ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P.No.D-2650 of 2019

DATE **ORDER WITH SIGNATURE(S) OF JUDGE(S)**

Before:-
Mr.Justice Muhammad Ali Mazhar
Mr.Justice Agha Faisal

Ms. Saba.....Petitioner

Versus

The Province of Sindh & others.....Respondents

Date of Hearing: 14.05.2019

M/s. Ghulam Asghar Pathan & Irshad Ali Shar Advocates for the Petitioner.

Petitioner Ms. Saba is also present.

Mr. Salman Talibuddin, Advocate General Sindh.

Mr. Mukesh Kumar G. Karara, Advocate for Respondent No.3.

Mr. Hatim Aziz Solangi, Additional MIT-I, Sindh High Court, Karachi present.

Muhammad Ali Mazhar, J: This petition has been brought to implore a declaration that cancellation/annulment of first preliminary test conducted on 07.04.2019 by the respondent Nos.2 and 3 for the recruitment of Additional District & Sessions Judge was illegal. The petitioner has rummaged what's more the directions against the respondent Nos.2 and 3 to issue her admit card for forthright appearance in the forthcoming written test without sitting in the retest/retake.

2. The evanescent indicators of this Constitution petition are that riposte to an advertisement published in the newspapers on 30.01.2019 inviting applications for the recruitment to the post of Additional District & Sessions Judge (BS-20), the petitioner had also applied. The admit

card was issued her to take a seat in the MCQs (preliminary test) conducted on 07.04.2019 in the Sindh High Court, Karachi. The petitioner claims to have secured 62% marks in the preliminary test on self-calculation and this estimation is based on answer key uploaded by the respondent No.3 at their website. However in actuality, the result of the preliminary test conducted on 7.4.2019 was discarded and cast-off before announcement of official results by the Testing Service Agency (respondent No.3). The petitioner has questioned the non-announcement of official results, annulment of preliminary test and calling upon the candidates including the petitioner to appear in the re-test. She wishes to appear in the written test scheduled on 18th and 19th of May, 2019 without going through the exercise of retest/retake.

3. The respondent No.2 took the plea that the petition is hit by non-joinder and mis-joinder of necessary parties. The Registrar of Sindh High Court has not been impleaded but what we noted that after filing this petition, the petitioner moved an application under Order 1 Rule 10 CPC to join the Registrar of this court and we had also issued notice to him. The respondent No.3 in the comments also articulated that no fundamental right of the petitioner has been violated if the preliminary test was shelved without declaration and announcement of the results. The respondent No.3 (Testing Service Agency) in their reply comprehensibly avowed that the questions were collected from different subject experts to create a question bank. After successful conduct of test on 07.04.2019, only an answer key was uploaded on the website. Though the result was compiled but before announcement of official results, it came into the knowledge that some next of kin/blood relatives of

subject experts had also appeared in the same preliminary test but this fact was never disclosed by them to the respondent No.3 at the time of handing over the questions for securing in the question bank, therefore, the respondent No.3 was left with no other option but to cancel the entire process in order to avoid any conflict of interest and with an even-handed aim of providing equal opportunity to all candidates de novo.

4. The learned counsel for the petitioner argued that due to sudden cancellation and scrapping of the earlier test and its result, the petitioner has suffered severe mental agony. No lawful justification has been brought on the record to cancel results of first test and calling upon the candidates to sit in retest. The learned counsel further argued that the cancellation of earlier test amounts to infringement of the petitioner's fundamental rights enshrined under Article 18 of the Constitution. No name of any blood relation is mentioned in their reply nor the names of subject experts. Nothing communicated whether any inquiry was conducted by the respondent No.3. The learned counsel denied the possibility of any conflict of interest and in support of his contention; he referred to the case of **Arpad Toth vs. David Michael Jarman reported in [2006] EWCA Civ 1028.**

5. To meet the objection with regard to maintainability of this petition, the learned counsel for the petitioner referred to the case of **Darakhshan Jahan vs. Province of Sindh (PLD 2011 Karachi 212).** This case pertained to the appointment of Civil Judges/Judicial Magistrates. The grievance of the petitioner was that the duration of test written on question paper was 120 minutes but at the time of test only 60 minutes were given. The officer of NTS could not satisfy as to why pattern of paper with proportionate time duration was not adhered to. This

court had directed the MIT to provide an opportunity to the petitioners to appear and attend next preliminary test.

