

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-415 of 2025

Before:

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Faraz Aziz son of Abdul Aziz Hakro,
in person.

Respondents : Province of Sindh and another,

Date of Hearing & Order: 10.04.2025.

ORDER

Abdul Hamid Bhurgri, J.- Through this constitution petition, the petitioner has prayed as under:-

i. It is accordingly prayed in the interest of justice, the illegalities of the respondents can be assessed as despite the requisition for a significant number of seats being submitted to the respondent No.2, the seats were not duly accounted in the Combined Competitive Examination Afresh-2020 were reserved for CCE-2021, 2023. It is pertinent to mention that the candidates have suffered due to illegalities committed by the SPSC and appeared twice in the written examination. The candidates were shown unallocated Inspite of passing due to limited number of seats although there are vacant posts/ seats available. For the appointment of PSTs & JESTs in the continuation of the earlier notification 02-03-2023 the waiting period of the candidates who have qualified IBA Tests for the post of PSTs/ JESTs through SUKKUR IBA is hereby extended till 30-06-2025. The same process of waiting list may kindly be started without any discrimination for the passing candidates of Combined Competitive Examination Afresh - 2020 who has suffered Four (04) years due to illegalities committed by the SPSC and appeared twice in the written examination.

ii. Grant any other relief(s), which under the circumstances of the case the Honourable Court may deemed fit and proper may kindly be granted.

2. The case of the petitioner is that the respondents invited Combined Competitive Examination-2020 (CCE-2020) through advertisement No. 09/2019 and he being qualified candidate of screening

test appeared in the written test, nevertheless, the result was not announced for three years, ultimately, the High Court declared the whole process null and void and ordered to conduct a fresh examination. Consequently, in compliance of orders dated 24.02.2023 and 29.04.2023 passed by High Court of Sindh, Karachi in CP No.D-8033/2019, again the examination of CCE-2020 was conducted; he appeared in the exam, the official respondents through press release dated 16.05.2024 declared result vide press release No.PSC/EXAM(S.S)/2024/279 SINDH PUBLIC SERVICE COMMISSION THANDI SARA, HYDERABAD Dated 16th May, 2024.

The grievance of the Petitioner is that although he passed the exam, he was not allotted a seat, his score falling short of the last appointed candidate. He further challenged the omission of CCE-2022, contending that the seats ought to have been filled from the pool of successful CCE-2020 candidates. Instead, the Respondents issued a fresh advertisement. Alleging breach of legitimate expectation, the Petitioner implored the Court to direct allocation of seats in his favour, contending that he and others had become overage due to the fault of the Respondents. In the end he prayed that his petition be allowed.

3. We have heard the petitioner in person and perused the material available on the record.

4. It has been observed that CCE-2020 exam was challenged in CP No.D-8033/-2019, this Court in petition had held that entire result of CCE-2020 based on tempered answer sheets has polluted the required standards of transparency, therefore, examination of CCE-2020 were ordered to be held again in terms of order passed by this Court on 24.02.2023, the petition was disposed of by consent with sole object that officials of SPSC will hold the examination transparently. It was further observed in paragraph No. 16 of the said order that it has not been done and now those officials, who not only favoured, prima facie, are guilty of misconduct, have also exposed themselves to contempt proceedings by willfully defying the directions of this Court and the Honourable Supreme

Court of Pakistan in Suo Moto case No.18/2016. This Court has also observed in para No.18 as under:-

“18. In view of the above facts and circumstances of the case, we stay off our hands for the time being to see what departmental action the Sindh Government/ competent authority is taking against the delinquent officials/officers in the first instance, where after or examining the proposed penalties, we will further pass appropriate orders. The proposed departmental proceedings shall be conducted within two months. The compliance report shall be submitted on or before the next date. The SPSC is directed to conduct the exams CCE-2020 afresh, within two months. The official Assignee and Additional Registrars of the Benches of this Court shall supervise such process in the terms as set out in the order dated 09.11.2020 whereby the petition was disposed of with consent and the order when challenged before the Hon'ble Supreme Court of Pakistan was maintained. Let a copy of this order be communicated to the competent authority of the Sindh Government, Chairman, Sindh Public Service Commission, and official Assignee for compliance”.

5. In compliance with the above order, fresh examination of CCE-2020 was conducted and same was monitored by the Official Assignee of this Court so also Additional Registrars of the Benches of this Court, where-after the result was announced and the petitioner declared pass but he could not be allocated service/group as he obtained 616 marks while the last candidate who had been appointed in AS Prison OMR had obtained 653 marks. Regarding the contention of petitioner that the respondents have selected candidates of their own choice by giving them more marks in interview. In this regard, the Honourable Supreme Court, in the case of ***Waheed Gul Khan and another v. Province of Sindh and others, 2024 SCMR 1701*** has held as under:-

“An interview is inherently a subjective evaluation, and a Court of law does not have jurisdiction to substitute its opinion with that of the Interview Board to provide relief to anyone. The role of the Interview Board is to evaluate candidates based on a variety of subjective criteria, which may include interpersonal skills, presentation, and other intangible qualities that are difficult to measure objectively. These assessments are inherently qualitative and depend on the opinion of interviewers, who are appointed for their expertise and ability to make such evaluations. However, this does not mean that

the decisions of the Interview Board are beyond scrutiny. If there were any indications of mala fides, bias, or significant errors in opinion that are apparent from the records, the Court would certainly be compelled to intervene.

