-SPSC has changed the upper age limit of the candidates including the Petitioner from 30 to 28, leaving the petitioner ineligible for the post to be applied for before the cutoff date i.e. 20.8.2020. He added that on 22.07.2020 the Petitioner and other candidates voiced their grievance by moving applications to the respondent No.2 for fixing of same eligibility criteria i.e. 21-30 years for the aforesaid posts but nothing has been done till date; that the Petitioner has been given discriminatory treatment for no plausible reason whatsoever by non-inclusion of relaxation of upper age limit while allowing other candidates, who had earlier applied under Advertisement No.05/2019, to participate in the subject examination, is in violation of strict and prohibitory command contained in Article 25 of the Constitution and sheer discrimination with the petitioner; that the petitioner has been indirectly non-suited on the ground that he has crossed the age of 28 years as per Recruitment Rules for the subject post amended on 29.11.2019; that Petitioner is eligible in all respect and is entitled to be allowed to participate in the Competitive Examination for the aforesaid post.

5. Mr. Allah Bachayo Soomro, learned Additional Advocate General, Sindh has raised the question of maintainability of instant petition and argued that the Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, this Court has no jurisdiction to interfere by means of a Writ. It is contended by him that the impugned recruitment rules have been framed in pursuance of Sub-Rule (2) of Rule 3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 in consultation with the Services General Administration and Coordination Department and Commission. He added that recruitment rules have been amended under the statutory power within the ambit of the relevant statute, therefore, this court cannot sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the Regulations making body of Government of Sindh. At this juncture, we asked him whether previous Recruitment Rules dated 18.10.2016 had conferred right to the candidates to seek appointment for the subject posts and subsequent change in rules has infringed their rights, by entailing them disqualified to apply for the subject post which could be enforced by a Writ Petition. He replied the query and has briefed us on the factual as well as legal aspect of the case and submits that respondent-department needed to recruit 60 Assistant Engineers (BS-17) through Competitive Examination; that the first advertisement was published on 5.4.2019, wherein the age limit as notified in Recruitment Rules for the post of Assistant Engineer (BS-17) (PHE) was 21-30 years vide notification dated 18.10.2016, but subsequently the Respondent-SPSC re-advertised the same post on 13.7.2020 changing upper age limit from 30 to 28 years on the premise that respondent-department amended the Recruitment Rules for the subject post. At this stage Mr. Javed Mahar Secretary SPSC pointed out that The Sindh Public Service Commission vide letter dated 12.02.2020 addressed to Competent Authority, and requested for reduction in upper age limit. He added that yet no final order has been passed by the competent authority. Learned Additional Advocate General in

principle has conceded the legal position of the case and argued that every statute is prima-facie prospective unless it is expressly or by necessary implication made to have retrospective operation. He added that the absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question. In terms of Section 6 of the General Clauses Act, 1897 unless a different intention appears the repeal shall not affect any right, privilege or liability acquired, accrued or incurred under the enactment repealed. He lastly submitted that after completion of the advertisement under previous recruitment rules, retrospective effect could not be given to the notification issued subsequently.

6. We have heard learned Counsel for the parties and perused the material available on the record.

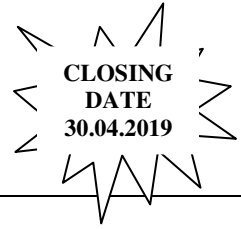
7. Perusal of the advertisement No.05/2019 dated 5.4.2019 explicitly shows that the candidates for the post enumerated in the said advertisement must be within age limit as under:-

AGE:MIN:21, MAX:30YEARS

NOTE: Age relaxation in upper age limit for vacancies in all departments is subject to Policy / Notification of the Government of Sindh whereas there is no relaxation in Police Service and the posts to be filled through Competitive Examination i.e. Engineering Cadre by Sindh Public Service Commission

8. Learned Counsel for the Petitioner while laying emphasis on Rule-12(2) of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 argued that the Petitioner cannot be non-suited on the ground of overage as there is general relaxation of upper age limit in all the departments of Government of Sindh and has specifically pleaded that he has crossed the age limit i.e. 28 years, however he asserted that he was quite eligible when first advertisement dated 5.4.2019 was issued by Respondent- SPSC for the aforesaid post. An excerpt of the said advertisement is reproduced as under:

