

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D-1708 of 2023

(Zahid Hussain & 15 others v. Province of Sindh & others)

C.P. No. D-1709 of 2023

(Malak Muneer & 15 others v. Province of Sindh & others)

Petitioners: Zahid Hussain & 15 others (C.P. No. D-1708 of 2023) through Mr. Sajjad Ahmed Chandio, Advocate along with Faiza Ubed Memon, Advocate.

Malak Muneer & 15 others (C.P. No. D-1709 of 2023) through Mr. Muhammad Arshad A. Pathan, Advocate.

Official Respondents: Province of Sindh & others through M/s. Mr. Allah Bachayo Soomro, and Muhammad Ismail Bhutto, Additional Advocate Generals, Sindh along with Abdul Hafeez Laghari, Controller of Examination SPSC, Syed Shafi Muhammad Shah and Mashooque Ali Gopang Assistants Litigation Branch.

Respondents/Intervener(s): In C.P. No. D-1709 of 2023) Sadam Hussain, Mst. Humaira Abro, Islamuddin, Farzal Ali Khan, Nabi Dad Shar, Sallahuddin, Habibullah, Huma Farooque, Arshad Hussain, Muhammad Qasim, Biveragh Mehmood and Zahid Hussain through M/s. Malik Naeem Iqbal & Malik Altaf Hussain and Barrister Faizan Hussain Memon, Advocates.

Ashfaque Ahmed through Mr. Asif Ali Talpur, Advocate.

Date of hearing: 21.02.2024 & 22.02.2024.

Date of Decision: 13.03.2024.

J U D G M E N T

Amjad Ali Sahito, J. Through the above-captioned petitions, the petitioners have questioned the procedure adopted by the Sindh Public Service Commission (hereinafter referred to as “SPSC”) to be illegal, unlawful and contrary to the specific

directions of the Honourable Supreme Court given in Suo Moto Case No.18 of 2016 (2017 SCMR 637).

2. The case of petitioners is that in the first phase they participated in the written test held on 30.05.2023 and 01.06.2023 conducted by SPSC in pursuance of advertisement No.04/2021 dated 28.11.2021, whereby applications were invited for the 465 posts of Municipal Officers (BPS-17), 698 posts of Town Officers (BPS-16) and 117 posts of Assistant Accounts Officers (BPS-16) and the petitioners were declared as successful and qualified for the interview for the second phase. The petitioners have pleaded that all the successful candidates were not selected on the merits by the SPSC and there is sufficient material against the successful candidates which reflect nepotism, corruption on the part of SPSC while undertaking this exercise. It is further pleaded that those who were selected were relatives and/or blue eyed of the feudals and/or political leaders of the Sindh.

3. In C.P. No. D-1708/2023, the petitioners have stated that as per answer sheet copy and the answer key displaced by the SPSC, the petitioners had secured top marks as given under this chart:-

Sr. No.	Name of the Petitioners/ Candidates	Marks	Roll No.
1.	Zahid Hussain s/o Muhammad Hanif	92.5	249666
2.	Maqsood Ahmed s/o Meer Muhammad	95	236043
3.	Muhammad Nadeem s/o Abdul Hakeem	90	239239
4.	Muhammad Khurram Khan s/o Muhammad Aslam Khan	88	250588
5.	Abdul Bari s/o Muhammad Aslam	86	274725
6.	Mohsin Khan s/o Niaz Ahmed Panhwar	82.5	213824
7.	Sikandar Ali s/o Meer Hassan	80	252089
8.	Waleed Khan s/o Abdul Sattar	80	270621
9.	Ghulam Murtaza Shah s/o Syed Juman Shah	80	250452
10.	Danial s/o Ali Nawaz	78.5	221528
11.	Naoman Khan s/o Badar-uddinSoomro	78	215462
12.	Rehan Ahmed s/o Abdul Rehman	75	251872
13.	Asad Ali Mangrio s/o Dost Muhammad	75	217488
14.	Nad Ali s/o Ghulam Mustafa Zardari	79	289029
15.	Sumair Hussain s/o Bakhat Hussain Chandio	-	307551
16.	Sana d/o Allah Dino Chachar	86	258902

4. In C.P. No. D-1709/2023, the petitioners have stated that the SPSC while conducting Competitive Exam announced

the result of written test together with their marks obtained; however, there will be separate columns of securing of marks in written test and interview/viva-voce while declaring the candidates as successful or unsuccessful, as the case may be. Nevertheless, the petitioners have tentatively assessed their marks from carbon copy/acknowledge copy of their MCQs answer sheet and found after verification the marks secured as under:-

