

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-366 of 2023

Samiullah Khan

Petitioner: In person

Respondents: Through Mr. Abdul Jalil Zubedi, AAG a/w
Dr. Liaquat Ali Abro, Consultant Law to Chief
Secretary Government of Sindh

Date of hearing
& Decision: 24.01.2023.

ORDER

Through the captioned petition, the petitioner has prayed as under:

1. Respondents No.2 and 3 may kindly be directed to amend the appointment/qualification rules as per Notification No.SOR-I (SGA&CD) 2/3-93 dated 24.11.1994 issued by the Services General Administration and Coordination Department, Government of Sindh
2. Respondents may kindly be directed in terms of above rules and qualifications to allow the petitioner and consider for interview for the post of Deputy District Attorney (BS-18) and the experience since 01.01.2009 to date in the Ministry of Law and Justice and Federal Courts may be considered as experience as Standing at Bar.”

2. Facts of the case are that the Sindh Public Service Commission, (SPSC) Hyderabad, issued a Consolidated Advertisement No.01/2020 dated 09.02.2020 for various vacant posts in the Government of Sindh departments, the Petitioner applied for the post of Deputy District Attorney (BS-18), through proper channel. SPSC conducted the written test for the subject post in December 2021 and he succeeded to qualify for the written test and waited for his interview call, however, in his utter shock and dismay his candidature was rejected by SPSC vide letter dated 04.11.2022, on the premise that petitioner has no experience of (05) five years practice of law. The petitioner being aggrieved by and dissatisfied with the rejection letter moved an application/representation before Respondent No.2 for considering his experience as a civil servant in the Ministry of Law and Justice, Government of Pakistan and Federal Courts and in lieu of experience of Standing at Bar but no response/decision was made by SPSC, hence this petition, *inter-alia*, on the ground that the Petitioner is serving in Ministry of Law and Justice, Government of Pakistan since 01.01.2009, holds the degree of Masters in law (LLM), while SPC's requirement for the aforementioned post is LLB,

further, the duties as Deputy Assistant Solicitor (BS-17) and Registrar (BS-17) at above-mentioned Federal Courts, have close relations with the prosecution and Court matters. Per the petitioner, during his tenure of service as Deputy Assistant Solicitor (BS-17) he had time and again been entrusted with the additional charge of Section Officer. According to the petitioner, being DAS/Law Officer (BS-17) he could apply for the higher post (BS-18), besides having over five years of close experience dealing with the prosecution and legal matters since 01.01.2009. Petitioner referred to the Sindh Judicial Service Rules 1994 and submitted that "**practicing the profession of Law**" has explicitly been defined and supports his case for participation in the interview, which is extracted as follows:

Qualifications: - (1) No person shall be appointed to a post in the service by initial appointment unless,-

(a) in the case of appointment to a post in the lower grade of Service he possesses a degree in Law from a recognized University entitling him to PRACTICE THE PROFESSION OF LAW OR is Barrister of England or Ireland or is a Member of the Faculty of Advocates of Scotland; and

(b) he is PRACTICING THE PROFESSION OF LAW OR is a member of the staff of the Supreme Court, High Court of Sindh or Courts subordinate to the High Court of Sindh.

Provided that the Civil Judges and Judicial Magistrates appointed on the recommendations of the High Court before the coming into force of these rules shall be deemed to have been appointed under these rules.

Explanation: The expression "practicing the profession of law" shall include any period of service of the State by a person as-

(a) Legal Assistant or Section Officer in the Law Department of Government of Sindh, only;

(b) Assistant Attorney;

(c) Assistant Solicitor;

and (d) Full time Prosecutor, authorized to conduct prosecution on behalf of the State in a Court;

(e) civil servants, other than those mentioned above, who have served in connection with the affairs of the province or Federation for a period of not less than three years.

3. We have considered the submissions of the petitioner, who is present in person, on the analogy put forward by him and perused the record with his assistance.

4. Primarily, the complete procedure for appointment of Deputy District Attorney (BS-18) is given in the advertisement, which provides that the candidate should be a law graduate at least in 2nd Division from a recognized university with a minimum of 05 years standing at the bar and he should be within age limits.

5. The entire case of the petitioner rests upon his experience as Deputy Assistant Solicitor (BS-17) in the Solicitor Wing of the Ministry of Law and Justice, Government of Pakistan, and the petitioner has heavily relied upon the Sindh Judicial Service Rules, 1994 and insisted that practicing the profession of law includes standing at the bar. We do not agree with the submissions of the petitioner, for the simple reason that standing at the bar cannot be equated with practicing the profession of law as a civil /public servant by sitting in the office, if the Law Graduate intends to practice law he has to obtain a certificate from concerned Bar Council, under the Legal Practitioners and Bar Council Act, 1973, to appear before the competent court of law and thereafter he could be able to earn experience of the virtual practice of law and not mere sitting in the office and holding the post in the Ministry of Law. The Deputy District Attorney holds a public office and is charged with the duties of so acting to best serve the interest of the administration of justice. His appointment is based on five years of practice as an advocate in the court of law, though, he is appointed by the Government, but is also an officer of the Court and, therefore, fairness, objectivity, and impartiality are the hallmarks of that office, thus the position held by the petitioner cannot be equated to the office of the Deputy District Attorney. We do not see any of the conditions, as enumerated in the recruitment rules for the subject post being fulfilled by the Petitioner, thus the request of the petitioner to allow him to participate in the interview for the post of Deputy District Attorney (BS-18) and the experience he earned, since 01.01.2009 to date, in the Ministry of Law and Justice and Federal Courts as experience as Standing at Bar cannot be acceded to.

6. So far as candidature/recruitment of the petitioner for the post of Deputy District Attorney (BPS-18) is concerned, in our view, it has rightly been rejected by SPSC vide rejection letter dated 04.11.2022 on the premise that the petitioner does not possess 05 years experience standing at the bar up to last date mentioned in the advertisement. It was contended by the petitioner that the right to practice the profession of law cannot be confined to physical appearances in judicial forums, but it necessarily includes giving legal advice, drafting, and providing any other form of legal assistance, including serving in the law department and advising the Government on legal issues. Be that as it may, it is admitted position that the petitioner is not enrolled as an advocate under the Legal Practitioners and Bar Council Act, 1973, and/ or a practicing lawyer and has no standing at the bar at all.

7. It will be seen from the above provisions that unless a person is enrolled as an advocate by a Bar Council, he shall have no right to practice in a court of law or

before any other Tribunal or authority. Once a person fulfills the requirements for enrolment, he becomes entitled to be enrolled as an advocate and on such enrolment, he acquires a right to practice as stated above. Having thus acquired a right to practice he incurs certain obligations about his conduct as a member of the noble profession.

8. Consequently, this petition is found to be misconceived and is dismissed along with the pending application(s) with no order as to cost.

JUDGE

JUDGE

Nadir*