**SINDH PUBLIC SERVICE COMMISSION
THANDI SARAK, HYDERABAD
ADVERTISEMENT NO.05/2019 DATED 05.04.2019**



**MANUAL APPLICATIONS ARE INVITED ON PRESCRIBED PROFORMA FOR 60 POSTS OF
ASSISTANT ENGINEER (CIVIL) BPS-17 (36 RURAL, 24 URBAN) IN PUBLIC HEALTH
ENGINEERING & RURAL DEVELOPMENT DEPARTMENT, GOVERNMENT OF SINDH**

TO BE FILLED THROUGH COMPETITIVE EXAMINATION

<p>AGE:MIN:21, MAX:30 YEARS</p> <p>NOTE: Age relaxation in upper age limit for vacancies in all departments is subject to Policy / Notification of the Government of Sindh whereas there is no age relaxation in Police Service and the posts to be filled through Competitive Examination i.e. Engineering Cadre by Sindh Public Service Commission.</p> <p><u>QUALIFICATION:</u></p> <p>i. B.E. (Civil) atleast in 2nd Division from a recognized University,</p> <p>ii. Registered as professional Engineer with Pakistan Engineering Council.</p> <p>02. QUOTA FOR FEMALE, MINORITIES AND DIFFERENTLY ABLED PERSONS.</p> <p>(As per policy of the Government of Sindh)</p>	<p>applied, attested copies of required certificates and three attested passport size photographs are enclosed.</p> <p>iv. The Commission under no circumstances shall be responsible for non-receipt or late receipt of any posted letter(s).</p> <p>v. Candidates residing abroad can apply on plain paper giving Age, Qualification, Domicile, PRC on Form "D" and three attested passport size Photographs along with all supporting documents. They shall be required to produce original Challan of Rs.1,000/- (Rupees one thousand only) duly paid in any Branch of State Bank / National Bank of Pakistan located in Sindh at the time of interview as well as prescribed application form duly completed in all respects.</p>
<p>03. APPLICATION FORM:</p> <p>i. Application Forms & prescribed syllabus will be issued by the Sindh Public Service Commission, Head Office, Thandi Sarak, Hyderabad and Regional Offices –</p> <ul style="list-style-type: none"> • 2nd Floor, Sindh Secretariat Building No. 06, Karachi. • Banglow No. 156 Friends Cooperative Society Akhwat Nagar near Gol Masjid, Airport Road, Sukkur • Commissioner's Secretariat, Opposite Shaikh Zaid Hospital, Larkano. <p>Candidates are required to pay examination fee of Rs.1,000/- (Rupees One Thousand only) through challan in the Head of Account "C02101-Organ of State-Exam Fee (SPSC Receipts)" State Bank / National Bank of Pakistan. The copy of paid Original Challan should be submitted along with all relevant documents on or before the closing date. The original Bank Challan shall be retained to be presented at the time of interview.</p>	<p>vi. The number of posts is subject to variation without any prior notice.</p> <p>vii. The candidates should have required age and qualification on closing date, Age shall also be reckoned on the basis of closing date.</p> <p>viii. Options (e.g. Domicile, Age Qualification, Centre and optional subject etc) once exercised shall not be changed at any subsequent stage.</p> <p>Applications should reach the Head Office of Sindh Public Service Commission, Thandi Sarak, Hyderabad or any of the Regional Offices of the Sindh Public Service Commission on or before the closing date up to 5:00 p.m. (office hours)</p> <p>No extra time will be allowed for postal transit etc.</p> <p>Applications received after closing date shall not be entertained.</p> <p>CLOSING DATE: 30.04.2019</p>
<p>ii. Application Form, prescribed Syllabus and Challan Form can also be downloaded from Sindh Public Service Commission Official Website www.spsc.gov.pk</p> <p>iii. No application Form shall be entertained unless copy of challan of Rs.1,000/- duly paid in any branch of State Bank / National Bank of Pakistan located in Sindh for the post</p>	<p>Other details can be seen in "General instructions" attached with the Application Form.</p> <p style="text-align: center;">SECRETARY Phone No.(022) 9200694, 9200246/ Fax No. (022) 9200697 Website. www.spsc.gov.pk Email: info@spsc.gov.pk</p>

9. The pivotal questions which need to be addressed in order to reach a just decision are whether the Respondent-department could issue the

Notification dated 29.11.2019 and take away the accrued rights of the candidates / petitioner under recruitment rules for the aforesaid post vide Notification dated 18.10.2016 and whether petitioner can be held disqualified to participate in the subject Competitive Examination?

