

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. D-4769 of 2014
(Muhammad Kousar Noor v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul_Karim Memon

Date of hearing and order:- 17.04.2025

Mr. Imtiaz Ali Solangi advocate for the petitioner.

M/s ZuberAhmed Rajput, advocate for the respondents.

Mr.Ali Safdar Depar AAG

ORDER

Adnan-ul-Karim Memon. J: In this Constitution Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner challenges the legality of the 2012 selection process conducted by the Sindh Information and Archives Department for the post of Information Officer (BPS-17). He asks this Court to declare this process unlawful and to order the Respondent department to begin a new selection process for the same post.

2. The petitioner, holding an M.A. in Mass Communication and seven years of journalism experience, applied for the post of Information Officer (BPS-17) advertised by the Sindh government on 21.10. 2012. He appeared for a walk-in interview, but the process was allegedly canceled arbitrarily. A fresh advertisement dated 22.11.2012 with altered qualification criteria (M.A. in Social Sciences instead of Mass Communication) appeared in less circulated newspapers. The petitioner claims unqualified individuals / private respondents were then illegally appointed, with only three out of 70 appointees holding the required Mass Communication degree. The petitioner contends this was done to favor certain individuals by exerting political influence, violating his fundamental rights and constitutional Articles. He submitted that the initial recruitment criteria for Mass Communication could not be changed, until and unless the recruitment rules are amended, to the detriment of qualified candidates like himself. He also pointed out that the appointments were made during a ban on government employment.

3. The learned counsel for the private respondents argued the appointments were made in December 2012, and the petition was filed belatedly in September 2014, suggesting the petitioner acted with unclean hands and malafide intentions. He also highlighted the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, which the petitioner did not challenge. The respondents were later regularized in 2017 following this Court's order. The petitioner remained inactive

on the case for about three years. He added that this Court initially kept the matter pending the Supreme Court's decision on regularization in the Anjum Badar case. After the Supreme Court's judgment in 2024, the respondents faced salary issues, which they also brought before this Court. This Court ultimately dismissed the petitioner's petition, agreeing with the office's objection that the petitioner did not appear to be an aggrieved person seeking relief based on a vague plea. He submitted that after promulgation of the said Act 2013, the Government of Sindh kept it on hold for a long and such attitude compelled respondents to approach this Court and filed C.P No.4751 of 2016, which was decided by this Court vide order dated: 6.12.2016, wherein this Court has directed to the Sindh Government to complete the scrutiny process within 3 months and in compliance of directions of this Court the present respondents were Regularized through Notification Dated: 1.7.2017. He next argued that between 2017 and 2020, the petitioner did not actively pursue his case. It was later fixed for hearings on 22.02.2022 and 03.03.2022, at which point this Court adjourned the matter sine die pending the Supreme Court's decision on the regularization of ad hoc and contract employees under the 2013 Sindh Act in Anjum Badar Vs Province of Sindh Case decided by this Court on 8.4.2021. Following the Supreme Court's judgment in the case of Abdullah Jumani and others Vs Province of Sindh and others (2024 SCMR 1258), which overturned this Court's earlier rulings, the Sindh government stopped the salaries of the respondents, leading them to file another petition (CP No. 4329 of 2021). He argued that on February 9, 2022, this Court issued a detailed order discussing the respondents' appointment case. The court noted that the respondents' salaries should not be stopped while they were still employed, as per established law regarding civil servants. The court also observed the similarity of the present petition to Petition No. D-56 of 2013 and highlighted the timeline of the current petition's hearings (fixed in 2020, May 2021, and subsequently adjourned sine die on March 3, 2022, after an urgent application on February 22, 2022), suggesting a lack of seriousness and potential mala fide intentions of the petitioner. He next submitted that this court, under Article 199 of the Constitution, an aggrieved person can seek relief. In this case, the petitioner's plea is vague, leading the Court office to initially refuse to entertain the writ petition. He lastly prayed for the dismissal of the instant petition.

4. As per the pleadings of the parties, the factual background reveals that the Information and Archive Department, Government of Sindh, published an advertisement in the 'Regional Times' dated October 20, 2012, inviting applications for the contractual appointment of an Information Officer (BPS-17) for a one-year term. Following their application, the official Respondents initiated the recruitment process, scheduling walk-in interviews for November 5, 2012.

