

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.1487-P/2015

Date of hearing:- 12.09.2017

Petitioner(s):- Muhammad Kashif Jamil by Mr. Saeed Ullah Khan Khalil, Advocate.

Respondent (s):-Public Service Commission through its Chairman, Peshawar and Finance Department through its Secretary Finance, by Mr.Rab Nawaz Khan AAG.

JUDGMENT

ROOH-UL-AMIN KHAN, J. By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, **(the Constitution)**, Muhammad Kashif Jamil petitioner, has asked for issuance of the following writ:-

- i) To declare selection of private respondents No.3 to 6 against the posts of Sub-Accountant in the Directorate of Treasury and Accounts, as illegal, unlawful and without lawful authority.*
- ii) To restrain respondent No.2/Finance Department from issuance of appointment orders of the private respondents.*
- iii) To direct respondents No.1 to recommend him for appointment against the aforesaid post and respondent No.2 to issue his appointment order; or*
- iv) Any other relief not specifically asked for.*

2. Petitioner averred in the writ petition that Khyber Pakhtunkhwa Public Service Commission (respondent No.1), advertised 17 vacant positions of Sub-Accountant in the Directorate of Treasury and Accounts, out of which 04 were allocated to Zone-II. The petitioner hailing from

Zone-II and having the prescribed qualification as set-forth in the advertisement, applied for his recruitment against one of the said vacant posts. He appeared in the competitive test/examination held in September, 2014 and qualified the same, hence, he was called for interview held on 07.04.2015. The petitioner appeared in the interview, but on declaration of result on 17.04.2015, he found himself not recommended. The grievance of the petitioner is that he having Bachelor Degree in Commerce (B.Com) with distinction, Master Degree in Commerce (M.Com) with gold Medal and Diploma in Information Technology (DIT), was more eligible and qualified as compared to private respondents, but respondent No.1 while violating the merit policy, recommended private respondents for recruitment against the questioned posts, which speaks about his favouritism and nepotism, hence, the impugned action and inaction of the respondents No.1 is liable to be struck down and respondent No.2 be restrained from issuance of appointment orders of the private respondents.

3. Respondent No.1 has filed Para-wise comments wherein he has strongly refuted the petitioner's stance. It is averred in the comments that the candidates having better merit position in Zone-II had been recommended for recruitment and position of the petitioner being low in merit from private respondents with 69 marks in aggregate,

could not be recommended, hence, no injustice or discrimination has been meted out with the petitioner.

4. Re-joinder was filed to the comments by the petitioner wherein he came forward with a new plea that he has done his B.Com and M.Com with distinction, so had he been awarded 02 marks on the basis of his distinction position in B.Com and M.Com, as provided under regulation 29 (a) of the Khyber Pakhtunkhwa Public Service Commission Regulation, 2003, he would have made out a place in the merit for recommendation, but by not awarding distinction marks, the respondents illegally deprived him from his due right. In better statement this stance of the petitioner was also refuted by the respondent No.1 on the ground that distinction marks were to be allowed only for standing first in the final University/Board examination prescribed for the post. The prescribed qualification for the questioned posts was Bachelor Degree in Commerce/Business Administration of ACMA, and the petitioner has no certificate/Degree from the Board/University to show is distinction in the final University Board examination of B.Com, the prescribed qualification for the questioned posts, while is distinction in M.Com is of no use as it was not the prescribed qualification for the questioned posts, hence, the petitioner cannot claim any benefit under regulation 29 (a) of the Regulations, 2003.

5. Arguments of learned counsel for the parties heard and record perused with their valuable assistance.

6. It appears from the record, particularly, the advertisement that the prescribed qualification for the post of Sub-Accountant in Directorate of Treasury and Accounts, was Bachelor Degree in Commerce/Business Administration of ACMA from a recognized University, however, candidates having additional skill of I.T. were to be given preference. Petitioner is having Bachelor Degree in Commerce (B.Com), which was the prescribed qualification for the questioned posts. No doubt, he has done his Master Degree in Commerce (M.Com) with distinction, but Master Degree was not the prescribed qualification for the questioned post. However, this qualification of the petitioner has duly been considered by the respondents as an additional qualification, as is manifest from the merit list, marks of which has been awarded to the petitioner. As per merit list of Zone-II, petitioner with 69 marks in aggregate is low in merits from private respondents No.3 to 6, who have scored 70, 71, 74 and 71, marks in aggregate, respectively. In this view of the matter, the petitioner has rightly been not recommended for recruitment and respondent No.1 was justified to recommend the candidates i.e. the private respondents for recruitment being on better footings than the petitioner. Like private respondents, the petitioner has

also been awarded the marks of academic qualification, additional relevant qualification i.e. M.Com and that of interview, aggregate of which comes low from the private respondents.