10. To see the aforesaid position, we have scanned the file of instant Petition and noticed that respondent-department has floated the summary for Chief Minister, Sindh in order to obtain permission for relaxation of upper age limit by 2 years for the aforesaid purpose. For convenience sake relevant portion of Summary is reproduced as under:

SUMMARY FOR CHIEF MINISTER, SINDH

SUBJECT: RECRUITMENT TO THE ENGINEERING CADRE POSTS
THROUGH COMBINED COMPETITIVE EXAMINATION

The Public Health Engineering Department needs to recruit 65 posts of Assistant Engineers (BS-17) through Competitive Examination which will be conducted by Sindh Public Service Commission. The advertisement is published on 14.07.2020 at Annexure-I. The age limit notified in recruitment rules of Assistant Engineer (BS-17) Public Health Engineering Department is 21-28 years vide notification dated 29.11.2019 (Annexure-II).

2. The Sindh Public Service Commission vide letter dated 12.02.2020 has stated that the reduction in upper age limit of PHE from thirty two twenty eight years may create problems and un-necessary litigation and has requested that the age limit for new recruitment advertisement may be considered for 21-30 years, as the recruitment has not been made since long so the candidate of upper age limit may participate for this examination.

3. The candidates are approaching this department for relaxation of upper age limit by least 2 years. In this respect, last recruitment was made in the year 2018 by the Sindh Public Service Commission. SGA&C Department has recently issued notification vide No.SO.II (SG&CD)5-64/2011 dated 27.07.2020, whereby age relaxation has been allowed upto 15 years.

4. Keeping in view of the above, it is proposed that the upper age limit for this examination may kindly be considered relaxation of upper age limit by 2 years.

5. The Honourable Chief Minister Sindh may like to approve at proposal contained in para-4 above please.

6. The Minister, PHE & RDD is on leave. However, he has considered to submit the summary.

(LAEEQ AHMED)
SECRETARY TO GOVT OF SINDH

CHIEF SECRETARY, SINDH

CHIEF MINISTER SINDH

11. We have also noticed that previous advertisement of SPSC was based on the earlier recruitment rules notified vide No. SOPHE)2(20)/2000, dated 18.10.2016. The recruitment rules were modified vide Notification No.SO (PHE)2(63)/2008, Dated 29.11.2019 with bifurcation of posts of

various disciplines / Civil, Electrical, Mechanical, Electronics and Chemical with upper age limit of 28 years. An excerpt of Notifications dated 18.10.2016 and 29.11.2019 are reproduced as under:

NO.SO(PHE)2(20)/2000
GOVERNMENT OF SINDH
PUBLIC HEALTH ENGINEERING AND
RURAL DEVELOPMENT DEPARTMENT
Karachi, dated the 18th October, 2016
NOTIFICATION

NO.SO(PHE)2(20)/2000: In pursuance of sub-rule(2) of rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and in consultation with the Services, General Administration and Coordination Department, Government of Sindh and in partial modification of this Department's notification No.SO(PHE)2(33)/98 dated 09.08.2001, the method, qualification, experience and other conditions for appointment in respect of the post in the Public Health Engineering & Rural Development Department, Government of Sindh, mentioned in column-2 of the table below, shall be as laid down in columns-3, 4 and 5 thereof:-

