

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P.No.D-2010 of 2013

Mrs. Refat Seema & 4 others Petitioners

Versus

Province of Sindh and others Respondents

Date of hearing: 20.11.2017

Syed Shoa-un-Nabi Advocate for the Petitioners

Mr. Shehryar Mehar, AAG along with Shahmir Imran Internee and
Ms. Humaira Jatoi.

ORDER

ADNAN-UL-KARIM MEMON, J: The case of the Petitioners is that pursuant to the advertisement dated 30.01.2004, published in daily Kawish Hyderabad; the Petitioners had applied for the posts of High School Teacher (HST) and Primary School Teacher (PST) and obtained 62, 78, 83, and 94 marks and qualified for the appointment on the aforesaid posts. Petitioners have submitted that their names appeared in the list of successful candidates vide public notice. Petitioners have submitted that Respondents had refused to issue offer letters to the Petitioners No. 2 to 5 for the appointment as PST on contract basis for three years, however they did not issue offer letter to the Petitioner No.1 for the post of HST on the premise that she did not qualify for the aforesaid post as the last candidate for the appointment as HST obtained 63 marks in the written test, whereas she obtained 62 marks. Petitioners No. 2 to 5 have submitted that subsequently offer letters issued to the various candidates were cancelled by the Respondent department vide letter dated 18.06.2007 without

assigning any reason. The Petitioners being aggrieved by and dissatisfied with the aforesaid actions of the Respondents have approached this Court on 26.04.2013.

2. Syed Shoa-un-Nabi, learned counsel for Petitioners, has contended that the aforesaid action of the Respondents is illegal and void. He next argued that the Petitioners are seeking similar treatment as meted out with the colleagues of the Petitioners by this Court vide common order dated 04.05.2011 passed in C.P. No. D-1051 of 2007 and other connected petitions in the following terms:-

“i) that the letter dated 18.06.2007 issued to the petitioners cancelling their offer letters are set aside.

ii) That in terms of summary to the Worthy Chief Minister dated 18.10.2006, the Secretary Education will issue show cause notice within one months from today to such of the petitioners who are ineligible for appointment as JST, PST and HST's for not possessing prescribed educational qualifications.

iii) The proceedings of the said show cause notice will be concluded within further one month time and appropriate order will be passed regarding eligibility on the basis of educational qualifications of the petitioners and communicate the same to the petitioners through registered post acknowledgement due record of which will be maintained.

iv) In case within two months the process of issuing of show cause notice, enquiry and passing of the order and its communication to the petitioners regarding their eligibility on educational qualifications is not completed, all the petitioners will stand entitled to be posted to their respective posts and respondent will take them on job and start paying their salaries from 5th July 2011.

v) Those petitioners in respect of whom there is no dispute regarding their eligibility of educational qualifications, they will immediately be issued posing orders and their salary will commence from the month of May, 2011.

All the petitions in the above terms with listed applications stand disposed of.

As a result of above discussion, this petition is disposed of with the directions to the respondent No.2 to forward the names of petitioners to the Chief Secretary, Government of Sindh, so that their cases may be sent for consideration to the Scrutiny Committee constituted to deal with the cases of regularization under the Act, 2013. This exercise shall be completed within sixty days. At this juncture the learned AAG argued that sixty days' time will be reckoned from the date of sending names by the Respondent No.2, which argument seems to be logical and approved. The Chief Secretary, Government of Sindh shall ensure that as soon as the names are received from Respondent No.2, he will pass on the same to the Scrutiny Committee constituted to deal with the cases of regularization for their consideration and the petitioners be intimated accordingly.”

Learned counsel has submitted that the aforesaid order was assailed before the Hon'ble Supreme Court of Pakistan in Civil Petitions No. 594-K to 611-K of 2011 and the same were disposed

of vide common order dated 11.08.2011 with the following observations:-

“Mr. Abdul Fateh Malik, learned Advocate General Sindh, submits that though the terms of impugned judgment are in direct conflict with the earlier judgment of the High Court of Sindh dated 24.11.2008 in C.P.s No. D-670/2008 and D1090/2008, still the... Looking to the peculiar facts and circumstances of the case, request made by the learned Advocate General Sindh being reasonable, is acceded to.

We accordingly dismiss all these petitions and refuse leave to appeal however with the observation that time from given in the impugned order of the High Court dated 04.05.2011 is extended for a period of two months from today, which shall be treated as final.”

He has further argued that the Petitioners have obtained considerable marks and have succeeded in the test and the interview, therefore they cannot be penalized for the alleged irregularities, if any committed by the official Respondents. In support of his contention he 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.