Subsequently, the official Respondents re-advertised the subject post above through a public notice dated November 23, 2012, a move that caused dismay to the Petitioner as it altered the required qualification from a Master's in Mass Communication to a Master's in Social Science(s). The Petitioner asserted the fundamental importance of employment, particularly for educated youth, and the State's duty to provide a transparent working environment where employers facilitate the development and utilization of employees' talents. Submitting that the official Respondent's actions were mala fide and deprived him of the opportunity to compete for the advertised position, the Petitioner has now sought recourse from this Court in terms of the ratio of the judgment rendered by the Supreme Court in the cases of *Shahzad Shahmir and others v Government of Sindh & others* (2021 SCMR 824).

5. We asked the parties' counsel two key questions: First, can this Petition challenging the Information Officer (BPS-17) selection process stand, considering the qualification changes mandated by the Supreme Court's ruling (2025 SCMR 216)? Second, does the significant delay since 2012 undermine the Petition's validity based on the *Shahzad Shahmir* precedent (2021 SCMR 824)?

6. Responding to the Court's query, the learned counsel for the Petitioner argued that the entire recruitment process for the Information Officer (BPS-17) post was fundamentally flawed and illegal, designed to favor specific candidates. He detailed a series of alleged irregularities, including the hasty conduct of the process to accommodate "blue-eyed boys," the presence of numerous errors and severe irregularities stemming from malice, and the denial of the Petitioners' right to equal opportunity under Articles 4, 9, 18, and 25 of the Constitution. The counsel explained that the Respondent Department initially advertised 30 contract positions for Information Officers (BPS-17) in October 2012, specifying a Master's in Mass Communication as the sole requirement. However, this qualification was inexplicably changed to a Master's in Social Science(s). He further highlighted the unusual decision to bypass the Sindh Public Service Commission's standard competitive process for gazetted posts in favor of walk-in interviews held in Karachi in November 2012, where over 200 candidates participated without any announced outcome. He submitted that the subsequent re-advertisement of the same positions on November 22, 2012, with new interviews in December 2012. The counsel contrasted this direct hiring approach with the Information Department's previous practice of recruiting through the Sindh Public Service Commission, suggesting a deliberate attempt to accommodate favored individuals. He asserted that this direct walk-in interview process for BPS-17 Information Officers was unfair, violated the basic principles of law, and contravened the Supreme Court's ruling (2013 SCMR 1752). He concluded by urging the Court to allow the Petition.

7. The learned Assistant Advocate General, assisted by the respondent's counsel's assertions, challenged the maintainability of this petition, referencing the comments filed by Respondents Nos. 2 and 3. They argued that the Petitioners did not participate in the walk-in interviews but only submitted applications to higher authorities before filing this Petition. They asserted that the selected candidates were qualified, possessing Master's Degrees in Social Science(s), and were chosen based on merit. The Assistant Advocate General explained that a summary seeking relaxation of the qualification criteria for recruiting Information Officers in BPS-17 was submitted to and duly approved by the Chief Minister of Sindh, and the entire process was completed lawfully. Learned that AAG heavily relied on an unreported decision of this court in the case of Muhammad Anas vs the Province of Sindh and others. In that case, similar to the present one, the petitioner challenged a re-advertisement for Information Officer (BPS-17) positions, alleging an illegal process and political appointments. He claimed he was not informed of the interview results. The Assistant Advocate General in that case argued that appointments were merit-based and qualified, citing Rule 3(iii) of the Sindh Civil Servants Rules regarding qualification criteria. After hearing the parties, this court in the Muhammad Anas case also noted the petitioner's general allegations and held that merely appearing for an interview did not confer locus standi for a writ of mandamus, ultimately dismissing the petition. He emphasized that the Respondent department acted without any malafide intention and concluded by requesting the dismissal of the Petition in the same terms.

8. Seeking clarification, we asked the learned Assistant Advocate General (AAG) why the Respondents did not follow the usual competitive recruitment process for the Information Officer (BPS-17) post. He replied that the Respondents had opted for contractual appointments, a method he argued was legally permissible for the competent authority under the Act 2013. We further pressed him on the change in qualification in the second advertisement after abandoning the first. The learned AAG asserted that the Competent Authority had the power to allow such relaxation of qualifications, via summary, which they did. Despite these explanations, the Court has decided to proceed with a decision based on the inherent merits of the case. However, we need to see such relaxation powers exercised by the Chief Minister of Sindh, an excerpt of the summary is reproduced as under:-

“The Honorable Chief Minister Sindh was kind enough to sanction 30 posts of Information Officers (BS-17) in the Information Department, Government of Sindh, on a contract basis during the current financial year, keeping in view the importance of media-related work of the department (Flag-A). The subject posts were duly advertised in the national press on 20th October 2012 (Flag-B), and the interviews of the intending candidates were conducted on 05th November 2012. The terms and conditions of the contract employees were also decided by the SGA&CD as per letter No. U.O No. SOR-II (SGA&CD) 5-3/12 dated 14th November, 2012 (Flag-C)

