

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Constitution Petition No.D-879 of 2024
(*Hafiza Imrana Maqsood Vs. Province of Sindh & others*)

DATE ORDER WITH SIGNATURE OF JUDGE

Before;
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Date of hearing & Order 26.08.2024

Petitioner Hafiza Imrana Maqsood present in person
Mr. Muhammad Sharif Solangi, Assistant A.G Sindh along with
DEOs (Primary/Secondary) Mirpurkhas and H.R DG

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ORDER

Adnan-ul-Karim Memon, J.

The petitioner Hafiza Imrana Maqsood through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeks direction to respondent No.3, 4, 5 & 6 to issue her appointment order for the post of Primary School Teacher (PST) BPS-14.

2. The petitioner who is present in person has submitted that was offered the post of Primary School Teacher on 01-03-2023 and in pursuance whereof she completed all codal formalities; however, her appointment order was withheld on the ground that her previous domicile certificate bearing No.GRW-8-2016-2662 dated 19.8.2016 was canceled on 3.4.2023, after issuance of an offer order dated 1.3.2023 though the respondents were informed that she applied for cancellation of her domicile on 25.3.2022 the same was inadvertently canceled a little bit late by the office of Deputy Commissioner Gujranwala but to no avail. She further submitted that she had obtained the Domicile and PRC Certificate of District Mirpurkhas on 11.12.2019, such verification has been available on record vide a verification letter dated 6.10.2023 issued by the office of Deputy Commissioner Mirpurkhas. She further submits that the parents of the petitioner belong to Mirpurkhas and her domicile and PRC of Gujranwala District were canceled by the Deputy Commissioner; however, the same was not considered. Petitioner further submitted that

since she has qualified and acquired vested rights to be appointed for the subject post she cannot be non-suited based on the analogy that earlier her domicile was of Punjab Province. She further submitted that since her earlier domicile has been canceled and she has acquired the domicile of District Mirpurkhas, therefore, the respondents are not entitled to withhold her appointment order of the subject post. She prayed for allowing the petition.

3. The learned A.A.G without filling the comments has submitted that before the issuance of the offer letter, she belonged to Punjab Province, as such she was/is not entitled to apply for the post of Primary School Teacher, which was/is meant for the candidates from the province of Sindh. However, he agreed that as of now, her domicile is of District Mirpurkhas which was obtained in the year 2019 much before the offer of appointment dated 01-03-2023

4. We have considered the contentions advanced by learned counsel for the parties and have gone through the material available on record with their assistance.

5. The important questions arising in the present proceedings are as under:-

i) Whether the DRC can withhold/cancel the appointment of the petitioner under the law?

ii) Whether the petitioner is a permanent resident of District Mirpurkhas?

iii) Whether the petitioner being a permanent resident of District Mirpurkhas submitted her domicile certificate after the cut-off date i.e. 26.3.2021 can be disqualified for the post of Primary School Teacher as per Teachers Recruitment Policy 2021?

6. Record reflects that petitioner filled her requisite Application Form wherein she disclosed her domicile certificate issued to her on 11.12.2019, then she was allowed to participate in the recruitment process for the subject post, subsequently her result was announced on 26.9.2021 and She obtained 49 marks from Union Council -7 Taluka Mirpurkhas. Finally, she was offered the post of PST on 1.3.2023.

7. To appreciate the controversy in its proper perspective, we deem it appropriate to have a glance at the term "qualification"; therefore, it is

necessary, in the first instance, to understand the meaning of the word “Qualification” from various sources:-

(i) “a pass of an examination or an official completion of a course, especially one conferring status as a recognized practitioner of a profession or activity.

(ii) a condition that must be fulfilled before a right can be acquired; an official requirement.”

