

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-4441 of 2016

Present.

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Mst. Marina Petitioner

Versus

Province Sindh and others Respondents

Date of Hearing: **29.05.2018**

Syed Fazl-ur-Rehman Advocate for the Petitioner.
Mr. Waqarullah Korejo, law Officer of Education Department.
Mr. Shahryar Mehar, Assistant Advocate General Sindh.

JUDGMENT

ADNAN-UL-KARIM MEMON, J:-, Through the captioned
Constitution Petition, Petitioner has sought following relief(s):-

- a) ***To declare that by not releasing salary of the Petitioner, the respondents have committed serious discrimination to the petitioner and thus have abused their official status illegally, unlawfully, malafidely and otherwise than due course of law.***
- b) ***To direct the Respondents not treat the Petitioner discriminately and further to release Salary of the Petitioner w.e.f. the date of joining of the Petitioner till to date and for future period in accordance with the rules and laws.***

2. The case of the Petitioner in a nutshell is that in pursuance of advertisement published in 'Daily Kawaish' dated 19.04.2012, inviting applications for appointment of Primary School Teachers (PST-BPS-9), Junior School Teachers (JST-14) and High School Teachers (HST-15) on contract basis for the period of three years. Petitioner applied for the post of Primary School Teacher (BPS-9). As per Petitioner, Respondents started recruitment process, after processing the application of the Petitioner, issued a final merit list of the successful candidates with regard to the recruitment test for the appointment of Primary School Teachers. Petitioner asserted that she secured 101 marks and stood qualified for the aforesaid post. Petitioner claims that she having successfully qualified the written test, was offered the post of Primary School Teacher vide offer letter dated 29.5.2014, followed by appointment letter dated 11.11.2014. Per Petitioner, she was surprised rather shocked to know that District Recruitment Committee (DRC) in its second meeting cancelled the appointment of the Petitioner on the premise that she had submitted her domicile certificate after cut-off date as mentioned in the advertisement. Petitioner averred that DRC cannot cancel the appointment of the Petitioner in terms of Rule 4 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974; that the Respondent No.2 is the Competent Authority for the appointment of candidates in BPS-9 to BPS-11. Petitioner further added that Respondents are under legal obligation to pay salary to the Petitioner and they cannot withhold the same without any

lawful justification or reason. The Petitioner asserted that she is performing her duty from 03.12.2014 in GBPS Gul Muhammad Solangi District Sujawal regularly. The Petitioner has submitted that she moved an application dated 14.04.2016 to the District Education Officer (Primary) for releasing her salary and thereafter made several visits to the office of the Respondent No.2 for the same and each time she was informed that her salary will be released soon. Petitioner has submitted that District Education Officer Sujawal has issued letter bearing No. DEO/ESST/1397 dated 09.05.2016 addressed to the Respondent No.2 wherein he has submitted that the Petitioner along with another newly appointed teacher namely Bilquees Memon was performing their duties regularly, but their salaries have not been paid to them, from which it is prima-facie evident that the Petitioner is regularly attending her duty. The Petitioner has submitted that she has been neglected and refused by the Respondents for her right to receive the salary, which is her fundamental right.

3. Upon notice, the Respondents No. 3 has filed his para-wise comments.

4. Syed Fazl-ur-Rehman, learned Counsel for the Petitioner has argued that the Petitioner has been seriously discriminated by the Respondents by not releasing her salary for the duties performed by her whereas all her colleagues, who were appointed by the Respondent No.1 along with her have been paid

their salaries by the Respondents; that the Respondents have no legal right or authority to refuse payment of salary to the Petitioner after accepting her services for the post offered to her; that the Respondents are legally bound to release her salary and by not releasing the salary to her for the duty done by her the Respondents have abused and misused their official status and as such are liable to be directed to do the needful; that since more than 01 year has passed when the Petitioner had requested them for release of her salary but the Respondents are not interested to even reply to the requests of the Petitioner; that the appointment of the Petitioner cannot be cancelled without hearing the Petitioner, as provided under Article 10-A of the Constitution. He lastly prayed for allowing the instant petition.

5. Mr. Waqarullah Korejo learned counsel representing the Respondent-Education Department, has contended that as per statistics collected from District Education Office, Thatta, applications were invited for appointment on the posts of PST, JST & HST on need base; that the cut-off date of submission of Domicile & PRC was 20th June 2012, however when the process of verification of documents was initiated and found that the Petitioner submitted her domicile certificate after the cut-off date as mentioned in the advertisement as such the name of the Petitioner was recommended for cancellation/deletion from the merit list of PST's of Union Council Mir Pur Bathoro, wherein the name of the Petitioner was recommended earlier for issuance of

offer letter and the name of Mst. Bilquees D/o Allah Bux Memon, who was top in next waiting was recommended for appointment as PST; that the entire process of these appointments were made by the then District Education officer, Thatta and DRC members as per the Recruitment Policy 2012. He lastly prayed for dismissal of the instant Petition.

6. Learned AAG has supported the stance taken by Mr. Waqarullah Korejo the learned counsel representing Education Department Government of Sindh.

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

8. The important questions arising in the present proceedings are as under:-

i) Whether the DRC can cancel the appointment of the petitioner under the law?

ii) Whether the petitioner is a permanent resident of District Sujawal?

iii) Whether the petitioner being permanent resident of District Sujawal submitted her domicile certificate after the cut-off date i.e. 20.5.2012 can be disqualified for the post of Primary School Teacher as per Teachers Recruitment Policy 2012?