Sr. No.	Roll No.	Name of the Petitioner/ Candidate	Tentative assessment of marks	Plus 05 marks of two wrong questions
1.	237832	Malak Muneer	87.50	92.5
2.	299790	Sarang	90.00	---
3.	215228	Amjad Ali	81.00	---
4.	303036	Fayaz Hussain	75.00	---
5.	254904	Zahid Hafeez Baloch	79.50	---
6.	232619	Awais	79.00	---
7.	281040	Arif Hussain	87.50	---
8.	238991	Muhammad Yousuf	80.00	---
9.	295243	Ghulam Murtaza	68.50	---
10.	211744	Muhammad Yousuf	75.00	---
11.	294310	Tariq Mubeen	76.00	--
12.	221576	Usaid Zafar	57.50	---
13.	291968	Naveed Ahmed	75.00	---
14.	216236	Basit Ali Jatoi	77.50	---
15.	309281	Amjad Ali	62.50	---
16.	217338	Rabia	64.00	---

5. According to petitioners, admittedly marks of the successful candidates were not disclosed in the very first press release issued on 27.07.2023 (Results) by the SPSC and even in the second press release dated 19.10.2023, the marks were yet not disclosed (Final Result). It is alleged that the petitioner's performance in the in the interview conducted by SPSC who was motivated one in which their marks were not given in conformity with the answers with the sole object to extend favour to the successful candidates who were being selected in negation with the merit. The petitioners have alleged that many of the successful candidates are relatives and/or employees of MNA/MPA of Pakistan People's Party, which ex-facie was in conflict with the directives of the Honourable Supreme Court contained in the reported judgement 2017 SCMR 637. In the recent past, this court has declared results of CCE-2020 as

illegal in C.P. D-8033 of 2019 by its judgement dated 24.07.2023.

6. The petitioners have brought to our notice certain facts during arguments which were eye-openers. While examining the marks of the petitioners from the answer sheet so uploaded by SPSC and comparing it with the marks the petitioners had obtained in the interview, we noticed that the petitioners who have secured high marks in the written test were being awarded very low marks in the interviews which is not conceivable and hardly any explanation has been offered by the relevant authority on this issue. The petitioners in these proceedings have prayed as under;

- a. To declare the whole process conducted by respondents-SPSC for recruitment of the subject posts to be illegal, unlawful, void, ab-initio and in violation of the directive/judgment of Honourable Supreme Court of Pakistan.
- b. To direct the respondents-SPSC to re-conduct written and viva-voce/Interview Tests for the subject posts and may record the same in camera for avoiding any controversy or question on credibility of the same.
- c. To constitute an Inquiry Committee headed by this Court to probe into a mega scam/corruption committed by the respondents-SPSC in the recruitment process of subject posts.
- d. To initiate contempt proceedings against the delinquent officers of SPSC for disobeying the orders/directions issued by the Apex Court as well as this Court.
- e. To grant injunction in respect of operation of merit list dated 19.10.2023 issued by SPSC, which is liable to be suspended and restraining the respondents-SPSC from further process of notifying the list and issuance of any notification thereof.
- f. To direct the respondent (Chairman NAB) to initiate inquiry against the delinquent officials of the Sindh Public Service Commission.
- g. To advise the Government to nominate Committee of three senior serving Judges of this Court to monitor the acts and procedure of the selection of the Commission as it nominated for ATC and NAB Courts.

7. Notices were issued to the respondents as well as Additional Advocate General Sindh.

8. The respondents i.e. Chairman, Secretary and Controller of Sindh Public Service Commission filed para-wise comments/reply to the petition wherein it is stated that SPSC, being an independent institution of the Province, did not prejudice nor has any personal grudge against the candidates including the petitioners. However, it is matter of fact that it provides a common transparent platform to all candidates including petitioners to compete and provides level playing field without any discrimination, caste, creed or colour in fair and transparent manner. They have referred that the qualifying pre-interview test by the candidates is testimony of this fact; however, the petitioners appeared in the interview for the post of Municipal Officer (BPS-17) but failed in the same due to their dismal performance before the Interviewing Committee; as such, there is no question of favouritism, nepotism and political affiliation but it is alleged only on assumptions and presumptions, social media hype and sinister propaganda against the SPSC. They have denied the allegations of the petitioners in respect of any violation by referring Instruction (V) of the Advertisement, wherein it is stated that:

V) There will be a pre-interview short listing test in accordance with Article No.0803 of Sindh Public Service Commission Recruitment Management Regulation (PMR), which determines the candidates for interview in the following ratio of the standing of successful candidates.

