

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

C. P. No. D – 598 of 2014

[Kamran Mustafa v. Province of Sindh and others]

**Before:**

**Mr. Justice Aftab Ahmed Gorar and**

**Mr. Justice Muhammad Faisal Kamal Alam**

Date of hearing : 23.01.2020.

Petitioner : Kamran Mustafa, through  
Mr. Waqar Ahmed Abbasi,  
Advocate.

Official  
Respondents No.1 to 6. : Through Mr. Allah Bachayo  
Soomro, Additional A.G. Sindh.

Respondent No.7. : Through Mr. Shabeer Hussain  
Memon, Advocate.

**JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** - The Petitioner, *inter alia*, has sought cancelation of appointment order purportedly issued to Respondent No.7 (Ghulam Mustafa) for the post of Junior School Teacher (“JST”).  
Petition contains the following prayer\_

- “a) *Direct the respondents to cancel the appointment order issued to the respondent No. 7 against vacant post of JST Science of UC Hatri and issue appointment order to the petitioner as he is resident of UC Hatri, Taluka Hyderabad of District Hyderabad and has secured first position in UC Hatri.*
- b) *Grant ad-interim injunction, thereby direct the official respondents to restrain the respondent No. 7 from performing his duty against the vacant post of Junior School Teacher in UC Hatri, Taluka Hyderabad of District Hyderabad and not to pass*

*any order creating right of the respondent No. 7, till final disposal of the instant petition.*

- c) Costs of the petition may be saddled upon the respondents.*
- d) Any other relief(s) which this Honourable Court deems fit, just and proper in favor of the petitioner may be granted.”*

2. Mr. Waqar Ahmed Abbasi, Advocate, has argued, that in spite of the fact that Petitioner has secured first position in written recruitment test for JST, but was not given appointment letter and instead official Respondents showing nepotism and acting mala fidely, issued the appointment order in favor of the above named Respondent No. 7, although he does not belong to the same Union Council Hatri. It is further argued with the help of supporting documents, that even the CNIC of Respondent No. 7 (annexure ‘A’ with the petition) shows that he is a resident of House No. D – 150, Mohalla Qasim, Hyderabad, Sub-District Qasimabad. The learned counsel has referred to various representations made by Petitioner against the alleged discriminatory treatment meted out to him by Respondents, which all are part of the record.

3. Upon issuance of notices, official Respondents as well as Respondent No. 7 filed their parawise comments and objections (respectively) to the main petition.

4. As per learned Additional A.G., the record shows that initially the name of Respondent No.7 was at the top in the result sheet in respect of JST Science for UC-2 (Union Council-2) Hyderabad City, but upon his appeal, it was finally decided that he belonged to UC Hatri, which is the subject dispute. In the parawise comments of Respondent No.6 (District Education Officer), it is categorically mentioned that till the filing of such parawise comments (on 20.05.2015) Respondent No.7 was not appointed,

but it is expected that he would be selected soon. The other official Respondents No.3 and 4 (Chief Program Officer and Deputy Program Manager, Reform Support Unit) also filed similar parawise comments.

5. Private Respondent No.7 through Mr. Shabeer Hussain Memon, Advocate, has opposed the petition, through his above referred Objections, by stating that the CNIC relied upon by Petitioner was issued by mistake and the same was corrected by the competent authority, viz. NADRA (National Database and Registration Authority). He has further stated that his Permanent Resident Certificate (Form-B) and Certificate of Domicile, which the said Respondent No.7 placed on record with his objections, show that he was the resident of Village Haji Khan Buriro, Deh Khanpota, Taluka Hyderabad. Both these documents are of 03.01.1993 and 11.03.1987, respectively. He has also placed reliance on his alleged corrected CNIC in which his permanent address is mentioned as **“Haji Khan Buriro, Hatri, Taluka and District, Hyderabad”**.

6. Arguments heard and record perused.

7. None of the Respondents have disputed the credentials of Petitioner, that he is a Bachelor of Business Administration (BBA) from the University of Sindh and is a resident of UC Hatri, Taluka and District Hyderabad. The subject dispute relates to filling up of advertised vacant seats of High School, Primary School and Junior School Teachers (JST) on need-based-basis, in terms of Education Policy, 2012, for different Union Councils of Hyderabad (Rural), as per Annexure-A filed with parawise comments of official Respondents No.3 and 4.

