

Order Sheet
HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-2689 of 2019

[Mst. Iqra v. Province of Sindh & others]

BEFORE:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Arshad Hussain Khan

Petitioner : Through Mr. Mashooque Ali Bhurgari, Advocate.
Respondents 6 & 7: Through Mr. Roshan Ali Azeem Mallah, Advocate
Province of Sindh : Through Mr. Rafique Ahmed Dahri, Assistant A.G
Date of hearing : 30.08.2023
Date of order : 30.08.2023

ORDER

ARSHAD HUSSAIN KHAN, J.- Through this constitutional petition, the petitioner has mainly sought the following relief(s):-

- a) To declare the act of the respondents regarding the reconsideration of application form instead of late submission of document is null and void in light of policy Recruitment Policy 2017 of SELD Government of Sindh as per para No.15.2.IV and 18.III.*
- b) That this Honourable Court may be pleased to direct the respondents to appoint the petitioner being qualified and eligible candidate for the post of JEST accordingly.*
- c) That this Honourable Court may be pleased to direct the respondents to stop the proceeding of filling the posts of JEST till the final decision of instant petition.*

2. Concisely, the facts of the case as disclosed in the memo of petition are that respondent No.2 / Secretary Education & Literacy Department, Government of Sindh, invited applications for appointment / filling the posts of Junior Elementary School Teacher [JEST] in Education and Literacy Department, Government of Sindh, through advertisement in the newspaper Daily "Kawish" dated 20.03.2019. In pursuance thereof, the petitioner applied for the post of Junior Elementary School Teacher (JEST) BPS-14 by submitting application. After some time the aptitude test of the candidates was conducted by IBA Testing Service and the petitioner along with other candidates appeared in the test wherein she claims to have qualified by obtaining 52 Marks; whereas respondents No.6 & 7 got 53 & 55 marks

respectively. Subsequently, respondents No.6 & 7 were disqualified by District Recruitment Committee (DRC) in a meeting held on 03.08.2019 on the ground that they failed to submit documents viz. PRC Form "D" before the closing date. Therefore, the petitioner at Sr.No.24 of the qualified candidates claims to have become entitled for the post on the count that one of the above candidates / respondents at Sr.No.22 has been disqualified but later on they with the collusion of official respondents / DRC have been declared eligible candidates by showing their documents having been submitted within due date. The petitioner then moved applications to the competent authorities as well as approached them personally but all in vain, therefore, she feeling aggrieved has come to this Court by filing instant constitutional petition.

3. Pursuant to the notices, official respondent No.5 / DEO Badin, private respondents No.6 and 7 filed their para-wise comments and objections respectively.

4. The stance of respondent No.5 in its para-wise comments is that though respondents No.6 and 7 submitted all their relevant documents before the cut of date, however, since the Scrutiny Committee raised objection upon PRCs 'Form D' of respondent No. 6 and 7, as such, keeping in view the response of the objection of private respondents, the official respondent No.5 got verified the PRCs from the concerned department, which were found genuine. Two members of District Placement Committee [DPC] showed their dissatisfaction on the above said verification and asked for re-verification, as such, the cases/applications of respondent No. 6 and 7 were kept pending till the re-verification is received. However, when the re-verification received, the DPC unanimously recommended the cases of Respondents No.6 and 7 to respondent No.3 (Director School Education) (ES&HS) Hyderabad Region, Hyderabad, for issuing offer letters. It has been categorically stated that respondents No. 6 and 7 were never disqualified but their cases kept pending for re-verification.

5. Respondents No. 6 and 7 in their respective objections have also denied the allegations levelled in the memo of petition. It has been stated that at no point of time they were ever disqualified by respondent No.5 but only their cases were kept pending till verification of the PRC and when the same were received their cases were recommended and the appointment letters were issued.

6. We have heard learned counsel for the parties as well as AAG and with their assistance perused the material available on the record.

