

JUDGMENT SHEET

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-905 of 2023

[Fida Hussain vs. Province of Sindh & Others]

Before:

Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Petitioner by : Raja Mohiuddin Panhwar advocate

Respondents by : Mr Muhammad Ismail Bhutto,
Additional A.G a/w Focal Person
DEO Elementary and Higher
Secondary Office Hyderabad
(Naveed Yousif Rana), Focal Person
DEO Primary Office Hyderabad
(Muhammad Ismail) and Office
Superintendent D.C Office
Hyderabad (Zahid Hussain)

Dates of Hearing : 27.03.2025

Date of Decision : 27.03.2025

JUDGMENT

ARBAB ALI HAKRO J:- The petitioner earnestly prays for his appointment pursuant to the statutory 5% quota duly earmarked for individuals with disabilities, as enshrined within the legal framework and safeguarded under equitable principles of justice and fairness.

2. Learned counsel for the petitioner submits that the petitioner is afflicted with Erb's Palsy, a disability duly certified by the Social Welfare Department Hyderabad, as evidenced by the certificate annexed at Annexure-A, page 17 of the Court's record. Counsel further submits that Respondent No.4, through advertisements dated 10.06.2021 and 08.06.2021 published in the Daily Jang newspaper, invited applications for various posts, including Naib Qasid, Sanitary Worker, Driver, and Lab Attendant (BS-1 to BS-4). Being duly qualified, the petitioner applied for the post of Naib Qasid, as substantiated by the applications appended on pages 23 to 29 of the Court's file. It is contended that subsequent interviews were conducted under the auspices of Respondent No.3, the Deputy Commissioner, in accordance with the notification issued by Respondent No.1 dated 03.03.2020. However, certain candidates were appointed while the

respondents ostensibly concealed the actual number of vacant posts, depriving the petitioner of his rightful appointment under the quota reserved for special persons with disabilities. Such conduct, it is averred, constitutes a blatant infringement of statutory provisions and judicial precedents established by the Supreme Court of Pakistan.

3. Learned Additional Advocate General (AAG), while referring to the comments submitted by the respondents, contends that there were 202 vacant posts, of which 63 were allocated to the position of Naib Qasid. He submits that, in accordance with the 5% quota reserved for persons with disabilities, three appointments were duly made. Learned AAG further states that, due to subsequent retirements and deaths, the total vacant posts of Naib Qasid increased to 148, out of which seven posts were designated for persons with disabilities in compliance with the 5% quota. Of these seven reserved positions, he asserts that three appointments had already been executed in adherence to the directives of the Supreme Court of Pakistan, while the remaining four posts were left under the purview of the Deputy Commissioner. He avers that the petitioner did not participate in the test and interviews and, as such, could not be considered for appointment. Concluding his submissions, the learned AAG emphasizes that all appointments made during the tenure of the caretaker government were declared null and void by this Court in Suit No.1493 of 2023.

4. We have meticulously considered the submissions advanced by learned counsel for the petitioner and learned Additional Advocate General (AAG) and the evidentiary material placed on record. The petitioner seeks redress for his alleged exclusion from appointment under the 5% disability quota, asserting that he participated in the interview conducted by the Selection Committee, a claim disputed by the respondents.

5. The petitioner has consistently claimed that he took part in the interview conducted by the respondents. As evidence, he provided Assessment Forms that his claims were prepared by the Selection Committee. However, the respondents have firmly denied this claim, creating a factual disagreement that requires careful consideration. Upon examining the Assessment Forms submitted by the petitioner, the Court identified several significant issues that cast doubt on their credibility. These forms are merely Photostat copies and lack any official stamp or endorsement from the appropriate authority, making their authenticity questionable. Moreover, the sections labelled

"Education, Behaviour, Way of Talking, Other, and Recommendations" are blank, indicating the incomplete forms. Additionally, the spaces allocated for the signatures of the Chairman and the two members of the Selection Committee are unsigned, further diminishing their reliability.

6. It is well-established that disputed facts can, in appropriate circumstances, be adjudicated in writ petitions, particularly where matters of public interest or fundamental rights are implicated. In the instant case, the issue pertains to implementing the statutory quota reserved for persons with disabilities, a matter of significant constitutional and legal importance. This Court is therefore inclined to exercise its jurisdiction to resolve the disputed facts presented.

7. The burden of proof lies with the petitioner to substantiate his claim. Given the inconsistencies in the Assessment Forms and the respondents' categorical denial, the petitioner has failed to provide sufficiently credible evidence to establish his participation in the interview process. The lack of proper authentication of the documents presented diminishes their probative value.

8. In view of the foregoing, we find that the petitioner has not discharged the burden of proving his participation in the interview process. As such, the petition stands dismissed. However, recognizing the importance of the statutory 5% quota, the petitioner can apply for future vacancies under the quota as and when new advertisements are issued. The respondents are directed to ensure transparency, accountability, and fairness in all future appointment processes under the quota, strictly adhering to relevant laws and judicial precedents.

JUDGE

JUDGE