

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**C. P. No. D – 2716 of 2014**

**Before:**

Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **05-10-2021**

Date of Decision: **05-10-2021**

Haji Shamsuddin Rajper Advocate for the Petitioner.  
Mr. Ali Raza Baloch, Assistant A.G a/w Mumtaz Ali Shah, Deputy District  
Education Officer (Primary), Naushehro Feroze.

**ORDER**

**Muhammad Junaid Ghaffar, J.** – Through this Petition, the Petitioner has  
sought the following relief:

**“a. To direct the Respondents to accommodate/issue  
appointment orders of PST in favour of Petitioner  
against vacant post of PST in UC-Chanheen taluka  
Bhiria as per policy of Education Department.**

**b. To declare the appointments in UC-  
Chanheen Taluka Bhiria of those female-candidates  
who belongs to other Union council and district as  
null & void and liable to be cancelled”.**

2. Learned Counsel for the Petitioner submits that the Petitioner appeared in examination for the post of Primary School Teacher (PST) and obtained 60-marks in the written test conducted by the NTS, and was at Serial No.5 of the merit list, whereas despite availability of vacancies, she was not considered; hence the relief being sought be granted. In support he has relied upon the Instructions Manual for Appointment Process of the Teachers Recruitment Policy, 2012 (“Instructions Manual”).

3. On the other hand, learned AAG has opposed the Petitioner’s contention and submits that the Petitioner had failed to qualify minimum requirement, hence no case is made out.

4. We have heard the learned Counsel for the Petitioner as well as learned AAG and perused the record.

5. Comments have been filed on behalf of the Respondent No.3 i.e. District Education Officer (Primary), Naushehro Feroze and the relevant paragraphs-5,7 & 8 read as under:-

**“5. The petitioner appeared in the written test for appointment of PST and secured 60 marks as per merit list issued by the NTS. Whereas, the final eligible candidate appointed as PST including other eligible candidates, was finalized at the score of 63 marks in the written test. Hence she is not eligible to be appointed as PST against 05 available need based vacancies of PST's viz Zero (0) male, two (02) for females and three (03) for mixed category at U.C Chanheen Taluka Bhiria.**

**7. It is admitted that the petitioner was placed at serial No: 05 with written test score of 60, in the Final test score list issued by the NTS, whereas, in the final merit list issued by the DRC Five eligible candidates named, Ms. Seema (77 Marks), Ms. Neelam (69 Marks), Ms. Rabia (63 Marks), Mr. Masood Ahmed (85 Marks) and Mr. Muhammad Moosa (71 Marks, on Disable Quota) have been recommended against above mentioned five (05) need based vacancies of PSTs at the said U.C. (For perusal P.C of the final merit list/DRC for U.C Chanheen is attached herewith at annexure "A").**

**8. The objection of the Petitioner on two of the above said eligible candidates named Ms. Seema & Ms Rabia is also unjustified. In this regard it is submitted that the said appointment of the PST's is U.C specific, that is only the eligible native candidates of the U.C is to be recommended and Finalized on the basis of their written test score as per Teachers Recruitment Policy 2012. The aforementioned two eligible candidates under objection have been finalized for the said appointment at U.C Chanheen on the basis of their Domicile & PRC certificates on FORM-D issued by the Deputy Commissioner, Naushahro Feroze”.**

6. From perusal of aforesaid comments, it reflects that insofar as Petitioner's contention that she was at serial No.5 of the merit-list and ought to have been appointed, is belied and disputed inasmuch as according to the Respondents, last minimum marks were 63 and the Petitioner was not eligible to be appointed as PST against five available need based vacancies as she had obtained 60 marks. While confronted, Petitioner's Counsel has disputed such merit-list and submits that insofar as one vacancy given to a disabled person is concerned, it could only be given from the quota of such persons, and not from the merit-list itself. Before proceeding further, we may say that insofar as the phrase “*disabled persons*” is concerned, it is not appropriate to use it any further.

("disabled persons" is not approved should be "persons with disabilities")<sup>1</sup>. We should emphasize the individual and not his disability. Rather than using terms such as disabled person, handicapped people, a crippled person, we should be using the terms such as people/persons with disabilities, a person with a disability, or a person with a visual impairment.

7. Coming back to the stance of the Petitioners Counsel in support, he has referred to the Instructions Manual. It would be advantageous to refer to the relevant portion which is described under para 4 of *Transparency and Communication*, which reads as under:-

**"4. A separate list of disabled and minority candidates will be made by DEO, and will be provided to DRC. Note that disabled and minority candidates will also appear on the 'master' merit list as well as the 'disabled / minority list. In case a minority candidate stands eligible for posting on general merit list, he will be entertained there and post of and quota post will stand vacant if no other candidate is available for the said position".**

7. Perusal of aforesaid Policy relied by Petitioner's Counsel reflects that the same goes against the arguments so made as it has been provided that the disabled and minority candidates will also appear in the master merit list and in case a minority candidate stands eligible for posting on general merit-list, he will be entertained there and the quota post will stand vacant if no other candidate is available for the said post. The argument of the Petitioners Counsel, even otherwise appears to be illogical and absurd, as it could not be the intention that if a person who is otherwise not fully able; but has qualified with other candidates on merits; be placed or forced to be reckoned with other not so able persons. The idea behind reserving a quota for special persons is to protect them; to encourage them; so as to enable them to compete amongst like persons; and be encouraged to earn their livelihood along with other normal persons. They must not feel deprived in any manner. However, at the same time if a person of this category, is otherwise competent, and has qualified the test along with other normal category of persons, then it would too harsh and insane to ask him to join the merit list of persons with disabilities. The proposition of the petitioners Counsel is out of the book and any prudent mind would not accept the same, considering the fact that a person on his own is not less able to others; rather the compelling circumstances, be it natural or accidental, put him in that category; and if,

<sup>1</sup> Malik Ubaidullah v Government of Pakistan [(2021 PLC (CS) 65]

on his own, he is coming out of that category on merit, then no one has the right to ask him to join the category of persons with disabilities. One of the major difficulties faced by persons with disabilities is that employers have the erroneous assumption that these people will probably underperform in most areas of their duties - something which is actually not the case<sup>2</sup>. Under the social model, disability is explained as a condition created by society and the environment, and not the result of an individual's impairment. The human rights model or rights-based model embodies the values or principles of dignity, respect, equality, and social justice to the disabled<sup>3</sup>. Our Constitution, as a whole, does not distinguish between a person with or without disabilities. It recognizes inherent dignity of a human being; equal and inalienable rights of all the people as the foundation of freedom, justice and peace. Every person is entitled to all the rights and freedoms set forth therein, without distinction of any kind<sup>4</sup>.

8. Lastly, notwithstanding the above, it is noted from the documents annexed with the comments that in fact the DRC had revised the total number of seats from 5 to 4 in respect of the Union Council in question; i.e. 2 each for females and mixed category. In that case, the petitioner, admittedly being at Serial No.5 of the merit list, has no case.

9. In view of such position, we do not see any justification to grant the relief being sought; as no case is made out. Accordingly, this Petition being misconceived is hereby dismissed.

J U D G E

J U D G E

Ahmad

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<sup>2</sup> See Malik Ubaidullah (Supra)

<sup>3</sup> See Malik Ubaidullah (Supra)

<sup>4</sup> See Malik Ubaidullah (Supra)