QALANDAR ALI KHAN, J:- Muhammad Ismail, petitioner, invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, for the following declaration:-

a. The respondent No.2 after its final recommendation for the appointment of petitioner as Male Principal (BPS-18) in Elementary and Secondary Education Department by the Government of KPK vide letter dated 15.01.2015 have become functus officio and as such was having no lawful authority to do anything or pass any order, which may affect the right accrued to petitioner for his
appointment against the said post by the Government of KPK.

b. The petitioner in terms of letter dated 15.01.2015 of respondent No.2 has legal and constitutional right to be considered for his appointment as Male Principal (BPS-18) in Elementary and Secondary Education by the Government of KPK.

c. The respondent No.1 after the issuance of letter dated 15.01.2015 by respondent No.2 cannot deny him his right of appointment as Male Principal (BPS-18) in Elementary and Secondary Education by the Government of KPK.

d. That, petitioner has been discriminated against all those who have been declared qualified like petitioner and are being appointed as Male Principal (BPS-18) in Elementary and Secondary Education by the Government of KPK.”

2. In his writ petition, the petitioner averred that having qualified the test and interview, his name was included by the Khyber Pakhtunkhwa Public Service Commission, Peshawar (respondent No.2) (hereinafter referred to as the Commission) in the tentative list of sixty seven candidates to be recommended to the Government for their appointment subject to verification of the documents/domicile etc and fulfillment of the criteria advertised for the post. After doing the
needful, respondent No.2 informed the petitioner vide letter dated 15.01.2015 that the commission has recommended him to the Government for his appointment to the post of Male Principal (BPS-18) in Elementary and Secondary Education Department; and, at the same time, informed him that the Commission could not entertain any (further) correspondence in this regard. However, after waiting for some time, the petitioner came to know about recommendation of forty-seven candidates by the Commission to the Government for their appointment against the post of Principal / Vice Principal (BPS-18) in the Elementary and Secondary Education Department, by excluding the name of the petitioner, though earlier recommended by the Commission to the Provincial Government for his appointment as Male Principal (BPS-18). The petitioner assailed the impugned act of the commission of not including his name in the list of forty-seven qualified candidates for their appointment to the Provincial Government,
inter alia, on the grounds that after making its final recommendations vide letter dated 15.01.2015 for appointment of the petitioner as Principal (BPS-18) in Elementary and Secondary Education Department, the Commission had become functus officio thus having no lawful authority to take any step/action after 15.01.2015 with regard to matter of petitioner's appointment as Male Principal (BPS-18) in Elementary and Secondary Education; that no notice or show cause notice was issued to the petitioner prior to issuance of the list of forty-seven qualified candidates for their appointment by the Provincial Government, as such, the petitioner was condemned unheard which was in sheer violation of principle of natural justice; that after issuance of letter dated 15.01.2015 a vested right accrued in favour of the petitioner which could not be taken away under the principle of *locus poenitentiae*; and that the petitioner was discriminated against as all those who had been declared qualified like the
petitioner were being appointed as Male Principal (BPS-18) in Elementary and Secondary Education Department by the Government of Khyber Pakhtunkhwa.

