

THE HIGH COURT OF SINDH, CIRCUIT COURT AT LARKANA

Before:

Mr. Justice Riazat Ali Sahar

Mr. Justice Ali Haider 'Ada'

C.P. No.D-166 of 2025

(Imran Ali Memon v. Province of Sindh and others)

Petitioner: Imran Ali Memon in person.

Respondents: Province of Sindh & others through Mr.Liaquat Ali Shah, Additional Advocate General Sindh along with Zahid Ali Abbasi, Secretary, Govt. of Sindh, School Education & Literacy Department, Khalid Ahmed mahar, Director (Primary & Allah Bux Soomro, Director (ES&HS) Larkana.

Date of hearing: 22.09.2026.

Date of decision: 08.10.2026.

ORDER

RIAZAT ALI SAHAR, J: - Through the instant Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has prayed for the following relief(s):—

- a) to direct the respondents to issue appointment-cum-posting order in favour of the petitioner for the post of Music Teacher (BPS-14) in the School Education & Literacy Department, Government of Sindh, without further delay;
- b) to award costs of the petition; and
- c) to grant any other equitable and appropriate relief warranted by the facts and circumstances of the case.

2. Briefly stated, the petitioner applied for the post of Music Teacher (BPS-14) pursuant to an advertisement issued in the year 2023 through SIBA Testing Services, Sukkur IBA University, on behalf of the School Education & Literacy Department, Government of Sindh. He participated in the prescribed recruitment process, secured 42 marks and was placed at Serial No.302 of the merit list. Thereafter, the Director, School Education (E,S&HS), Larkana

Region, issued an offer letter dated 09.08.2023 in his favour. Pursuant thereto, the petitioner underwent the prescribed medical examination and was declared medically fit. His grievance is that, despite completion of the aforesaid stages, the respondents failed to issue the consequential appointment-cum-posting order. Hence, the present petition.

3. **In response to the notice issued by this Court, respondent No.1 filed comments and admitted the petitioner's participation in the recruitment process, securing of 42 marks and issuance of the offer letter dated 09.08.2023.** The principal stance of the respondents, however, is that issuance of an offer letter and medical fitness do not, by themselves, confer a vested or indefeasible right to appointment unless followed by a formal appointment-cum-posting order. Significantly, it is not disputed that the offer letter issued in favour of the petitioner has neither been withdrawn nor cancelled by any competent authority and continues to hold the field. The respondents have further relied upon proceedings in Civil Suit No.1493 of 2023 and maintained that, on account of the interim order passed in **Civil Suit No. 1493 of 2023**, the recruitment process could not be taken to its logical conclusion. Reference has also been made to H.C.A. No.267 of 2024 against such interim order concerning candidates who had been issued offer letters for the post of Music Teacher. Respondent No.3 has substantially adopted the same stance and sought dismissal of the petition.

4. During the course of these proceedings, on 12.08.2026, the Director, School Education, Larkana Region, appeared before this Court but was unable to furnish a satisfactory explanation as to why, despite issuance of the offer letter and completion of the medical examination, the appointment-cum-posting order had not been issued. Consequently, a report was called from the Secretary, School Education & Literacy Department, Government of Sindh. In response thereto, the Department reiterated that although an offer

letter had been issued to the petitioner on 09.08.2023, further proceedings could not be completed on account of the litigation concerning the recruitment process.

5. The petitioner, appearing in person, submits that he successfully passed through the prescribed recruitment process, obtained 42 marks, was placed on the merit list, received the offer letter dated 09.08.2023 and thereafter successfully underwent the medical fitness examination. According to him, nothing further remained to be performed on his part, yet the respondents, without cancelling his offer letter or assigning any deficiency to his candidature, have withheld the appointment-cum-posting order. He, therefore, seeks a direction for completion of the recruitment process in his favour.

6. Conversely, learned A.A.G. Sindh contends that mere issuance of an offer letter does not create a vested or indefeasible right to appointment. According to him, the recruitment process became subject to judicial proceedings in Civil Suit No.1493 of 2023 and, therefore, no lawful appointment could be made pursuant thereto. He further submits that the petitioner cannot claim appointment contrary to any binding judicial order governing the recruitment process and, consequently, the petition is liable to be dismissed.

