

# IN THE HIGH COURT OF SINDH, ATKARACHI

C.P No. D-2839 of 2017

**Present:**

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Petitioners Through Mr. Ali Asadullah Bullo  
Advocate

Respondents No.2: Through Mr. Waqarullah Korejo  
Advocate.

Respondent No.1: Through Mr. Shahryar Mehar, AAG.

Dates of hearing: **27.04.2018 & 15.05.2018**

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

**ADNAN-UL-KARIM MEMON, J:** - By invoking extraordinary Constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, the Petitioners seek the following relief(s):-

- i) Declare that the actions of the respondent no.2 of not issuing offer letters pursuant to written test, interview, are illegal, malafide, unconditional and against the norms of equality, fundamental rights and fairness;***
- ii) Declare that the act of selection by the respondents is ultra-virus of the rules and violation of the advertisement and consisted on discrimination and nepotism.***
- iii) Direct the respondents to issue offer order and appointment letters to Petitioners for the post of Head master/Head Mistress (BPS17) pursuant for passing of written test, interview and signing of the acknowledgment Affidavit;***

2. Brief facts of the case in a nutshell are that in pursuance of advertisement published in 'Daily Kawaish' dated 10.05.2015 inviting application for appointment of Head Master/Head Mistress BPS-17, on contract basis for the period of one year, Petitioners applied for the aforesaid posts through proper channel. As per Petitioners, Respondents started recruitment process, after processing the application of the Petitioner, on different dates, the Respondent No.2 conducted written test through the Institute of Business Administration Sukkur (IBA). Petitioners added that after conducting the written test and interview, the Respondent No.2 issued a final merit list of successful candidates with regard to recruitment test for Head Master/Head Mistress BPS-17. Petitioners asserted that they successfully qualified the written test and interview and had legitimate expectation of recruitment for the post applied for. Per petitioners, on 11.05.2015 the Respondent No.2 issued a press release/corrigendum by modifying the qualification and experience of the aforesaid posts, though such announcement was made before conducting the written test and interview but it was after thought just to knockout the Petitioners only as they were already on the contractual posts in the Respondent-Department; that the act of the Respondent No.2 tantamount to circumvent the recruitment process as well as merit list, which is without lawful justification. Petitioners added that the Respondent No.2 has no authority or jurisdiction in law to announce such corrigendum at belated stage, which is in violation of law. Petitioners further averred that they approached the Respondent No.2 for further process of recruitment for issuance of offer letters to them, but to

no avail as they were informed by the officials of the Respondent No.2 that there is no seat now vacant for the Petitioners as they did not fulfill the criteria for the posts applied for as per the Rules. Per Petitioners, they were surprised rather shocked to know that they were disqualified for the aforesaid posts on the premise that they were already in service of the Education Department on contract basis, even after qualifying written test and interview. Petitioners have submitted that they had forwarded a complaint regarding injustice made with them by the Respondents in the recruitment process conducted by the IBA Sukkur, which was transparent and in accordance with law. Petitioners averred that in terms of Rule 4 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, the Respondent No.2 is the Competent Authority for the appointment of candidates in BPS-17. Petitioner further added that Respondents are under legal obligation to complete the process by recruiting the successful candidate/ Petitioners; however the Respondents have failed to recruit/ consider the Petitioners without any lawful justification or reason. Petitioners have further averred that the Respondent No.2 in the meanwhile selected more than 100 candidates who were already holding the post on contract basis as they were enlisted in the final list of successful candidates and only the Petitioners were sidelined; therefore the action of the official Respondents is discriminatory. Petitioners being aggrieved and dissatisfied with the self interpretation of law by the Respondent No.2, regarding the recruitment of the candidates for the posts of Head Master/Head Mistress in BPS-17 on contract basis on his own wish and will without adherence to the process initiated on the basis of

advertisement for the aforesaid posts and issuance of subsequent corrigendum dated 11.5.2015 have approached this Court.