6. The learned Advocate General Sindh argued that there is no violation of any rules or law. The constitution petition is not maintainable keeping in view the bar contained under Article 199 (5) of the Constitution of Islamic Republic of Pakistan. After scrapping of the first preliminary test without announcement of its official result, an opportunity was given to the petitioner to appear in the re-test like other candidates but she failed to appear. The test was scrapped obviously for the clear reason mentioned in the reply of respondent No.3 so there is no question of any violation or infringement of any fundamental rights of the petitioner nor has she been discriminated. An equal treatment was given to all such candidates who appeared in the first preliminary test but due to cancellation of the test and its result before its official announcement all such students without any reservation or objection participated in the retest and the result has already been announced. The learned Advocate General Sindh referred to an unreported judgment of the hon'ble Supreme Court in the **Civil Petition for Leave to Appeal No.394-K and 395-K of 2010 (The Administrative Committee vs. Mohammad Wasim Abid and others)** and argued that keeping in view the dictum laid down in this case the petition is liable to be dismissed.

7. Mr. Mukesh Kumar G. Karara, learned counsel for respondent No.3 argued that no result was officially announced by the respondent No.3. It came into the knowledge through reliable sources that some blood relation candidates of the subject experts who contributed the questions for the question bank also

appeared in the same preliminary test hence in order to maintain the transparency and fair play the test was scrapped with the permission of the competent authority which is in no way can be considered the violation of any fundamental rights of the petitioner who could appear in the retest but she decided not to opt this opportunity. He further contended that the petitioner has only attached the answer key and by her own proclaimed that she has obtained 62% marks but in reality there is no official result in field. The claim of certain percentage has otherwise no significance when the respondent No.3 with the permission of the competent authority already scrapped the entire preliminary test conducted on 07.04.2019. However, on 28.04.2019 the re-test was conducted and the official result of the candidates who appeared in the retest has already been announced and uploaded on the respondent No.3's website. He further contended that since the paper was leaked before examination, therefore, it was the responsibility of respondent No.3 to conduct retest to maintain transparency in the test. In support of his contention, the learned counsel for respondent No.3 referred to **2005 SCMR 445 (Asdullah Mangi vs. PIAC) and 2013 SCMR 264 (Sh. Muhammad Sadiq vs. FPSC).**

8. With our permission, the respondent No.2 had also addressed. He disclosed that for the first test, total 1283 candidates had applied out of which 1175 candidates were found eligible but in the examination only 1010 candidates appeared and 165 candidates were called absent. In the retest conducted on 28.04.2019, the competent authority only allowed those candidates to appear in the retest who had originally appeared in the first preliminary test. On 28.04.2019, out of 1010 candidates, 926 candidates appeared and only 132

candidates cleared the test whereas 794 candidates were failed and 84 candidates were absent. He presented this statistical data to dispel and dissipate the argument that to favour some persons the earlier result was scrapped. He further shown us an admit card issued to the petitioner for her appearance in the retest on 28.04.2019 but she did not appear in the retest. He also submitted some news clippings and orders of the court to show that in case of leakage of paper the retest is conducted. He had also shown us some news clippings and argued that the petitioner is disseminating wrong news of court proceedings and exploiting the situation with the claim that she is the only candidate who cleared the examination out of 1175 which is misconceived.

