

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-6204 of 2024
(Daulat Rai & others v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 13.10.2025

Mr. Ali Asadullah Bullo advocate for the petitioners
Ms. Saima Imdad, AAG

ORDER

Muhammad Karim Khan Agha, J: The petitioner prayed that
this Court may be pleased to:

1. *Direct Respondent No. 2 to refer the cases of the Petitioners to Respondent No. 3 (SPSC) for determination of their eligibility and suitability for appointment as Head Masters/Head Mistresses (BS-17) in accordance with law.*
2. *Grant any other relief deemed just and proper in the circumstances, in the interest of justice.*

2. The facts of the case as narrated in the memo of the petitions are that vide Notification dated 14-10-2014, the Respondents framed and approved recruitment rules for School Executive Service (SES), School Management Service (SMS), and School Finance Service (SFS) in the School Education Department, including the post of Head Master/Head Mistress (BS-17). Pursuant to these rules, several advertisements were published. The Petitioners, already serving as Junior School Teachers on a contract basis and holding B.Ed/M. Ed degree, I applied for the post of Head Master, appeared in the written test conducted by IBA Testing Service, and qualified for the interview. Despite clearing the written and verbal examinations and submitting all required documents, the Petitioners' names were omitted from the final result published by the Department. However, in the intervening period, some aggrieved candidates filed C.P. No. D-2839/2017, before this Court, which was dismissed; the recruitment process was declared illegal, rendering all such appointments void. Later, in C.P. No. D-2431/2021, this Court directed that cases of 937 Head Masters/Head Mistresses, including those not recommended earlier, be referred to the Sindh Public Service Commission (SPSC) for scrutiny of eligibility and regularization. This Court also ordered extension of their contracts until the SPSC decision. Despite the above order, the Respondents failed to refer the Petitioners' cases to the SPSC, though they were part of the same recruitment process and cleared the written test and interview. The Petitioners have not been called for

assessment, compelling them to approach this Court for the similar relief on the same analogy.

3. Learned counsel for the petitioner argued that the Respondents have violated the spirit of the Court's order in C.P. No. D-2431/2021 by excluding the Petitioners from the scrutiny process, which amounts to misconduct and bad faith. The Petitioners, being qualified and experienced contractual teachers, are entitled to equal consideration under Articles 4 and 25 of the Constitution. Excluding the Petitioners from the same recruitment process is discriminatory, arbitrary, and lacking legal justification, especially since they successfully completed all required stages. Denying their inclusion will make the Petitioners overage for future recruitment, causing irreparable harm to their careers. The Respondents' action infringes on the Petitioners' fundamental rights under Articles 4, 9, 18, and 25 of the Constitution. It contradicts the principles of fairness, equality, and due process as established by the Hon'ble Supreme Court (PLD 1995 SCMR 650, 2005 SCMR 25, 2001 SCMR 256). He requested that the petition be granted.

4. The learned AAAG opposed the petition on the analogy that their case does not fall within the ratio of the judgment rendered by this court, and as such, the petitioners are not entitled to the same relief.

5. After hearing both parties, and based on the law laid down by the Supreme Court in the cases of Mst. Kaneez Fatima v. WAPDA (1995 SCMR 453). The Supreme Court held that where candidates are similarly placed, *selective exclusion* without lawful justification amounts to discrimination under **Article 25**. "*Equality before law means that no person shall be denied the same protection of laws enjoyed by others in similar circumstances.*" Government of Pakistan v. Saeed Ahmed (1995 SCMR 650). Exercise of discretion must be fair, reasonable, and based on sound principles, not whims or caprice. "*Discretion to be exercised has to be judged and considered in the background of facts and circumstances of each case. It cannot be arbitrary.*" Imtiaz Ahmad v. Government of Sindh (2005 SCMR 25). The Court emphasized that open, transparent, and fair recruitment is part of constitutional governance; arbitrary deviation vitiates the entire process. Secretary of Education v. Qamar-uz-Zaman (2019 PLC (C.S.) 1102), this Court directed the Department to forward omitted and deferred candidates to the competent forum (SPSC) for assessment of eligibility, holding that all similarly situated persons must be treated equally. M. Ashraf Tiwana v. Pakistan (2013 SCMR 1159) Public authorities must act in good faith and not to the detriment of legitimate expectations of candidates who have gone through the recruitment process. Muhammad Shafique v. Province of Sindh (2021

YLR 2038) The Sindh High Court ordered that teachers who had cleared the same written test but were excluded due to departmental oversight must be reconsidered in light of the previous recruitment process and granted age protection.