7. We have heard the petitioner in person and learned A.A.G. Sindh and have carefully examined the material available on record.

8. Article 199(1)(a)(i) of the Constitution empowers a High Court, where no other adequate remedy is provided by law, to direct a person performing functions in connection with the affairs of the Federation, a Province or a local authority to refrain from doing anything which he is not permitted by law to do, or to do anything which he is required by law to do. **Constitutional jurisdiction is, therefore, available where a public authority**

fails to perform a legal or public duty or acts in an arbitrary, unreasonable or legally unsustainable manner. In the present case, the respondents are public authorities performing functions in connection with the affairs of the Province, while the petitioner's grievance relates to their failure to complete a recruitment process which, on their own showing, had substantially progressed in his favour.

9. **The material facts are largely undisputed. The petitioner participated in the recruitment process for the post of Music Teacher (BPS-14), secured 42 marks, was placed at Serial No.302 of the merit list, was issued an offer letter dated 09.08.2023 by the competent departmental authority and, pursuant thereto, underwent the prescribed medical examination and was declared medically fit.** There can be no quarrel with the proposition that mere inclusion in a merit list or issuance of an offer letter does not, in every circumstance, create an absolute or indefeasible right to appointment. Public employment necessarily remains subject to the applicable statutory rules, prescribed qualifications, verification of credentials, availability of sanctioned vacancies and fulfillment of all mandatory legal and codal requirements. However, that principle cannot be applied in isolation. Where the competent authority itself has processed a candidate through successive stages of recruitment, issued an offer letter and required him to undergo medical examination, the subsequent withholding of the final appointment must have some lawful and rational basis. An administrative authority cannot indefinitely keep such a candidate in uncertainty without either completing the process or identifying a legally sustainable impediment to his appointment.

10. **In the present case, no individual defect or disqualification has been attributed to the petitioner.** It is not alleged that he lacked the prescribed qualification, failed any stage of the recruitment process, furnished forged or false credentials,

was medically unfit or otherwise became ineligible under the applicable rules. On the contrary, the respondents admit the material stages completed by him. More importantly, the offer letter dated 09.08.2023 has admittedly neither been cancelled nor withdrawn by any competent authority. It, therefore, continues to form part of the subsisting departmental record. In these circumstances, the respondents cannot rely exclusively upon their own failure to issue the final appointment order as a ground for contending that the petitioner has acquired no enforceable claim whatsoever. The very omission relied upon by the respondents is the administrative inaction complained of before this Court.

11. We are also conscious of the principles underlying **res sub judice**, judicial propriety and comity of Courts. Section 10, C.P.C. embodies the salutary principle that courts of concurrent jurisdiction should not simultaneously adjudicate substantially the same controversy so as to avoid conflicting decisions. Likewise, the constitutional jurisdiction of this Court cannot be exercised in a manner which directly or indirectly nullifies, circumvents or sits in appeal over an order passed by another competent Court or Bench. The Supreme Court in *Water and Sanitation Agency, Lahore through M.D. v. Lottee Akhtar Beverages (Pvt.) Ltd., Lahore and others* (**2019 SCMR 1146**) emphasized observance of judicial propriety and comity where the same lis is already sub judice before another competent forum. The principle is intended to preserve consistency in judicial proceedings and prevent conflicting adjudications. Its application, however, necessarily depends upon the existence and legal effect of the proceedings relied upon. A party invoking an earlier judicial proceeding as a bar or continuing restraint must place before the Court sufficient material enabling it to ascertain the nature, scope and subsisting effect of such proceeding.

