

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3964 of 2013
(*Irshad Ahmed and 29 others v. Province of Sindh & 100 others*)

Mr. M.M. Aqil Awan advocate along with Mr. Danish Rashid Khan, advocate for the petitioners.

Mr. Ali Asadullah Bullo, advocate for respondents No.9 to 101

Mr. Ali Safdar Depar, AAG along with Abdul Jabbar Shahani, DS (Law) SE&LD and Shakeel Qureshi, Litigation Officer DSE (ES&HS) Hyderabad

Dates of hearing: **18.11.2021, 24.11.2021, 07.12.2021 & 05.04.2022**

Date of order: **19.04.2022**

ORDER

Adnan-ul-Karim Memon, J. Through the captioned Constitutional Petition, the petitioners have sought directions to the respondents No.1 and 2 to annul the process of recruitment for the posts of Sindhi Language Teacher (SLT), Language Teachers (LTs), Drawing Teachers (DTs), Arabic Teachers (ATs), Islamiat Teachers (ITs), Oriental Teachers, Assistant Home Economic Teachers, Junior Physical Education Teachers, Workshop Instructors, Commerce Teachers, etc., initiated in April 2012 by the Education and Literacy Department, Government of Sindh, *inter-alia*, on the ground that the whole process of recruitment was/is fraught with grave illegalities, and corrupt practices, which were/are violative of the principles of transparency as well as equity. Petitioners have averred that the invalidity of subject appointments arose not only for want of qualification of candidates but also from violation of legal provision for the appointment; that after the process of advertisement, the next logical step for a valid and lawful appointment is the short-listing process which is to be conducted by the selection committee, which factum was/is missing in the present case. Petitioners further averred that the subject recruitment process is a nullity in the eyes of law and liable to be canceled in the light of dicta laid down by the Honorable Supreme Court in the cases of *Obaidullah and another v. Habibullah and others*, PLD 1997 Supreme Court 835, *Mushtaq Ahmad Mohal and others v. The Honorable Lahore High Court, Lahore and others*, 1997 SCMR 1043, *Munawar Khan v. Niaz Muhammad and 7 others*, 1993 SCMR 1287, *Ghyasuddin Shahani and others v. Akhtar Hussain and others*, 2021 SCMR 1204, *Abrar Ali Khichi v. Chairman Sindh Public Service Commission through Secretary and 2 others*, 2018 PLC (CS) 52, *Selling of National Assets Including PIA at throwaway Price: in the matter of Human Rights Case No.11827-S of 2018*, 2019 SCMR 1952, *Raja Muhammad Asghar Khan, General Manager AKLASC Mirpur v. Muhammad Hafizullah, Manager, Technical AKLASC Upper Chater Housing Scheme Muzaffarabad and 5 others*, 2002 PLC(CS)

274, *Suo Motu Action Regarding Eligibility of Chairman and Members of Sindh Public Service Commission*, **2017 SCMR 637**, *Muhammad Umar Malik and others v. Federal Service Tribunal and others*, **PLD 1987 Supreme Court 172**, *Syed Mubashir Raza Jaffri and others v. Employees Old-Age Benefits Institutions (EOBI) through President of Board, Board of Trustees and others*, **2014 SCMR 949**, *Dr. Naveeda Tufail and 72 others v. Government of Punjab and others*, **2003 SCMR 291**, *Asaf Fasihuddin Khan Vardag v. Government of Pakistan and others*, **2014 SCMR 676**, *Muhammad Ashraf Sangri v. Federation of Pakistan and others*, **2014 SCMR 157**, *Muhammad Ashraf Tiwana and others v. Pakistan and others*, **2013 SCMR 1159**, and *Petition regarding miserable condition of the Schools*, **2014 SCMR 369**.

