

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
CP No.D-3134 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on CMA No.13436/2022.
2. For orders on office objection.
3. For hearing of main case.

11.08.2022

None present for the petitioner.
Barrister Munim Masood, advocate for respondent No.2.
Mr. Muhammad Nishat Warsi, Deputy Attorney General.

None present for the petitioner, nor any intimation received, whereas, this is a date by court matter and the petitioner was present before the Court on the last date of hearing. However, as per earlier orders the petitioner who appears in person has already filed his written arguments. We have perused the same. The case of petitioner is that he appeared in some NTS test for a vacancy of Sub engineer Electrical announced by Respondent No.2 and had passed the said aptitude test. It is his further case that thereafter he was called for interview and despite his excellent response, he has been allotted only (3) three marks which according to him could not have happened. He has prayed for issuance of an appointment order.

On the other hand, learned Counsel for Respondent No.2 has opposed this petition on the ground that it is hit by laches as exercise of test and interview was conducted in 2015, whereas, petition has been filed in the year 2021, and therefore, the petition is liable to be dismissed.

We have heard the learned Counsel for Respondent No.2 and have also perused the written arguments of the petitioner. Insofar as the delay in approaching this court is concerned, it seems to be an admitted position that the vacancy was announced in 2015, whereas, this Court has been approached in 2021. Though it has been stated that several efforts were made by the petitioner by approaching the authorities; however, that by itself is not a valid ground to overcome laches. The contention in this regard does not seem to be convincing as no justifiable cause has been shown to us so as to approaching this court after more than six years of the exercise of appointment. In matters of seeking appointments, it is very crucial as it has a direct impact on the maximum age which may have been fixed by the Employer.

Insofar as the case of the Petitioner as to the result of the interview being illegal and subject to challenge in these proceedings is concerned, 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 Petitioner, in which, according to him, he ought to have been declared successful, whereas, the Respondents have failed him. Apparently the verbal response of the Petitioner 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 this Petition is not maintainable. There isn't any yard stick or mechanism to examine that as to what had happened during the interview. 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.”*

Further reliance can also be placed on the case of ***Arshad Ali Tabassum v The Registrar Lahore High Court* [2015 SCMR 112]; *Miss Gulnaz Baloch v The Registrar Baluchistan High Court* [2015 PLC (CS) 393] and *Altaf Hussain v Federal Public Service Commission* [2022 PLC (CS) 92]**.

In view of the above discussion, this petition being misconceived and hit by laches is hereby dismissed.

JUDGE

JUDGE

Khuhro/PA