

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-3413/2014

Date Order with signature of Judge

Present
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Abdul Ghani Soomro

Muhammad Safar & others.....Petitioners

V E R S U S

The Province of Sindh & others.....Respondents

Date of hearing: 08.09.2016

Mr. Muneer Ahmed, Advocate for Petitioners.
Mr. Waqarullah Korejo, Advocate for Respondent No.3.
Mr. Abdul Jalil Zubedi, A.A.G.
Syed Inam Ali Shah, Programme Manager,
E&L Department.
Muhammad Jamil Khan, O.S.D. (Litigation), E&L Deptt.

Muhammad Ali Mazhar, J: An advertisement for job opportunities was published on 20.5.2012 by Education & Literacy Department, Government of Sindh for Primary School Teacher, Junior School Teacher and High School Teacher. All the petitioners applied for the job of Primary School Teacher for which following qualification was mentioned in the advertisement:

“Intermediate at least 2nd Division from a recognized Board of Intermediate & Secondary Education or Graduate from a recognized university. (Preference will be given to Graduates).”

2. Since in the aforesaid qualification, preference was to be given to the graduates, therefore, an explanation was also provided in the advertisement in the following terms:

“The preference will only be given to Graduates, if there is a tie in the final score between the candidates who appeared on the qualifying of intermediate and who appeared on as Graduate.”

3. The learned counsel for the petitioners argued that the petitioners Nos.1 to 4 applied on the basis of graduation and despite qualifying the pre-qualification test through NTS, they had not been considered for the job. The learned counsel for the respondent No.3 pointed out the explanation attached to the qualification in the advertisement and argued that in case of tie between two candidates, one applied on the basis of intermediate and the other on the basis of graduation, then it was the dominion of the Recruitment Committee to recommend the case of the candidate who is also graduate and since there was no tie in the matter, therefore, the petitioners were not considered for the appointment. He further argued that the basic qualification was intermediate second division, but the petitioners secured third division in their intermediate examination and since they were found eligible on the basis of their graduation, they were allowed to sit in the examination subject to the condition that the preference will only be given to graduate if there is a tie in the final score between the candidates who appeared on qualifying the intermediate and who appeared as graduate. The learned counsel for the petitioners argued that since the petitioners were entitled to apply on the basis of graduation, therefore, they had applied and after sitting in the examination, selection process was started and they had not been allowed the opportunity to serve. The Court asked him to point out any case of discrimination or the case that some other person who in similar circumstances applied on the basis of intermediate third division and graduation has been appointed without tie but the petitioners were not considered.

The learned counsel could not point out any such example in which any undue favour was given to any candidate who was at par with the petitioners. Since the basic terms and conditions are mentioned in the advertisement against which the petitioners applied. The policy matter framed with some guidelines by the authority concerned cannot be interfered by this Court unless some malafide or malice is attributed or some case of discrimination which is missing in this case.

4. So far as the case of petitioner No.3 is concerned, the learned counsel referred to Page 33 of the court file which is the Marks Sheet/Certificate issued by the Board of Intermediate & Secondary Education, Sukkur, Sindh according to which the petitioner No.3 has passed intermediate in 'C' grade, but this Marks Sheet/Certificate was issued for the supplementary examination in the month of December, 1999 while the learned A.A.G. and counsel for the Director, School Education submitted the concise statement of Director, School Education with which the Marks Sheet/Certificate of annual examination is attached of the same petitioner in which he obtained 'C' grade and when this certificate was sent for verification to the concerned Board, they declared it tempered, so this is the reason of not considering the case of petitioner No.3 as the Marks Sheet/Certificate submitted by the petitioner No.3 alongwith his application form was found tempered. Since at this stage it is not clear whether the annual marks sheet/certificate was tempered or the petitioner No.3 has rightly been issued the supplementary marks sheet/certificate in which he is shown cleared, therefore, in order to sift grain from the chaff, it is necessary that some inquiry may be conducted.

5. As a result of above discussions, this petition is disposed of with the following terms:

- (i) The petitioners No.1, 2 and 4 failed to make out any case for interference by this Court in the selection process, therefore, their petition is dismissed. So far as the case of petitioner No.3 is concerned, the Director, School Education is directed to conduct inquiry with a fair opportunity to the petitioner to appear and produce all academic antecedents and certificates and after considering the relevant certificates, the Director, School Education will decide the case of petitioner No.3 as to whether he is entitled for the job or not. This exercise will be completed within 40 working days.

Pending application is also disposed of.

Judge

Judge

Asif