

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P No. D – 2135 of 2024

Present:

Mr. Justice Zulfiqar Ali Sangi,

Mr. Justice Abdul Hamid Bhurgri,

Petitioners : Mumtaz Ali, Mureed Hussain, Saeed Ahmed, Muhakum Din, Nadeem, Majid Hussain and Nizamuddin, through Mr. Abdul Ahad Buriro, Advocate.

Respondents : Province of Sindh, through Secretary Education, Government of Sindh, through Mr. Ali Raza Baloch, Add.A.G Sindh.

Date of hearing : 18.03.2025.
Date of decision : 18.03.2025.

ORDER

Abdul Hamid Bhurgri, J.- The grievance raised by the petitioners in the present Constitutional Petition is that, pursuant to an advertisement published in various newspapers, they applied for the posts of Primary School Teacher (PST BPS-14). Subsequently, they appeared in the written examination conducted by SIBA, Sukkur. According to the petitioners, they successfully passed the said test in accordance with the criteria outlined in the advertisement. Despite fulfilling the prescribed requirements, the official respondents have not issued them appointment orders.

It is further alleged by the petitioners that the respondents are favoring certain individuals by offering appointments either in exchange for substantial bribes or on the basis of personal preference, thereby unlawfully depriving the petitioners, who are qualified candidates, of their rightful appointments. In this context, the petitioners have sought the following reliefs:

(a) That this Honourable Court may graciously be pleased to declare the petitioners as passed candidates, and the act of respondents for not appointing/considering the petitioners is without lawful authority and is of no legal effect.

(b) To direct the respondents to issue appointment orders to petitioners as PST on merit basis, as the petitioners have qualified all the required tests prescribed in advertisement.

(c) To grant any other relief.

2. Respondent No.3, the District Education Officer (Elementary, Secondary, and Higher Secondary), Sukkur, submitted his para-wise comments through a statement dated 18.03.2025, denying the petitioners' assertions. He stated that the petitioners had applied for the posts of Primary School Teacher (PST BPS-14) from Taluka Pano Akil, and provided the following details of their SIBA test results:

| Sr.No. | Name of Petitioner | SIBA Marks | Merit No in waiting list | Remarks |
|--------|-------------------------------------|------------|--------------------------|-----------------|
| 1. | Mumtaz Ali S/o Ali Murad | 49 | 82 | Not Recommended |
| 2. | Mureed Hussain S/o Ghulam Ghazi | 49 | 89 | Not Recommended |
| 3. | Saeed Ahmed Soomro S/o Rasool Bux | 46 | 196 | Not Recommended |
| 4. | Muhkumddin S/o Meer Muhammad Abbasi | 45 | 246 | Not Recommended |
| 5. | Nadeem S/o Ghulam Qadir | 45 | 240 | Not Recommended |
| 6. | Hussain S/o Ghulam Rasool | xxx | xxx | No Record found |
| 7. | Nizamuddin S/o Jamaluddin | 41 | 419 | Not Recommended |

3. According to Respondent No.3, the last candidate appointed for the post of PST from Taluka Pano Akil had secured a score of 51 marks in the SIBA test. He further stated that 22 candidates who also obtained 51 marks remain on the waiting list. The waiting list, as per government policy, is valid until 28.02.2025. Respondent No.3 annexed the relevant merit list for Taluka Pano Akil, duly signed by all members of the District Recruitment Committee (DRC), along with Notification No. SO(GA)SELD (Recruit./ Policy/2021) dated 02.03.2023, issued by the Secretary, Education and Literacy Department, Government of Sindh.

4. Learned counsel for the petitioners argued that the petitioners were qualified candidates who secured the required passing marks. Nonetheless, they have been unlawfully denied appointment, while the respondents seek to accommodate their preferred individuals or those offering illegal gratifications. He contended that the respondents be

directed to issue appointment orders in favour of the petitioners for the PST positions.

5. Conversely, the learned Additional Advocate General submitted that the merit list was issued in strict compliance with the Recruitment Policy governing PST appointments. He stated that while the petitioners obtained passing marks, this does not, by itself, constitute a right to appointment. As per the policy, the District Recruitment Committee (DRC) is responsible for preparing the final merit list post-results. In the present case, the last appointed candidate had secured 51 marks, whereas all the petitioners scored below 50. This fact is substantiated by the merit list submitted with Respondent No.3's comments, bearing the signatures of all DRC members. He maintained that the entire recruitment process was conducted fairly and in line with policy, rendering the petition devoid of merit and liable to dismissal.

6. We have heard the arguments advanced by learned counsel for the petitioners and the learned Additional Advocate General for the official respondents, and have also examined the record placed before us.

