

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P. No.D-1174 of 2014

Muhammad Abdul Moeti Atif.....Petitioner

Vs.

Government of Sindh & another.....Respondents

Dates of hearing: 26.11.2018 & 10.12.2018

Syed Shoa-un-Nabi, advocate for the Petitioner.

Syed Safdar Hussain, advocate for the Respondent No.3.

Mr. Waqarullah Korejo, Law Officer of the Respondent No.1.

Mr. Shahriyar Mehar, AAG a/w M/s. Shamin Imran & Humaira Jatoi, Internees of Advocate General office.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioner is seeking the directions against the Respondents to rectify the merit list of the Union Council Buffer Zone-II, Taluka North Nazimabad, Karachi by mentioning the name of the Petitioner in the merit list as successful candidate and issue the appointment letter for the post of JST (BPS-14) to him on the basis of Teachers Recruitment Policy-2012.

2. The facts leading to the case, in nutshell, are that pursuant to the advertisement dated 23.04.2012 published in Daily “*Roznama Express*”, whereby the Petitioner had applied for the post of Junior School Teacher (JST) and obtained 73 marks from Taluka North Nazimabad UC Buffer Zone-II. Petitioner has submitted that he qualified for the appointment on the aforesaid post as his name appeared in the NTS result of successful candidates. Petitioner has submitted that the Respondents had refused to issue offer letter to the Petitioner for the appointment as JST on contract basis for 03 years; however, they appointed another person in place of the Petitioner, who secured 69 marks

which were lesser marks than the Petitioner. Petitioner being aggrieved by and dis-satisfied with the aforesaid action of the Respondents has approached this Court on 05.03.2014.

3. To understand the aforesaid contents of the case, it is necessary to have a glance on the legal aspects of the matter. In this regard, Syed Shoa-un-Nabi, learned counsel for the Petitioner has contended that the aforesaid action of the respondents is illegal and void. He next argued that the name of the Petitioner by mistake had not been mentioned in the merit list of Taluka North Nazimabad UC Buffer Zone-II, whereas the Petitioner had secured 73 marks for the post of JST and another person namely Noor Ilahi who secured 69 marks in UC Buffer Zone-II had been appointed, which was discriminatory behavior of the Respondents. He next added that the Petitioner had obtained considerable marks and had succeeded in the test and interview, therefore, he cannot be penalized for the alleged irregularities, if any, committed by the Official Respondents, while preparing the merit list of UC Buffer Zone-I and Buffer Zone-II respectively, rather they mixed up both the Union Councils' Merit list, with malafide intention to accommodate Private Respondent No.3. He further added that the Petitioner approached to the Respondent-Department on 21.3.2013 and lodged his protest but unfortunately no positive response was given to the Petitioner, subsequently he moved another application to the Competent Authority but of no result; that the malafide intention and negligence of the respondents is apparent on the face of the record as they have failed and neglected to evaluate the documentary evidence in shape of Roll No. Slip issued by the Respondent No.2, wherein the name of the Petitioner was appearing in Union Council-9, which fell in the area of Union Council Buffer Zone-II rather than Buffer Zone-I; that the Petitioner produced the documentary evidence to substantiate his

claim that he had applied for the aforesaid post from Union Council-9, Buffer Zone-II, North Nazimabad Town, Karachi through his objection form sent by the Petitioner on 21.3.2013; that the Respondents have failed and neglected to consider the Permanent Residence Certificate issued by the Competent Authority of UC-9, Buffer Zone-II. He lastly prayed for allowing the instant Petition.

4. Syed Safdar Hussain, learned counsel representing the Respondent No.3 has supported the decision of the official respondents and argued that in view of un-reported order dated 07.7.2017 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.190-K/2015, therefore, this Petition has become infructuous; that the Petitioner was a candidate for the post of JST in BPS-14 from the vacancies falling in UC-10 Buffer Zone-II, where only one post of JST in BPS-14 was available and one Ms. Anum Qureshi with roll number 1830010502 was selected, who obtained 84 marks in National Testing Service (NTS) and as per Teachers Recruitment Policy- 2012, 20 gender marks were awarded to her which comes to 104 total marks; that after completing all codal formalities the Respondent-Department issued the Appointment Letter in her favour, whereas the Petitioner had obtained 73 marks which were lesser marks than that candidate as mentioned *supra*. He further added that the Respondent No.3 was selected with 69 marks and his name was appearing at Sr. No.01 in the NTS Test Result from UC-9 Buffer Zone-II, whereas the name of the Petitioner was appearing at Sr. No.09 in the Final Merit List of JST (General)/Male candidates from UC-10 Buffer Zone-I North Nazimabad Town Karachi, which is quite different Union Council and none from the said list of Male side had been appointed. He next added that the Petitioner has misconceived the things and conjoined the two Union Councils, when he got no favorable result; he jumped to another Union Council Buffer Zone-

II and claimed appointment, though he was well aware of his original Union Council-10 Buffer Zone-I North Nazimabad Town Karachi, which is not permissible under the law. He lastly prayed for dismissal of the instant Petition.