9. Heard the arguments. To begin with, we would like to concentrate and attend the question of maintainability of this petition first. The learned counsel for the petitioner referred to a case of **Darakhshan Jahan vs. Province of Sindh (PLD 2011 Karachi 212)** in which one of us *(Muhammad Ali Mazhar; J)* held as under:

> **"28. The interpretation of Sub-Article (5) of Article 199 of the Constitution and scope of powers of this court have already been dealt with and discussed in detail in the judgments pronounced by the hon'ble Supreme Court mentioned supra, therefore, we are fortified by the aforesaid dictum and cannot issue any writ against the Provincial Selection Board, but at the same time, we are also fully cognizant to the fact that there is no question of issuing any writ is involved against the respondent No.2, who had neither compiled the question book nor decided the time period of 120 minutes but it is the responsibility of respondent No.4, who committed the mistake, therefore, in order to do substantial justice, we are convinced to at least allow all the petitioners and other candidates to appear in the preliminary test, except those, who have already been declared qualified for the second test."**

10. In the case of **Sohail Ahmed vs. Province of Sindh (2017 PLC (C.S.) 510),** again one of us *(Muhammad Ali*

Mazhar; J), referred to the apex court's judgment rendered in C.P. No.03/2014 **(Muhammad Akram vs. Registrar, Islamabad High Court),** in which the apex court settled the law with regard to complexities of Article 199 (5) of the Constitution of Pakistan and held that the provisions of Article 199 (5) would bar a writ against a High Court if the issue is relatable to judicial order or judgment whereas a writ may lie against an administrative, consultative/executive order passed by the Chief Justice or the Administration Committee involving any violation of the Rules framed under Article 208 causing infringement of the fundamental rights of a citizen. The main emphasis in the judgment of the hon'ble Supreme Court *supra* was based on the niceties and nitty-gritties of Article 208 of the Constitution in which the Supreme Court and the Federal Shariat Court with the approval of the President and the High Court with the approval of the Governor concerned may make rules providing for the appointments by the court of officers and servants of the court for their terms and conditions of employment. Obviously neither any questions of employment and implementation of the rules framed by the Sindh High Court Establishment under Article 208 of the Constitution are involved nor any officer of the court or servant has filed this petition with regard to the terms and conditions of the employment but the premise of the constitution petition primarily relates to the non-announcement of official result and calling upon the candidates to appear in the retest. In the unreported judgment of apex court in **Civil Petition for Leave to Appeal No.394-K and 395-K of 2010 (The Administrative Committee vs. Mohammad Wasim Abid and others),** the honourable supreme court laid down as under:-

> **"To cut short we may observe that the Administrative Committee of the Sindh High Court had absolute discretion and vast powers to follow any equitable procedure or to lay down different criteria of passing marks in different tests, unless specifically provided under the relevant rules, which indeed shall have to be made applicable across the board to all the candidates and for such exercise of discretion no interference is called for before any fora. This being the position neither on legal plane nor on merits private Respondents could succeed before the High Court.**
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> **For the foregoing reasons, these Petitions for leave to appeal are converted into Appeals and allowed. Consequently, the impugned judgment of the High Court is set aside and two Petitions filed by the private Respondents are dismissed."**

11. Here we would like to elucidate and put in plain words that the challenge vide this petition is not against the decision of Administration Committee of Sindh High Court but the respondent No.3 simpliciter affirmed and self-confessed that on leakage of paper for the reasons mentioned in the comments, they scrapped the first preliminary test and its result with the permission of the competent authority means the honourable Chief Justice of this court. The petitioner has not raised any issue nor challenged any decision of the Administrative Committee of the Sindh High Court but main challenge is against the respondent No.3. In the present set of circumstances, we are not persuaded to nonsuit the petitioner on the ground of maintainability without adverting to the merits and propriety of the decision of retest/retake.