6. The question for determination is whether the refusal of Respondent No.2 to accept the petitioners' documents and allow them to participate in the competitive process through SPSC, despite a previous court order dated May 28, 2021, constitutes an illegal, unlawful, and malicious act, and if so, whether this justifies holding Respondent No.2 in contempt of court and directing them to comply with the previous order? And whether SPSC can assess the suitability of the petitioners who were appointed on a contract basis.

7. In service law, positions/posts are either temporary (time-limited) or permanent (not time-limited). There is no legal recognition of a "contract post" under the law as a separate category. The Government of Sindh is, therefore, required to follow standard Recruitment procedures for all appointments in basic scales on a regular basis, as appointments on a contract basis have been repeatedly criticized and ruled against by the Superior Court. The Supreme Court has also addressed issues related to discriminatory treatment and the regularization of contract or daily-wage workers and clarified the rights of temporary employees and the conditions under which they may attain permanent status. Numerous Supreme Court decisions are available to be cited on the aforesaid proposition.

8. Further on the subject issue, appointments to public office, particularly for posts in BPS-1 to BPS-15, must be transparent, merit-based, and made through a competitive process. While legal quotas are permissible, subject to the decision of the Supreme Court on the issue, the Sindh Government must make these appointments on a regular, open-merit basis with proper budgetary approval. This direction shall not be ignored by the Chief Secretary and Secretaries of the different departments of Government of Sindh as this practice of making permanent public appointments on a contract or ad-hoc basis is not appreciated by this Court in the case of *Shahnawaz and 36 others v. Province of Sindh & 04 others* (2023 PLC (CS) 447), except for specific exceptions outlined in the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. This principle is a well-established legal precedent, supported by numerous Supreme Court decisions.

9. Adding that the Sindh Civil Servants Act, 1973, distinguishes between regular and ad hoc / contract appointments. Section 2(1)(a) defines an "ad hoc appointment" as one made outside the prescribed

recruitment method, while Section 2(1)(b) explicitly excludes contract and work-charged employees from being considered civil servants, meaning they do not get the same benefits or protections as permanent staff. Section 5 mandates that all appointments must follow a formal, rules-based process. Additionally, Section 9 dictates that promotions are based on merit or seniority-cum-fitness. These sections collectively form the legal basis for opposing the regularization of temporary employees without a proper competitive process.

10. The Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, supplement the main Act and provide procedural details for appointments. Rule 3 states that posts are filled through either promotion/transfer or initial appointment. Rule 6-A establishes a separate Provincial Selection Board for promotions and higher-level appointments (BPS-18 and above), including a provision for the Chief Minister to head the board for BPS-20 and higher posts. This mechanism for promotions is distinct from the SPSC's role in initial recruitment in BS 16 and above. The SPSC does not assess the suitability of contract employees for regularization. Its sole function, as defined by Section 8 of the Sindh Public Service Commission Act, 2022, is to conduct competitive examinations and tests for the initial appointment of candidates to permanent government posts. This establishes the SPSC as the primary authority for ensuring transparent and merit-based hiring, not for converting temporary or contract positions into permanent ones.

11. However, in the present case, the position of Head Masters/Headmistresses (BPS-17) shows surprisingly contractual positions. The post of Head Master/Headmistress in BPS-17 can be filled through a competitive process and by promotion on seniority-cum-fitness basis with certain qualifications and experience. We do not see any logic to take the aforesaid posts out of the purview of the SPSC and to fill the same on a contract basis. Admittedly, the petitioners have not been declared as successful candidates by SPSC; therefore, they cannot claim an appointment for the said post on a contract basis as a matter of right for an indefinite period. Master/Head Mistress in BPS-17 cannot be relaxed under the newly introduced Recruitment Rules.

