

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

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

C.P No. D- 697 of 2015

Sobia Hassan Petitioner

Versus

Province of Sindh & others Respondents

Date of hearing: 02.02.2018

Mr. Munir Ahmed Advocate for Petitioner.
Mr. Waqarullah Korejo Advocate for Respondent No.3.
Mr. Tariq Ali Jakhrani Advocate for Respondent No.7.
Mr. Chaudhary Muhammad Rafiq Rajorvi, Assistant Advocate
General.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- The Petitioner, through the above referred Constitutional Petition is seeking appointment as Junior School Teacher on merit.

2. Brief facts of the case in nutshell are that in pursuance of advertisement published in 'Daily Dawn' inviting application for appointment of Primary School Teachers (PST-BPS-9), Junior School Teachers (JST-14) and High School Teachers (HST-15) on contract basis for the period of three years, Petitioner applied for the post of Junior School Teacher (BPS-14), As per Petitioner, official Respondents started recruitment process, after processing

the application of the Petitioner, on different dates, the Respondent No.2 conducted written test through National Testing Service (NTS). Petitioner has submitted that after conducting the written test, the Respondent No.2 issued a final merit list of successful candidates with regard to recruitment test for Junior School Teachers. Petitioner asserted that she secured 63 marks out of 100 and stood top in the Union Council-IV, Larkana, District Larkana. Petitioner further claims that she having successfully qualified the written test had legitimate expectation of recruitment for the post applied for. Petitioner further added that Respondent No. 4 to 6 through Notice/letter called on the Petitioner for verification of her academic qualification certificates. Petitioner next submitted that she was /is qualified for the post of Junior School Teacher but she has been ignored and in her place, the Respondent No.7 namely Ms. Amber Daughter of Fida Hussain Gaad, belonging from Union Council Larkana-VIII, was appointed, which action on the part of official Respondents is against the basic spirit of law. Petitioner further added that she approached the Respondent No.3 for redressal of her grievances but to no avail as she was informed by the officials of the Respondent No.3 that there is no seat vacant for female candidates in Union Council IV, Larkana, District Larkana on the premise that the aforesaid seat has been filled. Per Petitioner, she was surprised rather shocked to know that there is no seat for female candidate after qualifying written test and securing the 1st position in UC-1V, Larkana. Petitioner averred that in terms of Rule 4 of the Sindh Civil Servants (Appointment,

Promotion & Transfer) Rules 1974, the Respondent No.3 is the competent authority for the appointment of candidates in BPS-9 to BPS-11. Petitioner further added that Respondents are under legal obligation to complete the process by recruiting the successful candidate/Petitioner, however the official Respondents have failed to recruit/consider the Petitioner without any lawful justification or reason and appointed Respondent No.7 as Junior School Teacher in UC-IV Larkana. Petitioner asserts that the Respondent No.7 does not belong to UC-IV, rather she belongs to UC-VIII in District Larkana. Petitioner being aggrieved by and dissatisfied with the appointment of Respondent No.7 has filed the instant petition.

3. Upon notice, the Respondents filed para wise comments.

4. Mr. Munir Ahmed, learned counsel for the Petitioner has argued that the 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 Junior School Teacher (BPS-14) which cannot be nullified/denied by the whimsical and arbitrary actions of the official Respondents; that the 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, where the Respondent No.3 is the Competent Authority for

appointment of the candidates; that the action of the Respondents is in violation of the Fundamental Rights of the Petitioner 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 timely discharge of their duties/functions, the Petitioner is being deprived of her lawful rights to be considered for appointment against the post of Junior School Teacher (BPS-14), that the policy 2012 is discriminatory thus not sustainable in law. Learned counsel for the Petitioner emphasized that the appointment of the Respondent No.7 in place of the Petitioner is against the Teachers Recruitment Policy 2012 as well as against the basic spirit of law as such her appointment is liable to be cancelled. He lastly prayed for allowing the instant petition.

5. Mr. Waqarullah Korejo learned counsel for Respondent No. 3 has raised the issue of maintainability of the captioned Petition and argued that as per Teachers Recruitment Policy 2012, the required need based post of PST, JST and HST has been fulfilled. He further added that the merit list has been prepared by the District Recruitment Committee (DRC) under the Chairmanship of Director School Education and other senior officers of district. He further added that no violation, deviation from Teacher Recruitment Policy 2012 has been made, which may jeopardize the entire recruitment process for which the World Bank is assisting the province of Sindh in general and teaching

personnel in particular. Learned counsel argued that Petitioner applied for the post of Junior School Teacher, (General) from Union Council-IV, District Larkana and obtained 63 Marks, being the Female Gender she was given 20 Additional Marks in this way her total score is 83. He further submitted that the last candidate appointed on the post of Junior School Teacher have Higher Marks viz 84 marks then the Petitioner. He next submitted that there were total 02 vacancies position available in Union Council-IV, District Larkana; that as per data shared by District Education Larkana, no seat of Junior School Teacher for (F), is available in the aforesaid Union Council, therefore Petitioner was not selected due to low marks in the said UC-IV, whereas the last Female candidate in that UC obtained 84 Marks plus 20 Gender marks, therefore she was recommended accordingly as per recruitment policy 2012.