2. During the process of interviews of candidates, which were conducted by the department in a fair and transparent manner, it was observed that the qualification of a Master's in mass communication was sparsely available as most of the candidates who had appeared for interviews were Masters in social sciences rather than Masters in mass communication. Out of 150 candidates who were interviewed, hardly a few fulfilled the qualification criteria, and as such, the department feels constrained to recruit Information Officers, who are urgently required to meet the challenging assignment of the Information Department in view of the forthcoming general elections

3. It is therefore requested to kindly relax the qualification criteria for recruitment of Information Officers from Master's in mass communication to Master's in social sciences for contract employment of 30 Information Officers during the current financial year 2012-13 under Rule 3(3) of AP&T Rules, 1973.

4. Please, the Chief Minister of Sindh is requested to kindly approve Para"

9. In 2012, the Chief Minister of Sindh approved 30 contract-based Information Officer (BS-17) positions for the fiscal year. These were advertised nationally on October 20, 2012, with interviews on November 5, 2012. Contract employee terms were defined on November 14, 2012. The interview process revealed a scarcity of candidates with a Master's in Mass Communication, as most held Master's degrees in Social Sciences. Given the urgent need for Information Officers, particularly with upcoming elections, a request from the Minister of Information was made to relax the qualification requirement to a Master's in Social Sciences, citing Rule 3(3) of the AP&T Rules, 1973. The Chief Minister granted this approval on November 21, 2012. We disagree with the concerned department's proposal to relax candidate qualifications for the Information Officer post based on the Supreme Court's ruling in the case of Ayaz & others v Mustafa Saeed & others (2025 SCMR 216).

10. After a careful hearing of the learned counsel for the Petitioners, the learned AAG, and the counsel for the private respondents, and a thorough perusal of all the documents on file as well as the law on the subject issue, we will now consider the matter.

11. The significant legal issue presented in this Petition, the resolution of which will determine the outcome of this controversy, is whether the Respondents are legally entitled to directly appoint individuals to the post of Information Officer in BPS-17 on a contractual basis, or whether this appointment falls within the purview of Rule 3(1)(i) of the Sindh Public Service Commission (Functions) Rules 1990.

12. Our examination of the record reveals that the Respondent-Department issued an advertisement in the 'Regional Times' on October 20, 2012, for the position of Information Officer in BPS-17 within the Information and Archives Department, Government of Sindh. This was for a one-year contractual appointment and specified a qualification of a Master's Degree in Mass Communication (second division) for candidates appearing for walk-in interviews. Subsequently, the Respondent Department altered its stance and re-advertised the same position with a revised qualification, namely a Master's in Social Sciences (second division) for a walk-in interview, and thereafter finalized the selection process. We note with surprise that the aforementioned post was

advertised in the 'Regional Times' and not in prominent newspapers as stipulated by law. The counsel pointed out that in prior recruitment exercises for the same post, the Respondent-Department had submitted a requisition to the Sindh Public Service Commission (SPSC) via a letter dated July 12, 2008. This factum is disclosed in the judgment dated 1.4.2019 in C.P No. 4460 of 2012. This requisition form was duly processed, and an advertisement was published by the SPSC on August 20, 2008, for several positions, including Information Officer (BPS-17), requiring an M.A. in Mass Communication/Journalism (second division). As per counsel, the SPSC again advertised the same post in the daily 'Kawish' on February 21, 2010. However, for the present recruitment, the Respondents opted to bypass the SPSC to fill the aforementioned post on a contractual basis through walk-in interviews. The justification offered by the Respondent department in their comments that the officers were urgently required to address the demanding tasks of the Information Department due to impending General Elections is, in our considered opinion, an insufficient basis to deviate from the legally prescribed competitive process.

13. Upon careful consideration, we are of the considered view that the post of Information Officer in BPS-17 is within the ambit of the Sindh Public Service Commission's functions. Rule 3(1)(i) of the Sindh Public Service Commission (Functions) Rules 1990 explicitly provides that all civil posts concerning the affairs of the Province in Basic Pay Scales 16 to 22, except those enumerated in the schedule, shall be filled through a competitive process conducted by the Sindh Public Service Commission. Furthermore, such posts are mandated to be advertised publicly. In the matter before us, the Respondent department has not complied with this mandatory mode of recruitment as required by the aforementioned rules.

