

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
C. P. NO. D-424 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

Priority.

1. For hearing of Misc. No. 1969/22.
2. For hearing of main case.

22.09.2022

Mr. Mir Muhammad, Advocate for Petitioner.
Mr. Muhammad Yousif Alvi, Advocate for Respondent No.2.
Mr. Ali Safdar Depar, AAG.

Through this Petition, the Petitioner has prayed for the following reliefs:-

- a. Declare the petitioner has qualified as successful candidate for post ASI BPS-09 throughout all test as physical fitness, running and written test of SPSC and subsequently, final merit list interview was allegedly manipulated and name of the petitioner was deleted from merit list of interview that depriving the petitioner from alleged right is illegal. Unconstitutional, and unlawful and same has no legal effect. See annexure D,E,F&G
- b. Declare that respondents have violated directions /guideline of the supreme court and failed to implement the direction No.8 .12,15 & 16 in para No.26 of the judgment within 60 day of receipt of order which deem to contempt of supreme court direction and initiate contempt proceeding against the respondents see annexure "L"
- c. Direct the respondent No.3 to produce vacant post of ASI available in the police department as per direction No.16 in para No.26 of the judgment which clearly directed that in future the government should provide a list of existing vacancies, which should include a list of posts that may be vacant in the foreseeable future before this honorable court;
- d. Restraining the respondents to not decide the fate of one reserve sent in District Umer kot till final decision of this petition and Direct the respondents to implement the direction 15 in para No.26 of judgment that if any candidates decline the candidates who is next on merit list be offered the same as see annexure "L".

ALTERNATIVELY

- e. Direct the respondents to pay salary and back benefits as given to other successful candidates since 2019.
- f. Award costs and special costs;
- g. Other relief deemed fit and proper.

Learned Counsel has argued that despite best and excellent performance in the interview, the Respondents have manipulated/deleted the name of the petitioner from merit list of interview, as according to him earlier a list was issued wherein the petitioner was shown as passed in the interview; hence, he is entitled to the appointed due to his qualification; for which appropriate orders be passed.

We have heard the learned Counsel for the parties and perused the record.

At the very outset, we have repeatedly asked the learned Counsel for the petitioner to show us the first list, wherein, allegedly the petitioner has been shown as passed; however, he has not been able to refer to any such list on record.

Insofar as the case of the Petitioner as to the result of the interview being illegal and subject to challenge in these proceeding 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 is hereby dismissed in *limine* with pending applications, if any.

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