

THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P No. D- 131 of 2014

Before:
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

Petitioner. : Qurban Ali through Mr. Badal Gahoti,
Advocate.

Respondents. : Through Mr. Allah Bachayoo Soomro,
Additional Advocate General, Sindh.

Date of hearing
& decision. : 12.12.2019

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner is seeking appointment to the post of Junior School Teacher (General) at Union Council Karam Khan Nizamani Taluka Hala, District Matiari. Per petitioner after conducting the written test by National Testing Service Pakistan (NTS), he was declared hence he had legitimate expectation of recruitment for the post applied for.

2. We have asked from learned counsel for the petitioner that how this petition is maintainable, when the whole process of recruitment has been completed and successful candidates, who secured high Marks than the petitioner, have been appointed on merit.

3. Mr. Badal Gahoti learned counsel for the petitioner replied 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 him that he will soon be issued offer order. Subsequently, the Petitioner time and again approached the official respondents for obtaining offer order but he was kept on false hopes; that respondent No.2 awarded 20 extra marks to female candidate/ respondent No.4, such announcement was made after the result of NTS; that the act of Respondent No.2 tantamount to circumvent the recruitment process as well as merit list which is without lawful justification; that Respondent No.2 has no authority or jurisdiction to award grace marks to Female candidate / respondent No.4 which is in violation of law. Petitioner being aggrieved by and dissatisfied with aforesaid actions of official respondents filed the captioned petitions on 30.3.2016.

4. Upon notice, the official respondents filed para wise comments and controverted the stance taken by the petitioner.

5. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh while referring his para-wise comments filed on behalf of official respondents refuted the claim of the petitioner and argued that the instant petition is not maintainable.

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

7. It appears from the record that the Petitioner applied for the post of Junior School Teacher (BPS-14) to be filled on merit subject to availability of vacancy in Union Council Karam Khan Nizamani. Record reflects that in National Testing Service, Petitioner obtained 75 score, whereas respondent No.4 obtained higher score (71+20=91) than the petitioner. As per Teachers Recruitment Policy 2012 she was duly recommended on merit in mixed category school. Therefore, District Recruitment Committee (DRC) opined against the petitioner having been failed to meet the criteria for the aforesaid post.

8. We have gone through the Teachers Recruitment Policy-2012 which prima facie show that 20 marks will be given to Female candidates who have secured marks in written test. As per vacancy position shown in District Recruitment Committee report attached with the comments of respondent No.1 one seat was available for mixed category and respondent No.4 obtained higher marks i.e. 91 was recommended for the post of Junior School Teacher (BPS-14) in Union Council Karam Khan Nizamani.

9. Reverting to the plea taken by learned counsel for the petitioner that 20 additional marks given to Female candidate/respondent No.4 is against the law, suffice it to say that clause 20 of Teachers Recruitment Policy-2012, reads as under:-

“20. Selection / Ranking Criteria for candidates Minimum 60 marks in written test are required for merit determination. The merit list will be prepared for the PST, JST and HST will be as under:-

- i) For the appointment of PST, the merit will be determined on the basis of Union Council subject the availability of need based vacancy in UC of candidate.
- ii) For the appointment of JST, the merit will be determined on the basis of Union Councils, subject to the availability of need based vacancy in UC of candidate and;

- iii) For the appointment of HST, the merit will be determined on district basis subject to availability of need base vacancy. **Female candidates will be given additional 20 marks to qualified female candidate.** Repeat test will be conducted in any UC or Taluka where number of qualified candidates is less than the eligible number of need based vacancies. The specific criteria will be developed for the repeat test.”

10. We are, therefore, of the considered view that the criterion for selection and appointment, provided under Teachers Recruitment Policy 2012 is reasonable. On the aforesaid proposition, this Court has already decided the case of *Shabbir Hussain vs. Executive District Officer (Education), Larkana and five others* (2012 CLC 16).

11. As regards the contention of learned A.A.G. that the courts may not interfere with the policy matters of educational institutions we completely agree with the said contention of learned A.A.G. in view of the proposition of law as enunciated by 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. We are of the view that mere passing the written test could not, by itself, vests a candidate with fundamental right for enforcement by this Court. Admittedly the authorities had not issued any offer order for appointment to the Petitioner and appointment to the post is subject to Teachers Recruitment Policy 2012 and respondent No.4 has been declared successful candidate for the post of Junior School Teacher on merit, therefore, no case for appointment of the petitioner on the subject post is made out.

13. During the course of arguments learned Additional Advocate General has referred to the advertisement published in ‘Daily Kawish’ dated 19.04.2012 and argued that the appointment on the post referred were on contract basis for a period of three years. He further states that the project of School Education was being financed by the World Bank and appointments of the candidates were made as per criteria fixed by the World Bank in Teachers Education Policy 2012. In support of his contention, he relied upon the unreported order dated 07.07.2017 passed by Hon’ble Supreme Court in Civil Appeal No.190-K/2015.

14. We have noted that the appointments of the candidates were on contract basis for three years as per advertisement for the posts applied by the candidates and apparently such period has already been expired. On the basis of contentions of the parties with the material produced, it seems that appointment letter of the candidate/respondent No.4, who qualified for the post of Junior School Teacher was on contract period, thus this Court cannot over look this aspect of the case, while issuing a writ in the nature of mandamus.

15. It is a settled principle of law that for the purpose of maintaining a Constitution Petition it is the duty and obligation of the Petitioner to point out that the action of official respondents was in violation of their rules and regulations, which the Petitioner has failed to point out and failed to make out his case for discrimination as well.

16. In the light of above facts and circumstances of the case and the case law discussed supra, we reached to the conclusion that the petitioner has failed to make out a case for his appointment to the post of Junior School Teacher. Consequently, the instant Petition is dismissed along with listed application(s).

JUDGE

JUDGE

Fahad Memon