

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.1137-P/2018

JUDGMENT

Date of hearing.....21.02.2019.....

Petitioner: (Fayaz Ahmad) By Mr. Asif Ali Shah, Advocate.

Respondents: (Khyber Pakhtunkhwa Public Service Commission,
through Chairman etc) By Mr. Arshad Ahmed,
AAG.

QALANDAR ALI KHAN, J.- Fayaz Ahmad,

petitioner, was candidate for both posts of Subject

Specialist and Lecturer advertised by the Khyber

Pakhtunkhwa Public Service Commission, alongwith a

number of other posts vide advertisement No.06/2017;

and after failing to qualify for interview on the basis of

securing 223 marks in Lecturer test and 192 marks in

Subject Specialist test, he invoked the constitutional

jurisdiction of this Court under Article 199 of the

Constitution of the Islamic Republic of Pakistan, 1973,

for issuing the following directions to the respondents:-

- “i. Directing the respondents to include the name of the petitioner in the merit lists for interview and they be allowed to appear in the interview as per schedule already made public;*
- ii. Directing the respondents that the un-attempted wrong MCQs may be considered as correct and marks may be given according to law and the petitioner may be allowed to participate in the whole process of appointment of above mentioned posts;*
- iii. Directing the respondents the recommendation may be issued if the petitioner qualify the interview; or*
- iv. Directing the respondents constitute a team in the supervision of professor in Physics to scrutinized the papers and their marking meticulously in the presence of petitioner in the officer of respondents and*
- v. Granting any other remedy to which the petitioner are found fit in law, justice and equity.”*

2. In his writ petition, the petitioner averred that he was a permanent resident of District Peshawar and while having the requisite qualification of Master Degree in Physics from University of Peshawar, he applied for the

posts of Subject Specialist and Lecturer, advertised by the respondents in the newspaper; and was declared successful in the written test conducted by the Khyber Pakhtunkhwa Public Service Commission by securing 223 marks in Lecturer test and 192 marks in Subject Specialist test; but his name was not included in the tentative merit list for the post of Lecturer upto 226 marks and for Subject Specialist post upto 205 marks. The petitioner claimed that at the time of written test, he had raised objection to two MCQs in Lecturer test having no right answer in the given options; and, likewise, no right answer in the given options in MCQs No.6, 16, 19, 24, 35 and 64; but they were assured by the Invigilators about the benefit at the time of marking of their papers. The petitioner also alleged denial of access to him to his papers, and that his representation and personal visits to the office of respondent No.2 i.e. Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar, failed to bear fruit, and also that

he was not issued call letter for interview; hence the instant writ petition.

3. In their para-wise comments, the respondents raised several legal and factual objections, including the one with regard to the petitioner securing less than the threshold marks of 205 for the post of Subject Specialist and 226 marks for the post of Lecturer by obtaining 192 marks out of 400 for the post of Subject Specialist and 223 out of 400 marks for the post of Lecture. It was further pointed out that the Higher Education Department had already withdrawn the post of male Lecturer Physics, therefore, no further process was made. The respondents disclosed that after receiving complaints from candidates about the absence of right answers of question Nos.6, 16, 19, 24, 35 and 64 in question paper for the post of Subject Specialist, the Public Service Commission examined the said question paper, but even after detail scrutiny and minute examination of the question paper by the Director

Examination, Public Service Commission, no discrepancies were found in the said MCQs. They also questioned the authority of invigilating staff deputed in the examination halls to make such commitment on the part of the Public Service Commission regarding increasing or decreasing the marks in ability test. They concluded that the petitioner secured less marks than the fixed target for Zone-2, therefore, he was not eligible candidate for his appointment against any of the advertised posts.

4. Arguments of learned counsel for the petitioner and learned AAG for the respondents heard; and record perused.

5. It may be observed, at the very outset, that out of thousands candidates for both the posts of Subject Specialist and Physics Lecturer, the petitioner appears to be the only one raising objection to two MCQs in Lecturer test on the ground that no correct answers were available in the given options and likewise MCQs No.6,

16, 19, 24, 35 and 64 did not carry the right answers in the given options. Therefore, awarding marks to the petitioner for the un-attempted so-called wrong MCQs and allowing him to appear in the interview and also sending recommendation in his favour to the Government, would not only jeopardize the entire selection process by the Khyber Pakhtunkhwa Public Service Commission; but would also tend to open Pandora's box at this stage when recommendations have been made by the KP, PSC, and appointments also seem to have been made on the basis of such recommendations; more so, when complaints of the candidates in this regard have been entertained, but no discrepancies detected in the said MCQs by the concerned authorities. Even otherwise, having choice/option of attempting other questions in the examination/test, the objection of the petitioner with regard to only a couple of MCQs would not be tenable. In any case, this Court in its constitutional jurisdiction

cannot assume the role of overseeing the process of examination conducted by the Public Service Commission; which is, indeed, the only and exclusive function of the Public Service Commission, having mandate under the constitution and law of the land to undertake the exercise of conducting examination/test for various positions in the Government, and make recommendations for appointment on the basis of such examination/test.

6. As such, the writ petition is devoid of merit; hence dismissed.

Announced
21.02.2019

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*(D.B) Hon'ble Mr. Justice Rooh-ul-Amin Khan.
Hon'ble Mr. Justice Qalandar Ali Khan.*

(M. Iqbal)