2. Mr. M.M. Aqil Awan, learned counsel for the petitioners, has contended that under service jurisprudence the suitability and eligibility of a candidate for every post could only be ascertained through an objective procedure as enshrined in the service rules. Learned counsel emphasized that the public notice as discussed supra explicitly shows that the subject posts were meant for the Hyderabad region only; without looking into the factum that all the public posts were/are to be filled by District Quota for all the Districts falling within the revenue limits of Hyderabad Region under Rule 11 and 14 of the Sindh Civil Servant (Appointment, Promotion & Transfer) Rules, 1974. Learned counsel next submitted that to flout the aforementioned provisions respondent-education department has committed fraud on the statute and violated the basic terms of advertisement, thus making the entire recruitment process non-transparent; that illegalities are apparent on the face of the record in as much as no vacancy, whether in Regional Quota as a whole or District Quota for each District had been disclosed; that the second relevant factor is the constitution of the selection committee which was responsible to hold and conduct the selection process ordinarily by way of taking a written test and out of successful candidates, conducting the interview, and then compiling the result, however, nothing could be done in the manner as prescribed under Rule 5(1) as well as 5(1-A) of the APT Rules, 1974. Per learned counsel, the requirement of Rule 5(1) & (1-A) is that the concerned department would determine in consultation with S&GAD, however, no Consultation with SGA&CD had been made in this case. He added that despite the grave illegalities pointed out above there was nothing on record to show that necessary due diligence as per the evaluation requirements of candidates was undertaken by the selection committee; besides that there was no record of the workings of the so-called 'Selection Committee and whether in evaluating the candidates' eligibility, was adhered to. Per learned counsel, in contravention of the recruitment rules and other enabling rules, the purported committee selected the favorites and the petitioners were denied the opportunity to shortlist and interview. Learned counsel went ahead and submitted that the candidates were earmarked for selection by the political figures, and the purported selection committee was used as a rubber stamp only; he further submitted that unfortunately and regrettably favoritism and cronyism were allowed to prevail over merit and competence. He added that until and unless strict compliance with the provisions of the statute and rules governing appointment to the subject appointments were adhered

to in letter and spirit, such appointments would always be subject to challenge on the ground of arbitrariness and non-compliance with the law and settled principles; that personal bias, political affiliation and a lack of empathy displayed by those mandated to make these appointments defeated all ideals, hopes and mechanisms of good governance; that it has by now become well settled that this Court can look into the process of appointments to public office and the process can be judicially reviewed to ensure that the requirements of law have been met; that list of selected candidates explicitly shows that appointments were made only based on a written test which was held on 29.04.2012, without interview; and the meeting of the District recruitment committee which evaluated the merit/fitness held its meeting on 06.06.2012 and in one day the merit of 455 candidates were evaluated, which was not humanly possible. Learned counsel invited attention that the purported merit list was signed by 12 officers who purportedly acted as members of the selection committee and none had acted as a Chairman of the Committee; besides that Regional Director School Education was also missing from the Committee; that the Second list of selected candidates also shows that 90 Male & Female teachers were selected in one day i.e. 11.06.2012, which factum is shocking; he asserted that this very appointment was/is also violative of the transparency in as much as neither the Roll number of these selected candidates was mentioned in their list, nor the marks secured by them were mentioned in these lists. Per learned counsel, the merit is to be determined always through the numbers secured by the respective candidates, when the number is not mentioned, then it would be difficult to say that merit prevailed, for the subject posts. He lastly prayed for allowing the petition.

