

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

No. IHC/Judl.Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP-3321-2013

Titled. Abeera Saeed VS. 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: 3321/2013

ABEERA SAEED 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. Asif Razzaq, 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 her as second position-holder alongwith the respondent No.3 in the Board in General Science Group, 2013 as the respondent No.3 secured 1010 marks, which are equivalent to the marks obtained by the petitioner.

The petitioner's case is that the act of the respondents No.1 in withholding her position is based on irregularities, malafides and omissions. As a matter of fact, she appeared in the 1st-Year Exam of HSSC and obtained 475 marks and thereafter as per the facility provided by the respondent No.1, she opted to take two subjects of English & Urdu for enhancement of her marks. After putting a lot of effort and hard work in the subjects, 31 additional marks were increased in her total marks. She availed this facility as per rules and regulations of the respondent No.1 and obtained 1010 out of total 1100 marks and secured second highest marks in the Board, but respondent No.1 with malafide intentions, and colorful exercise of powers deliberately did not declare her as the second position holder alongwith respondent No.3.

According to petitioner, she availed the facility of re-appearing within the period of two years after passing the HSSC Exams without any extra time period, therefore, has a legitimate right to be declared as second position holder alongwith the respondent No. 3.

The Board/respondent No.1 resisted the petition on the ground that the petitioner was a repeater in two subjects i.e. English & Urdu 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 declare the petitioner as second position holder on sharing basis with respondent No.3 in 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 secured 1010 marks, which are equivalent to the marks obtained by the respondent No.3, is entitled to have the same position on sharing basis. 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.

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 her case does not fall within the ambit of Rule 1.19 b (1) as she 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 1010 marks in first attempt within two years, though repeated in two subjects in Part-I and therefore, she is entitled to be declared as second position holder alongwith respondent No.3, whereas the Board considered the respondent No.3 to be eligible for second position holder as she has successfully completed two years and has procured the 1010 marks in one go without re-appearing in any subject.

Record clearly indicates that the petitioner obtained **1010** marks within two years, but with slight variation as she repeated two subjects, whereas the respondent No.3 also secured similar 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 she repeated two subjects, the considered opinion shall be 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 highest 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, yet 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 or unreasonable and is also based on reasonable distinction.

As mentioned above, the respondent No.3 obtained **1010** marks in one go, whereas the petitioner secured similar 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.Suhail*
11-09-2013

APPROVED FOR REPORTING