

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

**Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon**

CP No. D- 1865 of 2014

Mst. Sadia & others ----- Petitioners

Vs.

Province of Sindh & others ----- Respondents

CP No. D- 905 of 2015

Miss. Erum & others ----- Petitioners

Vs.

Province of Sindh & others ----- Respondents

CP No. D- 233 of 2015

Rizwan Ahmed & others ----- Petitioners

Vs.

Province of Sindh & others ----- Respondents

Dated of hearing: **12.02.2019**

Mr. Abdul Khaliq Leghari, Advocate for Petitioners in CP No. D- 905 of 2015.

Petitioners in CP No. D- 233 & 1865 of 2014 are present in person

Mr. Allah Bachayo Soomro, Addl.A.G along with Khalid Mahmood Arain, Focal Person, Education & Literacy Department, Badin

J U D G M E N T

ADNAN-UL-KARIM MEMON, J.: All the above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common question of law and facts are involved therein. In all the captioned petitions, Petitioners are seeking appointments as Oriental Teacher (OT) and Drawing Teacher (DT).

2. The case of the Petitioners is that in pursuance of advertisement published in 'Daily Kawish' dated 4.4.2012 inviting application for appointment of various

teaching posts, including Oriental Teacher, Drawing Teacher (BPS-9), on regular basis in Hyderabad region, Petitioners applied on the aforesaid posts. Respondents started recruitment process, after processing the application of the Petitioners, and after conducting the written test, they were declared successful candidates for the post of (OT) and (DT). Petitioners further claim that they having successfully qualified the written test had legitimate expectation of recruitment for the post applied for. That employment is basic necessity of the life, particularly for the educated youth and the State is responsible to provide transparent working environment and the employers are required to provide opportunity for grooming and exploitation of abilities and talent of the employees; that the respondents assured them that they will soon be issued offer orders. Subsequently, the Petitioners time and again approached the respondents for obtaining offer orders but they were kept on false hopes. Petitioners being aggrieved by and dissatisfied with aforesaid actions of the respondents filed the captioned petitions on 2.10.2014

3. Upon service of notice, Respondent No.3 filed parawise comments, wherein it has been stated that written tests were conducted for recruitment to the posts of O.Ts & D.Ts, but since irregularities were found in the test, no result of written test was announced, shortlisting of eligible candidates were not done and list of successful candidates on merit basis was not announced. It is further stated that number of complaints were received that the eligible candidates were not called for written test / interview and those candidates were called for written test who even did not submit applications for the job, hence the whole process of recruitment was stopped.

4. We have asked from the learned counsel for the petitioners that how these petitions are maintainable, when the whole process of recruitment has been scrapped on the premise that grave irregularities were found in the test, no result of written test was announced, shortlisting of eligible candidates were not done and list of successful candidates on merit basis was not announced.

5. Mr. Abdul Khaliq Leghari, learned counsel for Petitioners in CP No. D-905 of 2015, in reply to the query submitted that the test/interviews were made in accordance with law upon fulfillment of all the codal formalities; that cancellation of recruitment process on the posts of the petitioners without providing them an opportunity of hearing is illegal and against the basic spirit of law, more particularly, violation of judgments passed by Honorable Supreme Court of Pakistan. He next argued that the petitioners cannot be held responsible for the illegal acts committed by the official respondents; that one Kashif Jameel applied

along with petitioners was subsequently appointed and petitioners were left in the lurch; therefore the instant petitions are maintainable.

6. We put another query to learned counsel for the petitioners that since no appointment orders had been issued, how vested right has accrued in favour of the petitioners. He in reply submitted that the Respondents are bound to follow the acceptance of result whereby the petitioners had been declared successful candidates therefore; denial of such appointment orders is illegal, which amounts to depriving the petitioners from their vested right as guaranteed under the Constitution. The submission proceeds on the premise that recruitment process initiated was required to be concluded as per the rules, and that the Government of Sindh was not justified in cancelling the process; that the appointments in the Education department have been made on the orders of this Court with the consent of the parties and cited various references in this regard; He relied upon common order dated 04.05.2011 passed in C.P. No. D-1051 of 2007 and other connected petitions. In support of his contention he further relied upon the case of Hameed Akhtar Niazi Vs. The Secretary Establishment Division (1996 SCMR 1185) and argued that those persons who were selected along with the Petitioners were subsequently appointed in the light of order dated 04.05.2011 passed by this Court in the aforesaid connected petitions and thus the Petitioners be treated alike. He next relied upon the case of Province of Punjab and others vs. Zulfiqar Ali (2006 SCMR678) He lastly prayed for allowing the instant petitions.