3. Mr. Ali Safdar Depar, learned AAG has contended that it is a settled principle of law that to maintain a Constitution Petition it is the duty and obligation of the Petitioners to point out that the action of the respondents violated their Rules and Regulations, which the Petitioners have failed to point out and as such have failed to make out their discrimination case as well. He emphasized that there was no design or ill-will behind the advertisement of vacancies or holding of written examinations, as no interference of this court is required in the impugned recruitment process. However, he fairly referred to the statement dated 27.4.2021 filed by respondent No.2 and submitted that as per District Education Officer (ES&HS) Hyderabad the Domicile Certificate and PRC (D) of 93 private respondents were submitted to the Deputy Commissioner Hyderabad for verification on 12.2.2021 and the office of Deputy Commissioner issued a report on 17.3.2021 declaring the said certificates of 14 respondents as Fake / managed. Accordingly, the Show Cause Notice(s) were issued to all concerned; thereafter, the Deputy Commissioner Hyderabad issued a series of modification letter(s), whereby, he has negated the earlier view of declaring the certificate as Fake and now declaring the same certificates as Genuine, therefore, the concerned Directors have been requested to initiate disciplinary proceedings against them for having Fake Domicile and PRC at their credit; finally, the Final Show Cause Notice(s) are being issued to the concerned to complete the proceedings against the said 06 respondents for imposing a major penalty for removal from service upon them. Learned AAG has placed on record the list of candidates showing the marks obtained in

the written test, for the aforesaid posts. We asked him where the original record of the entire recruitment process is, but he has no answer.

4. Mr. Ali Asadullah Bullo, learned counsel for the respondents No.9 to 101, has submitted that the instant petition is not maintainable as no case is made out in terms of the private respondents being ineligible and/or the relevant appointments were illegal. He further submitted that no statutory violations or illegality in the manner of appointment has been pointed out. He further submitted that this court cannot sit in appeal over a collective decision taken by a legally and duly formed selection Committee. He further added that the issuance of the writ of mandamus and quo warranto confers upon this court to control executive action in making appointments to public offices against the relevant statutory provisions and not otherwise. He next submitted that the Appointment orders of the private respondents are not fake and the contentions of the petitioners are afterthoughts and a heavy burden lies upon their shoulders to prove their contentions; that the official Respondents are responsible for the alleged act of irregular appointments if any, and the private respondents cannot be deprived on account of the illegal acts of the official Respondents if any; that the petitioners do not have any locus standi as it is clear from the inconsistent stand in the pleadings; the private respondents are enjoying their postings and received their respective salaries and after the lapse of considerable time the petitioners have awakened from a deep slumber to say that the appointments of the private respondents were not genuine. He continued by stating that if there was/is maladministration in appointments, it is the responsibility of the official respondents and not the selected candidates/private respondents. Per learned Counsel since the private respondents were appointed by law and there was no illegality in their appointments; depriving the private respondents of their livelihood, is not called for at this stage, therefore, the instant Petition is liable to be dismissed. He further argued that the Petitioners are innocent and victims of an internal tug of war between the officials even otherwise the appointment orders of the private respondents for the aforesaid posts are genuine and the Petitioners have nothing to do with the purported fake appointments if any in the respondent department and that they cannot be held responsible for that. He lastly prayed for the dismissal of the instant Petition.

5. We have heard learned counsel for the parties, and perused the material available on record and case law cited at the bar.

6. The questions involved in the present lis are whether the private respondents/successful candidates possess the qualifications for the subject posts/appointment; whether the recruitment process initiated by the Education and Literacy Department, Government of Sindh was fair, just, and reasonable and within the parameters of the law.

7. It appears from the record that the process of recruitment for the teaching cadre posts of the different subjects from BPS-09, 10, 14 & 15, initiated in April 2012 by the Education and Literacy Department, Government of Sindh, vide advertisement published

on 04.04.2012 to 15.04.2012 in different newspapers i.e. Daily Kawish and Nawai Waqt. Per petitioners, the entire process was flawed because no proper selection committee was constituted under the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. Neither the result of such written tests was disclosed, nor interviews of the purported successful candidates conducted. The Petitioners who had applied and participated in the written test for the subject posts were given a setback, when the respondent-Education and Literacy Department, Hyderabad Region issued offer letters to the private respondents, without an announcement of the result, compelling them to rush to this Court and prayed for a direction to the Secretary, Education and Literacy Department, Government of Sindh, to cancel all the posting orders of the private respondents and other successful candidates on the subject posts based on flawed recruitment process and in alternate they also sought direction to the respondents No.1 to 6 to announce a fresh merit list of successful candidates based on written test conducted on 29.4.2012.

