

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**C. P. No. D – 150 of 2008
C. P. No. D – 1063 of 2009
C. P. No. D – 117 of 2010
C. P. No. D – 339 of 2010
C. P. No. D – 554 of 2011
C. P. No. D – 3086 of 2011
C. P. No. D – 3304 of 2011
C. P. No. D – 2537 of 2012
C. P. No. D – 1008 of 2024**

Date of hearing	Order with signature of Judge
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For directions

1. For orders on CMA No.5110/2024 (Ex./A)
2. For orders on CMA No.5111/2024 (151 CPC)
3. For orders on CMA No.4674/2024 (Ex./A)
4. For orders on CMA No.4675/2024 (151 CPC)
5. For orders on CMA No.4096/2024 (I Rule 10)
6. For orders on CMA No.4097/2024 (Ex./A)
7. For orders on CMA No.4098/2024 (C/A)
8. For orders on CMA No.3403/2024 (Ex./A)
9. For orders on CMA No.3404/2024 (C/A)
10. For orders on CMA No.3554/2024 (C/A)
11. For orders on CMA No.3366/2024 (C/A)
12. For orders on CMA No.2946/2024 (Ex./A)
13. For orders on CMA No.2867/2024 (Ex./A)
14. For orders on CMA No.2868/2024 (C/A)
15. For orders on CMA No.1285/2024 (Ex./A)
16. For orders on CMA No.1286/2024 (C/A)
17. For orders on CMA No.337/2024 (Ex./A)
18. For orders on CMA No.338/2024 (151 CPC)
19. For orders on CMA No.3295/2024 (Ex./A)
20. For orders on CMA No.3296/2024 (C/A)
21. For hearing of CMA No.2947/2024 (151 CPC)

08.10.2024

M/s Mukesh Kumar G. Karara, Sarfraz A. Akhund, Raja Saif ur Rehman, Ghulam Murtaza Korai, Abdul Naeem Pirzada, Arif Ali Abbasi, Mohsin Sajjad Utraa and Muhammad Qayyum Arain, Advocates for petitioners / intervenors.

Mr. Ali Raza Baloch, Assistant Advocate General Sindh along with Muhammad Saleem Rajput (Secretary to Government of Sindh, Excise, Taxation & Narcotics Control Department, Karachi), Iqbal Ahmed Leghari (Director (E&T), Excise, Taxation & Narcotics Control, Sukkur Region), Bhoromal (Law Officer, Services, General Administration & Coordination Department on behalf of Chief Secretary Sindh) and Salahuddin Abbasi (Section Officer (Admn-I), Excise, Taxation & Narcotics Control Department, Karachi).

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Mr. Raja Saif-ur-Rehman, learned Counsel for applicants / intervenors in CMA No.3404 of 2024, has filed a statement along with several documents, taken on record.

2. In pursuance of this Court's order dated 15.08.2024, the Secretary to Government of Sindh, Excise, Taxation & Narcotics Control Department, present, has furnished a compliance report annexing a consolidated merit list of Sukkur and Larkana Regions. Moreover, the Court has been apprised that the Directors (Excise & Taxation Wing), Sukkur and Larkana have also furnished separate merit lists for their respective regions in respect of the candidates who appeared in the written test as well as viva voce, while the Directors (Excise & Taxation Wing), Hyderabad and Mirpurkhas have provided separate merit lists of their particular regions with regard to the candidates who appeared in the written test only, as it has been claimed that no viva voce has been conducted in both these regions. Further, a letter dated 23.08.2024 issued by the Director (Admn/MVR), Excise, Taxation & Narcotics Control, Karachi is attached with the compliance report showing that they did not conduct either written test or viva voce in the Karachi Region.

3. At the outset, a bunch of petitions including C. Ps. No. D-150/2008, 584/2009, 1063/2009, 117/2010, 339/2010 and 554/2011, five captioned above, were allowed by this Court vide judgment dated 26.10.2011 dismissing another set of petitions comprising C. Ps. No. D-1058/2009, 1133/2009, 03/2010 and 929/2010, which are not before us. The relevant paragraph of the said judgment is reproduced below:

“24. Result of the above discussion is that Constitutional Petitions No.D-150/2008, 584/2009, 1063/2009, 117/2010, 339/2010 and 554/2011 are allowed and respondents No.1 and 3 are directed to issue appointment letters to the persons selected for recruitment through Departmental Selection Committee in response to advertisement of 2007 within a period of 30 days. Following the principle laid down by Honourable Supreme Court in the case of Hameed Akhtar Niazi v. Secretary, Establishment Division (1996 SCMR 1185) respondent No.1 and 3 are directed to give the same treatment to the other persons selected through the process consequent upon 2007 advertisement without compelling them to initiate a spate of litigation.”

4. The Province of Sindh then challenged that judgment before the Supreme Court through **Civil Appeals No.252-K to 257-K of 2013** (*Re: The Province of Sindh & others v. Sono & others*) where a number of applicants / intervenors filed their CMAs for impleading them as party to the proceedings, and the Supreme Court decided the matter by judgment dated 23.11.2023 in the following terms:

“7. Keeping in view the discussion made above, we are of the view that impugned judgment of the High Court is based on sound reasoning and proper appreciation of the relevant record, which needs no interference; therefore, it is maintained. Consequently, the appeals stand dismissed.

8. As the applicant/intervenors are necessary party to the proceedings, therefore, the listed CMAs are allowed.”

5. Learned AAG Sindh has informed this Court that out of total number of petitioners in the above petitions, three petitioners namely Muhammad Nawaz S/o Aleem Solangi, Sono Bhagat S/o Ahmed Bux and Noor Ahmed S/o Bashir Ahmed Chachar, available at S. Nos. 21, 25 and 33 respectively of the individual merit list of Sukkur Region, filed today, have been issued appointment letters and are performing their jobs.