3. In their joint parawise comments, Government of KPK through Secretary Elementary and Secondary Education Department Peshawar (Respondent No.1) and Chairman, KPK Public Service Commission 2-Fort Road, Peshawar Cantt. (Respondent No.3) disputed claim of the petitioner on several legal and factual grounds including the one with regard to the effect that no final order was passed by the respondents against the petitioners and that the recommendations in the case had been sent to the concerned department which had attained finality. They pointed out that the eligibility criteria and prescribed qualification for the post of Principal/Vice Principal (BPS-18) as per notified service rules was Masters Degree with M.Ed/M.A (Education) or equivalent from a recognized University with nine years teaching/
administrative experience in recognized Secondary School/ Higher Secondary School. They claimed that the petitioner did not fulfill this criteria as during perusal of PERs it was found that he had served as primary teacher which was not relevant experience as per aforementioned service rules therefore his final recommendation was retained. They maintained that in case of large number of applications for a post the screening test was required to be held without first holding scrutiny of applications but once short listed candidates are identified the applications of such candidates are scrutinized before proceeding further and if found ineligible in scrutiny such candidates are not called for interview even if they qualify the test. According to the respondents, 2843 applications were received for the post of Principal/Vice Principal therefore the petitioner as well as other applicants were called for ability test without first holding scrutiny of their documents. The respondents admitted it
correct that the petitioner qualified the ability test and that he was subsequently called for interview subject to the provision of deficiency, however, the departmental permission certificate produced by the petitioner clarified only to the extent that the petitioner was serving as SET since 04.05.1985 therefore he was allowed to participate in the interview and that sixty seven candidates were recommended to the Government of Khyber Pakhtunkhwa for appointment vide letter dated 13.01.2015 subject to the condition that their PERS were found ‘satisfactory’. They, however, claimed that the petitioner was recommended provisionally/ tentatively which did not confer any right of appointment and that any discrepancy revealed at any stage could lead to cancellation of recommendation/appointment accordingly.

The respondents alleged that according to his PERs, it was found that the petitioner had served as Primary School Teacher since 1999 and that experience at Middle School was not relevant experience for the post of Principal /
Vice Principal, therefore, his recommendation was retained and a show cause notice was served upon him to clarify his position within fifteen days, but reply to the show cause notice was still awaited. The respondents termed filing of the instant writ petition as an attempt on the part of the petitioner to sabotage the proceedings initiated against him by the PSC and also to avoid the submission of reply to Show Cause Notice. The respondents claimed that since the petitioner had not served at GHS / Higher Secondary School therefore his experience was not relevant.

4. The petitioner also filed rejoinder, where-after, respondents No.1 and 3 filed better statement followed by counter reply by the petitioner, and thereafter arguments of learned counsel for the petitioner and learned Additional Advocate General heard, and file perused.

5. After perusal of record with the valuable assistance of learned counsel for the petitioner and learned Additional Advocate General, we
have no hesitation to hold the petitioner entitled to the declaration, as prayed for, on the following grounds, namely:-

a) Having qualified the ability test and interview, and after rectifying the deficiencies before interview as pointed out in the letter of the Commission dated 27.06.2013, the name of the petitioner was included in the list of sixty-seven candidates for recommendation of their names by the Commission to the Provincial Government for their appointment as Principal/Vice Principal (BPS-18) in Elementary and Secondary Education Department, following which the petitioner was also informed about the recommendation vide letter dated 15.01.2015; while, at the same time, informing him that Government was the final authority in the matter of appointment and that the
Commission could not entertain any (further) correspondence in this regard. In other words, scrutiny of the applications, including application of the petitioner, was held before he was called for interview and it was only after his application was found in order and fulfilling the eligibility criteria that his name was included in the list of the candidates who were being considered for recommendation to the Provincial Government, and further on the basis of this list of sixty-seven candidates, the petitioner was informed about his recommendation for the post of Male Principal (BPS-18) in the Elementary and Secondary Education Khyber Pakhtunkhwa vide letter dated 15.01.2015. It is, indeed, strange that on the one hand the respondents claimed that sixty-seven candidates
were recommended to the Government of Khyber Pakhtunkhwa for appointment vide letter dated 13.01.2015 subject to the condition that their PERs were found ‘satisfactory’ but, on the other hand, they claimed that it was only after perusal of PERs of the petitioner that they found the petitioner as having ‘served as Primary School Teacher’ which was not relevant experience as per the Service Rules. The respondents conveniently ignored this fact that they had already required the petitioner vide their letter dated 27.06.2013 to furnish experience certificate and also departmental permission certificate from Director Elementary and Secondary Education, which also contained verification to the effect of service of the petitioner in the department as SET since 04.05.1985,
and whereupon, ostensibly, name of the petitioner was included in the list of candidates who were to be recommended for appointment, followed by letter dated 15.01.2015. Even if this argument of the respondents is accepted as correct that no scrutiny of the applications took place before the ability / screening test, the scrutiny did take place, according to their own admission, after the ability / screening test, and before the interview, which is even otherwise proved from the fact that recommendations of the petitioner vide letter dated 15.01.2015 was not made subject to scrutiny of his PERs; as scrutiny of PERs, in any case, was, meant for verification of past performance and conduct of the petitioner and not for scrutiny of his experience on a particular post.
b) Having the status of only a recommendatory body, the Commission became functus officio after making recommendations in favour of the petitioner vide letter dated 15.01.2015, as power of appointment, ultimately, vested with the Provincial Government and even the letter itself suggested so by pointing out that the Government was the final authority in the matter of appointment. Therefore, the Commission had no authority to reopen its recommendations on the basis of an irrelevant fact of perusal of PERs when it already had satisfied itself about experience of the petitioner from the documents furnished by the petitioner in response to its letter dated 27.06.2013.