- a) For 1 to 2 posts, 5 candidates for each post.*
- b) For 3 to 10 posts, 4 candidates for each post.*
- c) For 11 to 100 posts, 3.5 candidates for each post.*
- d) For 101 to 300 posts, 3 candidates for each post.*
- e) For 301 or greater number of posts, 2.5 candidates for each post.*

9. They have further stated in their comments that the SPSC has complied with the directions of Apex Court in letter and spirit and displayed the marks of qualified candidates in written part of re-scheduled CCE-2013 as well as the score of failure candidates to ensure transparency. During interview, either some of the petitioners failed or could not be selected due

to less marks. They have also mentioned that it is the exclusive domain of the Interview Committee/Panel to evaluate a candidate and grant him/her marks as per its assessment. The authority and wisdom of Selection Committee cannot be challenged, which is best judge at the given time to form an opinion and evaluate the abilities and capabilities of candidates their academic knowledge, attitude, aptitude and personal information. It is also stated that every individual candidate is provided carbon copy to assess his/her marks after the answer key is uploaded on official website to ensure fairness and transparency, therefore, allegations of the petitioner are devoid of logic having no value in the eyes of law. They have further added that more than one lac candidates had applied for the post of Municipal Officer (BPS-17) and due to large number of candidates the written test of the same was conducted in phases. Hence, for uploading the official answer keys on the website is literally a meticulous practice thus needed quite some time to avoid possible errors as 105,748 candidates had appeared in the written test of Municipal Officer, out of which 1,440 passed the written test (1.36%), who were interviewed and out of them only 419 meritorious candidates secured maximum marks in the aggregate (written as well as interview) and declared successful (29%). Still 46 vacancies have been left vacant as suitable candidates were not found by the high-powered Interview Committee, which speaks volumes about the transparent and fair mechanism. They also added that 82 candidates who have been recommended for the post of Municipal Officers have also passed the written test of Town Officers and similarly 72 successful candidates besides 82 candidates (who had qualified written tests of both Municipal Officer and Town Officer) had qualified the written test of IBA, Sukkur for the posts of JEST/PST of School Education Department. They have further added that the SPSC has mechanism for redressal of grievances vide Regulation No.161 of the SPSC (Recruitment Management) Regulations, 2023, whereby if a candidate is dissatisfied, he may prefer an appeal to the Chairperson within ten (10) days of the decision and the Chairperson shall constitute committee comprising of three members to hear the appeal and take an appropriate decision in

accordance with law/rules/policy and the committee shall decide the appeal within ten days and that decision shall be final and binding on the candidate. Despite such mechanisms, certain allegations have been leveled, which are general in nature and usual blackmailing tactics adopted all the time and the same are not authentic and devoid of facts. Hence, they prayed for the dismissal of instant petitions.

10. It is relevant to mention here that the interveners mentioned in the title page filed their respective applications in terms of Order 1 rule 10 read with section 151 CPC stating therein that they were declared successful candidates but since they have not been impleaded them as party, as such, they prayed for impleading them as party in these proceedings. Accordingly, their applications were allowed and they were ordered to be joined as respondents in the petition. The intervener/respondent namely Zahid Hussain in his counter affidavit, has stated that instant petition is a product of malafide, prompted by a personal grudge, vendetta and the same is liable to be dismissed. He has also raised preliminary legal objections that the petition is a sheer afterthought inasmuch as the petitioners have been taking part of every process of the recruitment and they never raised any complaint. He has also questioned the jurisdiction of this Court to be barred on the ground that the petitioners have an appropriate remedy by way of filing representation before the respondent-SPSC but they failed to avail such statutory remedy and filed instant baseless petitions. However, it is a settled law that the extraordinary alternate jurisdiction of this Court could only be exercised in absence of any remedy. He has further stated that the identical petitions earlier filed have been disposed of by directing the petitioners to avail the departmental remedy. He has, therefore, stated that no relief could be granted to the petitioners and, the instant baseless petitions merit outright dismissal.

11. To the comments filed by the respondents-SPSC, the petitioners also filed their rejoinder/counter affidavit denying the version of SPSC contending that it is contrary to the admitted facts, based on lies, misguidance and an attempt of misleading.