12. Similarly, Article 199(5) of the Constitution and the principle explained by the Supreme Court in **Chief Justice of Pakistan**

Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others (PLD 2010 SC 61) preclude exercise of constitutional jurisdiction by one High Court or one Bench against another High Court or Bench in a manner inconsistent with the constitutional scheme and harmonious functioning of superior Courts. The present petition, however, does not seek issuance of any writ against a Judge or another Bench of this Court, nor does the petitioner seek to have any judicial order set aside in collateral constitutional proceedings. The relief is directed against executive authorities of the School Education & Literacy Department and concerns their alleged failure to complete the administrative process relating to his candidature. **The respondents have relied upon proceedings in Civil Suit No.1493 of 2023 as the principal explanation for non-completion of the recruitment process. However, despite having invoked those proceedings as a defence, they have not placed before this Court complete material establishing that any order presently subsists which specifically prohibits consideration or appointment of the petitioner. In the absence of such material, this Court cannot presume either the continuation or extinction of those proceedings; nor can an interim order passed at an earlier stage be treated, without proof of its continued operation, as a perpetual justification for administrative inaction.**

13. Another important feature of the case is that the petitioner did not merely apply for the post or secure a position in the merit list. The Department proceeded further and issued an offer letter dated 09.08.2023 after completion of the relevant stages and thereafter subjected him to medical examination, which he successfully passed. Admittedly, the offer letter remains uncanceled. The proceedings before this Court on 12.08.2026 are also significant. The Director, School Education, Larkana Region, despite his personal appearance, could not satisfactorily explain the non-issuance of the appointment order, compelling this Court

to call for a report from the Secretary of the Department. The respondents have suggested that the recruitment process may be undertaken afresh and that the petitioner may participate therein subject to eligibility. Such a course, however, cannot by itself answer the petitioner's existing grievance. Unless the earlier process has lawfully been annulled in a manner binding upon the petitioner, or his offer letter has been withdrawn or cancelled in accordance with law, requiring him to start the entire process afresh would effectively deprive him of the benefit of the stages which the Department itself had already permitted him to complete.

14. We reiterate that an offer letter does not invariably confer an absolute right to public appointment. Nor can this Court direct an appointment contrary to statutory recruitment rules or in violation of a subsisting judicial restraint. Nevertheless, an equally important principle of public law is that executive discretion cannot be exercised arbitrarily or indefinitely. Once the competent authority has selected a candidate through the prescribed process, issued an offer letter and required completion of further formalities, it must either take the process to its lawful conclusion or disclose a legally sustainable reason for not doing so. Administrative silence or indefinite inaction cannot substitute for a lawful decision. In the case at hand, the respondents have neither identified any personal disqualification of the petitioner nor produced before us any subsisting order specifically restraining them from considering his case. The offer letter has also never been cancelled. The respondents' defence, therefore, does not furnish sufficient legal justification for keeping the petitioner's case pending indefinitely.

15. For the foregoing reasons, we are satisfied that the petitioner's grievance calls for constitutional intervention. The petitioner successfully participated in the prescribed recruitment process; secured 42 marks; was placed in the merit list; was issued an offer letter dated 09.08.2023; underwent the prescribed medical

examination and was declared fit; and no personal disqualification or deficiency has been established against him. **Above all, the offer letter admittedly remains intact and has not been withdrawn or cancelled by the competent authority.** Accordingly, the instant petition is **allowed**. The Secretary, School Education & Literacy Department, Government of Sindh, and the competent appointing authority are directed to complete the remaining codal, administrative and legal formalities in respect of the petitioner and, upon verification of his original credentials and fulfillment of all mandatory statutory requirements, issue the consequential appointment-cum-posting order for the post of Music Teacher (BPS-14), provided that no subsisting order of a competent Court specifically prohibits such appointment and no lawful disqualification attributable to the petitioner is found to exist. The entire exercise shall be completed within four (04) weeks from the date of receipt/communication of this order.

16. It is further clarified that the petitioner's case shall not be declined merely on the ground that a formal appointment-cum-posting order had not earlier been issued, when the non-issuance thereof was not attributable to any fault or disqualification on his part. At the same time, the respondents shall remain bound by the applicable statutory rules and any subsisting binding judicial order, if any. In case the respondents claim the existence of any such legal prohibition, the same shall be specifically identified and communicated to the petitioner through a reasoned order within the aforesaid period rather than leaving his candidature undecided indefinitely.

17. The petition stands **allowed** in the above terms, with no order as to costs.

JUDGE

JUDGE

Approved for reporting