

IN THE HIGH COURT OF SINDH

Bench at Sukkur

C. P. No. D – 756 of 2013

Waheed Gul Khan.....Petitioner
Versus
Province of Sindh and others.....Respondents

C. P. No. D – 3575 of 2013

Mumtaz Ali KhosoPetitioner
Versus
Province of Sindh and others.....Respondents

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **15-12-2021**

Date of Decision: **15-12-2021**

Mr. Sohail Ahmed Khoso, Advocate for Petitioner in C.P.No.D-3575 of 2013
None present on behalf of the Petitioner in C.P.No.D-756 of 2013
Mr. Zulfiqar Ali Naich, Assistant A.G-Sindh.

ORDER

Muhammad Junaid Ghaffar, J. – Through both these Petitions, the Petitioners have impugned the result of the interview, conducted by the Respondents on the ground that the same is void and illegal with a further prayer that appointment order be issued in their favor.

2. Counsel for the Petitioner in C.P.No. D-3575 of 2013 has argued that pursuant to an advertisement dated 14.02.2010, the Petitioner applied for the job in the Food Department, Government of Sindh and passed the written test; whereas, he was called for interview vide letter dated 26.12.2011 and thereafter nothing happened. He further submits that subsequently, it came into the knowledge of the Petitioner that some appointment has been made and even those persons have been appointed who never appeared in the written test, hence this Petition. He lastly submits that all those appointments which are being made in violation of law are also liable to be declared as illegal, whereas, Petitioner is entitled to be appointed.

3. On the other hand, learned AAG has opposed these Petitions on the ground that as per result of the interview, the Petitioners in both Petitions had failed and hence no case is made out.

4. We have heard Counsel for the Petitioner in C.P.No.D-3575 of 2013 and learned AAG and perused the record.

5. As to the facts so pleaded on behalf of the Petitioners, it appears that though they did pass their written test, but admittedly as per comments, they were unsuccessful in the interview and therefore a question arises as to how and in what manner any right accrues to them to claim appointment by filing these Petitions. As to illegal appointment of others, it would suffice to observe that neither those persons have been joined as respondents; nor any specific prayer has been made to this effect. In fact, it appears to be an afterthought, and may have surfaced after filing of response to these petitions. In that case either the petitions were required to be amended or after withdrawal of these petitions permission should have been obtained to file fresh petition. None of these has happened and therefore, we cannot look into this aspect of the matter as it would seriously prejudice others.

6. As to the result of the interviews being illegal and subject to challenge in these proceedings, we have not been able to persuade ourselves as to how the relief being sought can be granted in respect of Viva-voce/Interview Examination of the Petitioners, in which, according to them, they ought to have been declared successful, whereas, the Respondents have failed them, as apparently the verbal response of the Petitioners in a Viva-voce Examination and Interview cannot be looked into by us in our Constitutional jurisdiction, as it is entirely dependent on the factual determination and the contention of the parties. Even otherwise, what answer is given by a candidate in an Interview/Viva-voce Examination, the same is a matter of verbal response and no record is apparently required to be maintained by the concerned appointing authority. In these circumstances, we are of the considered view that these Petitions are not maintainable. Reliance in this regard may be placed on the case reported as *Muhammad Ashraf Sangri v. Federation of Pakistan* **(2014 SCMR 157)**, wherein the Hon'ble Supreme Court has been pleased to observe as under-

“Essentially 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 in order to give the petitioner relief. What transpired at the interview and what persuaded one member of the Board to award him only 50 marks in something which a Court of law is certainly not equipped to probe and to that extent we cannot substitute our own opinion with that of the Interview Board. Obviously if any mala fides 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 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 Public Service Commission. For this proposition the case of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani (2012 SCMR 1198) can be referred to”.

7. Accordingly, both Petitions being misconceived are hereby dismissed with pending application(s).

J U D G E

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Ahmad