

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No. D- 317 of 2025

Before:

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Arsalan S/o Hajan Sahito, through
Mr. Miran Bux Shar, Advocate

Respondents : Province of Sindh and others through
Mr. Sharyar Awan, Assistant Advocate
General Sindh

Date of Hearing : ***06.05.2025.***

Date of Order. ***06.05.2025.***

ORDER

Abdul Hamid Bhurgri, J.- The case of the petitioner is that he, being an eligible candidate, applied online for the post of Medical Officer (BPS-17) pursuant to Advertisement No.05/2024 dated 26.06.2024, issued by the Sindh Public Service Commission (SPSC). Upon acceptance of his application, he was issued an Admit Slip and was called to appear in the written test under Roll No.189523. The petitioner duly appeared in the examination and successfully cleared the test by securing 52.5 marks out of 100.

2. Following the written test, the petitioner was summoned for an interview before the SPSC authorities. It is submitted that he performed competently during the interview and expected to be selected based on his relevant experience and performance. However, on 26.02.2025, the SPSC published the list of successful candidates. To the petitioner's utter shock and dismay, his name was found omitted from the said list, despite his belief that he had performed well. He contends that several candidates who had obtained lower scores in the written test were nonetheless declared successful and recommended for appointment to the post of Medical Officer (BPS-17).

3. The petitioner further alleged that the respondents acted in a discriminatory and arbitrary manner by favouring candidates selected on

the basis of extraneous considerations, including nepotism, monopoly, political patronage, and preferential treatment, rather than merit. As a result, the petitioner claims to have been unlawfully deprived of his fundamental and legal rights guaranteed under the Constitution.

4. Learned counsel for the petitioner submitted that his client is a meritorious and deserving candidate, possessing an outstanding academic record and having qualified the written test with commendable marks. Despite this, the petitioner was unjustly excluded during the interview process owing to the respondents' preference for individuals of their own choosing, influenced by nepotism and political connections. It is further asserted that individuals who secured comparatively lower marks in the written test were awarded disproportionately higher marks in the interview (viva voce), which facilitated their selection. Such conduct, it is contended, constitutes a manifest breach of the principles of meritocracy and a violation of the petitioner's fundamental rights as enshrined in Articles 18 and 27 of the Constitution of the Islamic Republic of Pakistan. Accordingly, the petitioner prays that this Honourable Court may be pleased to declare him as a successful candidate and allow this petition in the interest of justice.

5. Learned Assistant AG submits that petitioner could not qualify in interview, hence he had not been appointed by the respondents.

6. We have heard learned counsel for the respective parties and perused the material placed before the Court. The grievance of the petitioner, as articulated in the petition, is that although he successfully passed the written examination, the respondents owing to mala fide intent and irregularities wrongfully declared him unsuccessful in the interview. As a consequence, he claims to have been unlawfully deprived of his legal and constitutional right as guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. Accordingly, the petitioner beseeches this Honourable Court to declare him a successful candidate and to direct the official respondents to issue an appointment order in his favour for the post of Medical Officer (BPS-17).

7. The pivotal point for adjudication in this matter is whether this Court can grant the relief sought and issue the writ as prayed. The answer, is in the negative, in view of the well-settled principles of law that mere success in test does not *ipso facto* constitute a cause for judicial intervention. Admittedly petitioner is declared failed in viva-voce, Courts are generally reluctant to interfere in matters entailing subjective assessments of merit conducted by expert or designated selection committees. It is a settled proposition in administrative and service jurisprudence that the process of recruitment including the evaluation of candidates in interviews falls squarely within the exclusive domain of the appointing authority or Selection Board. Such bodies are presumed to possess the requisite expertise and acumen to assess the suitability of candidates. Unless there is compelling and demonstrable evidence of mala fides, arbitrariness, or breach of statutory rules, the judiciary exercises restraint and refrains from supplanting its opinion for that of the competent authority. Precedents of the superior judiciary reaffirm that the Courts cannot sit as appellate forums over decisions of Selection Committees.

8. The petitioner's claim that he secured higher marks in the written component but was subsequently declared unsuccessful in the interview on account of alleged bias, nepotism, and political favouritism is without any substance. A mere passing score in the written examination does not, in itself, confer a vested right to appointment unless the candidate also secures sufficiently high marks in the interview so as to surpass the final threshold determined by the lowest scoring successful candidate. As regards the petitioner's allegations of favouritism, nepotism, unlawful gratification, or political influence, these are generalized and unsupported assertions that would require a detailed factual probe something this Court is not inclined to undertake in the absence of cogent and convincing evidence. In the circumstances, no constitutional or fundamental breach has been substantiated, warranting interference in the recruitment controversy raised in this petition. The reliance is respectfully placed in the case of *Asif Hassan and others v. Sabir Hussain and others*, reported in **(2019 SCMR 1970)**, the Honourable Supreme Court has held as under:-

“On the other hand, learned counsel for the respondent No.1 has contended that the respondent as would appear from the

short listed candidates that he was more qualified and had a very long experience and, therefore, the official respondents out 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.

15. The Committee is best placed to assess the capabilities, academic background, aptitude, demeanor, and suitability of candidates. Judicial review of such assessments is not warranted unless it is demonstrated that the process was marred by arbitrariness or mala fide intent. In the instant case, no such glaring infirmity or procedural impropriety has been brought forth. The Court, therefore, refrains from stepping into the exclusive terrain reserved for administrative discretion.

16. The petitioner has alleged favoritism and nepotism; however, these allegations remain unsubstantiated. The assertions rest solely on conjecture and oral averments, unsupported by documentary evidence. The Court cannot place reliance upon such vague allegations to unravel or undo an otherwise lawful recruitment process. If such unverified claims are permitted to prevail, it would open floodgates for indiscriminate litigation and cast aspersions upon the sanctity of institutional recruitment”.

The same principle has been reiterated by the Honourable Supreme Court in the case of *Arshad Ali Tabassum v. The Registrar, Lahore High Court*, reported in **(2015 SCMR 112)**:-

“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.”

In the case of *Muhammad Ashraf Sangri v. Federation of Pakistan and others*, reported in **(2014 SCMR 157)**, the Honourable Supreme Court observed 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 on 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."

In the case of *Secretary Finance and others v. Ghulam Safdar*, reported in **(2005 SCMR 534)**, the apex Court has held as under:-

"10. Be that as it may, it is difficult to sustain the prayer of the respondents since mere selection in written examination and interview test would not, by itself, vest candidates with a Fundamental Right for enforcement as such in the exercise of Constitutional jurisdiction of the High Court. Admittedly, the appellants had not issued any offer of appointment to the respondents and their appointment was subject to clearance by the Establishment Division under the Centralized System of Recruitment till it was discontinued in November, 1996, which again coincided with the imposition of ban on fresh

recruitments, which could not be safely ignored by the appellants. Thus, the High Court was not right in overlooking this aspect of the case and issuing a writ of mandamus of the nature prayed for.”

On the point of factual controversy, this Court relies upon the case of *Mst. Kaniz Fatima through legal heirs v. Muhammad Salim and 27 others*, reported in **(2001 SCMR 1493)**, the apex Court has held as under:-

“Even otherwise such controversial questions could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan”.

Similarly, in the case of *Anjuman Fruit Arhitan and others v. Deputy Commissioner, Faisalabad and others*, reported in **(2011 SCMR 279)**, following observations were made:-

“The upshot of the above discussion is that learned single judge in chambers has rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused”.

9. In the light of foregoing discussion this petition is bereft of merit and is hereby dismissed along with listed applications, if any.

Judge

Judge

ARBROHI