ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D –1041 of 2020

Date	Order with signature of Judge

Before:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Petitioners: **Mst.Anam** ThroughMr.Sajjad Muhammad Zangejo, Advocate

Respondent No.5: Nemo.

Federation of Pakistan: Through **Mr. Ashfaque Hussain Abro**, Assistant Attorney General

Date of hearing: 31.08.2023

Date of Order: 31.08.2023

ORDER

ARBAB ALI HAKRO, J: Through this petition, the Petitioner has sought following relief(s):-

a) *To declare the act of Respondents to ignore the petitioner/ candidate whose name is at Serial No.1 of the list and appointing the candidate of Serial No.2 as illegal, unlawful and based on malafides, without legal justification;*

b) *To direct the respondents to issue appointment orders in favour of the Petitioner for the post of ASI BPS-09 as her name appears at Serial No.1 of the list, as candidate of Serial No.1, namely Saif Shahmeer has been appointed SIP and candidate of Serial No.2 Sobia Khan has remained absent in the interview, therefore name of Petitioner comes at serial No.1 and Asia at serial No.2 of the list; therefore Petitioner deserving for the appointment as ASI;*

c) *To pass ad interim order thereby restrain the respondents from appointing Asia of serial No.2 till final disposal of this petition as well as till appointment of Petitioner.*"

2. Precisely, the facts narrated in this petition are that the Respondents invited applications for appointment of Assistant Sub-Inspector (BS-09) in Federal Investigation Agency, Government of Pakistan, through an advertisement published in the Daily newspaper "Dawn". In pursuance of publication, ibid, the Petitioner applied for the post of Assistant Sub-Inspector and submitted her testimonials documents accordingly. After that, Petitioner was called for a physical test, wherein she appeared and was declared successful on Sindh Rural Women Quota, and results were also announced online. Subsequently, a date for the written test was announced, in which, likewise, the Petitioner appeared and was declared a successful candidate and obtained marks, i.e. 37 against the passing ratio expressed for successful candidates. After being declared successful, Petitioner was called for an interview, i.e. viva-vice on 22.01.2020, where she appeared; however, inspite of securing marks more than passing ratio in former stages, i.e. physical as well as written test, her name was not flashed in the merit list issued by the Respondents, consequently, such act is challenged by the Petitioner, claimed to be illegal, unlawful and unconstitutional, hence this petition.

3. At the very outset, learned Counsel representing the Petitioner submits that the Petitioner has successfully cleared physical as well as written tests and had secured passing marks; however, she was not called for an interview inspite of the approach, and in this regard, she approached this Court, by filing C.P No.D-100/2020, which was allowed vide order dated 06.02.2020, thereby she was allowed to sit in the interview. After that, Petitioner was short-listed for interview, but the Respondents did not consider her for appointment as ASI without any cogent reason and appointed one Asia, who is below marks than the Petitioner in a written test; besides such an act appears to be a violation of merit. It is next argued that the act of Respondents to appoint those candidates who obtained less marks than the Petitioner

seems to be an act of nepotism and favouritism, is illegal, unlawful and in violation of the fundamental rights of the Petitioner guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. Learned Counsel further argued that there is a clear discrimination in the appointment of a candidate having less marks than the Petitioner, who has obtained higher marks than those appointed. Lastly, he argued that the act of the Respondents by not selecting the Petitioner for the post of Assistant Sub-Inspector (BS-09) may be declared illegal, unlawful and unconstitutional; besides, directions may be issued to the Respondents to appoint the Petitioner for the subject post owing to having obtained better marks in physical as well as written test, respectively.

4. Conversely, learned Assistant Attorney General, in his arguments, contends that allegations raised by learned Counsel for the Petitioner are vague in nature, that no specific case of favouritism or nepotism has been cited on the part of the Selection Committee/ Penal; that appointment of other candidates has been made by the Selection Committee transparently on merit basis and no vested right is created in favour of the Petitioner. Lastly, he prayed for dismissing the captioned petition as devoid of merits.

5. We have heard Counsel for the Petitioner as well as learned Assistant Attorney General and have perused the record with their assistance.

6. The main grounds agitated in this petition by the Petitioner are that she secured higher marks in the written test than the successful candidates and that the Respondents/ Selection Committee malafidely declared her fail in the interview/ viva-vice allegedly due to favouritism and nepotism.