14. The SPSC's role is to select the most competent candidates through fair examinations. Favoritism and nepotism undermine merit, leading to a demoralized civil service and poor governance. Transparency is crucial for public trust and ensures that appointments are based on merit, not manipulation. Merit should be the sole criterion for selection. Legal principles mandate that appointments to BS-17 posts must be made through the SPSC after proper advertisement. The Sindh Government lacks the authority to bypass this process for BS-16 to 22 positions, as this would violate the Sindh Civil Servants Act 1973 and Article 242 of the Constitution, which aims for merit-based appointments. The Sindh Government cannot unilaterally withdraw posts from the SPSC's purview without valid reasons, making the circumvention of the competitive

process unjustified. The Supreme Court's judgment in Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) highlights the importance of adhering to legally established appointment procedures, as direct appointments without following due process were deemed improper.

15. We are firmly convinced that the law mandates that the posts of Information Officer in BPS-17 ought to have been filled through a competitive process. Therefore, this Court cannot disregard the findings of the Supreme Court in the previously discussed case. At this point, the Respondents' attempt to recruit for the Information Officer (BPS-17) position on a contract basis with the intention of subsequent regularization is a clear violation of the established Rules and the judgment passed by the Supreme Court, as detailed in the preceding paragraphs.

16. Drawing from the Supreme Court's ruling in Munir Hussain v. Province of Sindh (2022 SCMR 650), the Public Service Commission exams should fill all vacancies at once., However, we are of the view that altering qualifications without amending the recruitment rules by the respondent department is unlawful. However, the Chief Secretary of Sindh, in coordination with the Secretary of the Information Department, should review these cases for potential referral to the SPSC for assessment, provided the parties meet the criteria for the Information Officer post.

17. Drawing an analogy from the present situation and, more importantly, guided by the principles established by the Supreme Court of Pakistan in the cases of Dr. Naveeda Tufail and 72 others v. Government of Punjab and others (2003 SCMR 291) and Shahzad Shahmir and others v Government of Sindh & others (2021 SCMR 824). The *Dr. Naveeda Tufail* case shows that the Federal Government regularized ad hoc employees through the Public Service Commission. While the Petitioners, as provincial contract employees, cannot automatically claim this, Article 25 of the Constitution calls for equal treatment. In *Naveeda Tufail*, the Supreme Court recognized a legitimate expectation of regularization for Punjab's ad hoc lecturers due to continuous ad hoc appointments. The Supreme Court directed the Punjab government to regularize them via the Punjab Public Service Commission, following the Federal model with some concessions, ensuring separate consideration from direct recruits and non-retention of unsuitable candidates. This case highlights the need for fairness and the Public Service Commission's role in regularization. However, the Supreme Court in the case of Shahzad Shahmir held that appointments to BPS-17 under Article 242 of the Constitution must be made by the Sindh Public Service Commission (SPSC), rendering contract appointments to such posts illegal from

the outset. Consequently, the petitioners had no legal right to continued employment, as their contract appointments were not in accordance with the law. Despite this, the High Court had granted some benefits, which the Supreme Court noted the petitioners were likely not entitled to. Ultimately, the Supreme Court found no merit in the petitions and dismissed them. An excerpt whereof is as under:-

“5. Be that as it may, the very appointments in BPS-17, as per law, made under Article 242 of the Constitution, have to be made by the Sindh Public Service Commission (SPSC), and no contract employment could have been made on such posts. Thus, the appointments of the petitioners, as observed by the High Court of Sindh, Karachi (the High Court) in its impugned order, were on their very face illegal and, therefore, in our view, no right whatsoever existed with the petitioners to continue with the employment, more so, when the very contract appointments were not in accordance with law.

6. Be that as it may, the High Court has given certain directions in its impugned order dated 19.01.2021 extending some benefits to the petitioners, though we note that such entitlement to the benefits, apparently, was not available to the petitioners.

7. In view of the above, we find no merit in these petitions, which are dismissed and leave refused.”

18. Based on the aforementioned reasons, since the decision of this court was not set-aside by the Supreme court in the case of Shahzad Shahmir, we find it suitable to direct the competent authority within the Respondent Department to forward the private Respondent case to the Sindh Public Service Commission (SPSC) for a new interview process/assessment/ suitability, aimed at regular appointments. This referral, as discussed in the preceding paragraph, should occur within one month from the date of this order, following verification of their qualifications and following the Recruitment Rules. While considering this referral to the SPSC, the principles established by the Supreme Court in the cases of Dr. Naveeda Tufail and Shahzad Shahmir (referenced earlier) must be carefully considered. In the meantime, the positions currently occupied by the private respondents will not be filled. Furthermore, the petitioner will also be permitted to participate in the interview process by SPSC. If successful, his candidature will also be considered by the respondent department for the subject post.

19. This petition stands disposed of in the above terms.

JUDGE

Head of Const. Benches