7. Mr. Allah Bachayo Soomro, Addl.A.G has refuted the claim of the Petitioners and relied upon the Judgment dated 01.04.2015 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No. 18-K of 2013 and argued that the aforesaid Judgment is fully applicable in the case of the Petitioners, therefore they are not entitled for any relief from this Court. Learned AAG has sought permission to give brief history of the recruitment process of teaching staff in education department Government of Sindh initiated earlier and argued that on 30.01.2004 Education & Literacy Department invited applications for the appointment to the post of PST, JST, HST OT, DT etc. through daily newspaper. The offer letters for these appointments were issued on 10.07.2006, same were cancelled later on. The reasons for cancellation of the offer of appointments were that the Education & Literacy Department was in contact with the World Bank for financial assistance for the betterment of education in Sindh. The World Bank agreed to provide assistance for the appointment of teachers under Sindh Education Reform Program as per the guidelines, provided by the World Bank. It was decided to formulate Teachers Recruitment Policy for recruitment of teachers purely on merit,

assessed/evaluated by the third party. Accordingly Teacher's Recruitment Policy was issued on 10.07.2008 and it was decided to cancel all the offer letters and recruit the teachers on the new policy, purely on merit basis; that in consequence of the cancellation of such offer of appointment letters, many candidates filed petitions before this Court, in C.P. No. D-850 of 2010 along with 272 other CPs, this Court decided the matter on 08.07.2011, in which recruitment policy of 2008 was appreciated more particularly in C.P. No. D-1271 of 2012 vide order dated 28.08.2013 and it was declared that any selection or appointment made in violation of criteria laid down in the said policy to be unlawful and of no legal effect. He further contended that in C.P. No. D-670 and C.P. No. D-1090/2007, this Court supported the stance of Education & Literacy Department, who issued offer letters but cancelled afterwards in view of the recruitment policy 2008; that this Court declared that since their offer letters have not been acted upon, therefore the Petitioners cannot seek direction for issuance of posting orders; that this court vide order dated 9.10.2015 in C.P. No. D-34/2015 and other connected petitions directed that appointment process relating to teaching staff and other categories in Education & Literacy Department be initiated after initial examination through National Testing Service(NTS). Learned AAG in support of his contention relied upon the decision dated 15.2.2012 rendered by this Court in C.P. No. D-749 of 2009, which reads as under:-

“Case of the petitioner is that the offer letter for appointment as School Teachers were issued to them in 2006 but they were not allowed to join the service and for three years they kept on approaching authorities and finally filed this petition. The matter with regard to the recruitment procedure for appointment of teachers has already been discussed by the Hon'ble High Court of Sindh in the case of ShabbirVs. EDO (Education) Larkana & 5 others reported in 2012 CLC 16, in which education policy was devised and criterion for the appointment has been laid down. Admittedly, the petitioners were only issued offer letters on contract basis. In view of the above decision reported in 2012 CLC 16, this petition is dismissed.”

It is further submitted that the Petitioners in the above referred matter were issued only offer letters on contract basis. This Court dismissed C.P. No. D-749/2009 on the ground that the Petitioners were only issued offer letters on contract basis, which were cancelled later on and they were not appointed. Learned AAG also refuted the claim of the petitioners that one Kashif Jameel applied along with petitioners was subsequently appointed and petitioners were left in the lurch. He added that Kashif Jameel had not been posted as his case was found bogus. He relied upon the enquiry report dated 10.3.2017 and argued that the case of petitioners is not justified for appointment on the aforesaid posts. Learned AAG

concluded by saying that there is no post lying vacant therefore Petitioners cannot be adjusted. He prayed for dismissal of the captioned petitions.

8. We have heard the parties at length on the issue involved in the matter and perused the material available on record.

9. The grievance of the petitioners is that recruitment initiated has not been concluded, and the Respondent-department has arbitrarily discontinued the recruitment process, midway to fill up such seats by accommodating their favorites. To support such narrative it has been urged that the Respondent-department's decision to abort the ongoing recruitment process is arbitrary, irrational and actuated by political considerations which lack bona fide. (The details of recruitment process initiated and discontinued, with reference to the year of advertisement, is enumerated hereinafter).