13. The Supreme Court of Pakistan in another case of Muhammad Ashraf Sangri v. Federation of Pakistan (2014) SCMR 157), has held that "Essentially an interview is 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....."

The reliance is also placed on in the case of **Asif Hussain and others v. Sabir Hussain and others, reported in 2019 SCMR 1970**, wherein the Honourable Supreme Court has observed 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 **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 A 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.”

6. The 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.

7. In view of above dictum laid down by the apex Court, this Court cannot substitute its opinion to that of interview committee in the present matter.

8. The other point raised by the petitioner that he should be allocated service group as it has been done by the Education Department in the cases of appointment of PSTs and JESTs. This Court is of the view that this is a policy matter. It is well-established that matters relating to allocation of seats, preparation of merit or waiting lists, and recruitment procedures fall within the exclusive policy domain of the competent authorities. The courts, in exercise of their constitutional jurisdiction, are not to interfere in such policy matters unless it is shown that the action of the authority is tainted with arbitrariness, mala fide, or in violation of any statutory rules or constitutional guarantees. The court cannot issue directions to allocate seats or prepare waiting lists in a particular manner, as doing so would amount to encroaching upon the administrative discretion vested in the executive.

9. Judicial interference should, therefore, be limited to instances requiring legal interpretation and must not unduly encroach upon executive or legislative discretion. In the case of ***Mian Irfan Bashir v. Deputy Commissioner (D.C) Lahore and others reported in PLD 2021 SC 571***, the Honourable Supreme Court has held as under:-

“Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. This is totally uncharacteristic of the role of the judiciary envisaged under the Constitution and is most undesirable in a constitutional democracy. Judicial overreach is transgressive as it transforms the judicial role of

adjudication and interpretation of law into that of judicial legislation or judicial policy making, thus encroaching upon the other branches of the Government and disregarding the fine line of separation of powers, upon which is pillared the very construct of constitutional democracy. Such judicial leap in the dark is also known as "judicial adventurism" or "judicial imperialism". A judge is to remain within the confines of the dispute brought before him and decide the matter by remaining within the confines of the law and the Constitution. The role of a constitutional judge is different from that of a King, who is free to exert power and pass orders of his choice over his subjects. Having taken an oath to preserve, protect and defend the Constitution, a constitutional judge cannot be forgetful of the fact that he himself, is first and foremost subject to the Constitution and the law. When judges uncontrollably tread the path of judicial overreach, they lower the public image of the judiciary and weaken the public trust reposed in the judicial Institution. In doing so they violate their oath and turn a blind eye to their constitutional role. Constitutional democracy leans heavily on the rule of law, supremacy of the Constitution, independence of the judiciary and separation of powers. Judges by passing orders, which are not anchored in law and do not draw their legitimacy from the Constitution, unnerve the other branches of the Government and shake the very foundations of our democracy."

10. The argument advanced by the Petitioner that new advertisements breached a legitimate promise is devoid of evidentiary support. The Petitioner has failed to demonstrate that a binding assurance was extended by the Respondents regarding future allocation of service or group.

11. The doctrine of legitimate expectation has also been defined by the Supreme Court of Pakistan in Judges Pension case reported in **PLD 2013 SC 829** wherein it was held that "the rule of legitimate expectation is not a part of any codified law, rather the doctrine has been coined and designed by the Courts primarily for the exercise of their power of judicial review at the administrative actions". In the case of **R. v. Secretary of State of Transport Export Greater London Council (1985) 3 ALL,ER 300**, it is propounded that "Legitimate, or reasonable, expectation may arise from an expressed promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably

expect in continue. The expectation may be based on some statement or undertaking by or on behalf of the public authority which has the duty of taking decision". Whereas in the judgment reported as ***Union of India v. Hindustan Development Corporation (1993) 3 SCC 499***, it was held that "The legitimacy of an expectation inferred only if it is founded on the sanction of law or custom or established procedure followed in regular and natural sequence. It is also distinguishable from a genuine expectation. Such expectations should be justifiably legitimate and protectable, Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in the conventional sense."

12. Moreover, in Civil Appeals No.5751 to 5771 of 2021, whereby the Province of Sindh challenged the order of Circuit Court, Hyderabad, the Honourable Supreme Court held as under,-

"iii. As far as concerns of those respondents who had approached the Sindh High Court complaining that they have had unlawfully been kept out of the appointment process and others had been appointed despite having scored higher marks in the examination or were better qualified, the petitioners agree that the cases of such petitioners shall be treated as pending cases and would be processed under the new law by the Public Service Commission. If they do not qualify or are not appointed on account of non-availability of seats, they shall be considered for appointment against posts that may subsequently become available subject to all just and legal exceptions and provided they participate in the fresh process including written test and interviews."

Emphasis added

13. From the foregoing discussion, it is manifestly evident that should the Petitioner or any other candidate have participated in the selection process, including any written examinations or interviews, but failed to qualify, he may nonetheless partake in any fresh recruitment process initiated henceforth.

14. The Petitioner has also introduced certain factual disputes within this petition, which, in the considered opinion of this Court, are not amenable to resolution in the exercise of constitutional jurisdiction.

15. In light of the foregoing deliberation, we are of the considered view that the present petition is devoid of merit. The Petitioner has failed to demonstrate any illegality, procedural impropriety, or jurisdictional error warranting interference by this Court. Accordingly, the petition stands dismissed in limine, with no order as to costs. Any listed applications stand disposed of accordingly.

Judge

Judge

Irfan/PS