

ORDER SHEET

**THE HIGH COURT OF SINDH, KARACHI**

**C.P. No.D-3974 of 2023**

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Date Order with signature(s) of Judge(s)  
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1. For orders on Misc. No.18294/2023
2. For orders on office objection No.19
3. For orders on Misc. No.18295/2023
4. For hearing of main case.

**22.08.2023**

Mr. Waqarullah Korejo, Advocate for the Petitioner.  
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1. Granted.

2to4. Through this petition the petitioner has prayed that a committee be constituted by the Respondents for scrutiny of Petitioners case in line with the observations of Supreme Court dated 16.12.2021 and 15.9.2022 passed in CP No.46-K/2018.

Heard counsel for the petitioners and perused the record. At the very outset, petitioner's counsel has been confronted as to maintainability of this petition as the relief being sought pursuant to order dated 16.12.2021 passed in CP No. 46-K of 2018 and order dated 15.09.2022 does not pertain to the present petitioner inasmuch as the present petitioner had never availed any remedy for the relief now being sought; nor was a party before the Supreme Court; hence, the benefit of the order passed by the Supreme Court cannot be granted and in response, he has relied upon the case of *Hameed Akhtar Niazi*<sup>1</sup>. According to him, the petitioner is fully entitled for the same relief, as granted by the Honorable Supreme Court to others. He has been further confronted as to laches involved in this case as apparently the recruitment process in respect of which relief is now being sought pertains to the year 2012, and in response reliance has been placed on orders passed in CP No.D-612 of 2022 at Hyderabad Circuit Court and CP No.D-306 of 2022 at Larkana Circuit Court.

From perusal of the order(s) dated 16.12.2021 & 15.09.2022 passed by the Supreme Court, it appears that it is a result of some consensus between the petitioners therein and the Additional Advocate General and concerned Department, whereas there is no judgment or finding of the Honorable Supreme Court. In that case any reliance placed

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<sup>1</sup> Hameed Akhtar Niazi v The Secretary Establishment (1996 SCMR 1185)

on the case of *Hameed Akhtar Niazi (Supra)* is misconceived inasmuch as there is no independent adjudication of any legal issue by the Supreme Court, the benefit of which could be availed by the petitioners. The principle enunciated in *Hameed Akhtar Niazi (Supra)* is that where a question of law is decided by the Supreme Court in a service matter, then it can be applied to those as well who had not litigated. This is not the ratio of the order passed in the case as above. The consent order obviously cannot be cited as a precedent so as to make it binding on this Court. Moreover, the Supreme Court has called for reports from concerned departments and has passed various orders subsequently. Therefore, any reliance placed on such a consent order is of no help to the case of the present petitioners. Reliance may also be placed on order<sup>2</sup> dated 1.4.2015 passed by the Supreme Court in Civil Petition No.186-K of 2013 in more or less identical facts. Similar view has been expressed by a learned Division Bench of this Court in the case of *Mst. Jameela*<sup>3</sup>.

As to the objection regarding laches and the reply by the Petitioners Counsel, we may observe that identical Petitions have been dismissed by Sukkur Bench of this Court, comprising one of us namely *Muhammad Junaid Ghaffar, J.* One such order was passed in C.P No.D-179 of 2022, and the order of Circuit Court Hyderabad as above was also discussed. The same reads as under:

“Through this Petition, the Petitioners seek appointment as School Teachers (PST & HST) with Respondents pursuant to some advertisement and recruitment exercise carried out in the year 2013. It is the case of the Petitioners that they had qualified in the written test and interview, but no appointment orders were issued; hence, instant petition.

We have confronted the Petitioners’ Counsel as to involvement of laches in this matter and in response; he submits that on similar facts, certain orders have been passed by Circuit Court, Hyderabad in various petitions as stated in para-6 of the Petition. However, we are not inclined to consider the case of the Petitioners, as apparently laches is involved and no justifiable case has been made out in this regard; except reliance on the said orders. Nonetheless we have also perused one such order dated 26.01.2022 in CP No. D-1416 of 2020, and are of the considered view that it is not a binding precedent insofar as laches are concerned as the same has not been adjudicated or decided by the said Court at all; hence, any reliance on it is misconceived.

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<sup>2</sup> “The consent order obviously cannot be cited as precedent, moreso when the scrapping of the examination was maintained by the High Court. Additionally, the Constitution Petition suffered from laches. By now, almost 8 years have passed by when the selection was made and it is too late in the day to direct the appointment of Petitioners.”

<sup>3</sup> [2020 PLC (CS) 176] *Mst. Jameela v Province of Sindh* (incidentally authored by one of us; Adnan-ul- Karim, J.)

Moreover, it is a disposal order with certain directions and not a judgment to follow by itself.

Accordingly, this Petition being hit by laches is not maintainable and the same stands **dismissed in *limine*** with pending applications”.

Moreover, subsequently, another Division Bench at Hyderabad Circuit Court has also dismissed various identical petitions vide order(s) dated 30.3.2022 and 31.03.2022 in C.P. Nos. D-458 of 2022 and other connected matters and C.P. Nos D-594 of 2022 and other connected matters respectively.

In view of hereinabove facts and circumstances of this case, we do not see any reason to entertain this petition; being misconceived and not maintainable; hence the same was **dismissed in *limine*** by means of a short in the earlier part of the day and these are the reasons thereof.

**JUDGE**

**JUDGE**

*Faizan/PA\**