8. Crux of the stance of official Respondents is that Respondent No. 7 secured 80 marks, that is, more than Petitioner, who secured 62 marks, but, upon his (Respondent No.7) appeal, the purported error was corrected and

he was considered to have passed the Written Test being a permanent resident of UC Hatri, instead of UC, City-2, Hyderabad, because “Deputy Commissioner, Hyderabad / Assistant Commissioner, Taluka Hyderabad” has confirmed the above factual position. Consequently, name of Respondent No. 7 was mentioned in Final Merit List relating to the post of JST (Science Group) at serial No. 1 as recommended by District Recruitment Committee (DRC). It is further stated that in due course of time, Offer Letter would be issued to Respondent No. 7. Official Respondent No. 6 has also appended a list showing need-base vacancy in Hyderabad for Primary School Teachers (PST), Junior School Teachers (JST) and High School Teachers (HST). Against UC (Union Council) Hatri, two posts of JST are shown to be available, one for Science and General Group each. This fact is also acknowledged in the parawise comments of official Respondents. However, two main factors relevant for deciding the controversy at hand have not been highlighted by official Respondents in their parawise comments; *firstly*, when the credentials of the Petitioner is not in question and particularly that originally he secured First Position in UC Hatri, and his status is shown in the official document appended with the parawise comments, as a candidate ‘**1<sup>st</sup> waiting**’, then on what logical basis Petitioner was not given Offer Letter of JST in General Group; *secondly*, why the decision of Deputy Commissioner which confirms the permanent residence of Respondents No. 7 has not been filed with parawise comments, which is material, instead, an application of Respondents No. 7, made to Director School Education, Hyderabad / Respondent No.5, is only available. In such type of petitions, when there is a close contest between candidates, who are parties to the proceedings, official Respondents are bound to assist the Court in utmost fair manner and should not withhold any material information or document on any

assumption whatsoever. Mere parawise comments of officials are not sufficient.

9. As per the prescribed Objection Form of Respondents No.3 and 4, any Objection relating to, *inter alia*, District, was to be submitted by 25.03.2013, *whereas*, the above referred application of Respondent No. 7 is of 18.11.2013, which is after seven months of the result announced.

10. Private Respondent No. 7 in his objection to the main petition, has stated that the copy of his CNIC, as appended with the petition, was subsequently corrected and the permanent residence was shown to be Hatri in his corrected CNIC, a copy of which he has filed with his said Objections. This document (copy of CNIC) is also taken into the account. This CNIC of Respondent No. 7, as relied upon by him, has been issued by NADRA on 07.12.2014, that is, after six months from filing of the present petition and it does not appear to be a *bona fide* act on behalf of Respondent No. 7. Since NADRA is not a party to the present case, thus, it cannot be ascertained that on what basis the correction in CNIC of Respondent No.7 has been made.

11. The Annexure “B”, which is the result sheet of candidates, who passed JST Test (Science Group), annexed with the parawise comments of Respondents No.6, so also other result sheets available in the record, when carefully examined, it is astonished to note that date of birth of Respondent No.7 is mentioned as 24.07.1968; the same date of birth is also mentioned in his latest CNIC (*ibid*). Copy of the Public Advertisement issued by official Respondents is also in the record, according to which, age limit for eligible male candidates in respect of JST (Science and General Groups both) is mentioned as **21 to 30 years**. At the relevant time, when this advertisement was published in May, 2012, the Respondent No.7 was

already over age as he was **44 years old** and was not eligible; besides, he has not mentioned his educational qualification or credential. As against that, the date of birth of Petitioner is **14.08.1988** (undisputedly) and at the relevant time he was **24 years old**. Consequently, if the Respondent No.7 is selected for the test of JST in Science group, it was a wrong and illegal decision of Respondents in view of the above discussion, which decision of official Respondents appears to be tainted with dishonesty and *mala fide*. Consequently, Official Respondents should consider the case of Petitioner for the post of JST in UC Hatri within four weeks from today, strictly within the parameters of law, relevant Rules and the current Education Policy. Accordingly, this **Petition** in the above terms is **accepted**.

12. In view of the above discussion, Respondent No.2 – Secretary Education and Literacy Department or the Chief Secretary (as the case may be) should immediately hold enquiry about the induction of Respondent No.7 as Junior School Teacher in Science Group and if it is found that the appointment of Respondent No.7 was *per se* illegal, then besides dismissing him from service, the said Respondent No.7 shall be liable to pay back / return all the salaries, he has drawn till date. The well-known reported decision of the Honourable Supreme Court handed down in the case of **Syed Mehmood Akhtar Naqvi v. Federation of Pakistan and others – P L D 2012 Supreme Court page-1089**, [in particular paragraph-81 (e) and (f)], is relevant. Similarly, all those officials, who at the relevant time were part of the selection process should be proceeded against in a disciplinary proceeding. Compliance Report be submitted within eight weeks.

14. For compliance, copy of this order be communicated to (i) learned Additional A.G. Sindh, (ii) Worthy Chief Secretary Sindh, and (iii) Worthy Secretary Education.

16. Parties to bear their respective costs.

**JUDGE**

**JUDGE**

**Hyderabad,**  
**Dated: \_\_\_\_\_.**