7. As regards the plea of the petitioner with regard to non-awarding of 02 marks for his distinction in B.Com and M.Com, as provided under regulation 29 (a) of the Public Service Commission Regulation, 2003, we would like to first reproduce the said regulation and then to discuss the plea of the petitioner in light thereof:-

“29(a) Marking in the case of posts filled other than prescribed syllabus based examination will be made out of 100 marks to be distributed between the academic achievements of the candidates and the interview as follow:-

1	Academic record	30 Marks
2	Distinction for standing first in Board/University/Hafiz ul Quran	05 Marks
3	Additional Relevant/Higher qualifications	05Marks
4	Experience	10 Marks
5	Interview	50 Marks

“**Distinction for standing first**” has been explained in sub-regulation (j) of regulation 29 (a) which read as under:-

“Distinction marks shall be allowed only for standing first in the last/final University/Board examination prescribed for the post. The entitlement of distinction marks shall be further subject to the condition that the examination was passed by obtaining 60% (Grade-B) and above marks.”

8. As stated earlier, the prescribed qualification for the questioned posts was Bachelor Degree in Commerce/Business Administration or ACMA from a

recognized University. Admittedly, the petitioner has no distinction Certificate/Degree from the Board/University in B.Com, rather the distinction Certificate produced by him has been issued by the Post Graduate College of Commerce Peshawar, wherein he has been shown **standing first in the College**. Though, petitioner has distinction position in M.Com, but M.Com was not the prescribed qualification for the questioned posts, whereas regulation 29 (a) (j) provides that distinction marks shall be allowed only “for standing first in the last/final University/Board examination prescribed for the post”, therefore, benefit of the aforesaid regulation, cannot be pressed into service in favour of the petitioner.

At this juncture learned counsel for the petitioner by taking summersault, contended that above mentioned clause (j) of Regulation 29, was brought into book by substituting the previous one, vide Notification No.KPSC/B&A-52/2003/.24561-27 dated 12.03.2014, which had been contemplated in the following words:-

“Distinction marks shall be allowed only for standing first in a University/Board examination, at the rate of one mark per countable examination. However, the entitlement for the last and final examination shall be two marks. The entitlement of distinction marks shall be further, subject to the condition that the examination was passed by obtaining 60 % marks (Grade-B) and above marks and was not supplementary Examination”.

Learned counsel emphasized that the substitution was introduced in clause (j) of regulation 29, after publication of advertisement, therefore, the same is not applicable to the petitioner's case and the respondents should have considered the case of the petitioner on the basis of earlier provision (quoted above). If the case of the petitioner is adjudged on the basis of earlier provision of regulation 2003, even then, benefit of the substituted regulation 29 (j), cannot be extended to him because the language of the substituted regulation is very much clear and plain. The words,

“Distinction marks shall be allowed only for standing first in a University/Board examination at the rate of one mark per countable examination”

has very wisely been employed in the substituted provision, which mean that the distinction marks shall only be awarded, if the candidate stood first in countable examination. Admittedly, the requisite qualification for the questioned posts is prescribed as B.Com, hence, the countable examinations of the petitioner for the purpose of awarding distinction marks would be the annual examinations of the Board/University; (i) Secondary School Certificate (ii) D.Com and (iii) B.Com. Undisputedly, the petitioner has no distinction Certificate from the Board or University in S.S.C. or D.Com or B.Com, while his distinction in M.Com does not fall within the ambit of countable examination, thus the

petitioner is not entitled to be extended the benefit of regulation 9 (j) of the Regulation 2003. Moreso, M.Com was not the prescribed qualification for the questioned posts, hence, the petitioner is not entitled to any marks on the basis of distinction/standing first in the examination of M.Com.

9. For the reasons discussed above, we are not inclined to issue the writ sought by the petitioner. Resultantly, this petition being devoid for force is hereby dismissed.

Announced:

12.09.2017

Siraj Afridi P.S.

JUDGE

JUDGE