

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 2243 of 2013

Sarfraz Ahmed Petitioner

Versus

National Testing Services & others Respondents

Date of hearing: 08.03.2018

Mr. Altaf Hussain Khoso Advocate for the Petitioner.
Mr. Sharyar Mehar Assistant Advocate General Sindh.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition,

Petitioner is seeking following relief(s):-

- i) **To direct the Respondent O.1 to remove or delete names of the respondent Nos. 6 to 10 from the final merit list of Primary School Teacher of Union council Karira, Taluka Miro Khan District Kamber, Shahdadkot and prepare new final merit list.**
- ii) **To direct respondent NO.2 to 5 not to issue offer letter to respondent Nos. 6 to 10 for the post of Primary School Teacher from Union Council Karira, Taluka Miro Khan District Kamber, Shahdadkot .**
- iii) **To direct respondent No. 2 to 5 to take legal action against respondent No. 6 to 10 for submitting false information, forged and bogus documents to respondent No. 1 to 5.**

2. Brief facts of the case in a nutshell are that in pursuance of advertisement published in 'Daily Kawish' dated 19.04.2012 inviting application for appointment of Primary School Teachers (BPS-9), on contract basis for the period of three years, Petitioner applied for the post of Primary School Teacher (BPS-9) from Union Council Karira. As per Petitioner, Respondents started recruitment process, after processing the application of the Petitioner, in the month of January, 2013 on different dates, the Respondent No.2 conducted written test through National Testing Service (NTS). Petitioner added that after conducting the written test, the Respondent No.1 published Provisional merit list on its official website of successful candidates with regard to recruitment test for the post of Primary School Teachers. Petitioner asserted that he secured 91 marks out of 100 in the Union Council Karira, Taluka Miro Khan District Kamber Shahdadkot. Petitioner further claims that he having successfully qualified the written test had legitimate expectation of recruitment for the post applied for. Petitioner has further submitted that on 09.04.2013, he moved an application to the Respondents and raised objection for deleting the names of Ms. Iram Naz, Ms. Khursheed Begum, Ms. Humaira, and Ms. Hira from Union Council Karira Taluka Miro Khan, district Kamber, Shahdadkot, on the premise that the above referred candidates, who belonged to others Union Councils, thus cannot be considered for appointment for the post of Primary School Teacher from Union Karira Taluka Miro Khan, district Kamber, Shahdadkot. Petitioner being aggrieved by and dissatisfied by the impugned action of the

Respondents No.2 to 5 has filed the instant Petition on 20.05.2013.

3. Upon notice, the Respondents 2 to 7 filed para wise comments and controverted the allegations leveled by the Petitioner against them.

4. Mr. Mr. Altaf Hussain Khoso, learned counsel for the Petitioner has argued that the officials Respondents have violated the rights of the Petitioner by failing/delaying to issue appointment letter, despite the fact that the Petitioner has successfully passed the prescribed examination; that after successfully clearing the examination, the Petitioner has acquired a vested right and interest to be appointed on the post of Primary School Teacher (BPS-9) which cannot be nullified/denied by the whimsical and arbitrary actions of the official Respondents to accommodate the Private Respondents; that the official Respondents are acting in violation of the prescribed Rules as mentioned under the terms of Rule 4 of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, when the Respondent No.5 is the competent authority for appointment of the candidates; that the action of the official Respondents is in violation of the Fundamental Rights of the Petitioner as guaranteed under Articles 18, 24 and 25 read with Articles 4 and 8 of the Constitution; that due to omission/failure of the official Respondents to fulfill their legal obligations and that to timely discharge their duties/functions, the Petitioner is being deprived of his lawful rights to be considered for

appointment against the post of Primary School Teacher (BPS-9), that the Teachers Recruitment Policy 2012 is discriminatory thus not sustainable in law; that the official Respondents have accommodated the private Respondent with malafide intention even otherwise they did not belong to the same Union Council. He has further contended that the two bothers of Respondent No.8 namely Fida Hussain son of Ali Mardan & Ali Sher son of Ali Mardan, applied for the post of Primary School Teacher form Union Council Khabbar, whose Roll numbers and names are placed at serial No. 9 & 17 respectively in the final merit list; that the private Respondents No. 6 to 10 violated the recruitment rules by way of producing false information and bogus documents in collusion with Respondent No. 1 to 5 in order to grab rights of real candidates including the petitioner. He lastly prays for allowing the instant petition.

5. Mr. Sharyar Mehar, learned Assistant Advocate General Sind representing Respondents No.2 to 5 has argued that the instant petition is not maintainable on the ground that as per the Teachers Recruitment Policy 2012, the Petitioner has alternate remedy available to him to file an application to the Chairman of District Recruitment Committee (DRC) for redressal of the grievances if any; that no violation or deviation from Recruitment Policy 2012 has been made; that the entire recruitment process for which the World Bank is assisting the Province of Sindh in general and teaching personnel in particular; that the teachers recruitment

