

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

**C.P No. D-72 of 2025**

*[Ghulam Qadir v. P.O Sindh & others]*

**Before:**

**Mr. Justice Abdul Mobeen Lakho**

**Mr. Justice Riazat Ali Sahar**

Counsel for Petitioner: Mr. Abdul Hafeez Mari,  
Advocate.

Counsels/ Representatives for  
Official Respondents: Mr. Muhammad Sharif  
Solangi Assistant Advocate  
General, Sindh. Along with  
Mr. Tahir Saleem DEO (ES  
&HS), Mirpurkhas.

Respondent No.9: Haresh Kumar in person.

Date of Hearing: 27.08.2025

Date of Short Order: 27.08.2025

Date of Reasons: 29.08.2025

**JUDGMENT**

**RIAZAT ALI SAHAR, J: -** Through this Constitutional  
Petition, petitioner asserts that he had applied through IBA  
Sukkur for the posts of PST and JEST, was duly selected as PST  
(BPS-14) and also qualified for JEST, whereas private respondent  
No. 9 also applied and qualified for JEST but failed to appear  
before the District Selection Committee constituted in 2022 and

has remained absent without explanation. The petitioner was placed on the reserved list and subsequently included at serial No. 3 in the final 2024 list of eligible male candidates for JEST in Taluka Sindhri, while the name of respondent No.9 did not appear therein. Despite this, the petitioner apprehends that the official respondents, under the undue influence of respondent No. 9, are likely to issue an offer letter to him in usurpation of the petitioner's lawful right, which has caused the petitioner to seek following reliefs:

- “a. That the official respondents may kindly be restrained not to issue the offer letter/order to the private respondent No 09 without adopting due course of law.*
- b. That the petitioner may kindly be appointed/selected as JEST and issue him the offer letter/order/appointment letter as per merit and final list issued by the authorized officer.*
- c. Any other relief which may deem fit and proper as the circumstances of the petition.”*

**2.** Notices were duly issued to the respondents and their comments were called for.

**3.** Respondent No.2, Director School Education (ES & HS), District Mirpurkhas, and Respondent No.3, District Education Officer (ES & HS), District Mirpurkhas, in their reply to the petition, submitted that Respondent No.9, a private candidate for the JEST test, had remained absent from the first phase meeting of the District Selection Committee (DSC) due to the illness of his father. Thereafter, he submitted an application to the office of Respondent No.3, which was duly endorsed by the Director HR and Training, School Education and Literacy Department,

Government of Sindh, Karachi. In response to the said application, the office of Respondent No.3 addressed a letter to the Director HR and Training, School Education and Literacy Department, Government of Sindh, Karachi, vide office letter No. DEOES&HS/950/2023-24, seeking necessary instructions and guidelines. Consequently, the Office of the Director General HR and Training, School Education and Literacy Department, Government of Sindh, Karachi, through letter No. DG / HR&TRAINING / (SE&LD)JEST & PST / RECOMMENDED-16/2024/380 dated 25.04.2024, directed that the case of Respondent No.9 be placed before the DSC for consideration, as the proper procedure regarding his absence in the earlier DSC meeting had not been completed. It was further stated that the case of Respondent No.9 was entertained in the subsequent DSC meeting held on 08.01.2025, wherein he was recommended for appointment as JEST. They further stated that petitioner is in the waiting list.

4. Along with their comments, Respondents No.2 and 3 annexed, as *Annexure-A*, an application purportedly made by Respondent No. 9 [Mr. Haresh Kumar], wherein he requested permission to appear before the next meeting of the DSC. However, the said application conspicuously omits the date on which it was submitted, thereby casting serious doubt upon its veracity. In the application, Respondent No. 9 stated that his father had been diagnosed with “Chronic Pulmonary Obstructive Disease & Hypertension” during the period from 02-06-2022 to 06-06-2022, yet the application was received in the office of the

District Education Officer (DEO) only on 19.03.2024. The very next document, marked as *Annexure-B*, signed by Mr. Attaullah Talpur, DEO (ES & HS), Mirpurkhas and addressed to the Director General HR & Training, School Education & Literacy Department, Government of Sindh, Karachi, unequivocally records that Respondent No.9 had remained absent. Furthermore, it specifically refers to the Recruitment Policy for Teaching and Non-Teaching Staff, 2021, issued by the School Education & Literacy Department, Government of Sindh, particularly Para IV of Clause 17.6 (Interview), which is reproduced as under:

***“If any candidate called for interview does not appear before Divisional/District Selection Committee, he/she will be marked absent and his candidature will not be considered.”***

5. Learned counsel for the petitioner, Mr. Abdul Hafeez Mari, contended that the entire process undertaken to accommodate Respondent No.9 is *ex facie* illegal, arbitrary and in utter derogation of the Recruitment Policy 2021, which is binding upon all respondents. He submitted that once Respondent No. 9 failed to appear before the District Selection Committee in 2022, his candidature stood automatically lapsed under Clause 17.6 of the Policy, which unequivocally provides that a candidate marked absent shall not be considered any further. Learned counsel further contended that the belated application of Respondent No. 9, devoid of any date and surfacing almost two years later, not only smacks of manipulation but also militates against the principles of transparency, merit and fair play enshrined under Articles 4, 18

and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel maintained that the petitioner, being at Serial No. 3 of the final merit list, is entitled to appointment strictly in accordance with the doctrine of ***legitimate expectation***, while any attempt to bypass his rightful claim constitutes *mala fide* and colourable exercise of authority.