7. The core grievance of the petitioners is that despite securing passing marks, they were not appointed as PSTs (BPS-14) by the Education and Literacy Department. However, the official record reflects that while the petitioners did indeed pass the test, their scores were insufficient to qualify within the merit list. The last appointed candidate from the relevant Union Council had obtained 51 marks, whereas each of the petitioners scored below that benchmark. Initially recruitment policy 2021 for teaching and non-teaching staff of School Education and Literacy department Government of Sindh issued vide notification No.SO(GA)SELD(Recruit/Policy)2021 dated 24th February, 2021 in which the recruitment for primary school teacher (BPS-14) were on Union Council basis. Subsequently, on 17.05.2022, the Government of Sindh School Education and Literacy Department, amended the aforementioned notification, which is reproduced hereunder:

NOTIFICATION

NO.SO(GA)SELD/Recruitment Policy/2021:- In pursuance of Sindh Cabinet's decisions under Agenda-I/Item-1.4; taken in the Provincial Cabinet meeting held by way of circulation dated: 16-05-2022, the Recruitment Policy 2021 notified vide even number dated: 24-02-2021 and amended vide Notification even number dated: 8-12-2021, is hereby further amended as under:

| Sr. | Existing Recruitment Policy 2021 | Amended as under |
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| 01 | <p>2.1 APPLICABILITY AND THE CORE OBJECTIVE</p> <p>This policy shall be applicable to Directorate of Primary, Elementary, Secondary & High secondary Education and Literacy Department, Government of Sindh</p> | <p>This policy shall be applicable to Directorates, School Education, Primary, Elementary, Secondary and High secondary and Directorate of Teachers Training institutes, school Education and Literacy Department, Government of Sindh</p> |
| 02 | <p>4.1 Recruitment of Primary School Teachers (PSTs) will be made school specific and on UC Basis</p> | <p>Recruitment of Primary School Teachers (PSTs) will be made school specific and on Taluka Basis</p> |
| 03 | <p>4.2 The post of Primary School Teachers (PSTs) BS-14 shall be filled by appointment of persons domiciled in particular in UC, and in case no or less number of candidates from a particular UC secure qualifying test score, then vacancies available in that particular UC shall be filled by appointment of the candidates from neighboring UC(s), then vacancies shall be filled by appointment of candidates from UCs in the same taluka.</p> <p>Note: neighboring UCs means bordering UCs in the same taluka. In case there are more than one neighboring UCs then combined merit list of remaining qualified candidates from the neighboring UCs will be prepared for the purpose of appointment in UC where no or less number candidates from that particular UC qualify the test to fill vacancies there.</p> | <p>The post of Primary School Teacher (PSTs) BS-14; shall be filled by appointment of persons domiciled in particular Taluka.</p> |
| 04 | <p>6.1 Recruitment of Junior Elementary School Teachers (JESTs) will be made school specific on UC basis.</p> | <p>Recruitment of Junior Elementary School Teachers (JESTs), will be made school specific on Taluka basis.</p> |
| 05 | <p>6.2 The posts of Junior Elementary School teachers (JESTs) BS-14 shall be filled by appointment of persons domiciled in particular in UC, and in case no or less number of candidates from a particular UC secure qualifying test score, then vacancies available in that particular UC shall be filled by appointment of the candidates from neighboring UC(s) in the same Taluka, and if no candidates or less number of candidates are available from neighboring UC(s), then vacancies shall be filled by appointment of candidates from</p> | <p>The posts of Junior Elementary School Teachers (JESTs) BS-14 shall be filled by appointment of persons domiciled in particular taluka.</p> |