3. Upon notice Respondent No.2 filed para wise comments and denied the allegations leveled against the Respondent No.2.

4. Mr. Ali Asadullah Bullo, learned counsel for the Petitioners has argued that Petitioners are qualified candidates for the post of Head Master/Head Mistress in BPS-17 as such they cannot be deprived of the aforesaid post; that the corrigendum dated 11<sup>th</sup> May 2015 issued by the Respondent No.2 during the pendency of the instant petition is illegal and violative of the fundamental rights of the Petitioners; that the Petitioners have qualified for the aforesaid posts through transparent manner; that depriving the Petitioners from offer letters for the subject posts is discriminatory and against the basic spirit of law and justice; that the Petitioner No.5,2,6,9 and 10 were included in the second list of 420 candidates; that the Petitioners had already been selected by the Scrutiny committee and issuance of second list was based on malafide intention; that the Petitioners were shocked when they came to know that in the final list of the candidates the names of the Petitioners had not been enlisted; that upon inquiry by the Petitioners the Respondent No.2 informed them that they were not selected being a contract employee of the Respondent No.2; that the Respondent No.2 flouted the summary for recruitment of the post of Head Master/Head Mistress to the Chief Minister Sindh therein he recommended 906 candidates and bypassed the Petitioners; that the final list contains ineligible candidates selected by the Respondent No.2 with malafide intention; that the Petitioners applied through proper channel and also issued NOC

from concerned District Education Officers /Directors of the concerned departments; that the Respondent had selected about 660 candidate, who do not come up with the qualification/criteria of Associate Degree in Education (ADE); that delay in issuance of the appointment letters amongst other candidates is violation of fundamental rights of the Petitioners; that all actions of the Respondents are against the law thus are liable to be set aside. He lastly prayed for allowing the instant Petition.

5. Mr. Waqarullah Korejo, learned counsel for the Respondent No.2 has contended that the Respondents decided to initiate recruitment/selection of Head Master/Head Mistress in (BPS-17) through transparent manner vide advertisement dated 10.05.2016; that as per Recruitment Rules, the post of the Head Master/Head Mistress in BPS-17 was to be filled 80% by initial appointment through Sindh Public Service Commission (except contract employees) and 20% by promotion from amongst the various category of the teachers having 7 years' service in BPS-16 and those, who have completed mandatory training through PIPE or any Institution on the approved panel list and on combined seniority cum fitness basis; that the Respondent No.2 issued corrigendum on the very next day i.e. 11<sup>th</sup> May 2015 through public notice for the aforesaid posts with the rider that the candidates must have relevant qualification and experience for the post of Head Master/Head Mistress in BPS-17, excluding the candidates, who were already holding the post in Government Service on contract basis; that the corrigendum has been issued in accordance with the recruitment policy and Rules framed for the aforesaid posts thus no illegality has been committed by the

Respondents; that as per advertisement dated 12.11.2015, the candidates, who were contract employees were appointed through NTS and were not eligible, and in the light of said condition the Petitioners were disqualified, despite that inherent disqualification voluntarily appeared in the test and interview as such cannot claim appointment for the posts applied for without fulfilling qualification and experience that cannot be condoned; that Petitioners were called for verification of their documents and credentials, they were found to be not fulfilling the conditions as mentioned in the public notice, thereafter they were declared ineligible and the names of the Petitioners were excluded from the successful candidates. Learned counsel admitted that during the scrutiny process of the application of the Petitioners this important aspect of qualification and experience was escaped from the sight of the Respondent No.2, which can be condoned in the best interest of justice, therefore their names were wrongly included amongst the eligible candidates; that the Petitioners were disqualified for the post applied for; that upon verification of the documents the earlier process of test and interview of the Petitioners became null and void; that by virtue of corrigendum dated 11.05.2015 the candidature of the Petitioners stood cancelled in the light of the Recruitment Rules; that the process of selection has already been completed, offer letters have also been issued to the successful candidates, however codal formalities are yet to be completed, therefore, no fundamental rights of the Petitioners have been violated; that Petitioners were not finally selected as successful candidates because they were not meeting the criteria as set forth under the law; that the Petitioners

managed to obtain NOCs from the concerned authorities in violation of the advertisement criteria; that the finally selected candidates were initially appointed on contract basis but their contract period was completed, therefore, their case was quite different to freshly recruited teachers appointed through NTS. He lastly prayed for dismissal of the instant petition.