09. To appreciate the controversy in its proper perspective, we deem it appropriate to have a glance on the term of "qualification"; therefore, it is necessary, in the first instance, to

understand the meaning of the word “Qualification” from various sources:-

- (i) “a pass of an examination or an official completion of a course, especially one conferring status as a recognized practitioner of a profession or activity.**
- (ii) a condition that must be fulfilled before a right can be acquired; an official requirement.”**

10. Having considered the dictionary meanings of the word “Qualification” and the interpretation given to it by the Superior Courts in the different Judgments, we intent to resolve the issue and seek guidance from the parent Statute i.e. Sind Civil Servants Act, 1973 and Sind Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. Rule 12- (1) provides as under:

“ A candidate for appointment by initial recruitment must possess the educational qualifications and experience and be within the age limit laid down for that appointment.

Rule 14- says that the Vacancies in the under mentioned posts shall be filled on Provincial basis, in accordance with the merit and regional or district quota as determined by Government from time to time. (i) Posts in Basic Scales 2 [16] and above; (ii) Posts in Basic Scales 3 to 15 in offices which serve only the whole Province.

Rule15- provides that the Posts in [Basic Scales 3 to15 in offices which serve only a particular region or district shall be filed by appointment of persons domiciled in the region or district concerned.”

11. The Respondents have not disputed that the Petitioner is not resident of District Sujawal but premised their case on the

assertion that the Petitioner had submitted her Domicile certificate after the cut-off date i.e. 20.5.2012 as such she was disqualified for the post of Primary School Teacher BS-9. We are of the considered view this could hardly be a ground to cancel the appointment of the Petitioner. We can't endorse the assertion of the learned counsel for the Respondent, since we are of the view that this could not be an inherent disqualification for the post applied for by the Petitioner as per the Recruitment Rules, if it is so the same could have been condoned by the Competent Authority by exercising its power and authority, as provided under the law.

12. Let us shed light on the policy for recruitment-2012.

Policy for verification of documents as under:-

- 1. District Recruitment Committee will examine and verily following original documents of candidates:**
 - 1. CNIC**
 - ii. D Form PRC**
 - iii. Domicile**
 - iv. The DRC will entertain the UC of the candidate. The committee will use concrete evidence including NADTRA record as mentioned in the CNIC (Permanent Address)**
 - V. Academic and professional certificates issued by recognized accredited institute and duly verified.**
 - vi. The DRC during process will verify that the result (s) of requisite degree/corticated from accredited University / Recognized Board of Intermediate and Secondary education of the candidate have been announced on or before the closing date of advertisement 20th June 2012.**
 - vii. Proof of disability and minority (Certificate/ document issued by the competent authority under the relevant law.**
- 2. District Recruitment Committee is empowerd to take all necessary steps or set standards to ensure the validity and reliability of candidates academic and non-academic qualification. The**

committee is also required to ask disable and minority candidates to provide evidence of their claim being “disabled” and “minority” in line with the Government policy or rule/ law etc.

13. The aforesaid Recruitment policy clearly depicts that the post of Primary School Teacher in BS-09 can be filled in the aforesaid manner.

14. We have also perused the decision dated nil taken by the District Recruitment Committee in the following manner:-

“Domicile after closing date 04.03.2013. Offer issued. (Stopped posting order because she was recommended erroneously as her domicile issued after closing date. “Cancelled recommendation”.

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 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, however the case of the Petitioner is quite different as she has already been declared successful candidate in written test and interview and appointed for the post of Primary School Teacher BS-9 in Education Department Government of Sindh, but her appointment has been cancelled on the premise that she did not submit her domicile certificate within cut-off date i.e 20.5.2012.

16. In the light of above factual position of the case in respect of submission of Domicile Certificate after the cut-off date does not debar, the Petitioner for the appointment against the post of Primary School Teacher (BPS-9) since as per the relevant rules this assertion can't be made the basis of rejection of selected candidate. At the most in our view some time or opportunity should have been provided to the Petitioner to do the needful, which on the face of the record is wanting.

17. The Respondents thus in our view have failed to justify the impugned action of the DRC.

18. Reverting to the plea taken by the learned counsel for the Respondents that DRC is competent to cancel the appointment of the Petitioner as per Clause 1 & 2 of Teacher Recruitment Policy-2012. Upon perusal of the aforesaid clauses, we have noticed that the Respondents after recommendation made by the District Recruitment Committee offered the Petitioner for the appointment to the post of Primary School Teacher in BPS-09 and subsequently she was duly appointed for the aforesaid post vide appointment letter dated 11.11.2014 under Teachers Recruitment Policy 2012. We therefore are of the considered view that the Petitioner submitted her joining report on 03.12.2014 and thereafter she attended the job without any hindrance. We have not been informed by the learned counsel for the Respondents that on the date the DRC took decision to cancel the appointment of the Petitioner, whether it is before issuance of offer letter or

appointment letter or after joining of the Petitioner as Primary School Teacher. We are not convinced with the assertion of the learned counsel for the Respondent department that the DRC is competent to cancel the appointment of the Petitioner for the simple reason that a decisive step has already been taken by issuance of offer letter and appointment letter in favor of the Petitioner coupled with her joining of service, which right cannot be snatched away under the garb of powers of the DRC under Teacher Recruitment Policy 2012, which in our view have been exercised in a wrongful manner .

19. In the light of the above facts and circumstances of the case, we are of the considered view that the decision of the DRC for cancellation of the appointment of the Petitioner for the post of Primary School Teacher BPS-09 is erroneous and not sustainable under the law.

20. Thus we have reached to the conclusion that the petitioner has made out her case for release of her salary for the post of Primary school teacher. Consequently, the instant Petition is allowed as prayed. Listed application also stands disposed of.

21. Foregoing are the reasons for our short order dated 29.05.2018.

Karachi
Dated:- 01.06.2018.

JUDGE

JUDGE