12. The learned counsel for the petitioner relied on the case of **Arpad Toth vs. David Michael Jarman reported in [2006] EWCA Civ 1028.** In this case, the Supreme Court of Judicature, Court of Appeal (Civil Division) (UK) was appealed against the judgment of Queen's Bench Division, Oxford District Registry. The Supreme Court as a point of principle framed a question; "Does the presence of a conflict of interest automatically disqualify

an expert?" The court held that the key question is whether expert's opinion is independent. It was further observed that expert's expression of opinion must be independent of the parties and pressures of the litigation. It is the duty of an expert to help the court on the matters and this duty overrides any obligation to the person from whom he has received instructions or by whom he is paid. The Supreme Court further held that while the expression of an independent opinion is necessary quality of expert evidence, it does not always follow that it is sufficient condition in itself. Where an expert has a material or significant conflict of interest, the court is likely to decline to act on his evidence or indeed to give permission for his evidence to be adduced. This means it is important that a party who wishes to call an expert with a potential conflict of interest should disclose details of that conflict at as early a stage in the proceedings as possible. In our considerate view, the aforesaid judgment has no application or nexus with the present controversy. At this time the court is not going to scrutinize the expert's evidence of any witness where the question of any conflict of interest has arisen but the matter predominantly correlates to the leakage of paper before examination. The word 'conflict of interest' used in the comments of respondent No.3 does not insinuate or implicate any issue of conflict of interest in any expert's evidence but in fact they have used the words frankly for the reason that some blood relatives of experts appeared in the examination without disclosure. The judgment cited by the learned counsel is neither advantageous nor attracted in this case.

13. Though the petitioner leveled various allegations that in order to accommodate some failed candidates the retest has been devised but in nutshell no such

allegation has been substantiated nor anything was produced in support of allegations. The petitioner has also failed to demonstrate the violation of any fundamental rights. Article 18 envisages and envisions a right to enter upon any lawful profession or occupation and to conduct any lawful trade or business subject to the qualification as may be prescribed by law. Mere appearance in the preliminary test the result of which was not finally announced does not create any vested right in favour of the petitioner. After scrapping the first test, fair opportunity was afforded to all candidates to re-sit in the retest and the petitioner was also issued admit card but she failed to appear. The respondent No.3 highlighted the cause of scrapping the first preliminary test which seems to be quite reasonable and logical. There was no element of discrimination but a fair opportunity in a transparent manner was provided to all those candidates who appeared in the first preliminary test, therefore, the question of extending any undue favour to any candidate does not arise as the retest was unambiguously conducted only for the candidates who appeared in the first preliminary test only.

14. The petitioner had appeared for selection to the post of Additional District and Sessions Judge. Due to leakage of paper, the entire sacrosanctity and credibility of first preliminary test has become doubtful, dubious and contaminated. This impropriety and illegality cannot be ignored so the best way was to cancel the results of preliminary test in the larger interest of the entire judicial system of which this court is custodian and guardian being apex court of the province. Even a minute leakage of question paper would be sufficient to besmirch and taint the preliminary test and to go for a retest so as to achieve the ultimate object of fair and preeminent

selection. Another facet also needs our attention that the petitioner has calculated her marks on the basis of answer key uploaded by the respondent No.3. The fact remains that no official result was announced and mere self-calculation by the petitioner of her own numbers does not justify to allow her to sit in the second written test likely to be held on 18th and 19th of May, 2019 without her participation in the retest. There was no bar or impediment for her not to opt the retest/retake examination but the petitioner herself failed to avail this fair equal opportunity. Allowing petitioner at this stage to sit in second written test without qualifying retest will amount sheer discrimination to those candidates who also sit in the preliminary test and after cancellation they again sit in retake without any demur, doubts or objections. Except the petitioner no other candidate has come up to challenge the cancellation of earlier test and holding of retest/retake.

15. The phenomenon of leakage of paper before examination and in such set of circumstances, decision to retest/retake by the authorities is not unique or novel. Following are some working examples in which the paper was leaked thereafter the concerned authorities decided to take retest/retake examinations and everybody sat without any reservation or objection:

> **1. Gulf News, April 1, 2018. UAE schools averted retake of CBSE exams. India's CBSE (Central Board of Secondary Education) said all students would have to reappear for the Class 10 math's and Class 12 economics exam after it emerged that exam papers had been leaked on WhatsApp.**
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> **2. Khaleejtimes.Com, March 29, 2018. More than 10,000 Indian students have to reappear in Class 10 mathematics and Class 12 economics examinations following a confirmation of question paper leaks by the Central Board of Secondary Education (CBSE), on Wednesday. (same as above)**

3. Dunya News, 06th October, 2017. Lahore High Court directed to conduct a re-examination of medical entry test after finding evidence that its question paper was leaked. The court conducted hearing over the petitions filed against the leakage of question paper.

