

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**C.P. No.D-1717 of 2023**

[Shahid Hussain v. Province of Sindh & others]

**Before:**

**Mr. Justice Adnan-ul-Karim Memon**

**Mr. Justice Riazat Ali Sahar**

Petitioner: Shahid Hussain through Mr. Zain-ul-Abdin Sahito, advocate.

Respondents: Province of Sindh and others through Mr. Rafique Ahmed Dahri, Assistant Advocate General Sindh along-with Shahzad Ali Jat, Assistant Education Officer Badin and Muhammad Alam Abbasi Assistant Education Officer Secondary Badin.

Date of hearing: 13.11.2025

Date of Judgment: 13.11.2025

## **J U D G M E N T**

**RIAZAT ALI SAHAR, J:** - Through this petition, the petitioner prayed as under:-

*a) That this Honourable Court may be pleased to direct official respondents to appoint the petitioner for the post of JST Science considering the multiple errors committed by the concerned department, while declaring the act of the Respondents for non-issuance of offer / appointment letter in the favour of the petitioner, as illegal, ultra-virus and ab-void initio in the eyes of law*

*OR*

*This Honourable Court may be pleased to pass order for sending the issue of appointment of the petitioner to the District Recruitment Committee (DRC) of respective District of the petitioner for deciding the matter within the stipulated period, with intimation of this Honourable Court.*

*b) Any other relief which this Honourable court may deem fit and proper in the interest of justice.*

**2.** The case of the petitioner is that pursuant to an advertisement issued by the Education & Literacy Department, Government of Sindh, he applied for the post of JST on UC basis. The petitioner successfully qualified the written test and was placed at Serial No.5 in the merit list, whereas another candidate obtaining equal marks (i.e., 66) was placed at Serial No. 4. Despite securing identical marks, the petitioner was not selected, while three other candidates including one who also secured 66 marks were

appointed. According to the petitioner, one of the selected candidates was erroneously accommodated within the “Muslim” category though he actually belonged to a minority community and one seat was left vacant. It is further submitted that under the Government’s policy, ten percent quota was reserved at Taluka level for JST appointments from among the remaining qualified candidates. However, despite being the only eligible candidate from his UC, the petitioner was not considered for appointment. The petitioner further submitted that in 2022, the Secretary, Education & Literacy Department, issued a Notification constituting a Committee to scrutinize the cases of leftover candidates who had qualified the NTS test in 2013. The petitioner applied accordingly, yet his candidature was rejected without justification, compelling him to invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution.

**3.** Pursuant to the Court notice, the respondents No.1 and 3 have filed their respective comments whereby they have denied the claim of the petitioner. Respondent No.3 also places on record a copy of Order dated 03.11.2021 passed by this Court in C.P. No.D-335 of 2014 filed by the petitioner.

**4.** Learned counsel for the petitioner submits that the petitioner, being a qualified candidate on the waiting list, was unlawfully ignored and the Committee constituted to examine the cases of leftover qualified candidates failed to consider the petitioner’s case on merits and rejected it arbitrarily. Learned counsel prays that the petition be allowed in the interest of justice.

**5.** Conversely, learned Assistant Advocate General Sindh, relying upon the respective comments filed on behalf of respondents No.1 and 3, contends that the petitioner was afforded an opportunity of hearing but his application was found to be meritless. He contends that four seats were allocated for JSTs in UC Khairpur, one reserved for female candidates and three in mixed category. The three male candidates, namely M/s. Majid, Shahjahan and Jai Shanker, were duly recommended for appointment, while the female seat remained vacant because the concerned female candidate had yet to complete the requisite qualification as of the cut-off date. He further contends that the petitioner, being a male candidate and junior in age, could not be considered against the female quota, therefore, his claim has no legal basis, as such, instant petition is liable to be dismissed.

6. We have heard learned counsel for the parties at considerable length and have carefully examined the material available on record.

