

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 178 of 2020

Bilal Ahmed and another v. Province of Sindh and others

Before:

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

Date of hearing: **02-03-2022**

Date of decision: **02-03-2022**

Mr. Shahzado Dreho, Advocate for the Petitioners.
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

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ORDER

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioners seek the following relief(s):

- a) *Declare non issuing result with marks for the post of Assistant Sub-Inspect (BPS-9) to the petitioners even non assigned on website by the commission is illegal, malafide against the norms of law and justice.*
- b) *Declare that the act of respondents by not recommending the petitioners names for the post of Assistant Sub-Inspector (BPS-9) Male with ulterior motives is pick and choose policy, favoritism, nepotism and against the principles of natural justice.*
- c) *That this Honorable Court may be pleased to direct the respondents to constitute a committee comprising of members having unblemished reputation and character to conduct the fresh interview of the petitioners.*
- d) *That this Honorable Court may be pleased to direct the respondents to appoint the petitioners for the post of Assistant Sub-Inspector BPS-9 Male as per written test as well as prima facie discussed above material.*
- e) *That this Honorable Court may be pleased to grant ad-interim injunction by restraining the respondents to stop process of appointment of Assistant Sub-Inspector BPS-9 Male (Sukkur Range) till final decision of the instant petition and further may be restrained not to issue any appointment orders in that respect.*
- f) *To award the cost of the petition.*

g) *To grant any other relief, which this Honorable Court may deem fit and proper under the circumstances of the petition.*

2. Learned Counsel for the Petitioner has contended that the petitioners had qualified in the written test and appeared for interviews and it is their case that despite passing the same, neither the results of interview were announced; nor any appointment letters were issued. He has further argued that directions be issued to produce all results of the interview and thereafter appropriate appointment orders be issued in favor of the petitioners. In support he has relied upon the order dated 9.11.2020 passed in CP No.D-8033 of 2019 at the Principal Seat and order dated 13.2.2020 passed in CP No.D-228 of 2004 and other connected matters at the Principal Seat.

3. On the other hand, learned AAG has opposed this petition on the ground that as per comments of Public Service Commission, the petitioners have failed in the interview / viva voce examination; hence, no case is made out and the petition is liable to be dismissed.

4. We have heard the Petitioner's Counsel as well as AAG and perused the record.

5. It appears that pursuant to some job vacancies, an advertisement was published on 19.8.2016 and the Petitioners applied and were called for physical fitness test which they qualified and thereafter were called for pre-interview written tests which again was qualified by both the petitioners. It is their case that they had qualified in the interview; whereas, despite being successful in the interview, neither results have been announced nor any justification has been given as to non-issuance of appointment letters. On the other hand as per comments of the Commission, the petitioners appeared before the Selection Board / Interviewing Committee; but their performance before the said Board was unsatisfactory; hence, they have not been able to pass the interview / viva-voce examination.

6. 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 this Petition. It has also been alleged that unfair means were adopted in the appointment process and others have been appointed and to this it would suffice to observe that as to alleged 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 that case either the petition was required to be amended or after withdrawal permission should have been obtained to file a fresh petition. None of these has happened and therefore, we cannot look into this aspect of the matter as it would seriously prejudice others.

7. 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.”

8. Accordingly, petition being misconceived is hereby **dismissed** with pending application(s).

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Abdul Basit