

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P No. D – 163 of 2025

C. P No. D – 192 of 2025

Present;

Mr. JUSTICE ZULFIQAR ALI SANGI

Mr. JUSTICE NISAR AHMED BHANBHRO

In C.P No.D-163/2025 & CP. No D 192 / 2025

Petitioners : Through Mr. Achar Khan Gabol, Advocate

Respondents : Province of Sindh through Mr. Ali Raza Baloch,
Additional Advocate General Sindh

Date of hearing : 26.03.2025

Date of order : 26.03.2025

ORDER

Nisar Ahmed Bhanbhro, J;- Through this common order, we propose to dispose of captioned Petitions involving the same subject-matter.

2. Counsel for the petitioners in C.P No.D-192 of 2025 at the very outset, does not press the Petition to the extent of Petitioners No.3, 4 and 6, namely Shah Nawaz Ali, Ghulam Muhammad and Abdul Majeed, as they are residents of Districts Larkano, Kashmore at Kandhkot and Jacobabad, respectively, therefore, do not fall within the territorial jurisdiction of this Bench. Accordingly, the instant Petition to their extent is dismissed as not pressed for want of territorial jurisdiction, with a permission to file a fresh petition if so advised before the bench having jurisdiction.

3. Case of the Petitioners is that in the year, 2021, the Respondents through an advertisement published in various Newspapers as well as website of SIBA, invited Applications from the eligible candidates for filling the posts of JEST/PST in Education Department through SIBA, Sukkur. The Petitioners being eligible as per the criteria applied

for the posts of JESTs/PSTs and submitted their credentials to SIBA, they appeared in the written test and secured the required marks. Thereafter, the Education and Literacy Department introduced the Policy for appointment of the candidates by minimizing the ratio of passing marks up to 40 and further minimized the pass threshold up to 33 marks for the differently able persons and the “Hard Areas”, therefore, the petitioners were declared successful and were issued offer orders and after medical fitness and verification of their antecedent reports they were issued appointment orders, hence they joined their duties at their respective places of posting. Thereafter an order dated 12.01.2023 was passed in C.P No.D-297 of 2022 by this Court, whereby the Notification issued by the Government of Sindh for minimizing the passing marks threshold in respect of “Hard Areas” was suspended. The Respondent No 1 issued the impugned letter dated 22.01.2025 while misinterpreting the said order of this Court thereby withdrawn/cancelled the appointment orders of the present petitioners, hence, they pray that the impugned order is illegal, *mala fide* and result of misinterpretation of the order of this Court dated 12.01.2023, as the petitioners were appointed against the reserved quota of 5% for differently able persons, hence the present petitions.

4. In both the Petitions, the petitioners have prayed as follows;-

- (a) *To declare that the impugned Letter dated 22.01.2025 issued by the respondent No.1 is illegal, unlawful and same is liable to be set aside (as the impugned letter is contradictory to the order dated 12.01.2023 passed by this Honourable Court in C.P No.297/2022).*
- (b) *To direct the respondents to withdraw the impugned letter dated 22.01.2025 issued by respondent No.1 in respect of directions for withdrawal of the appointment orders of disable appointees by wrongly quoting the order dated 12.01.2023 passed by this Honourable Court in C.P No.D-297 of 2022.*

5. In response to the pleadings of the Petitioners the Respondent No 1 filed his reply asserting that the minimum threshold of 33 marks was revoked in compliance to the orders dated 12.01.2023 passed by this Court in Petition No D 2-97 of 2022. The Petitioners were given appointment orders without completing the formalities, they secured less than 40 marks,

they were not eligible for appointment, therefore, the department withdrawn their appointment orders.

6. Heard Learned Counsels for the parties and perused material available on record with their able assistance.

7. The Petitioners admittedly were issued appointment orders of teachers as PSTs and JESTs against a quota reserved under section 11(12) of the Sindh Empowerment of Persons with Disabilities Act 2018 being differently able persons. The Education Department Government of Sindh fixed a threshold of 33 marks for appointment of candidates in hard areas and candidates having disabilities vide notification dated 08.12.2021. The District Selection Committees dealing with the recruitment of teachers scrutinized the cases of the Petitioners and found them otherwise fit to be appointed as teachers.

8. The Government of Sindh revised its recruitment policy following the orders passed by this Court in CPD 297 of 2022 wherein the School Education & Literacy Department was restrained from making appointments of candidates who secured less than 40 marks in Hard Areas. The Education Department through letter dated 22.01.2025 directed the concerned Directors of the School Education Department to withdraw / cancel the appointment orders of all the candidates who had secured less than 40 marks. The appointment letters of the petitioners were withdrawn accordingly.