They have further stated that so-called transparency and fairness adopted by the SPSC is evident in decisions/judgments of the Superior Courts. They have further stated that admittedly the marks of the last candidate selected/recommended for the post of Municipal Officers on General Rural Quota secured 120 marks and on General Urban Quota secured on 118.5 marks but malafidely the petitioners who have secured more than 110 marks have been rejected by the SPSC, however, on the other hand 46 seats have been left vacant on the pretext that the eligible candidates could not be found. Similarly for the other posts, the SPSC has not adopted the proper procedure. The petitioner Ghulam Murtaza in his rejoinder/counter affidavit has stated that the comments filed by the respondents-SPSC is nothing but based on lies, misguidance and an attempt of misleading to pose the transparency, fairness and guanines of the procedure adopted by SPSC. He further stated that the candidates who have been declared successful and recommended for the post of CMO and placed in Merit List No.308 to 351, all candidates secured equal 119 marks as per marks sheet published by the SPSC; however, this is very strange and astonished that the candidates of Merit List No.308 to 351 secured equal 119 marks and not a 01 mark less or more. The petitioners have questioned this fact that how the Members of the Interview Committee found the equal abilities, capabilities, attitudes, communication skills etc. among those candidates. The petitioner has also repeated allegations for non-compliance of the orders of Apex Court.

12. The petitioner Malak Muneer in his rejoinder has stated that the respondents-SPSC are taking the advantage of their independent institution and as such leaving no stone unturned and ceiling to its purposeful, intentional illegalities and every time in every selection irrespective of its nature specifically the posts of public servants as well as civil servants; so far BPS-16 & 17 are concerned, the respondents-SPSC being habitual in pick and chose, as such, their acts are contrary to the merits. He has criticized the conduct of interview by contending that its mode was just based upon 3 to 4 questions i.e. (i) What is your name? (ii) What is your father's name (iii) What was/is your

father? And (iv) How many siblings are you? Oh! You are Graduate Engineer why you have come here? Why you are insisting for government job? He has stated that these are the questions which have been placed more or less to all candidates in general and the marking not only are surprising one but proving their conductive mind and discriminative act against their own candidates belong to Sindh by killing the merits and looking into the selected persons, their relation and their belongings. In his regard, petitioner has submitted the list of candidates having relationship with the MPA/MNA or Bureaucrats, which is as under:-

Sr. No.	Merit No.	Name & Father's Name	Relationship with politician & Bureaucrats
1	211	Waseem Abbas S/O Ghulam Abbas	Running Zardari House in Nawabshah
2	97	Zafar Ali S/O Hadi Bux Zardari	Politically associated with MPA Ali Hassan Zardari
3	208	Zohaib Raza S/O Raza Muhammad Zardari	Politically associated with MPA Ali Hassan Zardari
4	141	Mir Mursaleen Hassan S/O Hassan Ali Zardari	Closely associated with Zardari Family
5	80	Imdad Ali S/O Amb Zardari	Politically associated with MPA Ali Hassan Zardari
6	57	Mir Hassan S/O Ali Nawaz Zardari	Close side to MPA Faryal Talpur
7	151	Safdar Ali S/O Munwar Ali Khan	Cousin of MPA Sohail Anwar Siyal
8	39	Daniyal Ali Shan S/O Dr. Zulfiqar Ali Siyal	Cousin of MPA Sohail Anwar Siyal
9	62	Pir Zulfiqar Shah S/O Pir Niaz Muhammad	Son of MPA Kulsoom Chandio
10	177	Shoukat Samoon S/o Amir Bux	P.A to Kashif Shoro (Mayor of Hyd)
11	185	Ashfaq Ahmed Soomro S/o Khadim Hussain Soomro	P.A to Jamil Soomro (Political Secretary to Political Party Chairman)
12	1	Syed Amir Ali S/o Syed Momin Hussain Shah	Son of Customs official
13	31	Tahir Ali S/o Imtiaz Hussain Ghanghro	Incharge of Naudero House
14	238	Naved S/o Iqbal Mirani	S/o Ex-Municipal Commissioner
15	134	Zuhaib Ali S/o M. Juman Mangrio	Brother of Tarique Ali Mangrio (UC) Chairman & Right hand of MPA
16	173	Iqbal Dawood S/o M. Dawood	Relative of MNA Sikandar Rahpoto
17	116	Shahzad S/o Muhammad Ali Rahpoto	Relative of MNA Sikandar Rahpoto
18	223	Qamaruddin S/o Ghulam Nabi Halepoto	Close side to Syed Murad Ali Shah as well as Saleem Bajari
19	112	Sharjeel Ahmed S/o Ali	Brother-in-law of DIG Azfar Mehsar

