

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Irfan Saadat Khan, J.**  
**Agha Faisal, J.**

CP D 2226 of 2019 : Shamshad Kakepota vs.  
Secretary, School Education &  
Literacy Department & Others

For the Petitioner : Mr. Wakeel Ali Shaikh, Advocate

For the Respondents : Mr. Ali Safdar Depar  
Assistant Advocate General Sindh

Mr. Abdul Jabbar Shahani  
Focal Person  
School Education & Literacy Department, Sindh

Date/s of hearing : 10.11.2021 & 11.11.2021

Date of announcement : 11.11.2021

## JUDGMENT

**Agha Faisal, J.** The petitioner was aggrieved with regard to her not being considered for promotion, along with her contemporaries, and this petition was actuated by the factum that her representation / appeal in such regard had not been determined despite having been pending for over three years.

2. On 28.09.2020, the following order was passed by this Court:

*This petition was filed on 03.04.2019, but comments have not been filed by any of the respondent despite passage of more than one and a half year. It is admitted position that the appeal (page 39) filed by the petitioner before respondent No.1/Secretary School Education & Literacy Department, Government of Sindh, is pending before the said Secretary since July 2018. Respondent No.1 is directed to decide the petitioner's appeal without fail within fifteen (15) days from today strictly in accordance with law and after providing opportunity of hearing to the petitioner, and to produce the final order passed on the said appeal before this Court on the next date of hearing. Issue notice to respondent No.1/Secretary School Education & Literacy Department, Government of Sindh, for compliance. To come up on 21.10.2020.*

3. On 10.11.2021, when this matter was heard it was admitted by the learned AAG that compliance of the aforesaid order had not been made, however, a notice of hearing in such regard was issued to the petitioner for the previous day, being 09.11.2021. Learned counsel for the petitioner denied ever having received the notice and submitted that the proceedings in respect of a Show Cause Notice dated 18.07.2017 had already concluded vide order dated 02.09.2021 and the petitioner had been duly exonerated. Learned AAG, when confronted, sought time to obtain further instructions, hence, the matter

was adjourned till today. The issue before the court remained the same as identified vide order dated 28.09.2020, being in respect of the representation / appeal of the petitioner before the Respondent No.1 dated 12.07.2018, available at page 39 of the Court file, ("Appeal").

4. Today, the learned AAG filed a statement along with an order dated 10.11.2021 ("Impugned Order") demonstrating that the Appeal of the petitioner had been rejected.

5. A specific query was put forth to the learned AAG as to whether the petitioner had been given any notice of the purported hearing on which the said order had been passed and he replied to the same in negative. On the contrary it was stated that no hearing *per se* was held on the date of passing the order.

6. The Impugned Order itself states that the petitioner was called for personal hearing in August 2018<sup>1</sup> and thereafter no action was taken until purported notice of hearing for 09.11.2021. There was no justification for this apparent delay in the text of the Impugned Order and no justification for the immediacy in issuing the order post yesterday's hearing. Learned AAG was also queried as to why the order of this court dated 28.09.2020 was not complied with within the stipulated time frame of fifteen days and further as to how the Impugned Order was issued on a day for which no notice had been communicated to the petitioner and no opportunity was provided to the petitioner to state her case. No cogent justification was articulated before us in such regard.

7. We are constrained to observe that the Impugned Order appears to have been delivered in undue haste and in demonstrable violation of the principles of natural justice. It is also deprecated that while no such order existed during the hearing conducted yesterday, however, the Impugned Order was issued surreptitiously taking advantage of the time granted by this Court to the learned AAG merely to obtain instructions from the department with regard to the pending Appeal, which had admittedly not been decided till the tenancy of the hearing yesterday.

8. In view of the foregoing, we are of the considered opinion that no case has been set forth before us to afford any lawful sanctity to the Impugned Order, hence, the same is found to be *void ab initio*. The competent authority

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<sup>1</sup> Denied by the petitioner's counsel.

is directed to hear the Appeal of the petitioner and decide the same in accordance with the law, after giving due opportunity to the petitioner to present her case. It is expected that the entire exercise shall be conducted preferably within the period of one month from the date hereof.

9. The petition is hereby allowed in the aforesaid terms.

JUDGE

JUDGE