in phase III are purely need base appointments made under the guidelines of the donor agency (World Bank). The learned AAG has referred to the comments of Respondent No. 2 and argued that after verification of their documents etc. by the District Recruitment Committee (DRC) none of them except one candidate i.e. Ms. Aneela Soomro was considered for appointment, However, verification process in respect of documents i.e. Domicile/PRC etc. in respect of Ms. Aneela Soomro is verified by the Deputy Commissioner Shahdadkot at Kamber who submitted his statement to the effect that the Domicile bearing No. 9441 dated 18.05.2012 in respect of Ms. Aneela D/o Muhammad Umar Soomro has been verified and found the same to be issued by his office, while names of the rest of the above named candidates were removed from the merit list of Union Council Karira. He has further argued that there were in all 08 vacancies in Union Council Karira, out of which one seat was reserved for female and on such post Ms. Maria has been appointed as she secured highest score in female candidates, while seven seats were reserved as mixed candidates both male and female and one seat from those seats was reserved for minority candidate, however on remaining six seats five persons, namely, Ms. Kalsoom, Ms. Sultana, Ms. Sadia Riaz, Ms. Aneela Soomro, Ms. Waziran and Zahida Hussain; all of them secured highest marks in the union council and none of them has secured less marks than the present Petitioner except Mr. Zahid Hussain, who has obtained equal marks to that of

Petitioner, but he has been given preference because he was older in age than to the petitioner, which was as per the policy.

6. We have heard learned counsel for the parties and perused the material available on record.

7. Petitioner applied for the post of Primary School Teacher (BPS-9) to be filled on merit subject to availability of need based vacancy in the designated Union Councils. Record reflects that in National Testing Service (NTS) Petitioner obtained 91 marks. We have gone through the Teacher Recruitment Policy 2012, which prima facie shows that additional 20 marks will be given to the Female candidates who have secured 60 marks in the written test. As per the vacancy position shown in the comments there were in all 08 vacancies in Union Council Karira, out of which one seat was reserved for female candidates and on such post Ms. Maria has been shown to have been recommended qualified. Comments further reflect that seven seats were reserved for mixed candidates both Male and Female candidates and one seat, from those seats, was reserved for minority candidate, however on remaining six seats five persons namely Ms. Kalsoom, Ms. Sultana, Ms. Sadia Riaz, Ms. Aneela Soomro, Ms. Waziran and Mr. Zahid Hussain, who obtained higher marks than the Petitioner, except Mr. Zahid Hussain who has obtained equal marks to Petitioner but he was given preference because he was older in age, as such were recommended for the post of Primary School Teacher BPS-09 in

Union Council Karira, Taluka Miro Khan District Kamber Shahdadkot.

8. Reverting to the plea taken by the learned counsel for the Petitioner that 20 additional points were given to Female candidates which is against the law, suffice to say that as per Clause 20 of Teachers Recruitment Policy 2012, which reads as under:-

20. Selection / Ranking Criteria for candidates

Minimum 60 marks in written test are required for merit determination. The merit list will be prepared for the PST, JST and HST will be as under:-

- i) For the appointment of PST, the merit will be determined on the basis of Union Council subject the availability of need based vacancy in UC of candidate.***
- ii) For the appointment of JST, the merit will be determined on the basis of Union Councils, subject to the availability of need based vacancy in UC of candidate and;***
- iii) For the appointment of HST, the merit will be determined on district basis subject to availability of need base vacancy.***

Female candidates will be given additional 20 marks to qualified female candidate. Repeat test will be conducted in any UC or Taluka where number of qualified candidates is less than the eligible number of need based vacancies. The specific criteria will be developed for the repeat test.

9. We are therefore of the considered view that the criterion for selection and appointment, provided under Teachers Recruitment Policy 2012 was fair, just and reasonable. This Court has already decided a similar matter in the case of Shabbir

Hussain Vs. Executive District Officer (Education), Larkana and five others (2012 CLC 16).

10. Reverting to the second plea taken by the learned counsel for the Petitioner that Ms. Aneela Soomro did not belong to the Union council Karira but still she was recommended for appointment as Primary School Teacher. We have perused the list showing the names of the eligible candidates for the post of PST in Taluka Miro Khan, District Kamber Shahdadkot, which reveals that Ms. Aneela Soomro obtained 75 marks plus 20 gender marks total 95 marks. For verification of her particulars matter was referred to the Deputy Commissioner Kamber Shahdadkot at Kamber, who submitted his above referred report, which prima facie shows that she belong to Village Shahi Taluka Miro Khan, District Kamber Shahdadkot. Record further reflects that the Election Commission of Pakistan has issued Voter list dated 26.02.2011, which show that Ms. Aneela belongs to Deh Karira Taluka Miro Khan, District Kamber Shahdadkot.

11. As regards the contention of the learned AAG that the Courts cannot interfere in the policy matters of the educational institutions. Suffice to say that this proposition of law is enunciated by the Hon'ble apex court in the case of Government College University, Lahore through Vice Chancellor and others Vs. Syeda Fiza Abbas and others. (2015 SCMR 445).

12. We are of the view that mere passing the written test could not, by itself, vest a candidate with right of selection and seeking enforcement of the right through Constitutional jurisdiction of this Court is misconceived. Admittedly the authorities had not issued any offer of appointment to the candidate to the Petitioner and appointment to the post is subject to the Teachers Recruitment Policy 2012.

13. In the light of above facts and circumstances of the case, we have reached to the conclusion that the petitioner has failed to make out his case for appointment for the post of Primary School Teacher. Consequently, the instant Petition is dismissed along with listed application(s).

JUDGE

JUDGE

Shafi Muhammad / P.A