		Dino	
20	166	Masroor Ahmed S/o Manzoor Ahmed	Close side of Saleem Bajari & Murad Ali Shah (Former C.M Sindh)
21	243	Abdul Jabbar S/o Muhammad Yousuf Panhwar	Brother of Ayoub Panhwar, AD (Recruitment) SPSC
22	365	Surya Abid D/o M. Abid Rehmani	D/o Former MNA Shahida Rehmani
23	209	Kashif S/o Qamaruddin Gopang	S/o Chairman, District Council, Qambar ShahdadKot
24	111	Farhad S/O Hidayatullah Chhajro	S/o Ex-DG, Agriculture Extension Sindh
25	212	Ghulam Murtaza S/o Muhammad Khan Chhajro	Nephew of EX-DG, Agriculture Extension Sindh
26	86	Ayaz Ali S/o Ghulam Hussain Chhajro	Brother of XEN Irrigation Atta Muhammad Chhajro

He further added that the Interview Committee members were never in a position to ask academic questions and unable to frame the questions for interview even they did not ask a single question of current affairs or international affairs, as such, it was all poor assessment on the part of respondents-SPSC.

13. Learned counsel for the petitioners have argued that the entire process adopted by the respondents-SPSC is contrary to the law and directives of the Apex Court; that the list provided by them as above, such persons were appointed as Municipal Officers who are relatives of the MPA and MNA of political party, as such, order for an inquiry at high level be made to dig out the truth and failure of respondents-SPSC in the recruitment process in accordance with law and such report may be submitted to this Court through Additional Registrar of this Court; that it is the state of Interview Committee that at the time of conducting Interviews one of the Members namely Mr. Rizwan Memon was wearing Sports Dress, which is informal dress against norms showing his seriousness; that he is/was also involved in corruption and corrupt practices and it is an open secret that he has sold out his share posts in millions of rupees; that since last two decades almost every exam result declared by the SPSC had been challenged by hundreds of the aggrieved candidates and those were challenged in number of petitions and it is evident from the order dated 24.02.2023 passed by this Court in a C.P. No.D-8033/2019 wherein this Court has declared the examination results of CCE-2020 as illegal, null and void with

certain observations; that it is alarming situation that since the inception of SPSC all the recruitments as recommended are without regulations and there is no mechanism for conducting interviews as the Interview result does not reflect any opinion or marks of the subject specialist/expert and as to how marks will be awarded with regard to questions on subject/professional skills and rules of SPSC do not provide right of appeal; that the SPSC has failed to follow directions of Apex Court to publicly display the marks of the written tests and results of interviews in each subject as well as the cumulative total against the candidates' roll numbers on its website, on the notice board in the premises and in one Urdu, English and Sindhi newspaper but wilfully, intentionally disobedience has been made; that the fundamental rights of the petitioners guaranteed under Article 25 and Article 18 of the Constitution of Islamic Republic of Pakistan, 1973 are being violated and subjected to discrimination and by such illegal acts, the life, liberty and future of the petitioners have been made on stake by the respondents-SPSC. The learned counsel have prayed that the SPSC has completely failed to conduct written and interviews tests in transparent, fair and legal manner, as such, the entire process of the subject may be declared illegal, null and void with direction for taking legal actions against the delinquents pointed as above.

14. On the other hand, learned Additional Advocate Generals Sindh has negated the allegations of the petitioners. He has pointed out that there is proper mechanism/procedure for recruitment of the candidates in fair and transparent manner; that under R.161 of the Sindh Public Service Commission (Recruitment Management) Regulations, 2023 provide the right of Representation/Appeal to the aggrieved candidate but the petitioners have failed to exhaust it; however, their allegations made in the instant petitions are baseless and meritless; that more than 10 million candidates have participated in the written test for the post of Municipal Officer; however, 1,440 have succeeded to qualify for interview whereas in the interview 419 candidates were declared as successful despite there were 465 posts of Municipal Officers and yet 46 vacancies have been left vacant as suitable candidates were not found by the high-

powered Interview Committee, which converses level about the transparent and fair mechanism. He further contended that in past similar types of petitions were filed only in order to blackmail the authorities of SPSC but despite that the SPSC continued to keep up the manner in recruiting the suitable candidates for various posts. So far the petitioners are referring the closure of SPSC through the order of this Court, the said order was set aside by the Honourable Supreme Court of Pakistan. He argued that any person has right to participate in the competitive examination for any post, as such, the successful candidates having relation with the political persons or any of the officers is meaningless as there is no restriction for participation of such candidates in the recruitment process in any law; that the petitioners have questioned the entire process of the SPSC, which is nothing but a figment of imagination and legally farfetched because of failure to exhaust remedy available with the petitioners Under R.161 of the Sindh Public Service Commission (Recruitment Management) Regulations, 2023. Lastly prayed for dismissal of instant petitions. In support of the his contentions, they have relied upon the case reported as *MUHAMMAD ASHRAF SANGRI v. FEDERATION OF PAKISTAN and others* [2014 SCMR 157], and orders passed by this Court in C.Ps. No.D-8033 of 2019, 404 and 52 others of 2023.