6. We have heard the learned counsel for the parties and have also perused the material available on record.

7. Upon pleading of the parties and arguments extended thereon, there are two primordial questions arise in the present proceedings are as follows:-

***i) Whether the petitioners are qualified for the post of Head Master/Head Mistress in BPS-17 in Education & Literacy Department, Government of Sindh?***

***ii) Whether the post of Head Master/Head Mistress in BPS-17 in Education & Literacy Department, Government of Sindh is to be filled by 80% by initial appointment through Sindh Public Service Commission (except contract employees) and 20% by promotion from amongst the various category of teachers having 7 years' service in BPS-16?***

8. The Respondent No.2 advertised the aforesaid posts and the Petitioners participated and were declared successful candidates, however, during the recruitment process the Respondents issued attention notice, which was published in Daily Dawn dated 12.11.2015, which reads as under:-

**GOVERNMENT OF SINDH  
EDUCATION & LITERACY DEPARTMENT**

**ATTENTION**

**APPOINTMENT OF HEAD MASTER/HEAD MISTRESS (BS-17) IN SELECTED  
SCHOOLS OF SINDH**

*This is to inform to all candidates who have applied for the post of Head Master/Head Mistress that their data has been uploaded on the official website of Education & Literacy Department i.e. [www.sindheducation.gov.pk](http://www.sindheducation.gov.pk)*

*Those who have applied can check / verify their status on given website, in case of any mistake /query the same can be addressed by sending details to Additional Director (HRM), Education & Literacy Department, 3<sup>rd</sup> Floor, Old KDA Building, Sindh Secretariat No.3, Karachi.*

*It must be noted that those who possess LLB, B. Pharmacy, D. Pharmacy, BCS, B.E etc, in place of Academic qualification, are not eligible.*

*Age limit is 22-30.*

*Contract Employees, who were fresh recruited through NTS, are not eligible.*

*The written test is scheduled to be held on 20/12/2015.*

*At Karachi (for all candidates of Karachi Division).*

*At Hyderabad (for all candidates of Hyderabad and Mirpurkhas Division)*

*At Sukkur (for all candidates of Sukkur, Larkano & Shaheed Benazirabad Division)*

*Admit Cards would be delivered to all eligible candidates before 15/12/2015.*

*Secretary to Government of Sindh*

9. From bare perusal of the aforesaid public notice it is clear that the Contract Employees, who were fresh recruited through NTS, were not eligible. Prima-facie the public Notice was issued on 12.11.2015 and the Petitioners were well aware of the fact they were already working on contract posts thus were not eligible to compete the recruitment process for the post of Head Master/Head Mistress.

10. We have perused the minutes of the meeting of the committee constituted in connection with the recruitment of the Head Masters/Head Mistress (BPS-17) which explicitly show the following position:-

**“4. The Committees scrutinized documents of all 1080 candidates on case to case basis. The list of all the candidates duly signed by the members and Chairman is at Annexure-IV.**

5. It was observed by the Committees that as per Recruitment Rules for the post of Head Master (BS-17) and the advertisement dated 10.05.2015, the required experience for the candidates possessing various degrees was as under:-

Sr. No.	Category	Required Experience
1	MA &M.Ed	Relevant teaching/administrative experience
2	Masters Degree with B.Ed	05 years government service as HST (BS-16)
3	Masters Degree with Associate Degree in Education (ADE)	03 years service as Teacher

