

**IN THE HIGH COURT OF SINDH AT KARACHI.**

Constitutional Petition No.D-1929 of 2014

**Present.**

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Sikandar Ali Shah & Others ..... Petitioners

Versus

Province Sindh and others ..... Respondents.

Dates of Hearing: **28.08.2018 & 04.09.2018**

Mr. Abdul Mujeeb Pirzada, Advocate for the Petitioners.

Mr. Waqarullah Korejo, Advocate for the Respondent No.4.

Mr. Shahryar Mehar, Assistant Advocate General Sindh a/w Ms. Shamin Imran & Ms. Humaira Parveen, Internees for Respondents No. 1,2,3 & 5.

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**JUDGMENT**

**ADNAN-UL-KARIM MEMON, J:-**, Through the captioned Constitution Petition, Petitioners have sought the following relief(s):-

- a) ***Declare the act as to non-issuance of the offer for selection of the Petitioner to the post of JST is arbitrary, illegal, against the spirit of the Teachers Recruitment Policy, 2012, and against all norms of law and principles of natural justice.***
- b) ***Direct the Respondents to shift/add the need based vacant seats at Taluka Pool and accordingly issue the offer letters to the Petitioners for their selection for the post of JST.***

2. Brief facts of the case in a nutshell are that in pursuance of advertisement published in 'Daily Kawish' dated 21.04.2012 inviting application for appointment of Junior School Teachers

(BPS-14), Petitioners applied for the post of JST (BPS-14) from District Thatta. As per Petitioners, Respondents started recruitment process, after processing their applications. The Respondent No.2 conducted written test through National Testing Service (NTS). Petitioners 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 the recruitment test for the post of JST (BPS-14). Petitioners asserted that they having successfully qualified the written test had legitimate expectation of recruitment for the post applied for, yet they were declined the appointment/posting orders. Petitioners added that as per the Respondents, the number of the candidates, who passed the requisite test, was in excess of the vacancies available in the respective Union Councils; therefore, such vacancies would be filled on merit basis. Petitioners have submitted that the Respondents prepared a list showing Need Based Vacancy Position for JST/Science and JST/General for each of the Union Council of District Thatta, indicating the names of the Petitioners in "Taluka Pool", such list was displayed directing all such nominated candidates to deposit their testimonials for verification and the Petitioners submitted the same accordingly, however the Respondents later on changed their mind and only "10% Taluka quota" was shifted and not as the whole, which caused great prejudice to the Petitioners. Petitioners averred that in various Union Councils of District Thatta, no candidate could qualify the test for appointment to the post of JST and the need

based vacancies had been illegally kept, which act is against the norms of Teachers Recruitment Policy, 2012 which envisages, “in case where a qualified candidate is not available for the need based vacancy in the union councils, the need based vacancy will be shifted to Taluka pool of the need based vacancies and a Taluka merit list will be prepared by District Recruitment Committee for selection of candidates on merit”, for which the Petitioners moved representations requesting for implementation of the Recruitment Policy 2012, but contrary to the said policy, the respondents have denied the Petitioners the offer of selection, which is against all norms of law and principles of natural justice. Petitioners being aggrieved by and dissatisfied with the impugned action of the Respondents No.2 to 5 have filed the instant Petition on 15.4.2014.

3. Upon notice, the Respondents 4 filed para wise comments and controverted the allegations leveled by the Petitioners against them.

4. Mr. Abdul Mujeeb Pirzada, learned Counsel for the Petitioner has argued that the officials Respondents have violated the rights of the Petitioners by failing/delaying to issue appointment letters, despite the fact that the Petitioners have successfully passed the prescribed examination; that after successfully clearing the examination, the Petitioners have acquired a vested right to be appointed on the post of JST (BPS-14) which cannot be denied by the whimsical and arbitrary actions of the official Respondents; that the action of the official Respondents is in violation of the

