

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P. No.D-330 of 2014.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:-

Mr. Justice Salahuddin Panhwar.

Mr. Justice Muhammad Iqbal Mahar.

1. For orders on office objection.
2. For katcha peshi.
3. For hearing of M.A-2008 of 2014.
4. For hearing of M.A-9385 of 2014.

16.11.2016.

M/s Ahsan Gul Dahri and Wali Muhammad Khoso, Advocates for petitioner.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh alongwith Syed Mehfooze Ali Shah Director School Education Elem: Sec: H-Sec: Shaheed Benazirabad and Ghulam Ali Birkmani DEO El: Sec: H-Sec. District Shaheed Benazirabad.

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Through instant petition, petitioner has invoked the constitutional jurisdiction of this Court and has prayed as under:

- “a) Declare that Government Boys Higher Secondary School, Kazi Ahmed is situated in UC Kazi Ahmed-I and it is not situated in UC Kazi Ahmed-II and the vacant posts of JST lying vacant in Government Boys Higher Secondary School, Kazi Ahmed be included in UC Kazi Ahmed-I instead of UC Kazi Ahmed-II and the respondents be directed to issue fresh merit list of high score candidates of JST (Science) of UC Kazi Ahmed-I after including the posts of JST (Science) lying vacant in Government Boys Higher Secondary School, Kazi Ahmed.**
- b) Direct the respondent to issue Appointment Order of the post of JST to the petitioner being on merit No.4 (Science) against the post lying vacant in GBHSS Qazi Ahmed being situated in UC Qazi Ahmed-I, Dist. Shaheed Benazirabad.**
- c) Grant ad-interim injunction, thereby direct the respondents not to appoint any other person / candidate to the post of Junior School Teacher (Science) against the posts lying vacant in Government High Secondary School Qazi Ahmed by showing it in UC Kazi Ahmed-II, District Shaheed Benazirabad, till final disposal of the instant petition.**
- d)”**

2. At the outset, learned counsel for petitioner, *inter alia*, contends that Government Boys Higher Secondary School, Kazi Ahmed was situated in UC-I and in 2012 NTS test / examination was held for several teaching posts; about eleven (11) posts of teachers were shown as vacant; petitioner appeared in test and succeeded in getting 67 marks thereby standing at serial No.4 in merit list but other persons were appointed by showing the said school as '**UC-II Kazi Ahmed**' which, *per petitioner*, deprived him of his earned right.

3. Statement of Director Schools Education (Primary) Hyderabad Region, Hyderabad, is available on record. Relevant paragraph is that:

“After investigation it was found that Principal of Govt. (B) Higher Secondary Schools submitted the semis Data to the R.S.U. Department by changing the U.C. Kazi Ahmed from U.C-II to U.C-I but RSU Department did not make necessary correction in their Data, and showed the vacancy position of Govt. (B) Higher Secondary School Kazi Ahmed In U.C-II instead of U.C-I.”

The above paragraph leaves nothing to refute or *least doubt* the claim of the petitioner that at time of appearance of petitioner in 2012 NTS test / examination the '**Government Boys Higher Secondary School, Kazi Ahmed**' was shown to be falling in "**UC-I**" and not in "**UC-II**" but came with plea of '**not making correction in their Data**' which the respondent *legally* cannot claim to be a *lapse* on part of the petitioner. The respondents cannot take *benefit* of their own mistake particularly when the petitioner *otherwise* was / is eligible to be given job as the *appointments* were to be made on '*Union Council wise*'. The respondents *no where* denied the entitlement of petitioner if the said school is taken to be falling within UC-I, as was notified at time of recruitment process for such school? It is not expected from the authorities to deprive a person from his right on the ground that there was a mistake by any concerned agency / institution. Reference in this regard may be made to the case of *Besharat Jehan v. Director General, Federal Government Education, FGEI* 2015 SCMR 1418 wherein it is held as:

“15.....As noted above, if there was any lapse it was on the part of the respondents. If the Notification / memorandum as noted above had gone unnoticed by them, it is not the fault of appellant. It is not the case of the respondents that she procured the appointment letter through dubious means. Since appellant cannot be attributed any wrong on her part, respondent cannot be allowed to take benefit of their own oversight, lapse or ignorance of law (i.e Notification / Memorandum of relaxation of general age dated 28.11.2000)

Such factual aspect is not denied by the Director School Education Elem: Sec: H-Sec: Shaheed Benazirabad, who is present in Court. Since name of petitioner was shown at serial No.4 of merit list in U.C-I and subject school for which post was shown as vacant for recruitment is not disputed. Therefore, *legally* the petitioner cannot be penalized for a wrong or *least* a lapse or ignorance *prima facie* on part of the respondents.

4. While considering the above facts we, without commenting on the change of U.C-I to U.C-II whether it was a malafide act or was an inadvertence, are of the view that petitioner earned his right of appointment as he succeeded in getting higher marks and thereby shown as successful candidate at serial No.4 of the merit list, hence it was obligatory upon the respondents to issue appointment order in his favour yet the petitioner had to run from pillar to post and even to this Court which *entitlement* is pending since 2014. Accordingly, instant petition is allowed. Let appointment order shall be issued in favour of the petitioner within one month. In case of failure, it would amount to defiance of order of this Court by the respondents by treating the same as pejorative act on their part and contempt proceedings would be initiated against them.

Office shall send facsimile of this order to respondents for compliance as well provides copy to learned A.A.G. for information.

JUDGE

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