6. Mr. Chaudhary Muhammad Rafiq Rajorvi, Assistant Advocate General representing Respondents No.1, 2, 4, 5 and 6 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 her to file an application to the Chairman of District Recruitment Committee (DRC) for redressal of her 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); that total (2) vacancy positions was available in the aforesaid UC-IV as discussed supra. Learned AAG in support of his contention has produced a copy of Junior School Teacher final passed candidates list issued by National Testing Service Pakistan and District Recruitment Committee report for the post of JST, District Larkana and argued that Petitioner obtained 83 marks in NTS and there were two seats in aforesaid Union Council-IV, one for Male and one for Female. He further argued that the last seat in the aforesaid category was filled by Respondent No.7, who obtained 84 marks in the subject UC. Upon query by this Court as to why 20 gender marks were allowed to Female candidates, in reply to the query he referred to Teacher Recruitment Policy 2012 and referred Clause 20 of the Policy that 'Female Candidates' will be given additional 20 marks to qualify. In support of his contention he relied upon the order dated 07.07.2017 passed by the Hon'ble Supreme Court in Civil Appeal No. 190-K of 2015 and argued that instant petition is not maintainable as the World Bank Policy 2012 has not been called in question. Learned AAG has endorsed the stance taken by the learned counsel for Respondent No.3 in the above captioned petition and argued that in policy matters of educational institution this Court has no jurisdiction to interfere in the appointment process initiated under Teachers Recruitment Policy 2012. The learned Assistant Advocate General has also referred to

the advertisement published in 'Daily Dawn' and argued that the appointment on the post referred above were on contract basis for a period of three years. He further states that the project of School Education was being financed by the World Bank and appointment of the candidates were made as per criteria fixed for appointment by the World Bank in Education Policy 2012.

7. Mr. Tariq Ali Jakhrani, learned counsel for Respondent No.7 has adopted the arguments of learned Counsel for Respondent No.3 as well learned AAG and argued that the subject petition is not maintainable, which is based on factual controversy. During the course of arguments, upon query of this Court as to how the Respondent No.7 was appointed from Union Council- IV, District Larkana. As per record she applied for the post of Junior School Teacher from Union Council-VIII, Larkana. Learned counsel for the Respondent No.7 in reply to the query has argued that at the time of declaration of result of the test conducted by National Testing Service (NTS) name of Respondent No.7 was erroneously shown in Union Council No. VIII, City Larkana, against her seat No. 213001558 at serial No. 45, whereas she obtained total marks $64 + 20 = 84$ and secured first position in Union Council No.IV. He further added that there was only one post of Junior School Teacher vacant (Female) against which Respondent No.7 was appointed and she is serving there. In support of his contention learned counsel has relied upon CNIC, Domicile certificate, PRC Residence Certificate, voting list issued by the Election commission

of Pakistan in favour of Respondent No.7 as well as application for the correction in UC-IV instead of UC-VIII, Larkana in NTS record and DRC result.

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

09. Record reflects that the Petitioner applied for the appointment of Junior School Teacher (BPS-14) to be filled on merit subject to availability of need based vacancy in Union Council of a candidate. Record further reflects that in National Testing Service Petitioner obtained 83 score.

10. We have gone through the press release which prima facie shows that 20 marks will be given to Female candidates, who have secured 60 marks in written test. As per vacancy position shown in the District Recruitment Committee report is that there were two seats available one for Male and one for Female candidates. Record further reflects that two candidates namely Abdul Aziz Shaikh obtained 86 marks, whereas Female Candidate namely Ms. Amber (Respondent No.7), who obtained 84 marks, respectively in Union Council IV, District Larkana.

11. Reverting to the plea taken by the learned counsel for the Petitioner that after announcement of result by NTS the Respondent No.7 cannot take resort to move an application to DRC for correction in UC-IV instead of UC-VIII Larkana in NTS record, which attempt on the part of Respondent No.7 is malafide.

12. We do not agree with the assertion of the learned counsel for the Petitioner on the aforesaid proposition, for the simple reason that as per Teachers Recruitment Policy 2012, DRC is empowered to verify the Union Council position of the candidates and make necessary correction, as has been done in the case of Respondent No.7, which cannot be said to have been made as an afterthought, for the simple reason that voting list dated 27.05.2013 issued by the Election Officer District Larkana, which prima facie supports the stance taken by the Respondent No.7 that she is a resident of Old Nazar Mohallah, Larkana, which falls within the jurisdiction of Union Council-IV, District Larkana.

13. We are therefore of the considered view that the criterion for selection and appointment, provided under Teachers Recruitment Policy 2012 is fair, just and reasonable. This Court has already decided the similar matter in the case of Shabbir Hussain vs. Executive District Officer (Education), Larkana and five others (2012 CLC 16).

14. As regards the contention of the learned AAG that the Courts may not interfere with the policy matters of educational institutions. We agree with the said contention of learned AAG. 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)

15. In view of the aforesaid facts and circumstances of the case, we are of the considered view that mere selection in written test could not, by itself, vest a candidate with the fundamental right for enforcement through Constitutional jurisdiction of this Court.

16. Admittedly the authorities had not issued any offer of appointment letter to the candidate to the Petitioner and appointment to the post is subject to the Teachers Recruitment Policy 2012, which in our view has been followed in letter and spirit.

17. We have also noted that the appointment of the candidates was on contract basis for three years as per the advertisement for the posts applied by the candidates and apparently such period has already expired.

18. On the basis of contentions of the parties and on perusal of the material produced, it seems that appointment letters of the candidates, who qualified for the post of Junior School Teachers, were on contract period, thus this Court cannot over look this aspect of the case also, while issuing a writ in the nature of mandamus.

19. It is a settled principle of law that for the purpose of maintaining a Constitution Petition it is the duty and obligation of the Petitioner to point out that the action of the official Respondents was in violation of the rules and regulations, which

the Petitioner has failed to point out and has thus failed to make out her case for discrimination as well.

20. 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 her case for appointment for the post of Junior School Teacher. Consequently, the instant Petition therefore is dismissed along with the listed application(s).

JUDGE

JUDGE