

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 2798 of 2014

Arhum Aziz Shaikh Petitioner

Versus

Province of Sindh & others Respondents

C.P No. D- 2415 of 2014

Raja Muhammad Asad Khan Petitioner

Versus

D.E.O. Sanghar and others Respondents

Date of hearing: 04.10.2017

Mr. Mohsin Ali Advocate for Petitioner.
Mr. Waqarullah Korejo Advocate
for Respondent No.3.
Mr. Abdul Jalil Zubedi Assistant
Advocate General Sindh along with
Mr. Asadullah abro, Additional Secretary
Education and Literacy Department and
Mr. Yar Muhammad D.E.O. District Sanghar.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- The above referred
Constitutional Petitions are being disposed of vide this Single
Judgment, as common question of law and facts are involved
therein.

C.P No. D- 2798 of 2017

2. Brief facts of the case in nutshell are that in pursuance of advertisement published in 'Daily Kawaish' dated 19.04.2012 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 Primary School Teacher (BPS-9), 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.2 issued a final merit list of successful candidates with regard to recruitment test for Primary School Teachers. Petitioner asserted that he secured 91 marks out of 100 and stood top in the Union Council-I, Shadadpur, District Sanghar. Petitioner further claims that he having successfully qualified the written test had legitimate expectation of recruitment for the post applied for. Per petitioner, on 04.02.2013 the Respondent No.2 issued a press release, announced 20 extra bonus marks awarded to female candidates, such announcement was made after the announcement of result by NTS; that the act of Respondent No.2 tantamount to circumvent the recruitment process as well as merit list which is without lawful justification; that the Respondent No.2 has no authority or

jurisdiction in law to announce such grace marks to Female candidates which is in violation of law. Petitioner further added that he approached the Respondent No.3 for further process of recruitment, but to no avail as he was informed by the officials of the Respondent No.3 that there is no seat vacant for male candidates in Union Council I, Shahdadpur, District Sanghar. Per Petitioner, he was surprised rather shocked to know that there is no seat for male candidates after qualifying written test and securing the 1st position in UC-1, Shahdadpur. Petitioner further added that he has forwarded a complaint regarding injustice made to him by the Respondents in the recruitment process conducted in District Sanghar. 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 Respondents have failed to recruit/ consider the Petitioner without any lawful justification or reason.

C.P No. D- 2415 of 2014

3. Facts of the case are that Petitioner that in pursuance of advertisement published in 'Daily Kawaish' inviting application for appointment of Junior School Teachers (JST-BPS-14), Primary School Teachers (PST-9) 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, 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). Per petitioner he appeared in the test of for the post of Junior School Teacher (Science) and obtained 78 marks in Union Council Shahpur Chakar Taluka Shahdadpur and secured 2nd position. As per Petitioner that there are four seats of Junior School Teacher (Science) and the Respondents are trying to appoint their blue eyed candidates in violation of merit.

4. Upon notice, the Respondents filed para wise comments.
5. Mr. Mohsin Ali 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 Primary School Teacher (BPS-9) which cannot be nullified/denied by the whimsical and arbitrary actions of the 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 Respondents to fulfill their legal obligations and timely discharge of 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 policy 2012 is discriminatory thus not sustainable in law. He lastly prays for allowing the instant petitions.

6. Mr. Waqarullah Korejo learned counsel for Respondent No. 3 has raised the issue of maintainability of the captioned Petitions 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 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 in C.P. No. D-2798 of 2014 there were total 04 vacancies position available in Union Council-I, Taluka Shahdadpur District Sanghar; that as per data shared by District Education Sanghar, no seat of Primary School