8. We have noticed that this Court issued various directions to the office of Director Schools Education Hyderabad Region Hyderabad to produce the Selection/Appointment record of all the successful candidates, in terms of order dated 12.3.2018, however, the respondent Education Department has failed and neglected to produce the relevant record for unknown reasons. Prima-facie the candidates had cleared the written examination but they had failed to appear in the interview/viva voce which was a pre-condition before they could be appointed to the posts applied for. Essentially the written test is designed to gauge a candidate's familiarity with the subject plus his power of expression etc. In our view, the written test does not gauge the personality of the candidate or his communication skills, or his leadership or decision-making abilities which are left to be examined at the time of the interview. For this proposition, our view is supported by the decision rendered by the Honorable Supreme Court in the case of *Muhammad Ashraf Sangri vs. Federation of Pakistan and others*, **2014 § C M R 157**.

9. Principally, an interview is a subjective test and a Court of law can't substitute its own opinion for that of the Interview Board. If any, malafide or bias, or for that matter error of judgment were floating on the surface of the record, we would have certainly intervened as Courts of law are more familiar with such improprieties rather than dilating into the question of the fitness of any candidate for a particular post which as observed above is a subjective matter and can best be assessed by the functionaries who are entrusted with this responsibility, in the present case, the Sindh Public Service Commission. For this proposition, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of *Federation of Pakistan through Secretary Establishment Division v. Ghulam Shabbir Jiskani*, **2011 § CMR 1198**.

10. Prima facie, the respondent department deliberately avoided placing on record the entire record about such recruitment process, from the beginning till appointment orders issued in favor of beneficiaries, perhaps there is fishy in the matter, compelling this court to refer the matter to the competent authority for thorough probe in the affairs of the Education Department, Government of Sindh.

11. Besides the above, the NAB authorities conducted the inquiry against officers/officials of the Education Department of District, Hyderabad, District Accounts Office, Hyderabad, and others regarding salary disbursements to non gazetted teaching staff illegally appointed in the Education Department of District Hyderabad. After completion of the inquiry, NAB reference No.10/2017 was filed before the learned Accountability Court at Hyderabad against the officials of the Education Department, however, the officials were acquitted from the charge for want of evidence, vide judgment dated 11.10.2018.

12. During the arguments, we asked the learned AAG whether the number of vacancies was disclosed in the advertisement; whether the subject posts were sanctioned and transpired in the budget book 2011-2012; and whether Selection /Recruitment Committee was constituted to make the subject appointments under the recruitment rules. He candidly submitted that there was no requirement of the number of vacancies to be mentioned in the advertisement; that Selection Committee was constituted on 12.12.2011 comprising of Regional Director School Education, being its Chairman, District Education Officer of the respective districts and Head of the Institutions as Members. Learned AAG has further submitted that examination of candidates could be taken either in three methods /forms that are Written Examination, Interview, and Viva-voce, which shall be determined by the competent authority. He also referred to the summary of subject appointments in BPS-9 to 15 of District Hyderabad during 2011-12, including 380 posts assigned to male candidates and 250 for female candidates. The detail is given as under:

Sr. No.	Name of Post	No of vacancies	No of applied for	No of the candidates appeared	No absent Candidates	No of the Selected Candidates
01	Sindh Language Teacher (SLT)	12	690	418	272	12
02	Language Teacher (LT)	111	1877	1333	544	101
03	Home Economics Teacher (HET)	04	43	34	09	04
04	Commerce Instructor (CI)	01	26	18	08	01
05	Assistant Home Economics Teacher (AHET)	04	63	45	18	04
06	Assistant Agriculture Instructor (AAI)	02	26	19	07	02
07	Assistant Workshop Instructor (AWI)	36	172	143	29	32
08	Oriental Teacher (OT)	119	360	313	47	112
09	Drawing Teacher (DT)	205	225	206	19	152
10	Physical Education Teacher (PET)	136	157	153	04	125
Total		630	3639	2682	957	545

13. Fair and meritorious appointment to public office is a requirement and spirit of law under Article 18 of the Constitution of the Islamic Republic of Pakistan 1973. It is also well-settled law that even where appointments were to be made in the exercise of powers conferred upon the competent authority, such powers are to be exercised reasonably and in a justified manner.