S.No.	NAME OF POST	METHOD OF APPOINTMENT	Minimum academic qualification / experience necessary for initial appointment	Age Limit	
01	02	03	04	05	
	Assistant Engineer / Assistant Design Officer / SDO (BPS-17)	<p>i. Fifty percent by initial appointment (male only) through a competitive examination conducted by Sindh Public Service Commission.</p> <p>ii. Twenty five percent by promotion from amongst the Sub-Engineers holding a degree in Civil Engineering with atleast five years service as such on seniority-cum-fitness basis.</p> <p>iii. Ten percent by promotion from amongst the Sub-Engineers holding a degree of B.Tech (Hons) with atleast ten years service as such on seniority-cum- fitness basis.</p> <p>iv. Fifteen percent by promotion from amongst Sub-Engineers holding certificate of three years diploma from any institution recognized by Sindh Board of Technical Education / University in Civil Mech: or Electrical Engg: having atleast ten years service as such and having passed Departmental Professional Examination.</p>	<p>i. Bachelors of Engineering in civil From a recognized University.</p> <p>ii. Registration as Professional Engineer with the Pakistan Engineering Council.</p>	21	30

Tameezuddin Khoro
Secretary to Govt of Sindh

NO.SO(PHE)2(63)/2008
GOVERNMENT OF SINDH
PUBLIC HEALTH ENGINEERING AND
RURAL DEVELOPMENT DEPARTMENT
Karachi, dated the 29th November, 2019

NOTIFICATION

NO.SO(PHE)2(63)/2008: In pursuance of sub-rule(2) of rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and in partial modification of this Department's notification No.SO(PHE)2(20)/2000 dated 18th October, 2016, and in consultation with the Services, General Administration and Coordination Department, Government of Sindh, the method, qualification and other conditions for appointment in respect of the post of Assistant Engineer / SDO / ADOs (BPS-17) in the Public Health Engineering & Rural Development Department, Government of Sindh, mentioned in column-2 of the table below, shall be as laid down in columns-3, 4 and 5 thereof:-

S.No.	NAME OF POST	METHOD OF APPOINTMENT	Minimum academic qualification / experience necessary for initial appointment	Age Limit	
01	02	03	04	05	
	Assistant Engineer / SDO/ ADOs (BPS-17)	<p>i. Fifty percent by initial appointment through a competitive examination conducted by Sindh Public Service Commission (SPSC).</p> <p>ii. Twenty five percent by promotion from amongst the Sub-Engineers (BPS-11), holding a degree in Civil / Mechanical / Electronic/ Electrical Engineering with atleast five years service as such on seniority-cum- fitness basis; and</p> <p>iii. Ten percent by promotion from amongst the Sub-Engineers holding a degree of B.Tech (Hons) with atleast Ten (10) years service as such, on seniority-cum- fitness basis.</p> <p>iv. Fifteen percent by promotion from amongst Sub-Engineer (BS-11), holding three (03) years Diploma of Associate Engineer in Civil / Mechanical / Electronic / Electrical Technology from an institute recognized by Sindh Board of Technical Education (SBTE), having atleast five (05) years service as such and passed Departmental Professional Examination, on seniority-cum-fitness basis.</p>	<p>i. Bachelors of Engineering in civil From a recognized University.</p> <p>ii. Registration as Professional Engineer with the Pakistan Engineering Council.</p>	21	30

Dr. Niaz Abbasi
Secretary to Govt of Sindh

12. In the light of forgoing, we are of view that a statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. It is well settled that a substantive law is presumed to be

prospective. It is one of the facets of the rule of law. However, where a right is created by an enactment, in the absence of a clear provision in the statute, it is not to be applied retrospectively.

13. It is obvious from the record that when the subsequent notification was issued, a right had already been accrued to the candidates / petitioner and in such state of affairs in view of settled principle of law, retrospective effect could not be given to the subsequent notification. It is a settled law that rules of procedure operate retrospectively but if the rules create or take away some vested rights, then the operation of the rules is prospective and not retrospective. In our view the candidates / petitioner cannot be deprived of his right for applying for the subject post by making any subsequent amendment in the rules / policy already holding the field.

14. In the light of above facts and circumstances of the case, the instant petition is disposed of in the terms whereby the competent authority of respondents is directed to take final decision on Summary for Chief Minister, Sindh floated by the respondent-department on 28.7.2020 within a period of one week from the date of receipt of this order and till final decision on the subject Summary, Sindh Public Service Commission is directed to allow the petitioner to participate in the aforesaid examination, subject to all just exceptions as provided under the law after sending Intimation Letter to him.

15. This petitions stand disposed of in the above terms with no orders as to costs.

Let a copy of this order be transmitted to the respondents for information and compliance.

JUDGE

JUDGE