Teacher for (M), one seat of Primary School Teacher (F) and three seats of Primary School Teacher mixed were available in the Union Council-I Shahdadpur; that there was no male seat available in Union Council-I Shahdadpur therefore Petitioner was not selected due to low mark in UC-I, whereas the last Female candidate in that UC obtained 87 marks plus 20 Gender marks total marks 107 therefore she was recommended accordingly as per recruitment policy 2012. Learned counsel argued that in C.P. No. D-2415 of 2014 Petitioner obtained 78 score through NTS in Union Council Shahpur Chakar Taluka Shahdadpur District Sanghar. Per learned counsel further submitted that as per District Recruitment Committee merit sheet, the one Male and two Female position of Junior School Teacher (Science) was calculated and approved in Union Council of Petitioner and the candidate secured 80 marks in written test and was recommended for the post of Junior School Teacher on the other hand petitioner obtained lesser scored then the successful candidate hence he was not recommended.

7. Mr. Abdul Jalil Zubaidi learned Assistant Advocate General Sind representing Respondents No.2 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); that total four (4) vacancy positions was available in UC Shahdadpur-1 Taluka Shahdadpur District Sanghar. Learned AAG in support of his contention has produced a copy of Primary School Teacher final passed candidates list issued by National Testing Service Pakistan and District Recruitment Committee report for the post of PST, Taluka Shahdadpur District Sanghar and argued that petitioner obtained 91 marks in NTS and there were three seats in Union Council-I, Shahdadpur, one for Female and two seats for mixed category however there was no seat for Male candidate in the subject Union Council. He further argued that the last seat in mixed category was filled by candidate who obtained 102 marks and last seat was filled by Female candidate who obtained 103 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 Recruitment Policy 2012 and referred clause 20 of the Policy that 'Female candidates' will be given additional 20 marks to qualify Female candidates. 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 petitions 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.

8. We have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

9. Petitioner applied for the appointment of Primary School Teacher (BPS-9) to be filled on merit subject to availability of lead best vacancy in Union Council of candidate. Record reflects that in National Testing Service Petitioner obtained 91 score. We have gone through the press release dated 04.02.2013 which prima facie shows that 20 marks will be given to Female candidate who have secured 60 marks in written test. As per vacancy position shown in the District Recruitment Committee report is that there were three seats available one for mixed category two for Female candidates. Report further reflects that three Female candidates who obtained 102, 103 and 107 marks respectively in Union Council Shahdadpur 1.

10. Reverting to the plea taken by the learned counsel for the petitioners that 20 additional points were given to Female candidates which is against the law, suffice it to say that as per Clause 20 of Teachers Recruitment Policy 2012, 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.

11. We are therefore of the considered view that the criterion for selection and appointment, provided under Teachers Recruitment Policy 2012 is fare, 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).

12. As regards the contention of the learned AAG that the courts may not interfere with the policy matters of educational institutions we completely 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)

13. We are of the view that mere selection in written test could not, by itself, vest candidate with a fundamental right for enforcement through the Constitutional jurisdiction of this Court. 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.

14. During the course of arguments learned Assistant Advocate General has referred to the advertisement published in 'Daily Kawish' dated 19.04.2012 and argued that the appointment on the post referred 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.

15. We have noted that the appointment of the candidates was on contract basis for three years as per advertisement for the posts applied by the candidates and apparently such period has already been expired. On the basis of contentions of the parties with the material produced, it seems that appointment letters of the candidates, who qualified for the post of Primary School Teacher and Junior School Teacher were on contract period, thus this

Court cannot over look this aspect of the case, while issuing a writ in the nature of mandamus.

16. It is a settled principle of law that for the purpose of maintaining a Constitution Petition it is the duty and obligation of the Petitioners to point out that the action of the Respondents was in violation of their rules and regulations, which the Petitioners have failed to point out and failed to make out their case for discrimination as well.

17. In the light of above facts and circumstances of the case, we reach to the conclusion that the petitioners have failed to make out their case for appointment for the post of Primary School Teacher and Junior School Teacher. Consequently, the instant Petitions are dismissed along with listed application(s).

18. Foregoing are the reasons for our short order dated 04.10.2017.

JUDGE

JUDGE