Fundamental Rights of the Petitioners as guaranteed under Articles 18, 24 and 25 read with Articles 4 , 8 and 10-A 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 Petitioners are being deprived of their lawful rights to be considered for appointment against the post of JST (BPS-14), that the Teachers Recruitment Policy 2012 is to be interpreted liberally; that despite availability of the need based seats in the District Thatta, the refusal / denial to shift/add the vacant seat to Taluka Pool on the part of the respondents is an illegal and arbitrary act; that non-implementation of the instructions for selection/appointment process in terms of the recruitment of Teachers Policy, 2012 is violative of the fundamental rights and protection under the law. In support of his contention he relied upon the cases of Salahuddin Dheraj Vs. Province of Sindh & others (PLD 2003 Sindh 236 and Shabbir Hussain Vs. Executive District Officer Education Larkana & others (2012 CLC 16) and argued that the criteria for selection, which was advertised in the Newspaper was not followed. He further added that any selection or appointment made in violation of criteria, laid down in the aforesaid policy is of no legal effect; that the official Respondents have failed to determine Union Council wise merit list and thereafter 10% seats to be allocated at Taluka Pool. He further added that there were various Union Council from where no candidate could pass NTS Test and need based seat was vacant which was required to be added / shifted to Taluka Pool as per Teacher

Recruitment Policy 2012. He lastly prayed for allowing the instant petition.

5. Mr. Waqarullah Korejo, learned counsel for the Respondent No.4 has contended that the instant petition is not maintainable; that post of JST has been fulfilled in accordance with the Teachers Recruitment Policy 2012. The merit list has been prepared by the District Recruitment Committee (DRC) under the Chairman-ship of Director School Education and other senior officials of District Thatta; that no violation or deviation from Recruitment Policy 2012 has been made; that 18 male and 7 female vacancy positions were available in the Union Council Thatta; that for 4 vacancies, 10% for Taluka quota and 1 vacancy position for disabled quota were separated from total vacancy positions; that as per Teachers Recruitment Policy 2012, candidates obtaining 60% marks or more in the written test was one of the criteria for teachers recruitment on contract basis for a period of three years from the date of joining which does not mean that the Petitioners qualified for the post of JST without fulfilling other recruitment conditions; that the following is the merit position of the candidates:-

***“i) Petitioner No.2 appeared in the test from UC Makli Taluka & District Thatta, he obtained 65 marks in the written test, whereas the vacancy positions were 8 male and 6 female vacancy positions were available in UC of Petitioner and the last candidate was recruited who obtained 68 marks which was higher marks then the petitioner No.2;***

***ii) Petitioner No.3 obtained 63 marks in written test in UC Makli Taluka & District Thatta; that Petitioner No.9 obtained 66 marks in UC Makli;***

*iii) Petitioner No.7 obtained 64 marks in UC Makli;  
iv) Petitioner No.8 obtained 62 marks in UC Makli and all the above mentioned petitioners did not meet the merit criteria hence they were not recruited;*

*v) Petitioner No.11 obtained 68 marks in written test in UC Darro Taluka Mirpur Bathoro District Thatta;  
vi) Petitioner No.14 obtained 67 marks in written test in UC Darro Taluka Mirpur Bathoro District Thatta;*

*vii) Petitioner No.15 obtained 66 marks in written from UC Darro; viii) Petitioner No.12 obtained 66 marks from the UC Darro; that as per the data shared by the District Education Officer there were 7 male and 1 female vacancy positions available in the UC of the petitioners whereas the last candidate recruited for the post of JST ( General) obtained 71 marks which was higher marks than the petitioners;*

*ix) Petitioner No.19 obtained 72 marks in written test from UC Laikpur Taluka Mirpur Bathoro district Thatta;*

*x) Petitioner No.16 obtained 71 marks from UC Laikpur;*

*xi) Petitioner No. 17 obtained 68 marks in written test from UC Darro Taluka Mirpur Bathoro District Thatta;*

*xii) Petitioner No. 18 obtained 68 marks from written test from UC Darro Taluka Mirpur Bathoro, District Thatta and as per data of DEO Thatta there was no vacancy position of JST (Science) in UC Darro Taluka Mirpur Bathoro District Thatta;*