15. Learned counsel for interveners/respondents have contended that the petitions are not maintainable on the ground that the petitioners have not exhausted remedy available to them under R.161 of the Sindh Public Service Commission (Recruitment Management) Regulations, 2023 and failure to implead all the successful candidates as party in the petitions for the reasons that if any adverse order is passed, which shall certainly affect them, as such, no one should be condemned unheard; that all the successful candidates have been declared on merits in a fair and transparent manner and the domain of the Committee for conducting Interviews cannot be questioned though it was within the prescribed law and procedure. The petitioners have hurled various facts without any rhyme and reasons, which cannot be exactly co-related in the context of the petition, as such, the same are liable to be discarded.

16. We have heard learned counsel for the parties and perused the record with their assistance.

17. Admittedly, at the time of advertisement made by Sindh Public Service Commission, neither the petitioners nor any of the candidates have raised objections on the publication and its conditions. The total 105,748 candidates had appeared in the written test of Municipal Officer including petitioners, out of which 1,440 candidates passed the written test. Notwithstanding, the petitioners have admittedly participated in the interview process but at that time neither the petitioners nor any other single person have raised objection with regard to process of examination conducted by the respondents-SPSC; the successful candidates in written tests were interviewed including the petitioners, who sat in the written as well as viva-voce tests, none has questioned the process of the SPSC. However, when 419 candidates secured maximum marks in the aggregate (written as well as interview) and were selected for the posts of Municipal Officers (BPS-17) as successful candidates, after failure, the petitioners have raised objections about the procedure of examination and the conduct of the viva-voce, they filed instant petitions and raised certain objections but no justifying reason has been shown as to why the petitioners have been victimized. When we have confronted to the petitioners as to why they have not exhausted remedy available to them by way of complaint/appeal in view of Regulation No.161 of the SPSC (Recruitment management) Regulations, 2023, they replied that there were serious allegations against Chairman and Board members and as such they have not filed an appeal before the Chairman against the Board Members.

18. The main crux originated appears that the petitioners who though were satisfied to the entire process of the respondents-SPSC from the publication of the advertisement containing certain terms and conditions and pursuance to which they applied for the subject post(s), appeared in written test, result thereof was announced and also participated in the interviews before Interviewing Committee; however, after final result, the petitioners have questioned entire process of SPSC

through these petitions without making party to all the successful candidates. Admittedly, the petitioners appeared in the written examination and were cleared; however, they failed in the interview/viva-voce which was a pre-condition before they could be appointed for the subject post(s). Certainly, the written test is meant to measure the knowledge of the candidate in respect of subjects offered or opted, as such, written test could not calculate the personality and communication skills of the candidates including abilities in respect of leadership and decision; however, the same could be judged at the time of interview by the Interviewing Committee, who are entrusted with such task; and, for the result of Interviews, this Court is not a forum to be substituted and form any opinion in respect to the estimation of interviews. More so, the writ jurisdiction lies when there is no an alternate remedy but in the presence of remedy to be exhausted, the writ jurisdiction cannot be exercised as a substitute of Representation or Appeal and even the learned counsel for petitioners could not convince this Court on this point.

19. In these given circumstances, we are not persuaded with the contention of the learned counsel for the petitioners to hold that the entire process of SPSC was nullity. We, however, restrain ourselves from commenting on the conduct of the SPSC in regard to the marks given by the Interview Committee for the simple reason that the petitioners under Regulation 161 had a right to approach the SPSC (Recruitment Management) Regulations 2023 which reads as under:-

161. Right of Representation & Appeal. *A candidate aggrieved by any decision of the Commission or the nominated Member under the preceding regulations may, within 15 days of the communication of such decision, prefer a representation addressed to the Chairperson and submitted to the Secretary of the Commission adducing evidence in support of his/her claim. The Secretary, upon receipt of such representation, shall forthwith seek nomination of a Member from the Chairperson. The Member so nominated shall, within the next 15 days, hear the aggrieved candidate, evaluate the evidence produced by him/her, seek any counter evidence or explanation by the concerned Branch/Section of the*

Commission and announce his/her decision through a speaking order mentioning therein the respective versions of the parties and weighing them against the relevant provisions of law, rules and regulations. Any party aggrieved by the decision of the Member may, within 10 days of the announcement of such decision, prefer an Appeal to the Chairperson. The Chairperson, upon receipt of the Appeal, shall constitute a Committee comprising atleast 02 Members to hear the Appeal. The Member against whose decision the Appeal is preferred, shall not be a Member of the Appellate Committee. The Appellate Committee shall, after giving an opportunity of hearing to the parties concerned, dispose of the Appeal through a speaking order within the next 10 days. The decision of the Appellate Committee shall be final and binding on the parties.

