

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No.D-1225 of 2025.
[Mst. Mehrun Nisa v. Province of Sindh and another]

Before:-

Mr. Justice Amjad Ali Bohio
Mr. Justice Ali Haider 'Ada'.

Petitioner : Mst. Mehrun Nisa, *through*
Mr. Farooq Ali Halepoto,
Advocate.

Respondents No.1 & 2. : *through* Mr. Ali Raza Balouch,
Additional Advocate General
Sindh.

Date of Hearing : 05.03.2026
Date of Decision : 05.03.2026

ORDER

Ali Haider 'Ada' J: The case of the Petitioner is that she applied for the post of **Early Childhood Teacher (ECT)** as advertised by the Education & Literacy Department, Government of Sindh, through Sukkur IBA Testing Services (SIBA). The petitioner obtained 53 marks out of 100 in the test, whereas the passing marks were fixed at 55. Through the present petition, the petitioner has challenged the fixation of 55 marks as the cut-off score, alleging that the same is illegal and discriminatory in nature, as the passing marks for other teaching posts were fixed at 45. The Petitioner has further requested that two grace marks be awarded to her so that she may be considered for appointment.

2. Learned counsel for the petitioner submits that the petitioner is otherwise qualified and has fulfilled all the required criteria. However, under the Teacher Recruitment Policy-2021, the minimum passing score for the post of ECT has been fixed at 55, which, according to him, is discriminatory. He argues that for other posts in the teaching cadre, such as Primary School Teacher (PST) and Junior Elementary School Teacher (JEST), the minimum passing marks have been fixed at 45.

Learned counsel further submits that although 1188 posts were advertised, only 585 candidates were declared successful and nearly half of the posts are still lying vacant. He therefore prays that the fixation of 55 marks as the minimum passing score be declared ultra vires the Constitution of Pakistan, and that the petitioner be granted two grace marks or two percent so that she may be appointed against the said post.

3. On the other hand, learned Additional Advocate General has relied upon the Teacher Recruitment Policy-2021 and submits that the policy clearly provides that the minimum passing score for the post of ECT is 55 marks. Therefore, since the petitioner has obtained only 53 marks, she has failed to meet the required criteria. He has also placed on record a decision of the Division Bench of this Court, Karachi in CP No. 508 of 2023, decided on 09-10-2025, which has been annexed with the compliance statement of the Special Secretary (Law), School Education and Literacy Department, Government of Sindh. In the said decision, this Court observed that the Teacher Recruitment Policy is a rational, transparent, and merit-based framework. He therefore supports the policy and prays that the present petition be dismissed.

4. Heard learned counsel for the parties and perused the material available on record.

5. Now, on merits, it has surfaced that a total of 1188 posts for the position of Early Childhood Teacher (ECT) BPS-15 were advertised. As per the result of the recruitment test conducted by Sukkur IBA Testing Services, 585 candidates were declared successful in accordance with the prescribed criteria, whereby the minimum passing score was fixed at 55%. The result record reflects that the successful candidates secured marks ranging from 78, 76, 75, 74, 73, and downwards up to 55. The last candidate, placed at serial No. 585, secured 55 marks. It is also reflected from the record that almost 73 candidates obtained exactly 55 marks. However, 83 candidates secured 54 marks, while 80 candidates, including the present petitioner, secured 53 marks. In such circumstances, the question of awarding grace marks arises. If grace marks were to be granted by the department, the first right would

accrue to those candidates who obtained 54 marks. But the grant of grace marks cannot be treated as a matter of pure discretion; rather, the same must be based upon a reasonable and lawful criterion, and must also be permissible under the relevant policy.

6. A perusal of the **Teacher Recruitment Policy-2021** reveals only one relevant condition, which provides that where two or more candidates secure equal marks, the selection committee shall consider factors such as age, higher qualification, earlier attainment of higher qualification, and higher percentage of marks. However, this criterion is applicable only for the purpose of determining preference between successful candidates who have already qualified with equal marks, and not for drawing a comparison between successful and unsuccessful candidates; as a result, the question of giving preference under the recruitment policy arises only when two competing candidates have secured equal marks on the merit list. Support in this regard is drawn from the judgment of the Hon'ble Supreme Court of Pakistan in the case of *Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and others versus Latif Ullah Khan*, reported as **2021 PLC (C.S.) 1120**, wherein it was held that preference under the recruitment policy can only be extended where candidates stand on equal footing in terms of merit.

