

PESHAWAR HIGH COURT, PESHAWAR**ORDER SHEET**

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2
16.09.2020	<p data-bbox="472 604 1008 647"><u>Writ Petition No.4381-P/2019</u></p> <p data-bbox="472 693 1356 782">Present: Mr. Danish Khan Afridi, Advocate, for the petitioner.</p> <p data-bbox="654 827 1356 916">Mr. Wilayat Khan, AAG, for the Provincial Government.</p> <p data-bbox="883 956 938 986">***</p> <p data-bbox="472 1051 1356 1373"><u>IJAZ ANWAR, J:-</u> Mst. Maria Jabeen, petitioner herein, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has prayed for the following relief:-</p> <p data-bbox="548 1446 1252 1548"><i>“It is, therefore, humbly prayed that on acceptance of the instant writ petition,</i></p> <p data-bbox="594 1602 1252 2026"><i>a. Petitioner be declared as qualified candidate for the post of Assistant Sub-Inspector (Female) being on top of the merit list, and refusal of appointment by the respondents is illegal, unlawful and against the fundamental rights of the petitioner.</i></p> <p data-bbox="594 2053 1252 2220"><i>b. Directions be issued to respondents to appoint the petitioner as per Rules governing the subject</i></p> <p data-bbox="594 2247 1252 2413"><i>c. Any other relief which has not been specifically asked for but this Hon’ble Court deems appropriate may also be</i></p>

awarded to meet the ends of justice”.

2. In essence, petitioner is aggrieved of the act of respondent-Department, whereby, she, despite qualified the written test and interview, has not been appointed against the post of Assistant Sub-Inspector (Female), on the ground that she is not eligible for the said post, as per Rules.

3. Learned counsel for the petitioner argued that petitioner was having the prescribed qualification for the post of Assistant Sub-Inspector (M/F) (BPS-08) in the respondent-Department. She topped the merit in her category, however, she was not appointed on the ground that she was not holding the Diploma in Information Technology as required under the Rules as well under the advertisement at the relevant time. He further contended that the Rules were subsequently amended in March, 2018 and the relevant qualification of Diploma in Information Technology was deleted and as such, petitioner became eligible for appointment. He referred to different correspondence whereby the respondent-Department favored the petitioner and referred her case to the Department for her appointment. He further argued that as the appointment was not made, therefore, when petitioner became eligible after the amendment in the Rules, as such, in view of the judgments reported as

“Sh. Muhammad Sadiq Vs. Federal Public Service Commission and others (2013 SCMR 264)”,
“Government of NWFP, Health and Social Welfare Department through its Secretary Vs. Dr. Sheikh Muzaffar Iqbal and others (1990 SCMR 1321)” and
“Imtiaz Ahmed and others Vs. Punjab Public Service Commission through Secretary, Lahore and others (PLD 2006 SC 472)”, she is entitled to be appointed.

4. As against this, learned AAG representing the respondents-Provincial Government argued that on the last date of advertisement, petitioner was not holding the prescribed qualification. Similarly, appointments of Assistant Sub-Inspectors (Male) have since been made, and, therefore, the subsequent amendment in the Rules would not give any right to the petitioner for her appointment.

5. Arguments heard and record perused.

6. Perusal of the record reveals that vide advertisement dated 10.08.2017, respondent-Department advertised different posts including the post of Assistant Sub-Inspector (BPS-08) (M/F), wherein, the prescribed qualification is mentioned as under:-

- i. At least Intermediate or equivalent qualification from a recognized Board.*
- ii. One year Diploma in Information Technology from Board of Technical Education or Trade Testing Board.*

Similarly, the above qualification is also mentioned in the recruitment rules applicable at the relevant time. The advertisement mentions last date of submission of application as 01.09.2017. It is by now well settled that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date specified by the relevant Service Rules and if there is no cut-off date specified by the Rules then such date as may be mentioned for the purpose in the advertisement calling for applications. Similarly, if there is no such date fixed as referred above, then eligibility criteria shall be applied by reference to the last date fixed by which applications have to be received by the Competent Authority.