4. BBC News, 13 October 2016. Some children had already seen 11-plus paper before sitting the exam. The mistake was spotted by girls retaking the English exam in Plymouth.

5. The Indian Express, March 29, 2018. CBSE Class, X, XII Papers leaked: Over 20 lakh Students have to retake exam, dates to be announced soon. Central Board of Secondary Education (CBSE) announced that re-examination will be conducted across the country for Class 10 Mathematics and Class 12 Economics papers.

6.The Supreme Court India dismissed a string of writ petitions filed in the wake of the recent event of the leakage of the Economics and Mathematics question papers for the class 12 and 10 CBSE examinations respectively. 16 lakh students appeared in the exam in 11 regions all over the country and abroad. A plea was taken by the petitioners that the decision of re-examination contradicts the test of proportionality and reasonableness. The bench remarked, "it is not a part of the jurisdiction of this court to see if the paper was leaked...in writ jurisdiction, we cannot examine the impact of the leakage... this falls within the power of the authorities..." https://www.livelaw.in/sc-dismisses-petitions-relating-cbse-examination-paper-leak-retest/

7. Aljazeera, 20 Jun 2016. A total of 555,177 pupils will be re-sitting partial baccalaureate exams this week. More than half a million secondary school pupils are retaking their baccalaureate exams in Algeria after a major leak of the papers online earlier this month. Algerian authorities have decided to temporarily block several social media websites including Facebook and Twitter, starting on Sunday, to prevent further cheating.

8. Tribune, Karachi, October 30, 2012. Retakes scheduled after IoBM papers leaked. At least 160 students at the Institute of Business Management (IoBM) have been asked to retake an exam after the administration learnt that a question paper was leaked.

9. The Express Tribune Blogs. June 5, 2013. The British Council has announced "a breach of security". Because of a few low cheats, all students will have to retake their Pakistan Studies and Islamiyat Papers in ten days time. The problem of leaks is not purely a Pakistani one. In places like Zimbabwe the main local examination board

Zimansec has very little credibility due to rampant cheating. The only credible qualifications in Zimbabwe are those from the Cambridge International Examination Board. However, reputable examination boards can also face issues. For example, in April this year an A-level paper was leaked online in the UK. The CIE Board also faced some minor issues in Namibia recently.

10. The Daily Star, Bangladesh, August 16, 2018. The High Court cancelled the written examination held on April 21 last year for the recruitment of executive officer of Janata Bank for question paper leak. The writ petitioner prayed to cancel the examination and hold a retake. They said in the petition that the question papers of the examination were leaked before the exam.

11. Independent News for International Students. 29.3.2017. UK: Medical students to resit exams after online leak discovered. More than 250 final-year medical students from the University of Glasgow will have to retake their exams following a discovery exam details were leaked through social media, *The Telegraph* reports.https://www.studyinternational.com/news/uk-medical-students

12. bdnews24.com. Bangladesh, 18 Feb 2018. Govt. panel says SSC questions leaked, recommends test retaking. A government panel says it has found that the questions of the school-leaving SSC and equivalent exam have leaked and plans to file recommendations for retakes in some cases.

13. Supreme Court of India. Civil Appeal 5675-77/2007. (Chairman, All India Railway Rec. Board versus K. Shyam Kumar & Ors.). Railway Board directed the Railway Recruitment Board to conduct retest for recruitment to Group-D posts for those candidates who had obtained minimum qualifying marks in the first written examination against which large scale irregularities were noticed including leakage of question papers. The court maintained the decision of the Board for retest.

