

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

C.P No. D- 424 of 2015

Before:-

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Adnan-ul-Karim Memon

Farman Ali and another

Petitioner

VERSUS

Government of Sindh
and others

Respondents

Mr. Muhammad Hanif Memon, Advocate for Petitioner

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing. : 08.09.2020
& decision.

ORDER

ADNAN-UL-KARIM MEMON, J:- The instant Petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the petitioners, seeking appointment to the post of Primary School Teacher (BPS-9) from Union Council Mullakatiar, Taluka Bulri Shah Karim, District Tando Muhammad Kahn.

2. Brief facts of the case in nutshell are that in pursuance of advertisement published in 'Daily Kawish' dated 19.04.2012 inviting applications for the post of Primary School Teachers (BPS-9), on contract basis for a period of three years, petitioners applied for the same. The recruitment process started and in the month of January, 2013; Respondents conducted written test through National Testing Service (NTS) and published Provisional Merit List of successful candidates on its official website, according to which petitioners secured 68 and 67 marks respectively out of 100 in the Union Council Mullan Katiar, Taluka Bluri Shah Karim District Tando Muhammad Khan and were declared pass. Since the petitioners successfully qualified the written test, they had legitimate expectation of their recruitment. Per learned counsel while issuing merit list Respondents 3 and 4 included the names of Respondents 7 to 12 who were inhabitants of other union council and not Mullan Katiar, hence they moved applications to the competent authority and raised objection, but their complaint was not

considered. Petitioners being aggrieved by and dissatisfied by the impugned action of the official Respondents have filed the instant Petition on 7.3.2015.

3. Upon notice, Respondents 2 to 6 filed para-wise comments and controverted the allegations leveled against them.

4. Mr. Muhammad Hanif Memon, learned counsel for the Petitioners 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 by successfully passing the examination, the petitioners have acquired 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 official Respondents to accommodate the Private Respondents; that the official Respondents are acting in violation of the prescribed Rules as mentioned under Rule 4 of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, when the Respondent No.2 is the competent authority for appointment of the candidates; that the action of official Respondents is in violation of the Fundamental Rights of the Petitioners as guaranteed under Articles 18, 24 and 25 read with Articles 4 and 8 of the Constitution; that due to omission / failure of 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 Primary School Teacher (BPS-9); that the Teachers Recruitment Policy 2012 is discriminatory thus not sustainable in law; that the official Respondents have accommodated the private Respondents with malafide intention even otherwise they did not belong to the same Union Council. He has further contended that the private Respondents violated the recruitment rules by way of producing false information and bogus documents in collusion with the official Respondents in order to grab rights of real candidates including the petitioners. He lastly prayed for allowing the instant petition.

5. Mr. Allah Bachayo Soomro learned Additional Advocate General Sind representing Respondents 2 to 6 has argued that the instant petition is not maintainable on the ground that as per Teachers Recruitment Policy 2012, the Petitioners have alternate remedy available to them to file an application to the Chairman District Recruitment Committee (DRC) for redressal of their 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 based

appointments made under the guidelines of the donor agency (World Bank). Learned A.A.G. has referred to the comments of official Respondents and argued that after verification of documents of the candidates etc. by the District Recruitment Committee (DRC) the last candidate who secured 70 Marks was considered for appointment, However, the petitioners secured 68 and 67 Marks less than the successful candidates; that all the candidates secured highest marks in union Council Mulakatiar and none of them has secured less marks than the present Petitioners, therefore no discriminatory treatment is meted out with them.

6. We have heard learned counsel for the parties and perused the material available on record.

7. It appears from the record that petitioners applied for the post of Primary School Teacher (BPS-9) to be filled on merit subject to availability of need based vacancy in the designated Union Councils, through National Testing Service (NTS). We have gone through the Teacher Recruitment Policy 2012 which prima facie shows that the last candidate who secured 70 Marks was considered for appointment against the aforesaid post, whereas Petitioners obtained 67 and 68 marks, which are less marks than the successful candidates. We are therefore of the considered view that the criterion for selection and appointment, provided under Teachers Recruitment Policy 2012 was fair, just and reasonable. This Court has already decided the similar issue in the case of Shabbir Hussain vs. Executive District Officer (Education), Larkana and five others (2012 CLC 16).

8. As regards the contention of learned A.A.G. that the Courts cannot interfere in the policy matters of educational institutions, suffice to say that 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).

9. We are of the view that mere passing the written test could not, by itself, vest a candidate with right of selection and seeking enforcement of the right through Constitutional jurisdiction of this Court, is misconceived. Admittedly the authorities had not issued any offer of appointment to the Petitioners and appointment to the post was subject to Teachers Recruitment Policy 2012.

10. 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 against the post of Primary School Teacher.

Consequently, the instant Petition fails and is dismissed along with listed application(s).

JUDGE

JUDGE

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