6. The above story relates to the five listed petitions, while the facts of remaining four titled petitions are that C. P. No. D-3304/2011 was filed on 12.12.2011 and since then is pending; C. P. No. D-3086/2011 was dismissed for non-prosecution on 01.10.2019, and for its restoration CMA No.5620/2024 has been filed on 01.10.2024; C. P. No. D-2537/2012 was filed for implementation of the judgment passed in C. P. No. D-150/2008 during pendency of the matter before the Supreme Court, and it was disposed of vide order dated 16.04.2019 observing that in case petitioners' case is covered in terms of the judgment sought to be implemented, the respondents should implement it in letter and spirit subject to the orders of the Supreme Court, and for implementation of order dated 16.04.2019 an application under Section 151 CPC has been

filed on 19.09.2024; and, C. P. No. D-1008/2024 is a fresh one on the same subject, which has been filed on 04.07.2024.

7. The point, which requires consideration, is that the matter has attained its finality after upholding this Court's judgment dated 26.10.2011 by the Supreme Court through its judgment dated 23.11.2023. As per the directions given in the said judgment, the respondents have to issue appointment letters to the **persons selected for recruitment through Departmental Selection Committee** in response to advertisement of 2007.

8. The Secretary, Excise, Taxation & Narcotics Control Department submits that the subject recruitment process was divided into five regions viz. Karachi, Hyderabad, Sukkur, Larkana and Mirpurkhas, and save Sukkur and Larkana Regions, it became incomplete in the remaining three regions. As far as Hyderabad and Mirpurkhas Regions are concerned, there is a dispute that whether viva voce took place or not; however, learned Counsel, representing the applicants / intervenors hailing from Hyderabad and Mirpurkhas Regions, though claims that viva voce was conducted, has drawn this Court's attention to the advertisement which does not have any condition of viva voce. Hence, he submits that the merit lists for both the regions showing the candidates who appeared in the written test may be considered as the final merit lists. The Secretary makes a suggestion that as the process was not completed in the whole Province, hence, the number of vacancies available for recruitment process of 2007 i.e. 46 (Merit = 44, Differently abled = 01 and Minority = 01) can be equally divided into the four regions. Since the vacancies on merit were 44, hence, 11 vacancies will go to each region i.e. Hyderabad, Sukkur, Larkana and Mirpurkhas.

9. The proposal submitted by the Secretary appears to be justified; hence, by consent of all the Counsel / parties present except Mr. Sarfraz A. Akhund, Advocate, who has objected only to the extent of number of

vacant posts viz. 46 which is not tenable, the following directions are issued to comply with this Court's judgment dated 26.10.2011:

- (i) The merit lists with regard to appearing candidates in the written test in Hyderabad and Mirpurkhas Regions be treated as final merit lists like merit lists of Sukkur and Larkana Regions.
- (ii) The appointment letters be issued to the 11 topper candidates in the merit lists of each region viz. Hyderabad, Sukkur, Larkana and Mirpurkhas within fifteen (15) days irrespective of the fact that those candidates are petitioners / intervenors in these proceedings or not. For such purpose, the merit lists, which were submitted before the Supreme Court, will be considered.
- (iii) An appointment letter will also be issued to the topper, combining the all four merit lists, belonging to differently abled persons and minorities each against the 02 posts reserved for them, as noted above.
- (iv) After fifteen (15) days of issuance of the appointment letters, if the top 11 candidates, persons related to differently abled and minority or any of them will not respond or refuse to join, then the appointment letters will be issued to the next candidates in line in the merit lists, and this process will be continued till filling of 46 (44+1+1) vacant seats.
- (v) The appointment letters be issued through 'TCS' courier service; the booking receipts and the acknowledgement / delivery reports of which as well acceptance or refusal of the candidates shall be furnished to this Court under a statement by the Secretary to Government of Sindh, Excise, Taxation & Narcotics Control Department.
- (vi) The appointment letters already issued to three candidates viz. Muhammad Nawaz S/o Aleem Solangi, Sono Bhagat S/o

Ahmed Bux and Noor Ahmed S/o Bashir Ahmed Chachar (available at S. Nos. 21, 25 and 33 respectively of the merit list of Sukkur Region) will be subject to the outcome of the aforesaid exercise that if the candidates above them in the merit list of Sukkur Region do not respond or join, and the lists falls towards their names, their appointment will remain intact, and if the 11 vacancies become filled by the candidates higher in merit, then their appointment will be cancelled.

10. At this juncture, another issue has been brought to this Court's attention by learned Counsel for the petitioners / intervenors that a number of candidates have secured similar marks and the result is tied between them; hence, it is not clear that who will be the first topper in that situation. Learned AAG Sindh submits that if two or more candidates are found to have identical marks, the order of merit will be determined in accordance with the age (older to be ranked higher). He, however, has not placed relevant rules at the moment. The merit lists furnished by the respondents except the list of Sukkur Region do not contain the dates of birth of the candidates. Therefore, the respondents after getting this point confirmed that older in age to be ranked higher shall settle the merit lists accordingly.

11. With the above observations, C. Ps. No. D-3304/2011 & 1008/2024 along with pending application(s) and the pending applications in the remaining Constitutional Petitions stand **disposed of**. Let a copy of this order cover in hand be supplied to the office of Additional Advocate General Sindh for compliance.

Office to place a signed copy of this order in the captioned connected matters.

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