10. We have had considered the facts and circumstances of this case, it is important to discuss the right of the petitioners to be appointed as agitated by them. We have noted that the action of the Respondents against does not impinge petitioners any fundamental and statutory right. The action of scraping the recruitment process does not violate the principles of natural justice.

11. On the basis of respective submissions advanced, following issues arise for consideration of this court in the petitions:-

- i) Whether the petitioners have acquired any right of appointment pursuant to advertisement issued for recruitment, or to be considered for appointment?
- (ii) Whether the decision of Government of Sindh in discontinuing the recruitment exercise initiated in the year 2012 is arbitrary?

12. We are of the considered view that even a successful candidate does not acquire indefeasible right to be appointed and that it could be legitimately denied. The notification inviting application for appointment has been held only to be an invitation to the qualified candidates to apply for recruitment. On their mere applying or selection they do not acquire any right to the post.

13. In the absence of any relevant rule, the Government is under no legal duty to fill up all or any of the vacancies. Such right of employer is, however, hedged with the condition that State action is not arbitrary in any manner. The decision of employer, if is otherwise not arbitrary and has been taken for valid reasons, no interference with the State action is warranted.

14. There can be no doubt that the petitioners merely on account of making of applications for appointment do not acquire any right of appointment. The question as to whether the respondents had the right to stop the recruitment process. In our view that the mere fact that petitioners were selected for appointment to vacancies, pursuant to an advertisement did not confer any right to be appointed to the posts in question to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment, for the simple reason that the whole process has been scrapped and nothing is left to be filled up, therefore, the question of appointment on the aforesaid posts do not arise.

15. We have noted that in the present case the selection was yet to be made by the respondent-department. Therefore, the petitioners cannot even claim that they were selected for appointment by the respondent-department. The selection process had not been completed and before it could be completed the Government reviewed its earlier decision and decided to revise the same for appointment. It is, therefore, clear from the settled legal position that the petitioners had no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the respondent-department.

16. We are of the considered view that even for the sake of arguments, merely issuance of offer order is no ground to claim appointment order as the respondents had found something fishy in the matter and recommended for scrapping of the whole recruitment process initiated at District level by the concerned District officer.

17. Reverting to the plea raised by the learned counsel for the petitioners with regard to appointments made on the orders of this court in Education Department, suffice it to say that the orders passed by this court as referred were based on consent of the parties, therefore, the Petitioners cannot rely upon the consent orders passed by this Court. The learned counsel for Petitioners failed to refer any Judgment of this Court, which had allowed the petition of the successful candidates on merits. The consent order obviously cannot be cited as precedent, as observed by the Hon'ble Supreme Court of Pakistan in the unreported case of Muhammad Arif & others v. Province of Sindh and others vide judgment dated 01.04.2015 in Civil Petition No. 186-K of 2013. In our view, once the Hon'ble Supreme Court has passed Judgment dated 01.04.2015 in terms when, the scrapping of the examination was maintained. By now almost 8 years have passed the whole recruitment process was culminated and it is too late in the day to direct the appointment of the Petitioners.

18. In view of the discussions made above, it is obvious that the petitioners did not acquire any right of appointment against the posts advertised. Since the Government also has the right to cancel the recruitment process, even prior to its conclusion, for valid reasons, the petitioners cannot compel the Government to complete the recruitment process, once initiated, as per the rules operating on the date of advertisement.

19. The material placed on record before this Court clearly shows that a policy decision was taken by the Government to have the recruitment undertaken for the posts by way of fresh advertisement. Such material would clearly justify a departure in policy for ascertaining merit of candidates which is neither irrational nor discriminatory or arbitrary. The petitioners otherwise have not acquired any right to be considered for recruitment. Objection, raised in that regard, therefore, fails.

20. The case law cited by the learned counsel for the Petitioners including the case of Hameed Akhtar Niazi (supra) are on different footing and distinguishable from the facts and circumstances of the present case.

21. In the light of above facts and the observation made by the Hon'ble Supreme Court in the case of Muhammad Arif & others vs. Province of Sindh & others (supra), consequently, all the Constitution Petitions merit no consideration and are dismissed with no order as to cost.

JUDGE

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