6. However, subsequently vide another advertisement dated 13.05.2015 the experience was curtailed to three (03) years. It was further observed that by the earlier Committees, the experience certificates not showing the exact period of experience were accepted. Besides, the affidavits regarding the experience signed by the candidates themselves showing private tuition experience were also accepted. The Committees viewed the acceptance or rejection of the candidature on the basis of such affidavits/certificates as discriminatory and unjustified. Thus, the Committees put a suggestion that for the sake of transparency and keeping in view the shortage of teachers, on time waiver for experience may be granted to all the IBA shortlisted eligible candidates, may be considered. Such suggestion was unanimously supported.

Sd/-  
(Hamzo Khan Tagar)  
Director Public Private Partnership (PPP  
Node)  
Former Sr. Program Manager  
RSU/Member  
School Education Department

Sd/-  
(Muhammad HussainSoomro)  
Additional Director (HR) Member/  
Secretary  
School Education Department

Sd/-  
(Faisal Ahmed Uqaili)  
Chief Program Manager, Reform Support  
Unit/Member  
School Education Department

Sd/-  
(Ghulam Ali Brahmani)  
Additional Secretary (General Admn:)/  
Member  
School Education Department

Sd/-  
(Noor Ahmed Samoo)  
Additional Secretary (Services-II)/Member  
Services, Administration & Coordination Department  
Government of Sindh

Sd/-  
(Syed Zakir Ali)  
Special Secretary Schools/Chairman  
School Education Department

11. During the course of arguments, the learned counsel for Respondent No.2 placed on record the copy of the aforesaid minutes of the meeting and relevant Recruitment Rules. We are cognizant of the fact that the relevant Recruitment Rules have been framed in pursuance of sub-rule (2) of Rule 3 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, in

consultation with the Services, General Administration & Coordination Department, and in supersession of all notifications issued in this behalf. The method, qualification and other conditions for appointment in respect of the post in School Management Service Cadre, Education & Literacy Department, Government of Sindh, and issued Notification dated 14<sup>th</sup> October, 2014, an excerpt of rule 4 of School Management Service (SMS) is reproduced, which clarifies the legal aspect of the matter in hand, as under :-

4	Headmaster/Headmistress (BPS-17) Campus/Cluster/ Primary Schools.	<p>i) 80% by initial appointment through Sindh Public Service Commission (except contract employees).</p> <p>ii) 20% By promotion from amongst the various categories of teachers having 7 years service in BPS-16, and have completed mandatory training through PITE or any Institution on the approved panel list and on combined seniority-cum-fitness basis.</p>	<p>M.A and Med. Preferably with specialization in Management at least in 2<sup>nd</sup> Division from a recognized University and having basic knowledge of computer.</p> <p>OR</p> <p>Masters Degree and B.Ed both at least in 2<sup>nd</sup> Division having five years Govt. service as HST (BPS-16) (except contract employees) with computer literacy (up to 2018 only)</p> <p>OR</p> <p>ii) Masters at least in 2<sup>nd</sup> Division and Associate Degree in Education (ADE) at least in 2<sup>nd</sup> Division from a recognized University having three (3) years service as teacher in any registered school with computer literacy (upto 2018)</p>	22-30
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12. The aforesaid Recruitment Rules clearly depict that the post of Head Master/Head Mistress in BPS-17 can be filled in the aforesaid manner through competitive process and by promotion on seniority-cum-fitness basis with certain qualification and experience. We do not see any logic to take out the aforesaid posts out of the purview of Sindh Public Service Commission and to fill the same on contract basis. Admittedly, the Petitioners have not been declared successful candidates by SPSC therefore; they cannot claim appointment for the said posts on contract basis as a matter of right. The declaration of result of the Petitioners for the aforesaid posts, if any, made by the Respondent No.2 for the posts of Head Master/Head Mistress in BPS-17 is in violation of law which cannot have any sanctity. We are of the view the qualification and experience for the posts of Head Master/Head Mistress in BPS-17 cannot be relaxed under Recruitment Rules.