7. Now, if the matter is examined with regard to Early Childhood Education, it appears that the Education and Literacy Department, Government of Sindh, in continuation of the policy of 2014, introduced the **Early Childhood Care & Education (ECCE) Sindh Policy, 2015**, in view of the essential need for structured early childhood education. In the said policy, the concept of Early Childhood Care and Education (ECCE) in Pakistan has been comprehensively elaborated, highlighting its importance, objectives, and the steps required for its effective implementation. The policy emphasizes that early childhood education forms the foundation of a child's healthy skills, social, and emotional development and therefore requires specially trained teachers and appropriate educational standards. The relevant paragraph of the said policy reads as follows:

2.1 Early Childhood Education (ECE) in Pakistan's public education sector can be traced back to the country's first Education Conference in November 1947. The terms of reference for the primary and secondary committee, then, included the provision of pre-primary education through a clause that the committee shall "recommend the lines on which pre-primary education may be run and to consider the part of the Central and Provincial governments in setting up Nursery schools (TEC, 1947)". The age bracket for early childhood mentioned in the 1947 proceedings was 3- 6 years.

2.2 In the 21st century, with every step forward, the Government of Pakistan and the province of Sindh fall back on the aims of education to align the way forward i.e. "To educate Pakistani's to be:

Seekers of truth and knowledge who can apply both for the progress of society;

Creative, constructive, communicative and reflective individuals;

Disciplined, productive, moderate and enlightened citizens;

Capable of effectively participating in the highly competitive global, knowledge based economy and the information age; citizens committed to creating a just civil society that respects diversity of views, beliefs and faiths¹."

2.3 Aligned with these principles, in 2000, Pakistan endorsed the Millennium Declaration, adopted 16 targets and 41 indicators against which progress towards achieving the eight MDGs by 2015 was measured. Pakistan also endorsed and adopted the Dakar Framework for Action, Education for All (EFA) goals to meet the learning needs of children, youth and adults by 2015.

2.4 In 2001, the Education Sector Reforms Action Plan 2001-2005 established ECE as an innovative program in government schools of Pakistan. This was followed by the National Plan of Action (NPA) for Education for All (EFA) goals 2002-2015 setting a target to achieve 50% of children attending ECE within formal schools. This target was not achieved primarily due to a shortage of resources.

2.4 The National Education Policy (NEP) 2009 was the first government document to formalize ECE in Pakistan as a Pre-Primary sub sector, termed as "Katchi", focusing on children aged 3-5 years.

2.5 In 2010, the 18th Constitutional Amendment devolved the responsibility of education to the provinces and Rite to Education Acts (RTA) were passed by Islamabad Capital Territory, Balochistan, Punjab and Sindh provinces mandating free and compulsory education for children aged 5-16 years (Article 25A) along with most having provisions for ECE. The Provincial Education Sector Plans 2014-18 then

paved the early childhood movement to achieve universal access to equitable and inclusive early childhood care and education service delivery.

2.6 The Global Partnership for Education (GPE) has supported this shift through its grant as reflected in the Sindh and Balochistan Education Sector Plans 2014-18 where ECE is integrated in a sector-wide approach in both Sindh and Balochistan provinces.

2.7 Against this background, for the first time in the history of Sindh, ECE was included as a component in the Sindh Education Sector Reforms Programme and funding was provided to the provincial and district governments.

2.8 The Sindh Education Sector Plan (SESP) 2014-18 outlined implementation of ECE in Sindh, highlighting the development of an ECE policy and minimum standards as the first objective.

