

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA.**

**Constitution Petition No. D- 241 of 2016**

**Before:**

Justice Adnan-ul-Karim Memon  
Justice Abdul Mobeen Lakho

Petitioner : Abdul Hafeez Soomro, in person

Secretary, Education and Literacy, department, Government of Sindh and others : Through Mr. Abdul Hamid Bhurgri, Additional Advocate General, Sindh a/w Gulsher Ali Soomro, DEO (P), Larkana and Muhammad Ali Gopang, ADC-I, on behalf of DC, Larkana.

Private respondents. : Through Messrs. Habibullah G. Ghouri and Noorullah G. Rind, Advocates.

Date of hearing : 03.08.2022.  
Date of order : 03.08.2022.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Through this petition, the petitioner is seeking the appointment as a Primary School Teacher (PST) on the premise that he secured 87 marks in National Testing Service (NTS) test and his credentials were duly verified by the competent authority, thus, he is eligible and entitled to be appointed on the aforesaid post in UC -II, Ratodero District Larkana, on merit.

2. Petitioner, who is present in person has submitted that in pursuance of the advertisement published in the national print media in the year 2012 he applied for the post of PST and secured 87 marks in National Testing Service (NTS) test and his credentials were duly verified by the competent authority, thus, he is eligible and entitled to be appointed on the aforesaid post under the teachers' recruitment policy; petitioner referred various documents attached with the memo of the petition, more particularly the comments of respondent-Secretary Education department, whereby he dropped his candidature on the plea that the next candidate had a higher qualification to the petitioner, by ignoring the factum that petitioner was/is BSc Degree holder. He further submitted that this Court passed various directions to the respondents to issue the offer letter to the petitioner for the subject post, but they turned their deaf ear just to support the candidates of their choice i.e. respondent No.9 who was issued the offer letter as admitted by the DEO, Primary Larkana, vide order dated 15.5.2018. He further submitted that the real question before this Court relates to fairness, integrity, and transparency of the recruitment process and procedure adopted by the respondent-District Recruitment Committee/ department, who in turn initiated the pick and choose process, and knocked out the petitioner on a false

pretext, thus he has suffered a lot in perusing the matter since 2016. He further submitted that there are serious flaws in the process of selection of the candidates for the post of Primary School Teacher of the concerned area, which point explicitly shows a lack of transparency in the recruitment process just to facilitate nepotism and favoritism in accommodating the private respondents for the subject post that cannot be condoned. He prayed for allowing the instant petition.

3. The learned Additional AG has not controverted the factum of marks obtained by the petitioner and his qualification for the subject post, he however submitted that even a successful candidate does not acquire an indefeasible right to be appointed and that it could be legitimately denied. He further submitted that the public notice inviting application for the appointment has been held only to be an invitation to the qualified candidates to apply for an appointment. He next added that by mere applying or selection, the petitioner does not acquire any right to the post. He next submitted that on the decisions of authority on a policy matter, Courts will not ordinarily interfere. At this stage, we reminded him that Courts do not abdicate their right to scrutinize whether the policy has been formulated keeping in mind all relevant facts and whether it is beyond the pale of discrimination or unreasonableness based on the material on record. Unless the policy or action is inconsistent with the Constitution and the laws are arbitrary or irrational or there is an abuse of power, the Courts will not interfere with such policy matters. In support of his contention, he relied upon the order dated 1.4.2015 passed by the Hon'ble Supreme Court in Civil Petition No.186-K of 2013. He lastly prayed that matter may be referred to the competent authority for a decision on merits.

4. Mr. Habibullah G. Ghouri learned counsel for respondent No.8 has submitted that an employer has the discretion to formulate appropriate policy viz.a.viz job qualification and criteria for various positions in line with its peculiar requirements and organizational structure hence no person had a vested right to be appointed on a post rather the authorities made a selection for the post as per criteria set out in Rules/policy and had to find the most suitable candidate for the job who could capably discharge the duties, he lastly prayed for dismissal of the instant petition.

5. We have considered the facts and circumstances of the case. It is important to discuss the right of the petitioner to be appointed as PST as agitated by him. We have noted that the action of official respondents against the petitioner does impinge on his fundamental and statutory right, in the terms that he had secured 87 Marks and the candidate, who secured the same marks has been accommodated, based on higher qualification, though the petitioner is also BSc. Pass degree holders, therefore cannot be held disqualified for the subject post as per the teachers' recruitment policy introduced by the respondents from time to time. Besides the above, this court vide order dated 13.4.2021 directed the competent authority to take the examination/ test of the

petitioner, however, nothing has been placed on record in compliance with the said order. The Deputy Commissioner, Larkana, has filed a statement in compliance with the order dated 31.5.2022, which is taken on record. We are surprised rather shocked to know that since 09.3.2016 the petitioner has become rolling stone at the hands of the official respondents, despite the knowledge that the petitioner meets the eligibility criteria for the subject post in terms of the advertisement published in the year 2012. Prima facie the respondents are reluctant to decide as such we have no option to decide the matter by holding that the respondents have failed to consider the candidature of the petitioner on the aforesaid pleas and dropped him on the aforesaid analogy which is the erroneous decision. We are of the considered view that the competent authority ought to have appointed the petitioner in time and took almost 6 years to take the decision, thus they are responsible for the entire episode.

6. We in such circumstances direct the competent authority of the official respondents to issue the offer letter to the petitioner for the post of Primary School Teacher in a week and place on record the copy of the offer letter.

7. This petition stands disposed of in the above terms.

**JUDGE**

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