9. We have examined the cases of Petitioners, they were appointed under a particular quota of 5 per cent reserved for them under section 11(12) of the Sindh Empowerment of Persons with Disabilities Act 2018. They secured minimum 33 qualifying marks and Disability Certificates in their favor were issued by the Sindh Persons with Disabilities Protection Authority established under the Department of Empowerment of Persons with Disabilities Government of Sindh, thus were qualified to be appointed as teachers. The School Education Department issued the impugned letter dated 22.01.2025 by misinterpreting the

order of this Court which related to the appointment of teachers on merits in Hard Areas. The Division Bench of this Court of which one of us (Nisar Ahmed Bhanbhro J.) was a member while dealing with the same issue in “CP No D 511 of 2025 titled Meer Shahnawaz Versus the Province of Sindh” observed in para 12 of the order as under:

“12. The blanket termination letter / impugned order referred to above lead to the termination of the Petitioner and many others because they did not obtain 40 marks in their examinations. However we find that the concerned department by terminating the petitioner through this blanket letter / impugned order misinterpreted the Court Order which was referred to therein and reproduced above and it did not apply to those persons who had been appointed on a disabled quota who only needed to score more than 33 marks in the examination and the petitioner scored 34 marks which qualified him through the disabled quota and as such he was wrongly terminated. His case did not fall within one of a hard area. The 40 mark requirement had no relevance to the petitioner who had been appointed on the disabled quota under section 11(12) of the Sindh Empowerment of “Persons with Disabilities” Act 2018 as referred to above.”

10. Learned Additional Advocate General when confronted with above position painstakingly tried to convince this Court that the matter related to recruitment of teachers therefore a uniform policy of merit for appointments has been designed by the department.

11. We are not convinced with the stance of the School Education Department as the appointment under Disable Quota has a statutory backing and persons having any physical imparity cannot be placed in a uniform policy under employment process, as admittedly their abilities to perform routine activities are not at par with the normal persons. The Sindh Empowerment of Persons with Disabilities Act 2018 is a beneficial legislature aimed at benefitting the persons falling within the category of differently able persons. The goal of the empowerment of differently able persons can only be achieved by making them self

dependant, giving them their due share in the employment, placing them in a hygienic atmosphere at the work place. To achieve this goal the Government Departments are required to prepare a separate merit list for the recruitment of persons under this category, to ensure that no seat remains vacant under 5 % quota.

12. This Court believes in institutional autonomy and sparingly interferes into the appointment process, as it is the matter of internal discipline and deriving of policies for recruitment. The Department is in a better position to determine the method and qualification of recruitment ensuring merits, but once a policy is framed and appointments under the said policy are made by issuing appointment order then the withdrawal of appointment orders through a blanket letter would be a sheer abuse of the process of law. In the instant case the Respondent No 1 issued the impugned letter dated 22.01.2025 almost after 2 years of the order passed by this Court by making self determined interpretation. The impugned letter has been passed beyond the powers vested in Secretary School Education Department because the recruitment policy 2021 was framed by the Government of Sindh following a decision of Cabinet, the passing threshold of 33 marks for disable persons was also fixed by the Cabinet, therefore the Department was not competent to revise the policy through impugned letter by colorful exercise of powers in violation of the fundamental rights enshrined under article 4, 9, 25 and 27 of the Constitution. This Court is the custodian of the fundamental rights of the individuals and would not hesitate to step in enforce such constitutional guarantee when it appears that executive authority has acted beyond the bounds of law. We are of the considered view that this is fit case for exercising writ jurisdiction in favor of the Petitioner, we therefore allow these Constitution Petitions and set aside the impugned letter dated 22.01.2025 issued by the School Education Department Government of Sindh. The Petitioners are restored to their services from the date they were terminated/ their appointment orders were withdrawn with all back benefits. They shall join their duties at their respective places immediately. The impugned letter reflects that the process for the release of the Salaries of the Petitioners is also under halt for the reason of their marks below 40; the Respondent No 1 is

directed to finalize the process for release of salaries of the Petitioners within one month and ensure that the Petitioners receive their salaries in 45 days period from the date of this Order.

13. The Petitions stand disposed of in above terms along with listed applications.

Office is directed to send Copy of this Order to Learned AAG and Secretary to Government of Sindh School Education and Literacy Department for compliance.

Judge

Judge

ARBROHI