14. Primarily, the recruitment process for the post is regulated by the Sindh Civil Servants, Act 1973 and rules framed thereunder. In principle, posts are only of two kinds one is called a temporary post which is always a time-bound post, and the post which is not time-bound is always treated as a permanent post and there is no concept of any contract post in service jurisprudence. The appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules

and not otherwise. Appointments in the public office are to be made strictly under applicable rules and regulations without any discrimination and in a transparent manner. Thus, all appointments in the public institutions must be based on a process that is substantially and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws, i.e. advertisement, written test, and interview by the recruitment/selection committee. However, if the candidate has applied based on such an admissible quota under the law he can be accommodated subject to his qualification for the post under the recruitment rules. If approved offer letter is required to be issued to the successful candidate to accept the offer within 15 days, if accepted the candidate is required to undergo a medical fitness process if he crosses that process, the department is required to issue him the appointment order, subject to completion of one year, and/or two years probationary period; and if the appointee completes the probation period, the department is required to issue a confirmation of service certificate, then his seniority shall be prepared from the date of his regular appointment in the department.

15. Before we advert to the aforesaid submissions and the legal substantiality of the recruitment process as discussed supra. In the first instance, we deem it appropriate to have findings of the competent authority on the subject recruitment process, which has been called into question through the instant petition. In this regard, we seek guidance from the decision of the Honorable Supreme Court in the case of Government of Punjab through Chief Secretary and others vs. Aamir Junaid and others (2015 SCMR 74), in the aforesaid case, the judgment the learned Lahore High Court was upheld; whereby the learned Lahore High Court allowed a writ petition of certain employees in District Chiniot, whose appointments were canceled on the ground that the process of their selection was non-transparent and fraudulent, etc. by directing to reprocess the cases of such employees.

16. Prima facie, there are certain discrepancies in the subject recruitment process as pointed out by the learned counsel for the petitioners and discussed in the preceding paragraphs, therefore, we deem it appropriate to refer the matter to the Chief Secretary, Government of Sindh who shall constitute a Committee headed by him; and, the Secretary Education Department, Secretary Services General Administration, & Coordination Department, and Director School Education concerned, as members, who shall scrutinize the candidature of each recruited candidates including private respondents and petitioners, separately. The Committee shall examine the subject recruitment process, including all the relevant documents of the aforesaid candidates to satisfy that the same are not fake, forged, or manipulated; and to ascertain that the recruitment process was within the ambit of the relevant law, rules, and regulations. The Committee shall also satisfy itself that each of the candidates meets the eligibility criteria prescribed in the advertisement, in pursuance of which their appointments were made. The committee shall also verify that at the time of appointment each candidate was a resident of the concerned area for which the appointment was made. The petitioners/private respondents and all other selected candidates shall be intimated through public notice to furnish to the office of the Secretary, Education and Literacy Department, Government of

Sindh the requisite testimonials /documents/record along with their address and contact number so that they may be called for a personal hearing before the Committee. After hearing the petitioners/private respondents including the successful candidates and examining the documents furnished by the successful candidates, if found in order and possess the requisite qualification for the subject posts and meet the eligibility criteria as laid down in the advertisement in pursuance whereof the appointment process in question was initiated, shall be treated as valid and lawful appointees. In a case, the recruitment process is found to be flawed appropriate recommendations shall be made under the law. However, it is made clear that the aforesaid arrangement is subject to the outcome of the report of the Committee. The above exercise be concluded within three months from the receipt of a copy of this order.

Relist **after three months.**

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