c) The respondents claimed, in their comments, that experience of
the petitioner as Primary School Teacher (PST) since 1999 was not relevant, but the bio-data of the petitioner, even attached with the better statement of the respondents and as such admitted by them nowhere shows experience of the petitioner as PST, therefore, one is at a loss to understand wherefrom experience of PST was found by the respondents which, as such, appears to be only an attempt on the part of the Commission to come out of the quagmire wherein it landed after not recommending the petitioner on a false pretext which finds no support from the available record.

d) The other objection of the respondents that experience at Middle School was not relevant for the post of Principal/Vice Principal is also falsified by the letter dated 06.01.2015 of the Elementary and
Secondary Education Department to the Secretary of the Commission thereby clarifying that Middle Schools were part of Secondary Schools and came within the definition of Secondary Education, therefore, all the teachers working on regular basis in Middle, High and Higher Secondary Schools are inter-transferable and further that their experience in Middle, High and Higher Secondary Schools was equally countable for a higher post.

There can be no cavil to this proposition that the Commission conducts tests / examinations for Government Posts on the requisition of the Provincial Government/ concerned departments according to their Rules for appointments/ recruitments with no powers to make recommendations for appointments/recruitments to the
Provincial Government/concerned departments in violation of the relevant appointment rules. Having recommended candidates with the same experience after qualification of M.A, the respondents could not treat the petitioner with different yardstick as he had vividly shown and proved this fact to the Commission that he had more than the requisite experience of nine years after acquiring M.A in 1988.

e) What else would be required to prove malafide on the part of the respondents after going through their comments wherein they claimed that a show cause notice was served upon the petitioner to clarify his position within fifteen days and that reply to show cause notice was still awaited and further that the petitioner filed the instant petition to sabotage the proceedings initiated
against him by PSC and also to avoid the submission of reply to show cause notice. The fact of the matter, on the other hand, as revealed from the record is that the instant writ petition was filed on 30.03.2015 and the show cause notice was issued on 17.04.2015, after this Court had already called upon the respondents to furnish their comments vide order dated 01.04.2015. As such, the show cause notice was clearly issued after filing of the instant writ petition and after the respondents were required by the Court to furnish their comments, therefore, their this plea that the writ petition was aimed at sabotaging proceedings initiated against the petitioner by the Commission and also to avoid submission of reply to show cause notice was not only farther from
reality but also aimed at hoodwinking the Court.

6. The above facts would, obviously, lead one to the only irresistible conclusion that conduct of the Commission in the case of the petitioner had left much to be desired. We, therefore, expect the Chairman, Khyber Pakhtunkhwa Public Service Commission (Respondent No.3) to look into this state of affairs and take appropriate action, if not already initiated.

7. With the above observations/remarks, the writ petition is accepted and the declaration, as prayed for, is granted in favour of the petitioner against the respondents.

Announced.
Dt.30.05.2016.

J U D G E

/*M.S.AWAN*/