

Order Sheet
IN THE LAHORE HIGH COURT
LAHORE
Judicial Department

W.P. No. 78710 of 2022

Ghulam Fareed. Vs. Government of Punjab, etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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06.04.2023.

Mr. Muhammad Kamran-ur-Rashid Mayo,
Advocate for petitioner.
Mr. Muhammad Nawaz Shah, Addl. A.G.
Malik Khuda Yar, Inspector Police Legal, IGP
Office, Punjab, Lahore and Raja Najam Waseem,
Inspector DPO Office, T.T. Singh.

Through this constitutional petition, the petitioner has called in question the action of the respondents, whereby despite being at Serial No. 1 of the merit list on the basis of written exam, the petitioner has not been selected for appointment against the post of Constable.

2. The claim of the learned counsel for the petitioner is that the petitioner could not be refused appointment as he was at Serial No. 1 of the merit list and the action of the respondents for not selecting the petitioner is *mala fide*, which action is liable to be set-aside and for this purpose relies upon judgment reported as **NLR 1997 Service 29** (*AMJAD LATIF versus C.B.R*) to state that merit list prepared on the basis of written test for appointment to civil posts cannot be upset through apportionment of marks reserved for *viva voce* when methodology of apportionment of marks reserved for *viva voce* is adopted by selection committee in a *mala fide* manner. Besides, it is stated the claim of the respondents that the petitioner was found involved in a criminal case was also not justified.

3. The learned Additional Advocate General under instructions states that despite being at Serial No. 1 of the merit list after written examination, the petitioner had failed to qualify in interview, where he was required to obtain at least 8 out of 20 marks but he only secured 7 marks, therefore, he failed to meet with the threshold for appointment to the post of Constable advertised by the respondents for District T.T. Singh. Besides it is claimed that petitioner had not disclosed the factum of registration of criminal case against him in his application form despite being required to do so, hence he cannot seek appointment.

4. There are two questions involved in the matter: first, is that the petitioner has failed in interview; and second, that he was involved in a criminal case.

5. As regards the question of failure in interview on account of obtaining less marks than required, this court may refer to some cases earlier decided by courts of law. The Hon'ble Supreme Court of Pakistan in judgment reported as **2014 SCMR 157** (*Muhammad Ashraf Sangri v. Federation of Pakistan and others*) while considering the cases of employees, who had not been selected on the basis of interview has observed that High Court cannot interfere in marks awarded by the Interview Board unless *mala fide* or bias or for that matter patent error is floating on the surface of the record because an interview is a subjective matter relating to fitness of any candidate for a particular post and could at best be assessed by functionaries, who were entrusted with such responsibility.

6. The Hon'ble Supreme Court of Pakistan in case reported as **2015 SCMR 112** (*Arshad Tabassum Vs. The Registrar, Lahore High Court, Lahore*) has

declared that court cannot substitute opinion of the interview committee on a bald allegation made by an unsuccessful candidate, who lost chance in the interview. The operative part of the said judgment is reproduced below:

“6. We have heard the petitioner in person as well as learned Additional Advocate-General, Punjab and have perused the available record. It is an admitted fact that the Interviewing Committee laid down a criteria for filling in the post of Additional District and Sessions Judge as under: -

"17. Interview of 100 marks of successful candidates will be conducted by the Examination Committee. The Candidates securing 50% marks in interview and falling in merit will be considered for recommendation of their appointment as Additional District and Sessions Judge."

Out of 904 candidates, who appeared in the written examination, 53 candidates were declared pass therein. The aforesaid 53 candidates were called for interview as per aforementioned criteria laid down by the Examination Committee out of whom only 31 candidates could pass the interview and they were appointed as Additional District and Sessions Judges vide Notification dated 3-6-2013. The petitioner failed to obtain requisite marks in the interview for having him declared pass, as such, was not recommended for appointment as he obtained 40 marks in interview out of 100 marks whereas according to the afore quoted criteria, a candidate can only be eligible for appointment if he obtains 50% marks in the interview but the petitioner could not obtain the marks according to the criteria.

7. 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. Reference is made to the case of Asif Mahmood Chughtai, Advocate and 17 others v. Government of Punjab through Chief Secretary and others (2000 SCMR 966), Dr. Mir Alam Jan v. Dr. Muhammad Shahzad and others (2008 SCMR 960) and Muhammad Ashraf Sangri v. Federation of Pakistan and others (2014 SCMR 157). In such circumstances, the petitioner could not establish any malice on the part of the Interview

Committee. There is also no measuring apparatus with this Court to determine that the petitioner was deferred in the interview by the Interview Committee only for the sole reason of his misconduct as Civil Judge. It is presumed that the Interview Committee must have given the petitioner marks after judging his ability without being influenced by the earlier misconduct of the petitioner as the Interview Committee was not acting as Disciplinary Committee dealing with the misconduct of the petitioner. Since the petitioner could not fulfil the requisite criteria for the post of Additional District and Sessions Judge, therefore, he was not recommended for appointment by the Selection Committee, thus, no illegality has been committed by the respondent while acting on the recommendations of the Examination Committee warranting interference by this Court in its constitutional jurisdiction.

8. *Upshot of the above discussion is that we find no merit in this petition which is hereby dismissed."*

7. The petitioner claims that he has not been appointed as he was found involved in a criminal case but he has failed to point out any *mala fide* on behalf of the respondents to declare him as fail in the interview process solely for the reason that he was involved in a criminal case. It is presumed that the interview committee must have given marks to the petitioner on the basis of his suitability for appointment to the said post by judging his ability and as the petitioner could not fulfill the requisite criteria, therefore, he was not selected, hence, has not been able to make out a case for this Court to interfere in the interview process or the marks awarded therein.

8. The Hon'ble Supreme Court of Pakistan in judgment reported as **2000 SCMR 966** (*ASIF MAHMOOD CHUGHTAI, ADVOCATE and 17 others versus GOVERNMENT OF PUNJAB through Chief Secretary and others*) has held that candidates having passed written test but failed in interview to obtain the qualifying marks were rightly declined appointment. The same principle is applicable to the case of the petitioner.

9. The judgment relied upon by the petitioner in the case of Amjad Latif (*supra*) is of no help to the petitioner as in the said case the written examination was based on two papers i.e. Mathematics and General Knowledge, reserving 100 marks for each paper and the department reserved 100 marks for *viva voce*. In the said circumstances, the court observed that reserving of 33% marks for interview had upset the merit list as a whole for that reason the court reached the conclusion in the said case that marks had not been properly apportioned and had not been awarded to candidates in a transparent manner, which had upset the merit list. On the other hand, in the present case, it is not the case of the petitioner that the marks of the interview were reserved excessively so that the merit list had been disturbed by award of higher marks to some candidates to the exclusion of the others, rather the petitioner has failed in interview on the basis of assessment by respondents on the basis of criteria fixed for considering the case of each candidate for appointment as Constable keeping in view the requirements of duties for the said job, which petitioner has failed to clear in interview, hence, his case is distinguishable from the afore-referred case on facts.

10. In view of what has been discussed above, as the petitioner has failed in interview by obtaining 7 out of 20 marks in the interview process, he is not entitled to any relief. As the matter has been decided on the basis of failure of the petitioner in interview, therefore, the matter relating to petitioner's involvement in the F.I.R/criminal case has not been addressed by this Court.

11. For what has been discussed above, the petitioner has failed to make out any case for interference by this Court. Consequently, this constitutional petition being devoid of any merit is **dismissed.**

(Muzamil Akhtar Shabir)
Judge

Zeeshan Khan

APPROVED FOR REPORTING