2.9 In 2014, the first South-Asian Conference on Early Childhood Education and Development (ECED) and Right to Education was held in Karachi, Sindh to develop the Karachi Consensus Statement 2014 that agreed upon 9 principles and 48 recommendations across 5 themes of ECED namely policy and right to education; curriculum and standards; teacher/care giver preparation; assessment and research; and innovations. The 9th principle linked ECED to SDGs.

2.10 Policy development structures were prepared for a comprehensive analysis of local and global early childhood initiatives to inform and support government efforts on the provision of ECCE for achieving 8 MDGs, 17 SDGs and 6 EFA targets by 2030.

2.11 In 2015 the MDGs expired and a review of national progress highlighted that Pakistan had lagged behind in its commitments with respect to all indicators. 2015 also signified the expiry of EFA goals and subsequently the EFA Global Monitoring Report was released. The way forward was a renewed commitment to the 17 United Nations Sustainable Development Goals that begin in 2016 till 2030. The National Education Policy 2016 is under development and will integrate the SDG agenda along with provincial priorities.

8. It may also be noted that even at the international level, including under the framework and guidance of UNESCO, policy guidelines have been framed outlining the standards and recruitment considerations for the appointment of Early Childhood Teachers. In this regard, reference may be made to the **National Education Policy 2021** and the *Recommendations for Early Childhood Education Policy Consultation* held on 22 January 2021. The said consultation was moderated by ITA, (International Training Assistance) and led by nine

eminent panelists, with the participation of approximately 120 participants under the sponsorship of UNESCO (2021). The consultation emphasized the importance of qualified and competent teachers for early childhood education and highlighted the need for a structured and merit-based recruitment process for the appointment of Early Childhood Teachers. For the sake of convenience, the relevant paragraph is reproduced as under:

ECCE Cadre, Recruitment & Preparation (pre and in-service) with school-based support:

The above suggestions and holistic /inclusive support for ECE requires teachers/assistants/ planners who are well acquainted with the science, art and practice of ECE. Currently Sindh is the only province with new cadre for ECE Teachers (BPS 15); in Punjab the AEOs support the ECE initiative province wide at the cluster level (10 schools per AEOs). There must be an ECCE workforce cadre fully notified with TORs in place across the country. ECCE must be part of the pre-service professional development programs (B.Ed 4 years) and 1 year diplomas to make up for teacher shortages in this sub-sector. There is thus an urgency for policy action in this critical area. The post-Covid framework must also focus on the mental well-being of students, introducing EQ as an imperative quality for teachers, pro-active parental involvement.

9. Now, if the Recruitment Policy-2021 (Teaching and Non-Teaching Staff), commonly known as the Teachers Recruitment Policy 2021, framed by the School Education & Literacy Department, Government of Sindh, is perused, it appears that specific criteria for recruitment have been prescribed for each post, including Primary School Teacher (PST), Junior Elementary School Teacher (JEST), and Early Childhood Teacher (ECT).

10. Under the heading **“Recruitment of Early Childhood Teachers”**, the relevant Clause (3) assumes significant importance for the present controversy. For the sake of convenience, the said clause is reproduced as under:

(3) As children’s curiosity and imagination evokes learning, Early Childhood Education (ECE) focuses an education through engaging in recreation and developing appropriate standards to meet the physical, intellectual, emotional and social needs of children. To achieve the required objectives, female Early Childhood Teachers (ECTs) will be recruited and placed in the high priority and high enrolment schools.

11. Furthermore, in continuation of the objective recruitment criteria, Clause 18.3 of the said policy prescribes the **minimum passing score of 55% out of 100 marks** for the post of Early Childhood Teacher (ECT). In these circumstances, the contention of the petitioner that the fixation of 55% as the minimum passing score is ultra-virus cannot be accepted.

12. It is to be noted that the field of Early Childhood Education is fundamentally distinct from other teaching cadres. The **Early Childhood Care & Education (ECCE) Sindh Policy 2015**, the **National Education Policy 2021**, and the **Teachers Recruitment Policy 2021** collectively emphasized the critical importance of early childhood education as the foundational stage of a child's learning and development. At this stage, children develop basic skills, linguistic, emotional, and social abilities which shape their future learning capacity. Therefore, the role of an Early Childhood Teacher is considered highly specialized and responsive.