16. The aforesaid incidences of leakage of papers and decision of retest make evident that a large number of students had to sit in retake/retest. In India two million students had to sit in retest of two papers. The Supreme Court of India dismissed the petitions which were filed to challenge the decision of retake/retest. In our country the Cambridge students had to sit in retest of two subjects like other examples of Lahore High Court orders

for retest in the medical entry test and retest/retake announced by Institute of Business Management. The right which is foundation of an application under Article 199 of the Constitution is a personal. The legal right may be a statutory right or a right recognized by law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a justiciable right in existence to give jurisdiction to this court in the matter. The object of the proceeding initiated under Article 199 of the Constitution of Islamic Republic of Pakistan is the enforcement of a right and not the establishment of legal right and therefore, the right of petitioner must not only be clear and complete but simplicitor and there must be an actual infringement of the right. Ref: **Asdullah Mangi vs. PIAC (2005 SCMR 445),**

17. A vested right is free from contingencies but not in the sense that it is exercisable anywhere and at any moment. There must always be occasions at which and circumstances under which the right may be exercised. Such rights have peculiar characteristics of their own. Here the petitioner has failed to rationalize any vested right and its violation. So far as plea of discrimination, it always involves an element of unfairness and bias. The factum of bias could not be substantiated without any convincing evidence which the petitioner has failed to bring in this case. A Court of Law cannot exercise unfettered or unrestricted powers to administer equity not based on justiciable foundation but it must be satisfied before exercising its power that some illegal wrong has been inflicted or is about to be inflicted.

18. A standard of unreasonableness used in assessing an application for judicial review in Wednesbury Corporation

case which means a reasoning or decision unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it ***(Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223)***. The test is a different (and stricter) test than merely showing that the decision was unreasonable. https://uk.practicallaw.thomsonreuters.com**.** In the test of proportionality, the courts may quash exercise of discretionary powers in which there is no reasonable relation between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. So the administrative action which arbitrarily discriminates will be quashed by the court. The implication of the principle of proportionality is that the court will weigh for itself the advantages and disadvantages of an administrative action and such an action will be upheld as valid if and only if the balance is advantageous. If this action is disproportionate to the mischief then it will be quashed. https://www.lawteacher.net/free-law-essays. The Supreme Court of India in **Civil Appeal No. 5675-5677/2007, Chairman, All India Railway Rec. Board versus K. Shyam Kumar & others** have discussed the principle of Wednesbury and Proportionality in the following terms:

> **"36. <u>Wednesbury and Proportionality</u> - <u>Wednesbury</u> applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to 'assess the balance or equation' struck by the decision-maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance**

between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.

37. <u>Proportionality</u> requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The Court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere".

19. The menace of leakage of paper is cancerous to our education system and all selection process. If it is allowed to be rampant, the merit and excellence in all fields and traits would be seriously smashed up and destructed. In such situation, most deserving candidates legitimately expecting their selections on merits in the competitive process will be deprived. At least in the selection process of this High Court Establishment, all best possible efforts should be made to avoid this disorder and upheaval in future. The respondent No.3 (Sukkur I.B.A Testing Service) is directed to maintain strict secrecy and confidentiality of test papers in future if engaged for similar task and they will also structure a foolproof mechanism and system to ensure that the examiners/paper setters should make disclosure of any conflict of interest beforehand *(which is in fact had become cause of leakage of paper in the ADJ selection process of this court)* and if any next of kin/blood relative

of any examiner/paper setter will apply to join the selection process and sit in the preliminary test and written test then the question paper contributed by any such examiner/paper setter shall be outrightly excluded from consideration.

20. Keeping in mind the principle of judicial review, we have examined and reached to the finale that the decision taken for the retest was proportionate, well balanced and harmonious and it does not stand to reason to interfere. No vested right created in favour of the petitioner. No privilege or benefit can be claimed by the petitioner on the basis of alleged marks secured in the tainted process which has lost its neutrality. The principle of Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Whereas proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. In all attending circumstances, we do not find any illegality and impropriety in the decision taken for retest.

21. In the wake of above discussion, the petition is dismissed in limine along with pending application.

Judge

Judge

Karachi.
Dated.17.5 2019