7. Now looking at the criteria mentioned in the advertisement, it is very much clear that besides holding intermediate or equivalent qualification, there must be one year Diploma in Information Technology from Board of Technical Education or Trade Testing Board. In accordance with the advertisement, petitioner was never eligible for the said post; however, she was allowed to appear in the written test conducted by ETEA and as per the result, she was the only eligible candidate holding 97.94 marks, while, amongst the male

candidates, two of the candidates were having the prescribed qualifications in terms of advertisement. It, therefore, follows that petitioner was not eligible even to be considered for the appointment. Similarly, it is astonishing to note that Department tried its best to waive of the condition of Diploma in Information Technology with the only aim to favor the petitioner and probably this was the reason that even the recruitment Rules were amended vide Notification dated 19.02.2018 so as to bring petitioner in the eligibility criteria, however, the Establishment Department has regretted the same.

8. The reliance on the judgments of the Hon'ble Supreme Court of Pakistan reported as *“Sh. Muhammad Sadiq Vs. Federal Public Service Commission and others (2013 SCMR 264)”*, *“Government of NWFP, Health and Social Welfare Department through its Secretary Vs. Dr. Sheikh Muzaffar Iqbal and others (1990 SCMR 1321)”* and *“Imtiaz Ahmed and others Vs. Punjab Public Service Commission through Secretary, Lahore and others (PLD 2006 SC 472)”*, does not in any way support the case of the petitioner, because, in the reported case PLD 2006 SC 472, petitioners were not qualified on the last date of submission of applications for appointments.

Their case was that since earlier when they qualified their LLB, there was no condition of two years experience as practicing Advocate to appear in the competitive examination for the post of Civil Judge Judicial Magistrate and as such, petitioners did not join the law profession to be enrolled as an Advocate and subsequently the rules were amended and therefore it was held that earlier rules, if any, would not be relevant and the rules/regulations prevailing at the time of appointment are to be followed. Similarly, quite recently, the Hon'ble Supreme Court of Pakistan in case reported as 2020 SCMR 568 held that candidates were required to meet the eligibility criteria on the last date of submission their applications. Similar view was expressed by the Hon'ble Supreme Court of Pakistan in the case of *“Asif Hassan and others Vs. Sabir Hussain and others (2019 SCMR 1720)”*. Reference can also be made to cases titled, *“Wasim Shahzad Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others (2018 PLC (C.S) note 168)”*, *“Muhammad Muneer Malik and others Vs. Allama Iqbal Open University and others (2016 PLC (C.S) 896)”* and *“Shazia Munawwar Vs. Punjab Public Service Commission through Secretary, Lahore (PLD 2010 Lahore 160)”*.

9. There is yet another very important aspect of the case and the principle why much importance has been given for the eligibility on the cut-off date is, we feel privilege to refer to the judgment of the august Indian Supreme Court in the case of *Ashok Kumar Sharma and other Vs. Chander Shekhar and another 1997 (4) SCC 18*, wherein, it is held that “the proposition that where applications are called for prescribing a particular date as a last date for filing an application, the eligibility of the candidate shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known to that persons, who obtained the qualification after the prescribed date but before the date of interview, would be allowed to appear for the interview, other similar placed persons could also have applied. Just because, some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on

a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is undisputable and infact was not doubted or disputed in the majority judgments”.

10. Thus, looking from any angle, we are unanimous on this irresistible conclusion that petitioner was not holding the prescribed qualification on the last date of submission of application for her appointment. Similarly, the subsequent amendment in the Rules, in no way, will give any right to the petitioner to be treated in accordance with the amended Rules and if these Rules are applied in her case, it would be injustice to numerous other candidates who did not apply because of lacking the qualification of Diploma of Information Technology.

11. For the reasons recorded hereinabove, this writ petition, having no merits, stands dismissed.

Announced
Dt:16.09.2020

Senior Puisne Judge

Judge