

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.4847-P/2016

JUDGMENT

Date of hearing.....24.01.2019.....

Petitioners: (Naveeda Naz etc) By Mr. Sajeed Khan Afridi,
Advocate.

Respondents: By M/S Kamran Hayat, AAG and Khalid Rehman,
Advocate.

QALANDAR ALI KHAN, J.- Since identical issues

have been raised, this consolidated judgment in the

instant writ petition is also directed to dispose of the

below mentioned writ petitions;

1. **W.P.No.1049-P/2016.**
*(Syed Waqas Naqvi-Vs- Khyber Pakhtunkhwa
Public Service Commission etc).*
2. **W.P.No.1052-P/2016.**
*(Muhammad Waqas-Vs- Government of Khyber
Pakhtunkhwa etc).*
3. **W.P.No.1105-P/2016.**
*(Wajia Anees-Vs- Chairman Public Service
Commission etc).*
4. **W.P.No.1106-P/2016.**
*(Sabeena Jadoon-Vs- Chairman, Public
Service Commission, KPK etc).*
5. **W.P.No.4251-P/2016.**
*(Nazim Shahab Qamar-Vs- Government of
Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar etc).*
6. **W.P.No.362-P/2017.**
*(Sajjad Khan-Vs- Khyber Pakhtunkhwa Public
Service Commission etc).*
7. **W.P.No.3205-P/2017.**

(Kashif Noman-Vs- Chairman Khyber Pakhtunkhwa Public Service Commission etc).

2. The petitioners in all the aforementioned writ petitions were candidates for 103 posts of Civil Judges-cum-Judicial Magistrates/*Illaqa Qazi* (BPS-18), advertised by the Khyber Pakhtunkhwa Public Service Commission (hereinafter referred to as **the Commission**) vide advertisement published in the news papers bearing No.07/2015; and had qualified the written test/examination conducted by **the commission** and had also undergone the psychological test and psychological assessment, and were thereafter called for final interview; but they could not secure the minimum threshold of 30 % marks in the final interview; hence could not be recommended by **the commission** for appointment to the Peshawar High Court; hence writ petitions, *inter alia*, on the grounds that they possessed the requisite qualification; that they had qualified the written test/examination conducted by **the commission** and had obtained much more marks even than the candidates who were

recommended for appointment; that the process of interview was seriously flawed as marks in the interview were allocated only by the Chairman without separate marks by each member of the committee constituted for the interview; and that members of the committee did not possess the requisite qualification and expertise to objectively assess qualities and capabilities of the candidates for appointment as Civil Judges-cum-Judicial Magistrates/*Illaqa Qazi* (BPS-18).

3. In their comments, the respondents (the Khyber Pakhtunkhwa Public Service Commission) resisted the writ petitions on several legal and factual grounds, including that the petitioners failed to qualify mandatory interview; that they did not avail the remedy under regulation, 2003, of the KPK, Public Service Commission; and that the petitioners could not question the recommendation of the Public Service Commission, being advisory in nature, in writ jurisdiction, in the light of judgments of Supreme Court of Pakistan. While admitting in their comments

that the petitioners had qualified the written test/examination and had also undergone the psychological test and psychological assessment interview, the respondents pointed out that the petitioners could secure less than 30 % qualifying marks in the interviews/viva-voice, hence declared fail. **'Unanimously'** by the interviewing panel, headed by the Chairman of **the Commission** along with two senior most members of **the Commission** and two nominees of the Peshawar High Court. It was also pointed out in the comments that the Commission was not maintaining individual marks of each interviewer, rather it maintained collective marks of the panel, as such marks awarded by each member of the Committee could not be provided to the candidates. It was further pointed out by the respondents that this Court had earlier dismissed an identical writ petition titled Asghar Khan son of Aziz-ur-Rehman (W.P No.1404/2012, and that as per judgment of the Supreme Court reported as SCMR 2014 157, interview marks could not be challenged questioned in the writ

jurisdiction. It was clarified by the respondents that the interview marks were always awarded according to performance of each candidate in the interview, regardless of the marks obtained by such candidate in the written test/examination. While referring to the earlier application of candidates for posts of Civil Judges-cum Judicial Magistrates/*Illaqa Qazi*, respondents disclosed that even after rechecking/re-totling of their scripts, no mistake was found. The respondents defended the marks awarded to each candidate by panel of **the commission** in the interview. The respondents also highlighted the professional skills, competency and integrity of members of the commission, and claimed that the commission strictly observed merit while recommending candidates for their appointment to the respective departments/institutions.

4. Arguments of learned counsel for the petitioners, also on behalf of learned counsel for couple of petitioners not in attendance in the Court

today, learned AAG and learned counsel for the Peshawar High Court heard; and record perused.

5. As would be seen from the brief resume of cases of the petitioners, hereinabove, their common grievance is with regard to allocation of less than 30 % qualifying marks in the interview by **the Commission**, leading to their failure in the examination for 103 post of Civil Judges-Cum-Judicial Magistrates/*Illqa Qazi* (BPS-18), advertised by the Commission vide advertisement No.07/2015. Their contention in the writ petitions was that they had not only qualified the written test/examination but had also secured much higher marks even than the candidates who were recommended for appointment against the aforesaid posts to the Peshawar High Court. Their main grievance was that instead of each member of the panel/committee of **the commission** separately awarding marks in interview, they were declared unsuccessful only by the Chairman for not meeting the threshold of 30 % qualifying marks in the interview. **The commission**, on the other hand, claimed that the

panel/committee ‘**unanimously**’ awarded the marks, meaning thereby that the petitioners failed in the mandatory interview in the opinion of each and every member of the panel/committee, who ‘**unanimously**’ declared them failed in the mandatory interview, regardless of their qualifying the written test/examination, and securing even much more higher marks than the candidates who qualified the interview and were recommended on the basis of merit, which was result of qualifying marks in both the written test/examination and interview.

6. As such, nothing was pointed out in the writ petitions by the petitioners to discredit the process of interview, which was in accordance with the existing rules/regulations of **the commission**; and, apparently, not marred by any extraneous considerations. Even otherwise, this Court could not substitute opinion of the interview committee on the basis of allegations levelled against the interview process by the unsuccessful candidates, who lost their chance in the interview, in light of the consistent view of the august

apex Court, reported as 2015 SCMR 112, 2014 SCMR 157, 2008 SCMR 960 and 2000 SCMR 966.

7. Consequently, all the mentioned writ petitions, having no merit and substance, are dismissed, accordingly.

Announced
24.01.2019

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

(Ayub)