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| | UCs in the same taluka. Note: Neighboring UCs means bordering UCs in the same Taluka. In case there are more than one neighboring UCs then combined merit list of remaining qualified candidates from the neighboring UCs will be prepared for the purpose of appointment in UC where no or less number candidates from that particular UC qualify the test to fill vacancies there. | |
| 06 | 14(VIII) The Divisional/District Selection Committee (DSC) will also prepare UC wise waiting list for each post and each quota. | The Divisional/District Selection Committee (DSC) will also prepare taluka wise waiting list against each post and prescribed quota. |
| 07 | 14(IX) A waiting list of selected candidates will be maintained for period of one year in case any candidate given offer of appointment does not submit acceptance letter within stipulated time, then next candidate in the waiting list in the order of merit will be issued offer of appointment. | A waiting list of selected candidates will be maintained for period of two years. In case, any candidate is given offer of appointment and he/she does not submit acceptance letter within the stipulated time; then next candidate in the waiting list in the order of merit will be issued offer of appointment. |
| 08 | 14(X) In case of vacant posts of PSTs, or ECTs or JESTs, if candidate from a particular UC do not secure qualifying test score, then vacancies available in the particular UC shall be filled in by recommending candidates from the neighboring/nearest UC(s) in the same Taluka, and if no candidate or less candidates are available from neighboring UC(s), then vacancies shall be filled in by recommending candidates from other UCs in the same Taluka. | In case of vacant posts of JESTs, if candidates from a particular taluka do not secure qualifying test score, then vacancies available in that particular taluka shall be filled in by recommending candidates from the neighboring and nearest talukas in the same district, and if no candidate or less candidates are available from neighboring talukas, then vacancies shall be filled in by recommending candidates from other talukas in the same district. |
| 09 | 15(III) Only such number of selected candidates will be issued offer letters in the order of merit as there are vacancies available in particular UC/Taluka as the case may be. | Only such number of selected candidates will be issued offer letters in the order of merit as there are vacancies available in particular taluka as the case may be. |
| 10 | 15(V) Lists of candidates on waiting list for each post/category will be maintained in the order to merit for period of one year. In case any candidate who is given offer of appointment does not submit acceptance letter within stipulated time, then next candidate in the waiting list in the order of merit will be issued offer of appointment. | Lists of candidates on waiting list for each post/category will be maintained in the order of merit for period of two years. In case, any candidate who is given offer of appointment does not submit acceptance letter within stipulated time, then next candidate in the |

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| | | awaiting list in the order of merit will be issued offer of appointment. |
| 11 | 17.6(l) Selection of candidates for different categories will be school specific, and UC/Taluka based | Selection of candidates for different categories will be school specific, and Taluka based. |
| 12 | 18.1 55% for male candidates 50% for female candidates & 18.2 50% for minority candidates | 40% for male, female and minority candidates |
| 13 | | 18.2(c) The candidate who have secured marks less than aggregate of 40%, in selected deprived taluka(s) having very less number of passing candidates and sufficient vacancies, shall be helped and given fair chance to improve in order to provide teachers to deprived areas. 18.2(d) These candidates, having secured less than 40% of aggregate marks, will be offered to go through a special training at TTIs and pass a test to be conducted by third party with a least 40% marks. However, these candidates will not be considered as government employees until they pass the test and get appointment orders. |
| | | 18.2(e) The deprived taluka(s) will be as under: 1. Ghorabari 2. Ketu bunder 3. Mirpur sakro 4. Thatta 5. Jati 6. Khari chan 7. Mirpur bathoro 8. Shah bunder 9. Shaheed Fazal Rahu/Golarchi 10. Thano Bola Khan 11. Manjhand 12. Thul 13. Tangwani 14. Jam Nawaz Ali 15. Shuja Abad 16. Bulri Shah Kareem 17. Tando Muhammad Khan 18. Tando Ghulam Hyder |

Note: The amendments shall come into force with immediate effect and not retrospectively.

Column No.2 of the above policy reflects that the appointment of PSTs were based upon Taluka basis instead of Union Council.

08. The documentary evidence on record, including the DRC-approved merit list, confirms that the appointments were made strictly in accordance with the Recruitment Policy shown above. Accordingly, the submission of the learned Additional Advocate General is well-founded and supported by official documentation.

9. It is settled law that policy matters fall within the exclusive domain of the Executive. Judicial interference is warranted only in cases where such policy is in violation of fundamental rights. The Honourable Supreme Court has consistently maintained judicial restraint in such matters, as reflected in the **case of Watan Party v. Federation of Pakistan reported in (PLD 2006 SC 697), Mian Muhammad Nawaz Sharif v. President of Pakistan, (1993 SCMR 473), Gadoon Textile Mill v. WAPDA (1997 SCMR 641), Sher Aman v. The State (2022 SCMR 406), Province of Punjab through Chief Secretary Lahore vs. Prof. Dr. Javed Iqbal and others (2022 SCMR 897), and [Punjab Public Service Commission and others vs. Mst. Aisha Nawaz and others (2011 SCMR 1602). Abdul Hameed and others vs. Water and Power Development Authority through Chairman Lahore and others (2021 SCMR 1230).**

The Honourable Supreme Court, in the case of Abdul Hameed and others v. Water and Power Development Authority through chairman, Lahore and others, 2021 SCMR 1230, has held as under:-

“It is not role of the Courts to interfere in policy decision, unless it is manifest that, such a policy decisions are the outcome of arbitrary exercise of power, mala fides, patently illegal or manifestly unreasonable”.

In the case of Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others, 2022 SCMR 406, the Honourable Court has held as under:-

“The role of the Court is to interpret the law and not delve in matters involving policy issues”

10. In light of the foregoing discussion, the petitioners have failed to establish a case warranting judicial intervention. Accordingly, the instant Constitutional Petition is dismissed for lack of merit.

These are the detailed reasons for our short order dated 18.03.2025.

Judge

Judge

ARBROHI