20. It is also significant to mention here that on matters involving similar question, this Court at Principal Seat @ Karachi and different other Circuit Courts have passed the following order by directing the petitioners and the aggrieved persons to file an appeal before the Sindh Public Service Commission. The relevant part of the orders passed by this Court is reproduced here under:-

C.Ps. No.D-404 and 52 others of 2023

7. The main ground agitated in these petitions by the petitioners is that they secured higher marks in the written test than the successful candidates. However, the Respondents/ Selection Committee malafidely declared them failed in the interview/ viva-vice allegedly due to favoritism and nepotism, and their second ground is that according to Sindh Police Recruitment Policy, 2022, the petitioners deemed to have secured passing marks in the interview/ viva- vice shall be declared as successful.

8. As far as the first ground of the petitioners that they secured better marks in the written test, but were 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 favour of the petitioners unless they have 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 him marks as per its assessment, and 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 etc, of the petitioners which has weighed with the Selection Committee or where exercise smacks of malafide as noted above. Assessment of candidates 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 analysed 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 respondents 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.”

9. Although the petitioners have also raised the allegations of favouritism and nepotism on the part of Respondents, but it is a mere accusation as no material in support thereof has been produced before this Court. They have rather prayed for declaring the recommendations made by the Respondents regarding 1253 candidates, being discriminatory and violating the law and Constitution, without impeading them as a party.

10. Learned AAG placed on record the breakup of candidates who appeared in an interview and were selected as Prison Constables. Allowing this relief would mean that the persons appointed/ selected based on such recommendation would be placed out of service, although they are not before this Court. Without affording them the opportunity of hearing, admittedly no such order could be passed, which undoubtedly would affect their right.

11. As far as the second ground of the petitioners is concerned, according to Sindh Police Recruitment Policy, 2022, the petitioners are to be deemed to have secured

passing marks in interview/ viva-vice. In this regard, it would be appropriate to reproduce the relevant rule, i.e. 4(b)(i) of SPRP, 2022, as under:-

b. Function of SPRB

“The SPRB shall act ‘only’ as policy guideline forum for recruitments to be made in Districts/ Regions/ Ranges of Sindh Police.”

12. The above Rule clearly shows that it only applies to the recruitment of Sindh Police and not to Sindh Prison and Corrections Service Department, Government of Sindh, hence on this point even, we are afraid, the petitioners must fail.

13. Needless to add, the criteria for appointment are to be formulated and fixed by the Selection Committee, and no vested right is created in favour of the petitioners on the basis of grounds raised if they have been declared failed in the interview. Even otherwise, it is settled that 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 Sangrivi 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 low 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.”

14. In view of the above discussion and exposition of the law, the petitioners have not been able to make out any case of issuance of desired writ by this Court; therefore, captioned petitions, being devoid of force, are accordingly dismissed along with listed applications.

C.P. No.D-1607 of 2023.

“Compliance report is filed in which it is stated that the Petitioner was called for interview but she could not qualify.

The Petitioner has challenged the impugned deficiency letter in which the Petitioner was declined appointment in respect of advertisement given for hiring persons having specialist qualification. It is stated that overall criteria of passing marks from 50% to 45% has to be notified in terms of Notification dated 05.05.2023.

Learned AAG opposes the Petition and states that till date that minimum threshold of 50% has not been reduced to 45%.

Regulation No.1208 of Sindh Public Service Commission Recruitment Management Regulations 2006, as amended from time to time, provides a right of appeal to an aggrieved party so also a Review Petition.

This Petition is disposed of with direction to the Petitioner to exhaust the remedy as provided above and if the Application/Appeal is already pending then it should be decided by the Respondents within two weeks by passing a speaking and well-reasoned order, after hearing the Petitioner.”

C.P. No.D-5038 of 2023.

“Learned AAG has filed comments along with certain documents and referred to Regulation 161 of the Sindh Public Service Commission (Recruitment Management) Regulations, 2023 and submits that the Petitioners are required first to avail remedy of representation and or appeal against the orders impugned herein. While confronted, Petitioners’ Counsel submits that they will file and pursue their representations under the said Regulation.

