

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –4976 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Naseer Khan

Versus

Province of Sindh and 04 others

Date of hearing & order : 11.11.2020

Petitioner Naseer Khan present in person.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

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

M/s. Liaquat Ali Abro and Nadeem Ahmed Qureshi, Law Officers of Law Department, Government of Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner has called in question the rejection of his candidature for the post of District Public Prosecutor (BS-19) in Law Department, Government of Sindh vide letter dated 18.10.2019 issued by Sindh Public Service Commission Hyderabad (SPSC) on the analogy that he did not possess ten (10) years' experience as an Advocate of High Court as per advertisement No.3/2019 dated 15.02.2019.

2. Petitioner, who is present in person, has submitted that SPSC announced various posts of different departments including one post of District Public Prosecutor (BS-19) on Rural quota vide advertisement No.3/2019 dated 15.02.2019 ; that he appeared in the competitive process and qualified the written examination test, however he was not allowed to appear in the interview on the ground that he did not possess the minimum ten (10) years' experience as an advocate of High Court ; that reasons assigned for the rejection of his candidature was on account of suspension of his practicing license by the Sindh Bar Council being in Government service as law officer in the Mines Labour Welfare Organization, Sindh, Labour Department. It is urged that the impugned rejection of his candidature for the aforesaid post is arbitrary, malafide and discriminatory as he had an experience as an advocate of the High Court of more than thirteen (13) years at the time when he was illegally rejected, and the certificate of his enrollment issued by the Sindh Bar Council was provided by him to the respondents. It is further urged that the impugned rejection letter was issued on

18.10.2019 i.e. only one day before the interview scheduled for 19.10.2019, and as such, his statutory right to appeal was denied. He prayed for allowing the instant petition.

3. Conversely, learned AAG assisted by Mr. Muhammad Yousif Alvi, Law Officer of SPSC argued that petitioner lacks the experience of ten (10) years as an advocate of High Court, on the premise that he was / is a Government Servant and his license to practice as an advocate stood suspended by the Sindh Bar Council when he joined civil service as such his experience before joining his service comes to six years, whereas ten (10) years' experience of standing at the bar was the requirement for the subject post, resultantly his candidature was canceled vide letter dated 18.10.2019. They prayed for dismissal of the instant petition.

4. We have heard the petitioner, who is present in person, learned AAG, and learned Law Officer representing SPSC.

5. We have noted that the petitioner was enrolled to the Subordinate Courts on 15.10.2003 and High Court on 01.04.2006. Later, he entered into Government Service as a law officer in the Mines Labour Welfare Organization, Sindh Labour Department on 23.05.2013. Under the rules of the Sindh Bar Council, after he entered into government service, his license was suspended. Yet by his post as law officer he has been permitted by the Labour Department, Government of Sindh, to appear and plead their cases before the Honorable Supreme Court / High Court / Sindh Services Tribunal to defend the Government interest, such notification dated 2.9.2013 is available on record. It appears from the aforesaid factual position of the case, prima-facie his job description remained as of an advocate of High Court.

6. To elaborate further on the subject, one can qualify as an Advocate after completion of a law degree (LL.B), six months pupillage under a senior Advocate in his / her chambers and thereafter to go for Bar admission test. The Bar Council examines him / her i.e. whether he / she is fit or not to be enrolled as an Advocate, and he / she qualifies, the Bar Council issues to him / her the license for appearing before the Courts subordinate to High Court. After completion of two (02) years practice, the advocate can apply for enrollment as an Advocate of High Court.

7. We have noticed that ten (10) years of practice at the Bar is foundational professional experience, which is considered as qualification for the subject post. The contention of the respondents that the experience of the petitioner as an

Advocate High Court gets obliterated or washed away when he was appointed as law officer in the year 2013 cannot be accepted for the reason that petitioner was appointed law officer being an advocate and he has been allowed to appear before the Honorable Supreme Court / High Court / Sindh Services Tribunal as discussed supra as such his experience to practice continued till date by virtue of his post as a law officer, *prima-facie* he cannot be held disqualified to compete in the competitive examination for the post of District Public Prosecutor.

8. In our view, the submission of respondents will be counterproductive and would prevent good Advocates from accepting appointments in civil service if this analogy persists. The second limb of the argument of the respondents is that once an Advocate is appointed as a Law Officer in any department of the Government of Sindh, he cannot be appointed to the post of District Public Prosecutor has to be ruled out for the understanding that it does not appeal to logic.

9. We, therefore, hold that ten (10) years' service experience includes a period of serving as a law officer, which counts active practice at the bar which petitioner possesses and therefore is qualified to appear for the subject test for the position of District Public Prosecutor.

10. In the light of the above facts and circumstances of the case, the competent authority of SPSC is directed to allow the petitioner to appear in the subject interview and after conducting his interview announce the result accordingly within two (02) weeks from today.

11. The petition is accepted under the terms set out above, with no order as to costs.

J U D G E

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Shahzad*