7. The record demonstrates that four posts of Junior School Teacher (Science) (JST) were sanctioned for U.C. Khairpur, Taluka Tando Bago, District Badin and five candidates qualified the NTS test. The petitioner bases his claim on two grounds: firstly, that he secured 66 marks, identical to those obtained by another candidate, Mr. Jai Shankar, who was appointed as JST despite falling under the “Minority” (Non-Muslim) category; and secondly, that a female candidate, namely Ms. Bushra Naz, who topped the merit list, could not be appointed due to her failure to meet the requisite academic qualification as of the cut-off date, thereby leaving one post vacant, which the petitioner claims should have been offered to him.

8. At the outset, it is pertinent to note that the petitioner has not approached before this Court with clean hands. He did not disclose that he had earlier filed a C.P. No.D-335 of 2014 (Shahid Hussain v. Province of Sindh & others) before this Court, wherein his claim regarding tie-breaking criteria and entitlement to appointment had already been adjudicated and dismissed on merits. Such suppression of material facts disentitles him to equitable relief under Article 199 of the Constitution.

9. With regard to the petitioner’s first contention, it is pertinent that the issues he has now raised stood conclusively determined in the aforesaid earlier petition. In C.P. No.D-335 of 2014, this Court had examined the relevant provisions of the Teachers’ Recruitment Policy, including the mechanism for determining inter-se merit in the event of equal marks. Clauses 19 (IV) (A) and related provisions categorically provide that where two or more candidates secure equal marks, the candidate senior in age shall be ranked higher. Relevant paragraphs 6 and 7 of the earlier order, which bind the petitioner, are reproduced below:-

*“6. As per Teachers Recruitment Policy in a case where the marks mentioned above are equal, the candidate senior in age is to be ranked higher. On merits, we have considered the facts and circumstances of the case. It is important to discuss the right of the petitioner to be appointed as JST as agitated by him. We have noted that the action of respondents against the petitioner does not impinge on the petitioner’s fundamental and statutory right. We are of the considered view that even a successful candidate does not acquire an indefeasible right to be appointed and that it could be legitimately denied. The public*

*notice inviting application for the appointment has been held only to be an invitation to the qualified candidates to apply for an appointment. On their mere applying or selection, they do not acquire any right to the post.*

*7. The material placed before this Court explicitly shows that the respondents considered his case on the aforesaid pleas and rejected vide statement dated 05.12.2017 with the reasons discussed supra and we are not inclined to deprive the private respondent, who has already been appointed for the subject post, as per the Teachers Recruitment Policy, and on this score alone this petition fails on the ground that the private respondent is senior in age as per clause 19 (IV) (A) of Teachers Recruitment Policy, 2017.”*

10. These findings, based upon the same policy framework and same claim of equal marks, continue to hold the field. The petitioner, despite being aware of such adjudication, has sought to reopen an issue already decided against him, which is impermissible.

11. Turning to the petitioner’s second contention regarding the vacant seat of the female candidate, the record and the comments of the respondents make it abundantly clear that the unfilled position pertained exclusively to female quota, as earmarked in the sanctioned strength and in accordance with the Teachers’ Recruitment Policy 2012. The Instruction Manual for Round-III specifically provides that female quota posts are non-interchangeable and must be filled only from eligible female candidates, as such, no male candidate may claim appointment against a seat reserved for females, irrespective of merit position. Therefore, even if the female candidate was ineligible due to lack of requisite qualification as of the cut-off date, the vacancy could not lawfully be offered to a male candidate, including the petitioner. The Committee constituted in 2022 under notification dated 16.06.2022 to consider cases of leftover candidates had no authority under the policy to convert female quota seats into open merit or male category seats or mixed category.

12. In view of above facts, circumstances of the case and discussion, it is evident that the petitioner not only suppressed material facts relating to his earlier unsuccessful litigation but also seeks relief contrary to the express provisions of the Teachers’ Recruitment Policy. His claim on both grounds is devoid of merit. Consequently, the petition fails and is hereby **dismissed** with no order as to costs.

JUDGE

JUDGE