3. Mr. Shehryar Mehar, learned Assistant Advocate General has refuted the claim of the Petitioners and referred to the comments filed by the Respondents 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 further added that on 30.01.2004 Education & Literacy Department invited applications for the appointment to the post of PST, JST, HST, OT, DT etc. through advertisement in some newspapers. The offer letters for these appointments were issued on 10.07.2006, which 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 basis of a 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. He stated that 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 the criteria laid down in the said policy was 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 the same 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 directions for issuance of posting orders. 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 Shabbir Vs. 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 only issued offer letters on contract basis and 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. He stated that all appointments for the posts of PST, JST and HST advertised 2007 onwards were made in accordance with the Recruitment Policy of 2008 and 2012 with the assistance of the World Bank as well as IBA and Sindh University in 2008. Learned AAG concluded by saying that at present there is no post lying vacant; therefore Petitioners No. 2 to 5 cannot be adjusted. Learned AAG has further pointed out that the Petitioner No.1 obtained lesser marks than the candidate, who was declared successful in the written test who obtained 63 marks, therefore she is not entitled for any relief from this Court. He prayed for dismissal of the captioned petition.

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

5. In the present proceedings, the Petitioners have heavily relied upon the order dated 04.05.2011 passed by this Court in C.P. No. D-1051 of 2007 as well as the case of Hameed Akhtar

Niazi supra. The learned AAG pointed out that the aforesaid orders passed by this Court and the Judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Hameed Akhtar Niazi supra have been discussed in the judgment dated 01.04.2015 passed by the Hon'ble Supreme Court in Civil Petition No. 186-K of 2013 in the case of Muhammad Arif & others Vs. Province of Sindh & others. An excerpt of the same is reproduced as under:-

“ The Education Department Government of Sindh, for the purpose of filing a number of posts of Junior School Teacher (JST), Primary School Teacher (PST) and High School Teacher (HST), invited applications through advertisement in newspapers on 06.04.2007. A total number of 3,75,000 candidates applied for the posts. The petitioners were among them 1,75,000 candidates passed the written test and eventually 2050 candidates selected on merit for appointment. The successful candidates, including the petitioners, were informed through office orders to collect their letter of offer for appointment to the said posts. However before the appointments could be materialized the entire examination was approved by the provincial government. The Petitioners filed Constitution Petition before the High Court of Sindh on 27.03.2012 seeking appointment. their petition was dismissed by the impugned judgment on two grounds, firstly that the Court had in the case of Shabbir Hussain v Executive District (Education) Larkana (2012 CLC 16) upheld the annulment of the selection and secondly, that the Constitution Petition has been filed with the delay of five years and thus suffered from laches.

2. We heard the learned counsel for the petitioners, whose only argument was that some of those who were selected along with the petitioners were subsequently appointed and thus the petitioners be treated alike. In support of his contention, reliance was placed on Hameed Akhtar Niazi v The Secretary Establishment Division (1996 SCMR 1185).

3. Responding to the above contentions, the learned Assistant Advocate General Sindh submitted that the appointments of some of the successful candidates were made on the orders of the Court and not by the Education Department on its own.

4. The record shows that certain appointments were undoubtedly made but on the orders of the Court. It further transpires that such orders were made with consent of the counsel representing the Department. However, the learned counsel was unable to refer to any judgment of the High Court which had allowed the petition of the successful candidates on merits. The consent order obviously cannot be cited as precedent, moreso when the scrapping of the examination was maintained by the High Court. Additionally, the Constitution Petition suffered from laches. By now, almost 8 years have passed by when the selection was made and it is too late in the day to direct the appointment of the Petitioners. The petition, is therefore is dismissed and leave refused.”

6. We have noticed that the appointment in the Education department were made on the basis of the orders of this Court with the consent of the parties, therefore the Petitioners cannot rely upon the order dated 04.05.2011 passed by this Court. The

learned counsel for Petitioners has failed to refer to 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 case of Muhammad Arif & others as discussed supra. In our view, once the Hon'ble Supreme Court has passed Judgment dated 01.04.2015 in terms "**when the scraping of the examination was maintained by the High Court, the Constitution Petition suffers from latches. By now almost 8 years have passed when the selection was made and it is too late in the day to direct the appointment of the Petitioners**".

In view of the explicit findings by the Hon'ble Supreme Court we cannot take any contrary view.

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

8. In the light of above facts and the observation made by the Hon'ble Supreme Court quoted above, this Constitution Petition merits no consideration and is accordingly dismissed with no order as to cost.

JUDGE

Karachi
Dated:- 23.11.2018

JUDGE