12. In the earlier round of litigation, on the subject issue, in Constitutional Petition No. D- 2839 of 2017, and C.P. No. D-2431/2021, this Court vide order dated 19.01.2021 noted that the learned AAG filed a fresh compliance report dated 18.01.2021. The stance of the learned AAG was that the committee viewed the recruitment process, suffering from various defects and legal flaws, and thus suggested for four months to initiate the recruitment process afresh through a competitive process, i.e.,

SPSC. In the meantime, he prayed for the retention of incumbents' Head Masters/Head Mistresses on their respective posts on the ground that there was an order in operation obtained by concealment of facts of the case. However, we did not appreciate the request for a month's extension in light of the order and reason assigned. During arguments in the aforementioned case, we were apprised of the fact that fresh recruitment rules had been notified, and the respondent department was directed to act strictly in accordance with the law to fill the subject posts through the competitive process and they were directed to allow the incumbents Head Masters/Head Mistresses to participate in the said process without discrimination, subject to all just exceptions as provided under the law and complete the same process within two months strictly in pursuance of law and to submit the compliance report to this Court.

13. The Supreme Court in the case of Shahzad Shahmir and others v. Government of Sindh & others (2021 SCMR 824), dismissed the petitions of Headmasters (BPS-17) who were appointed on contract; that Appointments to BPS-17 posts must be made through the SPSC as per Article 242 of the Constitution, and not on a contractual basis. Due to the illegality of the appointments, the Supreme Court ruled that the petitioners had no right to their employment and dismissed their case. The Supreme Court also noted that the High Court had extended some benefits to the petitioners, even though they were not legally entitled to them. Since the order passed by this court was not set aside as such, the observation recorded in this case shall be kept in mind by the department while scrutinizing their case afresh.

14. In view of the foregoing legal position, we are of the considered view that the Government having the domain to frame the policy of appointment and also by law, provide the qualification for appointment against a particular post and thus, appointment against such post through initial appointment or otherwise cannot be claimed without fulfillment of the criteria and the requisite qualifications as provided under the Recruitment Rules as discussed supra.

15. In view of the Judgments/orders of the Supreme Court in the cases of Ali Azhar Khan Baloch and Shahzad Shamir as discussed supra, the Government of Sindh cannot circumvent the law and bypass the directions contained in the aforesaid Judgment/order of the Supreme Court by making appointments in BPS-17 on contract basis, which are required to be filled through a competitive process and regular mode of service.

16. At this stage, Petitioners' counsel cited various case laws and based on this analogy, counsel argued that the petitioners' case for permanent appointment may be referred to the SPSC for a fresh interview according

to recruitment rules, which was/is later development as their colleagues have already undergone such competitive process by the order of this Court and the Supreme Court.

17. This Court is of the considered view that the Petitioners, having duly participated in the same recruitment process conducted through IBA Testing Service, and having cleared both the written and interview stages, stand at par with those candidates whose cases have been referred to the Sindh Public Service Commission (SPSC) for scrutiny and eligibility pursuant to this Court's earlier order in C.P. No. D-2431/2021. The non-inclusion of the Petitioners in the said process prima facie amounts to discrimination, arbitrariness, and a violation of their fundamental rights under Articles 4, 18, and 25 of the Constitution. The competent authority of the Respondent Department is directed to forward the cases of interested petitioners to the SPSC for a fresh interview/assessment/suitability for the subject post, if not earlier assessed, and if they are working on contract, within three months from the date of this order. This referral will be based on verification of their qualifications and adherence to the Recruitment Rules, considering the principles in Dr. *Naveeda Tufail and 72 others v. Government of Punjab and others* (2003 SCMR 291) *and Shahzad Shahmir's* case supra. In the intervening period, the petitioners will retain their current positions unless they have already vacated them.

Head of the Constitution Benches

JUDGE