6. Conversely, learned Assistant Advocate General, Sindh, Mr. Muhammad Sharif Solangi, supported the stance of the official respondents and argued that no illegality has been committed in entertaining the case of Respondent No. 9. He contended that the absence of Respondent No. 9 from the initial District Selection Committee proceedings was not willful but occasioned by unavoidable circumstances, as his father was undergoing serious medical treatment during the relevant period. Learned AAG further submitted that the subsequent application of Respondent No. 9 was duly processed through the proper channel and was ultimately placed before the competent authority, i.e., the Director General HR & Training, School Education & Literacy Department, Government of Sindh, who issued specific directions to allow his candidature to be considered in the next DSC meeting. He maintained that the DSC, being a recommendatory body, was bound to act in accordance with those instructions and upon reconsideration, Respondent No. 9 was recommended on merit. Learned AAG emphasized that the petitioner, at best, remains in the waiting list and does not acquire an indefeasible right of appointment until all candidates higher in merit or otherwise

validly recommended are exhausted. He contended that the principle of service jurisprudence is well settled that mere inclusion in a merit list or waiting list does not by itself confer a vested right of appointment. Thus, the apprehension of the petitioner that his rights are being usurped is premature, misconceived and without legal foundation. The respondent No.9 adopted the arguments of learned A.A.G. Sindh.

7. Heard. Record Perused.

8. At the very outset, it is necessary to examine the Recruitment Policy, 2021, which by its plain language in Clause 17.6 stipulates that if any candidate called for interview does not appear before the Divisional/District Selection Committee, **“he/she will be marked absent and his candidature will not be considered.”** This provision leaves no scope for discretion or subsequent condonation of absence. *Expressum facit cessare tacitum*—when the law is expressed in explicit terms, nothing can be implied. Thus, the failure of Respondent No.9 to appear before the DSC in 2022, irrespective of the reasons advanced belatedly, disentitled him to any further consideration. The belated attempt to revive his candidature by producing a medical excuse almost two years later stands contrary to the principle enunciated in **Ali Azhar Khan Baloch v. Province of Sindh and others (2015 SCMR 456)**, where the Honourable Supreme Court held that recruitment and appointments must strictly adhere to the prescribed statutory scheme and any deviation violates Articles 4 and 25 of the Constitution.

9. The subsequent direction of the Director General HR & Training to place the case of Respondent No.9 before the DSC in 2025 appears to be an exercise *dehors* the Recruitment Policy. Executive instructions cannot override statutory rules or policies having binding force, as reiterated in **Ahmed Khan Dehpal v. Govt. of Balochistan (2013 SCMR 759)**, where it was held that no administrative authority has power to act in contravention of the law or rules and any such action would be void. The doctrine of *quando aliquid prohibetur ex directo, prohibetur et per obliquum* (what cannot be done directly, cannot be done indirectly) squarely applies: since Clause 17.6 barred reconsideration, the respondents could not have resorted to administrative directions to circumvent the prohibition.

10. The petitioner's claim also finds support in the doctrine of *legitimate expectation*, which has been recognized by the superior Courts of Pakistan. In **Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265, para 192)**, the Supreme Court underscored that State authorities must honour the legitimate expectation created by their policies and representations and deviation without rational justification violates Article 4. The petitioner, placed at Serial No.3 of the final merit list, legitimately expected that vacancies would be filled strictly on merit and in conformity with the notified rules. Any attempt to sidestep this merit position by resuscitating the candidature of Respondent No.9 amounts to *colourable exercise of authority*.

11. We are also fortified by the principle that public employment is a public trust and cannot be distributed on grounds of sympathy or extraneous considerations. Any departure from merit not only prejudices eligible candidates but also undermines public confidence in the fairness of the system. Sympathy for the medical condition of a candidate's father cannot justify violation of clear policy provisions. The law is *lex dura sed lex*—the law is harsh but it is the law. It is equally trite that where two competing claims arise, the one based on statutory rules and merit must prevail over the one based on executive indulgence. Authorities cannot bypass prescribed legal processes in order to accommodate individuals and if done, such action is ultra vires and liable to be struck down. In the present case, the petitioner's claim flows directly from the Recruitment Policy and final merit list, whereas the case of Respondent No.9 rests solely on executive indulgence unsupported by law.

12. The contention of learned AAG that inclusion in a merit list or waiting list does not confer a vested right is undoubtedly correct as a general proposition. However, the principle admits an exception where manipulation or unlawful favour is sought to elevate an otherwise disentitled candidate. Once the rights of a validly placed candidate are jeopardised by illegal accommodation of another, the Court is bound to intervene. The apprehension of the petitioner, therefore, is not premature but well-founded, for the very act of considering Respondent No.9 in



2025 constituted an illegality capable of depriving him of his lawful right.

**13.** On a cumulative consideration of the record and submissions, it is evident that Respondent No.9's candidature lapsed irretrievably upon his failure to appear before the DSC in 2022 and no subsequent application, however sympathetic, could revive it. The belated directions issued in 2024–25 were ultra vires the Recruitment Policy and offend Articles 4, 18 and 25 of the Constitution. The petitioner, having been duly placed in the final merit list, cannot be deprived of his entitlement. ***Fiat justitia ruat caelum*** — let justice be done though the heavens may fall.

**14.** For the reasons discussed hereinabove, this petition is ***allowed***. The action of the respondents in entertaining the candidature of Respondent No. 9 is declared to be without lawful authority and of no legal effect. The respondents are directed to ensure that appointments are made strictly in accordance with the final merit list and the Recruitment Policy, 2021. Petition stands **allowed** with no order as to costs. These are the reasons for our short order dated 27.08.2025.

***JUDGE***

***JUDGE***

\*Abdullahchanna/PS\*