7. As far as first ground of the Petitioner that she secured better marks in the written test but was declared failed in the interview/ viva-vice by the Selection Committee is concerned,

merely securing better marks in the written test would not create a vested right in her favour unless she has secured required marks in the interview as well. Suffice to say that it is the exclusive domain of the Interview Committee/ Penal to judge a candidate and grant them marks as per its assessment. This Court, in constitutional jurisdiction, cannot substitute its opinion for that of the Interview Committee/ Penal. The authority and wisdom of the Selection Committee cannot be challenged unless gross negligence tainted with malafide is discernible on a mere glance on the record. The Selection Committee is the best Judge at the given time to form an opinion and decide the abilities and capabilities of candidates, their academic knowledge, attitude, aptitude and personal information. This Court will not interfere and thrust its opinion, subsequently changing the verdict of the Selection Committee, except when it has been other than the capabilities, e.t.c., of the Petitioner which has weighed with the Selection Committee or where exercise smacks of malafide as noted above. Assessment of a candidate is an exercise that is made on the basis of specific criteria, i.e. human judgment or perception, and it is mainly based on objective criteria, i.e. which are evaluated and secured at the time of undertaking such exercise and could not be checked or analyzed by this Court through a judicial review. In the case of **ASIF HASSAN AND OTHERS vs. SABIR HUSSAIN AND OTHERS (2019 SCMR 1970)**, the Hon'ble Apex Court has observed as under:-

> "*On the other hand, learned Counsel for the respondent No.1 has contended that the respondent as it would appear from the short listed candidates that he was more qualified and had a very long experience and, therefore, the official respondents ought to have given preference to respondent No.1 upon the petitioners. However, we note that the respondent's objection could neither be examined by this Court nor could have been done so by the High Court for the simple reason that the Court cannot take*

upon itself the function of the appointing authority in order to judge the suitability of a candidate."

Similarly, in the case of ***ARSHAD ALI TABASSUM vs The REGISTRAR, LAHORE HIGH COURT, LAHORE (2015 SCMR 112)***, the Apex Court observed as under:-

"*As far as the contention of the petitioner that he was not recommended for appointment by the committee due to the malice on the part of the members of the Interview Committee for the reason that his services were terminated as Civil Judge on the charge of misconduct, is concerned, suffice it to observe that according to the established principle of law this Court cannot substitute opinion of the Interview Committee on the bald allegation after losing the chance in the interview."*

8. Although the Petitioner had also raised the allegations of favouritism and nepotism on the part of Respondents, it is a mere assertion as no material in support thereof has been produced before this Court.

9. Learned Counsel representing the Petitioner placed on record the short-list of Applicant for an interview, and Respondent No.5 was selected as Assistant Sub-Inspector (BS-09). Allowing this relief would mean the person appointed/ selected based on such a recommendation would be placed out of service.

10. Needless to add, the criteria for appointment is to be formulated and fixed by the Selection Committee, and no vested right is created in favour of the Petitioner on the basis of grounds raised if she has been declared failed in the interview. Even otherwise, it is settled law that the Court ought not to intrude in the matters of candidates' fitness for a particular post as this is best assessed by the functionaries entrusted with the responsibilities, such as the Public Service Commission as held in the case of ***Muhammad Ashraf Sangri vs Federation of Pakistan and others (2014 SCMR 157)***, it has been held as under:-

"136. It is an admitted position that although the Petitioner had cleared the written examination but he had failed in the interview/viva voce which was a pre-condition before he could be appointed as a member of the Central Superior Service of Pakistan. It would be seen that the written test is designed essentially to gauge a candidate's familiarity with the subjects which he has chosen to offer for this purpose plus his power of expression etc. Hence the written test does not gauge the personality of the candidate or his communication skills or his leadership or decision making abilities which are left to be examined at the time of interview. The Central Superior Service of Pakistan is not merely any type of service but should only admit such persons in its fold who have a well-rounded personality, a grasp over national and international affairs, balanced sense of judgment, maturity and stability, good communication skills and leadership as well as decision making abilities. This is for the simple reason that very important matters of the State and the country are entrusted to the members of the Central Superior Service and if persons of law intellectual quality or feeble personalities enter the same, the entire country suffers. When the Petitioner sat for the SSC Examination he knew very well that not only did he have to pass the written test (when he did) but also the interview in which he failed. 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 is 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 (2011 SCMR 1198) can be referred to."

11. In view of the above discussion and exposition of the law, the Petitioner has not been able to make out any case of

issuance of the desired writ by this Court; therefore, the captioned petition, being devoid of force, is accordingly **dismissed** along with listed applications.

JUDGE

Faisal Mumtaz/PS JUDGE