13. In view of the foregoing, we are of the considered view that the Petitioners were declared successful candidates by IBA Sukkur and Respondent No.2 as Head Master/Head Mistress in BPS-17 without recourse to the provisions contained in the Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974 and Sindh Public Service Commission (Functions) Rules 1990. It is a well settled law that a post of BPS-17 can only be filled through the Public Service Commission after inviting in the public notice, therefore no sanctity can be attached with the declaration of the result of the Petitioners as Head Master/Head Mistress in BPS-17 on contract basis, which is a regular budgeted service post.

14. The Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) has held at paragraph No 198 as under:-

***“The Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BS.16 to 22 against the language of these Rules, which are framed under the dictates of the Act as mandated under Article 240 of the Constitution. The Article 242 of the Constitution provides the mechanism for appointment of a Civil Servant through Public Service Commission. This Article is safety valve which ensures the transparent process of induction in the Civil Service. It provides appointment by Public Service Commission with the sole object that meritorious candidates join Civil Service. The Sindh Government through executive or legislative instruments cannot withdrawn any post from the purview of the Public Service Commission as has been done in the case of the petitioners, in negation to the command of Article 242 of the Constitution. For the aforesaid reasons, we hold that the Sindh Government shall make all the appointments in BS 16 to 22 through Public Service Commission.”***

15. In view of the foregoing legal position, we are of the considered view that the Government having the domain to frame the policy of appointment and also by law, provide the qualification for appointment against a particular post and thus, appointment against such post through initial appointment or otherwise cannot

be claimed without fulfillment of the criteria and the requisite qualifications as provided under the Recruitment Rules as discussed supra.

16. Reverting to the claim of the Petitioners that they have qualified written test and interview for the posts of Headmaster/Headmistress in BPS-17, therefore, they are entitled for the appointment against those posts, this assertion of the Petitioners in our view is misconceived for the simple reason that mere selection in written examination and interview would not, by itself, vest the candidate with the fundamental right to claim appointment and its enforcement in a writ petition. Admittedly, the Respondent No.2 had not issued any offer of appointment to the Petitioners and their passing the test & interview for subject posts is subjected to clearance by the Competent Authority under the Recruitment Rules as discussed supra.

17. For the aforesaid facts, reasons and circumstances of the case, we are of the view that Article 199 of the Constitution casts an obligation on the High Court to act in aid of law and to protect the rights within the frame work of the Constitution. This extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. Reliance is placed on the case of Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others (2015 PLC 259).

18. On perusal of the record and the documents furnished by the respective parties we have found that prima facie, there are serious discrepancies in the recruitment process initiated by the Respondent No.2 for the post of Head Master/Head Mistress in BPS-17 as discussed in the preceding paragraph, which needs serious attention that whether the Respondents No.2 has adhered to fill the vacancies for the post of Head Master/Head Mistress in BPS-17 in the light of Recruitment Rules for the aforesaid post.

19. In the light of the foregoing, we direct the Chief Secretary Sindh to scrutinize the recruitment process initiated by the Respondent No.2 for the post of Head Master/Head Mistress in BPS-17 strictly in accordance with the Recruitment Rules for the aforesaid post within a period of two months from the date of communication of this judgment and submit compliance report through MIT-II of this Court. The Sindh Government is directed to implement the judgment of the Hon'ble Supreme Court rendered in the case of Ali Azhar Khan Baloch supra in its letter and spirit. Non-compliance of any part of the judgment shall expose the delinquent officials or any officer found instrumental in this behalf, beside the beneficiary, to contempt proceedings.

20. In result of foregoing discussion, we do not find any merit in the instant Petition, which is hereby dismissed along with the listed application(s).

JUDGE

JUDGE