Accordingly, both these petitions are disposed of by directing the Petitioners to pursue and or file their representations, as above, which shall be decided by the Respondent No.3 / Sindh Public Service Commission in accordance with law preferably within a period of 30 days after affording opportunity of hearing.

Office to place copy of this order in the connected petition as above.”

C.P. No.D-6868 of 2019.

“6. It is an admitted position that although the petitioners had cleared the written examination but they had failed in the interview / viva voce which was a pre-condition before they could be appointed to the posts applied for. Essentially the written test is designed to gauge a candidate’s familiarity with the subject plus his power of expression etc. In our view, the written test does not gauge the personality of the candidate or his communication skills or his leadership of decision making abilities which are left to be examined at the time of interview. For this proposition, our view is supported by the decision rendered by the Honorable Supreme Court in the case of Muhammad Ashraf Sangri vs. Federation of Pakistan and others, 2014 S C M R 157.

7. Principally, 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. Obviously, if any, malafide 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 the 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 Sindh Public Service Commission. For this proposition, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani, **2011 SCMR 1198**.

8. In view of the foregoing findings, we cannot agree with Ms. Sana Saleem, learned counsel for the petitioners, for the aforesaid submissions made by her for the simple reason that per the conditions of the Sindh Public Service Commission examination, a candidate had to achieve a minimum of marks in the interview in order to be declared successful which the petitioners failed to do.

9. For all the foregoing reasons we find that this petition has no merit and hence same is dismissed with no order as

21. The contentions raised by the petitioner’s counsel that the appointment to the public office by SPSC should be made on merit without encouraging nepotism or corruption and the system should be de-politicised so that the deserving should not be made to suffer. We fully agree ourselves with the aforesaid contentions. We confronted the Secretary, SPSC with the serious allegations against the commission and the Interview Committees on the basis of the material which was annexed with the petitions reflecting the affiliation of the candidates selected for

the post of Municipal Officers besides their relationship with some of the political leaders. The Secretary, SPSC had hardly any justifiable explanation to offer. We further inquired from the Secretary SPSC as to whether any audio or video recording is available of the interviews conducted by the committees of SPSC. His answer was in negative. We, with heavy heart, are compelled to record that the institutions which need to be independent are being polluted for political reasons and the merit is completely overlooked while selecting the candidates against the public offices. We also are fully conscious that the government has never taken steps to ensure that the merit should prevail and transparent process should be undertaken by the SPSC.

22. We cannot allow the transparent process which need to be observed by the SPSC while selecting and/or examining the candidates for different public office to be compromised for any political reason and to eliminate such an approach, we are bound to hold as under while disposing of the petitions:-

- (A). The petitioners or other candidates are at liberty to file Representation/Appeal under Regulation No.161 of the SPSC (Recruitment management) Regulations, 2023 of Sindh Public Service Commission before the Chairman, SPSC, who shall decide the same in accordance with law within 45 days and inform the result through given address/website.
- (B). That in regard to the serious allegations against Mr. Rizwan Memon, we direct that the Chairman, Sindh Public Service Commission to probe the matter by forming a committee against the said member and submit a detailed report for our perusal within two months from the date of receipt of this judgement. The proposed report of the committee shall address all the issues and the response by hearing the parties who were petitioners in these proceedings, including Mr. Rizwan Memon, by seeking his explanation on this issue. A

conclusion be reached after hearing the relevant persons.

- (C). That in order to make the process transparent, we direct that in future the committee of SPSC comprising of the members for interview are not independent and petitions were filed against them that the members of the committee are influenced to appoint candidates of their choice or those who have political affiliations. We for future direct that no members of the committee shall be part of an interview viva-voce in case he or she has any relationship with the candidate and the chairman shall ensure this strictly.
- (D). That while conducting interviews/viva-voce of the candidates from Grade 16 onwards, the audio and video shall be recorded with the photographs of the candidates and the members of the interview committee shall be visible in the proposed video. On conclusion of the interview, a statement of the person who has recorded the video shall also be recorded without any editing. Such audio and video shall be kept in safe custody for at least three years unless extended by the court in the safe custody of SPSC. In case such any audio and video is missing, the Chairman and Secretary of the SPSC shall be personally responsible and the failure of their part may lead to the consequences.
- (E). That all the results of the written test of the candidates conducted by the SPSC shall be displayed on the website of the SPSC by showing the name of candidates' marks and obtained marks.
- (F). That all the results of interview/viva-voce of the candidates conducted by the SPSC shall be displayed on the website of the SPSC by showing the name of the candidates along with his father's name marks obtained in

interview/via-via including written test with final result.

JUDGE

JUDGE

Abdullah Channa/PS

Dated: 13.03.2024.