

## IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

### Constitutional Petition No.D-154 of 2023

**Dr. Atteque Rehman**

Petitioner: Through Mr. Aftab Hussain Khuharo, advocate.

Respondents: Nemo.

Date of hearing  
& Decision: 10.01.2023.

### **ORDER**

**ADNAN-UL-KARIM MEMON, J.** – Through this petition, the petitioner has impugned recruitment process initiated by the Sindh Higher Education Commission, Government of Sindh, (SHEC) for the positions of Director General (ORIC) BS-20 and Director General (Coordination) BS-20.

2. Brief facts of the case are that the posts of Director General (ORIC) BS-20 and Director General (Coordination) BS-20 fell vacant in November 2022. Thereafter Director (Admin) SHEC, Government of Sindh advertised the subject posts for appointment in renowned Daily Newspapers on 3.11.2022 for the appointment. The Committee received applications that were scrutinized, and a test was conducted, thereafter, the decision was made to call only the successful and /or shortlisted candidates for interview, however, the petitioner failed to obtain threshold marks to be called for interview. The petitioner being aggrieved by and dissatisfied with the non-consideration of his candidature by the Committee has preferred this Petition, *inter-alia*, on the ground that he is a fit and eligible candidate for the subject positions in all respect, however, his candidature has wrongly been held failed in the test so conducted by the SHEC. For convenience's sake, an excerpt of the results dated 02.01.2023 of both posts are reproduced as under:-

**Result for the post of Director General Coordination**

Candidate	Total 100
DG-001	46
DG-002	34
DG-003	44
DG-004	45
DG-005	37
DG-006	46
DG-007	75
DG-008	71
DG-009	55
DG-010	46
DG-012	46
DG-013	49
DG-014	46
DG-015	56

**Result for the post of Director General ORIC**

Candidate	Total 100
DO-001	41
DO-002	45

3. Mr. Aftab Hussain Khuharo, learned counsel for the petitioner, argued that the petitioner has completed Ph.D. degree with more than 15 Research papers, worked as Director HEC Islamabad for about three years, and also appeared for the interview earlier for the post of Executive Director Sindh HEC. It is contended that the petitioner had reservations against the written test dated 02.01.2023 conducted by SHEC through NED University, Karachi, which is violative of laws for the reason that the Vice Chancellor of NED University is also a member of the SHEC; and, as per law such test could have been conducted through the third-party testing agency after getting approval from members of SHEC, but the test was conducted from the respondent university and the result whereof uploaded on the website was unexpected for which the petitioner also moved such application for redressal of his grievance, but all in vain. He lastly prayed for allowing the instant petition.

4. We have heard learned counsel for the petitioner on the maintainability of the petition and perused the material available on record.

5. Since the Selection Committee through a third-party testing agency has already awarded marks to the petitioner which are fewer marks than the

candidates who obtained higher marks and shortlisted them for the subject positions for the interview in terms of Public Notice dated 3.11.2022.

6. In such circumstances, we are not in a position to substitute our findings and change the criteria and/or the marks as awarded by the testing agency to the petitioner for the said posts, and the respondent SHEC deemed it better not to call the candidates for the interview, who failed in the written test. Besides, we shall add that eligibility of the candidate demands that he must possess inspiring leadership with strong interpersonal and influencing skills and proven academic excellence of the candidate; and, in the present case, the petitioner has not been declared as the successful candidate for the said positions to claim the right to be called for interview and/or to be appointed.

7. It is a well-settled position of law that merely applying for joining the recruitment process in response to an advertisement does not create any vested right to claim the job. Apparently, before finalizing a fit candidate by the competent authority or Selection Board, the testimonials and antecedents of each candidate are required to be considered under the prescribed benchmarks but to maintain a level playing field and evenhanded competition amongst all candidates, the qualification and competency in all fairness have to be considered and adjudged under the qualification notified to apply in the advertisement, the settled terms and conditions cannot be disregarded. On the aforesaid proposition, we are fortified with the decision of the Honorable Supreme Court in the case of Muhammad Ashraf Sangri v. Federation of Pakistan and others (2014 3CMR 157).

8. Adverting to the contention of learned counsel for the petitioner that the petitioner was the only candidate who ought to have been shortlisted for the interview rather than other candidates as required under the Sindh Higher Education Commission Act, 2013. We are of the considered view that this contention is not appealable because the testing agency was only required to make recommendations of eligible candidates for the interview after awarding the marks which function is over, however, if the SHEC do not find require the number of eligible candidates the procedure does not require them to cancel such process; and in the present case, petitioner obtained fewer marks to claim eligibility for the interview; even otherwise, this Court cannot sit in judgment over the wisdom of competent authority of the Government in the choice of

the person to be appointed as long as the person chosen possesses prescribed qualification and is otherwise, eligible for appointment.

9. So far as the participation of respondent No.3 as a member of SHEC and the test conducted by the respondent University is concerned, prima facie, the same action of the testing agency could not prejudice anyone else for the reason that its function was to award marks and the petitioner obtained 34 marks for the position of Director General Coordination, whereas for the position of Director General (ORIC), he obtained 45 marks and in the first position some candidates obtained more than 34 marks, thus the petitioner cannot assert that his right has been prejudiced by the participation of respondent No.3 in the process, thus this contention of learned counsel for the petitioner is overruled.

10. In the wake of the above discussion, we do not find any justification to interfere in the recruitment process initiated by the Sindh Higher Education Commission, Government of Sindh, for the positions of Director General (ORIC) BS-20 and Director General (Coordination) BS-20 as no material has been placed on record to take a contrary view; even no malafide on the part of SHEC has been proven. We accordingly dismiss the present petition in *limine* with no order as to costs. Pending applications also stand disposed of.

**JUDGE**

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Nadir\*