8. Having considered the dictionary meanings of the word “Qualification” and the interpretation given to it by the Superior Courts in the different Judgments, we intend to resolve the issue and seek guidance from the parent Statute i.e. Sind Civil Servants Act, 1973 and Sind Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. Rule 12- (1) provides as under:

“ A candidate for appointment by initial recruitment must possess the educational qualifications and experience and be within the age limit laid down for that appointment.

Rule 14- says that the Vacancies in the under mentioned posts shall be filled on Provincial basis, in accordance with the merit and regional or district quota as determined by Government from time to time.

(i) Posts in Basic Scales 2 [16] and above; (ii) Posts in Basic Scales 3 to 15 in offices which serve only the whole Province.

(ii) Rule15- provides that the Posts in [Basic Scales 3 to15 in offices which serve only a particular region or district shall be filed by appointment of persons domiciled in the region or district concerned.”

9. The Respondents have not disputed that the Petitioner is not a resident of District Mirpurkhas but premised their case on the assertion that the Petitioner had submitted the cancelation of her previous Domicile certificate after the offer letter dated 1.3.2023 as such she was/is disqualified for the post of Primary School Teacher BS-14. This Court is of the candid opinion that the cancellation of the petitioner's domicile certificate after the offer letter should not be a reason to withhold or cancel her appointment. This Court disagrees with the assertion made by the learned Assistant Advocate General and the officials present in court for the simple reason that the cancellation of the domicile certificate does not inherently disqualify the petitioner for the post she applied for, as per the Recruitment Rules. If the cancellation of the domicile certificate were a disqualifying factor, it could have been waived by the Competent Authority through the exercise of its powers and authority under the law.

10. Primarily, the petitioner is challenging the rejection of her appointment as a Primary School Teacher (BPS-14) based on the cancellation of her previous domicile certificate issue from the office of Deputy Commissioner Gujranwala. The petitioner argues that the cancellation of the domicile certificate after the offer letter does not debar her from the appointment, as per the relevant rules. Specifically, the petitioner cites Rule 5 and Rule 7(2) of the Sindh Permanent Residence Certificate Rules, 1971. Rule 5 states that certificates of Permanent Residence in Sindh must be issued in Form "C" for admission to educational institutions and Form "D" for recruitment to the Public Service. Rule 7(2) provides that a person with a domicile in another province cannot be granted a certificate in Form "D" unless they renounce that domicile and provide evidence of renunciation to the District Magistrate. The petitioner argues that she had already initiated the process of canceling her previous domicile certificate by applying on March 25, 2022, well before the recruitment process began in the present case. While Deputy Commissioner Gujranwala issued a letter on April 3, 2023, confirming the cancellation of her domicile, this fact was endorsed by Deputy Commissioner Mirpurkhas on October 6, 2023. Therefore, the petitioner contends that the cancellation of her domicile certificate after the offer letter should not be grounds for rejecting her candidature for appointment, as she had taken the necessary steps to comply with the relevant rules.

11. It appears that the petitioner received the offer letter for her appointment after completing the necessary formalities, including the verification of her domicile and permanent residence certificates (PRCs). This Court has concluded that once an offer of appointment is issued after all the required formalities have been completed, it cannot be revoked on a mere assumption, supposition, or the arbitrary decision of an executive official. Such a right, once acquired, cannot be destroyed or withdrawn as it is protected by the legal principle of *locus poenitentiae*, which is well-established in service jurisprudence. The Respondents thus in our view have failed to justify the impugned action of withholding the appointment order of the petitioner by the District Recruitment Committee (DRC).

12. In the light of the above facts and circumstances of the case, we are of the considered view that the decision of the DRC for cancellation of the appointment of the Petitioner for the post of Primary School Teacher BPS-14, if any, is the erroneous decision and is not sustainable under the law. Thus, we have concluded that the petitioner has made out her case for the appointment for the post of Primary School Teacher BPS-14. Consequently, the instant Petition is allowed as prayed. Pending application(s) also stand disposed of.

JUDGE

JUDGE

Ali Sher