13. Keeping in view the importance of this stage, the policy makers have knowingly determined that comparatively higher merit should be maintained for the recruitment of Early Childhood Teachers so that competent and capable candidates are appointed to handle early learners. The fixation of a minimum passing score of 55% appears to be aligned with this objective. Thus, the determination of such criteria falls within the policy domain of the executive authorities. It is essentially an administrative decision taken after considering the relevant educational policies and the importance of early childhood education. In the absence of any apparent illegality or violation of law, such policy determination does not call for interference by this Court. Therefore, the minimum passing score of 55% prescribed for the post of Early Childhood Teacher cannot be termed as arbitrary or discriminatory; rather it appears to be a rational standard set in view of the specialized nature and significance of early childhood education.

14. Furthermore, mere selection in a written examination, and even qualifying any subsequent test or interview, does not by itself vest a candidate with a fundamental right to seek enforcement of

appointment through the Constitutional jurisdiction of this Court. It is now a well-settled principle of law that merely participating in a recruitment process, or even securing a place on the merit list, does not confer an enforceable right to appointment. The competent authority retains the discretion to proceed with the recruitment process in accordance with the applicable rules and policies. Guidance in this regard may be drawn from the judgment of the Hon'ble Supreme Court in the case of **Secretary Finance and others v. Ghulam Safdar, 2005 SCMR 534**, wherein it was held that:

10. Be that as it may, it is difficult to sustain the prayer of the respondents since mere selection in written examination and interview test would not, by itself, vest candidates with a Fundamental Right for enforcement as such in the exercise of Constitutional jurisdiction of the High Court. Admittedly, the appellants had not issued any offer of appointment to the respondents and their appointment was subject to clearance by the Establishment Division under the Centralised System of Recruitment till it was discontinued in November, 1996, which again coincided with the imposition of ban on fresh recruitments, which could not be safely ignored by the appellants. Thus, the High Court was not right in overlooking this aspect of the case and issuing a writ of mandamus of the nature prayed for.

15. It is also a settled principle of law that the Superior Courts ordinarily refrain from interfering in policy matters. The scope of judicial review in such cases is limited. The Court may only interfere where it is manifest that the policy decision is the result of arbitrary exercise of authority, is tainted with mala fide, is patently illegal, or is manifestly unreasonable. Guidance in this regard may be drawn from the judgment of the Hon'ble Supreme Court in **Abdul Hameed and others v. Water and Power Development Authority through Chairman, Lahore and others, 2021 SCMR 1230** wherein it was held that the Courts should not interfere in policy decisions of the executive unless such decisions are shown to be arbitrary, mala fide, contrary to law, or wholly unreasonable. Finally, it is also noteworthy that the Division Bench of this Court at Karachi has already examined the **Teachers Recruitment Policy 2021** and declared the same to be a rational, transparent, and merit-based framework. The said policy has been found to be within the lawful authority of the Provincial Government and consistent with the constitutional guarantees of equality and fairness.

16. Furthermore, the Provincial Government framed the recruitment policy as part of delegated legislation, and its provisions could not be invalidated on vague grounds of being unreasonable or prone to misuse, as held in **Executive District Officer (Revenue), District Khushab at Jauharabad and others vs Ijaz Hussain and another, 2012 PLC(C.S.) 917 [Supreme Court of Pakistan]**, wherein it was held that:

15. The framing of the recruitment policy and the rules thereunder, admittedly, fall in the executive domain. The Constitution of Islamic Republic of Pakistan is based on the well known principle of trichotomy of powers where legislature is vested with the function of law making, the executive with its enforcement and judiciary of interpreting the law. The Court can neither assume the role of a policy maker or that of a law maker. To the said extent the impugned judgment is not sustainable. Consequently, this appeal is allowed and the impugned judgment is set aside.

17. Consequently, in view of the foregoing discussion and reasons, this Court finds that the instant constitutional petition is devoid of merits. Accordingly, the present constitutional petition is hereby dismissed.

JUDGE

JUDGE