

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

C.P. No.D-768 of 2014.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For katcha peshi.
For hearing of MA-4737/14.
17.11.2016.

Mr. Nauman Sahito, Advocate for Petitioner.
Mr. Allah Bachayo Soomro, Addl. A.G.

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Through instant petition, Petitioner has prayed as under:-

(a) Direct the respondents to appoint the Petitioner as JST without any delay.

(b) Declare that the act of the respondents by non-issuing of JST Order to the Petitioner along with other successful candidates is illegal and unlawful.

(c) Any other relief(s) this Honourable Court may deem appropriate and proper in the circumstances of the case.

(c)Grant costs of this petition.

2. Precisely relevant facts are that petitioner applied for JST in U.C. Dhilyar, Taluka Khipro, and District Sanghar; except Petitioner, none applied from that Union council; test was conducted by NTS and she got top position. In-spite of that she was deprived and respondents appointed one Shagufta, who had applied on general category.

3. Comments filed by respondent No.5, paragraph-4, is that:

*“That as for as the contents of apra-4 of this instant petition to the Petitioner are concerned, it is respectfully submitted that **no doubt Petitioner qualified the written test and her name was declared successful in the provisional list** but another candidate name Shagufta d/o Moula Bux applied through internet and requested to the **authority to enter her name in the U.C. Dhilyar,** Taluka Khipro, District Sanghar and submitted her domicile and PRC certificates which were verified from the office of the D.C, Sanghar and found genuine along with domicile and PRC of the Petitioner also. Attached as annexure `A & C`. That both the candidates*

qualify the written test, but as there was only one seat of JST available as distributed on need based vacancy position. As in annexure `A` that Mst. Shagufta d/o Moula Bux having seat No.263003572, secured `76` marks in the written test and also the Petitioner was secured 76 marks. Due to the elder of than the Petitioner she was selected. Copy of NTS result for the post of JST of selected female candidate is attached as annexure-D.

4. Alongwith comments, application of that lady Shagufta is appended, which also confirms that she had applied for *general category* and secured same marks, however, she, *at belated stage*, applied to be treated as applied in UVC Dhilyar being resident of village Ali Ghulam Bhambhro, P.O. and Taluka Khipro, U.C. Dhaliyar.

5. Heard the respective sides, perused the available record *carefully*.

6. The respondents in *first breath* do not deny the fact that petitioner applied for *JST* while Shugufta had applied for *general category* therefore, they both *legally* and *even per recruitment procedure* were required to be judged as such (*category-wise*). Thus, the plea of Petitioner is not disputed, rather same is admitted, *however*, the record and *comments* speak otherwise. An *authority* can never be used to favour some *blue eyed* but shall always require the *authority* to hold the scale of *equity* firmly and any deviation therefrom shall open the action or omission by an authority for *judicial review*. A reference to *Corruption in Hajj Arrangements in 2010* (PLD 2010 SC 963), being helpful is made hereunder:

‘Indisputably, if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same. (Commissioner of Income Tax v. Mahindra (AIR 1984 SC 1182).The exercise of constitutional powers by the High Court and the Supreme Court is categorized as power of judicial review. Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. With the expanding horizon of Articles dealing with Fundamental Rights, every executive action of the Government or other public bodies, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of the Superior Courts and can be validly scrutinized on the touch stone of the Constitutional mandates.

Further, the *plea* raised to justify the act of appointing Shugufta in place of present petitioner cannot sustain for simple reason that it is not the competence of the 'authority' to subsequently allow one to change stance which *otherwise* could cause prejudice to *earned* rights of others. Shugufta, while applying for the post, had actively chosen the *category* therefore, change of *category* by authority at *belated* stage (after date of application) cannot be justified. Such manner is not only very strange rather appears a *malfeasance* on the part of official Respondents, which categorically shows that the manner adopted by official respondents is completely against the law of equity and *fair-play*. A reference to the case of *Muhammad Sharif v. Federation of Pakistan* PLD 2015 wherein case of *Abdul Basit* has been referred which says as:

“13. Constitutional jurisdiction of this Court under Article 199 is not fettered by provisions of subordinate legislation and it can be brought into operation in aid of a citizen whose fundamental rights are put in jeopardy.The honourable Supreme Court in case of Abdul Basit (2012 SCMR 1229) supra held in unambiguous term that Article 199(3) of the constitution had to be strictly construed and **where an action of the authority was in colourful exercise of power and / or was tainted with malice, Art. 199(3) could not come in the way of the High Court to entertain such a petition.**
(Emphases applied)

Thus, it can *safely* be said that act of respondents putting Shugufta in place of petitioner merely on a plea of some enquiry, conducted on a belated request of Shugufta, cannot be stamped as a '*proper exercise*' rather same is a patent case of excess of powers. Accordingly, instant petition is allowed. Respondent No.4 shall issue appointment order in favour of the Petitioner within one month with compliance report. Non-compliance of order amounts to contempt proceedings. Office shall communicate this order for compliance.

JUDGE.

JUDGE.