

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

No. IHC/Judl.Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP. 3318-13

Titled. SAAD JAN Versus F.B.I.S.E. Etc

a) Judgment approved for reporting

☒ Yes/~~No~~

b) Judgment any comment upon the conduct of the Judicial officer for quality of the impugned judgment is desired to be made.

~~Yes/No~~

(In case the answer is affirmative separate confidential note may be sent to the Registrar drawing his attention to the particular aspect).

Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P NO: 3318/2013

SAAD JAN VERSUS F.B.I.S.€ ETC

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of Chief Justice, and that of parties or counsel, where necessary.
1	2	3

11.9.2013

Raja Inaam Amin Minhas, learned ASC for petitioner,
Dr. Babar Awan, learned ASC for respondent No.1,
Malik Ghulam Mustafa Kundwal Advocate for respondent
No. 3,
Mr. Muhammad Waheed, Principal for respondent No.2,
Hafiz Muhammad Asif, Assistant Secretary, Federal Board:

ORDER
MUHAMMAD ANWAR KHAN KASI, CJ:

The petitioner invokes constitutional jurisdiction of this Court for issuance of a writ to declare him first position-holder in the Board in Humanities Group, 2013 as he had obtained 927 marks out of 1100 marks as compared to respondent No.3, who obtained 914 marks in the same Group.

The petitioner's case is that the act of the respondents is based on irregularities, malafides & omissions in withholding his position. As a matter of fact, he appeared in the 1st-Year Exam of HSSC and obtained 460 out of 550 marks and thereafter as per the facility provided by the respondent No. 1, he opted to take one subject of English compulsory HSSC-1 for enhancement of his marks. After putting a lot of efforts and hard work in the subject, 15 additional marks were increased in his total marks. He availed this facility as per rules and regulations of the respondent No.1 and obtained 927 marks out of total 1100 and secured the highest marks in the Board but respondent No.1 with malafide intention, and colorful exercise of powers deliberately did not declare petitioner as the first position holder and respondent No.3, who secured 914 marks i.e. 13 marks less than the petitioner, was declared 1st position-holder.

According to petitioner, he availed the facility of re-appearing within the period of two years after passing the SSC Exams without any extra time period, therefore, has a legitimate right to be declared as first position holder.

The Board/respondent No.1 resisted the petition on the ground that the petitioner was a repeater in one subject i.e. English

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[Compulsory] in HSSE-I, therefore, according to policy instructions, repeater is not entitled to ranking.

The respondent No.2, however, in his separate written comments supported the claim of the petitioner by referring to Rules and previous precedents on the subject.

Heard & record perused.

The dispute pertains to a declaration of top ranking amongst the students of HSSC Examination, 2013. Before dilating upon controversy, it is important to mention that all the students are equally important to the Court except for the inequality they earned through variation of their performance.

The sole point, which requires determination, is as to whether the petitioner, who obtained higher marks than the respondent No.3, is entitled to get top position. Since both the sides, referred Rule 1.19 of the Examination Rules, it will be imperative to go through the same which reads as under:-

1.19 Declaration of Top Positions;-

- a. A candidate shall be eligible for ranking among position holders who:
 - (1) Qualifies SSC/HSSC Annual Examination in the first attempt;-
 - (2) appears in the HSSC examination within two years of passing the SSC or equivalent examination.
 - (3) was admitted in -IX/X promoted to Class-XI/XII and appeared in SSC/HSSC Part I & II examination together.
- b. A candidate shall not be considered eligible for ranking among position holders, if he/she
 - (1) Repeats Part-I examination after getting previous Part-I result cancelled.
 - (2) does not appear/fail/pass in SSC Part-I/HSSC Part-I examination and rejoins class-IX/XI.

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In addition to above, the exhaustive comments of respondent No.2 [College of the petitioner] have also been perused, which suggest that petitioner passed the examination within two years and his case does not fall within the ambit of Rule 1.19 b (1) as he availed facility of re-appearing within two years time without any extra time period.

The learned counsel for the petitioner laid much stress on the point that under the rules the petitioner succeeded to obtain **927** marks in first attempt within two years, though repeated in one subject in Part-I and therefore, he is entitled to be declared as No.1, whereas the Board considered the respondent No.3 to be eligible for top ranking despite having less marks by considering the fact that she has successfully completed two years and has procured the marks in one go without re-appearing in any subject.

Record clearly indicates that the petitioner obtained **927** marks within two years, but with slight variation as he repeated one subject, whereas the respondent No.3 procured **914** marks in one go without re-appearing and for this reason the Board recommended her name for Award of distinction.

The petitioner also qualified his HSSC Examination in first attempt within the stipulated period, but considering the fact that he repeated one subject, I am of the considered opinion that the distinction awarded to the respondent No.3 is justified as it can be awarded to a person, who achieved a target in extraordinary manner by showing outclass performance because the underlying myth for the top ranking is that it is for the person who performs extraordinary among the best.

The person who obtained high marks, while appearing one time and in one go cannot be equated with the one, who though obtained highest marks, but through repetition. The impugned action of the respondent-Board is justified being in consonance with the spirit of natural justice, doctrine of prudent reason and, therefore, cannot be termed as arbitrary, perverse and unreasonable and is also based on reasonable distinction.

As mentioned above, the respondent No.3 obtained **914** marks in one go, whereas the petitioner obtained **927** marks within the stipulated period, but not in one go, therefore, there exists no justification to interfere under constitutional jurisdiction.

In view of above, the petition is dismissed with no orders as to costs.

CHIEF JUSTICE

M.Suhali*
11-09-2013

APPROVED FOR REPORTING