*xiii) Petitioner No.56 obtained 64 marks in written from UC Thatta-2 Taluka Thatta District Thatta whereas 13 female vacancy positions were available in the UC candidate and there was no male vacancy position in UC Thatta-2;*

*xiv) Petitioner No.5 obtained 64 marks in written test.*

*xv) Petitioner No.4 obtained 62 marks in written test from UC Doomani Taluka & District Thatta; that as per the District Education Officer Thatta there were 4 male vacancy positions available whereas the last candidate recruited for the post of JST; xvi) Petitioner No. 10 obtained 63 marks in written test from UC Jhampir Taluka & District Thatta and as per the District Education Officer Thatta there were 8 male and 4 female vacancy positions available in UC of Petitioners;*

*xvii) Petitioner No. 13 obtained 66 marks in written test from UC Bano Taluka Mirpu Bathoro, District Thatt, Whereas 6 male vacancy positions were available in the UC of the candidate whereas the last candidate recruited for the post of JST General obtained 67 marks which were higher marks then the petitioners.”*

Mr. Waqarullah Korejo, has further contended that the entire recruitment process was conducted with the assistance of World Bank by the Province of Sindh in general and teaching personnel in particular; that the teachers recruitment in phase III was purely need based as appointments were made under the guidelines of the donor agency (World Bank); that all the Petitioners did not qualify for the post of JST(General) the candidates obtaining higher marks than the Petitioners were duly appointed as such no discrimination took place and no fundamental right of the Petitioners has been violated in appointments for the aforesaid posts; that the left over vacancies are required to be filled according to the Teachers Recruitment Policy-2012 through public notice. He lastly prayed for dismissal of the instant petition.

6. Mr. Shehryar Mehar, learned A.A.G Sindh, representing the Respondents No.1,2,3 & 5 has supported the arguments as advanced by the learned counsel for the Respondent No.4 and prayed for dismissal of the instant Petition.

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

8. The entire case of the Petitioners is built upon one point which is reproduced as under:-

**“Whether where a qualified candidate is not available for the need based vacancy in the union councils, the need based vacancy can be shifted to Taluka pool?”**

9. To appreciate the above factum, we have noticed that Clause 5(b) (i) (ii) & (iii) of the Instructions Manual for Appointment Process of the Teachers Recruitment Policy 2012, provides as under:-

**“5(b) JST – 10% Taluka / Tehsil quota will be observed against total stream wise seats of the Taluka:**

**i) First UC wise merit shall be determined based for each UC of Taluka.**

**ii) When merit of all UCs completed then remaining candidates shall compete for 10% seats allocated at Taluka**

**iii) The UCs where no candidate could pass NTS test and need base seat is vacant, that seat also will be added/shifted at Taluka pool.”**

10. Prima-facie as per Teachers Recruitment Policy 2012, candidates obtaining 60% marks or more in the written test was one of the criteria for teacher’s recruitment on contract basis for the period of three years. Record reflects that all the Petitioners obtained less marks than the successful candidates, who were selected for appointment on the aforesaid posts as per schedule given hereinabove. In view of the forgoing factual position of the case, we are of the considered view that the criterion for selection and appointment, provided under Teachers Recruitment Policy 2012 was fair, just and reasonable and does not require any interpretation on our part as asserted by the Petitioners. 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).

11. We are also cognizant of the fact that courts should not interfere with the policy matters of educational institutions. 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. Reverting to the plea taken by the Petitioners that they qualified for the post of JST, in this regard, we are of the view that mere passing written test could not, by itself, vest a candidate with the fundamental right for enforcing a Constitutional jurisdiction of this Court. Admittedly the authorities had not issued any offer of appointment to the Petitioners and appointment to the post was subject to the fulfillment of the conditions as mentioned in the Teachers Recruitment Policy 2012. We have 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. 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 JST were on contract period, thus this Court cannot over look this aspect of the case while issuing a writ in the nature of mandamus. 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 thus failed to make out their case for appointment and discrimination as well.

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

JUDGE

JUDGE

**Shafi Muhammad / P.A**