7. From the record, it appears that pursuant to an advertisement published in the Daily 'Kawish' dated 20.03.2018 whereby respondent No.2 / Secretary Education & Literacy Department, Government of Sindh, invited applications for appointment of the posts of Junior Elementary School Teacher [JEST] PBS-14 in the Education and Literacy Department, Government of Sindh, and the cut of date for filing documents was fixed as 20.04.2018, the petitioner along with other candidates had applied for the same. Subsequently, written test of the candidates was conducted by Sukkur IBA Testing Services [STS] and the petitioner along with other candidates appeared in the test wherein the petitioner was qualified by obtaining 52 Marks and she was placed at Sr. No. 24; whereas respondents No.6 & 7 got 53 & 55 marks respectively and were placed at serial Nos. 22 and 16 respectively in the merit list published by STS. During the scrutiny of the documents of the qualified candidates in the written test, the Scrutiny Committee raised objection in respect of the PRCs 'Form D' submitted by respondents No.6 & 7 dated 29.05.2018 and 14.06.2018 respectively as the said documents apparently issued after the cut of date. In response to the said objection, respondents No.6 and 7 by filing the photocopies of earlier issued PRCs dated 08.01.2018 and 15.10.2015, which were before the cut of date, submitted that since the earlier issued PRCs were lost as such PRC for respondent No.6 dated 29.05.2018 and for respondent No.7 dated 14.06.2018 were filed as duplicate of earlier issued PRCs. Respondent No.5 got verified the earlier issued PRCs of respondents No.6 & 7 from the concerned department, which were found genuine. However, Additional Deputy Commissioner-1 and Chief Monitoring Officer Badin being members of District Placement Committee [DPC] showed their dissatisfaction on the above said verification and asked for re-verification, as such, the cases/applications of respondents No. 6 and 7 were kept pending till the re-verification come. However, when the re-verification received the DPC unanimously recommended the cases of Respondents No. 6 and 7 to respondent No.3 [Director School Education] (ES&HS) Hyderabad Region, Hyderabad] for issuing offer letters.

8. Precisely, case of the petitioner is that since the applications of respondents No. 6 (Sr.No.22) and 7 (Sr.No.16) were rejected on 03.08.2019 by respondent No.5 on account of anomaly in their documents viz. PRCs

‘Form D’, as such, the petitioner, placed at serial No. 24 of the qualified candidates, has become entitled for the post.

9. Firstly, the petitioner has failed to produce any document, which could show that the applications of respondents No. 6 and 7 were ever rejected. Secondly, the official respondent in its comments has very categorically stated that the applications of respondents No. 6 and 7 were never rejected but the same were kept pending till the verification of documents, viz. PRCs ‘Form D’. However, when the re-verification received the DPC unanimously recommended the cases of Respondent No. 6 and 7 to respondent No.3 [Director School Education (ES&HS) Hyderabad Region Hyderabad] for issuing offer letters. The documents filed by respondent No.5 in support of the stance manifestly substantiate the case of the respondents. Moreover, there is nothing available on the record, which could show that the petitioners ever rebutted the comments of the respondents and the documents annexed therewith. In absence of any rebuttal in respect of the comments and documents annexed therewith, the malafide on the part of the respondents cannot be alleged. Even otherwise, it is well established principle of law that judicial review of an administrative order/action in the absence of any material contrary thereto [viz. mala fide], the Court should not interfere with any order of Executive/Authority, which otherwise is free from any illegality or jurisdictional flaw. Reliance can be placed on case of Federation of Pakistan v. Saeed Ahmed Khan [PLD 1974 SC 151].

10. In the present petition, the petitioners have also alleged that the respondents No. 6 and 7 with the collusion of official respondents have managed the documents and hence the official respondents committed illegality to deprive the petitioner from her right of appointment. In absence of any proof thereof, the petitioner by raising such allegations, in fact, has agitated the factual controversy, which cannot be resolved except adducing evidence that too through proper trial and the cases involving such questions do not qualify for invoking the constitutional jurisdiction of the High Court. Reliance in this regard can be placed on the cases of Muhammad Younus Khan and 12 others v. Government of N.W.F.P. through Secretary, Forest and Agriculture, Peshawar and others[1993 SCMR 618], Federation of Pakistan and 2 others v. Major (Retd.) Muhammad Sabir Khan [PLD 1991 SC 476] AND Anjuman Fruit Arhtian and others v. Deputy Commissioner Faisalabad and others[2011 SCMR 279].

11. It may also be observed that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties, can be determined only by the courts having plenary jurisdiction in the matter and not by this Court in the writ jurisdiction.

12. In the instant case the material available on the record reflects that the official respondents while entertaining/accepting the applications of respondents No. 6 and 7 have not committed any illegality. Conversely, the documents viz. PRCs 'Form D' annexed with applications were accepted upon verification and re-verification of the same from the concerned department. Learned counsel for the petitioner has not been able to point out any illegality or material irregularity or violation in the recruitment process of appointment of respondents No. 6 and 7 for the post of JEST warranting interference in exercise of writ jurisdiction of this Court, hence the present constitutional petition is liable to dismissed being devoid of any merit.

13. Foregoing are the reasons for our short order dated 30.08.2023, whereby this petition along with listed application was dismissed with no order as to costs.

JUDGE

JUDGE

Shahid