5. On the other hand Mr. Waqarullah Korejo, learned counsel representing the Respondent No.1 has vigorously argued, while supporting the stance of private Respondent No.3; that as per NTS Final Merit List, the Petitioner applied for the post of JST (General) seat from UC-Buffer Zone-I and obtained 73 marks; that merely passing the written test does not culminate in the appointment of candidate; that under the Teachers Recruitment Policy, 2012 and upon fulfilling such requisite qualifications and all other terms and conditions, a candidate could only be declared as successful candidate by the respective District Recruitment Committee. He next added that the Petitioner is mixing two merit sheets of different Union Councils i.e. UC Buffer Zone-I with UC-Buffer Zone-II; that as per the terms and conditions of the Teachers Recruitment Policy, 2012, the appointment of JST was made on UC wise vacancy positions. The Petitioner belonged to UC-Buffer Zone-I, wherein there was only one candidate namely Ms. Anum Qureshi was recommended on merit under the Policy as she obtained 84 marks than the Petitioner who obtained 73 marks, whereas the Respondent No.3 Noor Illahi was recommended on merit from UC-Buffer Zone-II by DRC Karachi. He lastly prayed for dismissal of the instant Petition.

6. Mr. Shahryar Mehar, learned Assistant Advocate General Sindh has supported the assertion of learned counsel representing the Respondent No.1 and request for dismissal of the instant Petition.

7. We have heard the parties at length and considered their submissions and have perused the material available on record.

8. As per the pleadings of the parties and arguments extended thereon, there is dispute with regard to passing of NTS-examination by the Petitioner for the post of Junior School Teacher (BPS-14) from UC-Buffer Zone-I, wherein there was only one candidate namely Ms. Anum Qureshi, who was recommended on merit under the Teachers Recruitment Policy-2012 as she obtained 84 marks than the Petitioner who obtained 73 marks. The only plea which would determine the matter is as under: -

i) Whether the post of JST was required to be filled on merit subject to availability of need based vacancy in Union Council of candidate?

9. Record reflects that in National Testing Service, the Petitioner obtained 73 score and as per Teacher Recruitment Policy-2012, which reads as under:-

**Selection / Ranking Criteria for candidates
Minimum 60 marks in written test are required for merit determination. The merit list will be prepared for the PST, JST and HST will be as under:-**

i) For the appointment of PST, the merit will be determined on the basis of Union Council subject to the availability of need based vacancy in UC of candidate.

ii) For the appointment of JST, the merit will be determined on the basis of Union Councils, subject to the availability of need based vacancy in UC of candidate and;

iii) For the appointment of HST, the merit will be determined on district basis subject to availability of need base vacancy. Female candidates will be given additional 20 marks to qualified female candidate. Repeat test will be conducted in any UC or Taluka where number of qualified candidates is less than the eligible number of need based vacancies. The specific criteria will be developed for the repeat test.”

10. Prima-facie, the case of the Petitioner does not fall within the ambit of UC-Buffer Zone-II rather he belonged to UC-Buffer Zone-I, wherein he obtained 73 marks, whereas the last candidate who succeeded in the test had secured 84 marks which were higher marks than the Petitioner.

11. Reverting to the claim of the Petitioner that he belonged to UC-9 Buffer Zone-II Taluka North Nazimabad Town Karachi, suffice it to say, that the NTS result explicitly shows his name at Sr. No.9, who applied from the UC Buffer Zone-I Taluka North Nazimabad Karachi, from the general seat of JST and obtained 73 marks, whereas Respondent No. 3 Noor Illahi belonged to UC-10 North Nazimabad, Buffer Zone-II who obtained 69 marks. As per record, i.e. the National Testing Service final merit result shows that Respondent No.2 applied for the post of JST from Taluka North Nazimabad, UC Buffer Zone-II and was offered the appointment to the post of JST in BPS-14 vide letter dated 11.4.2014.

12. We have scanned the record and found the contention of the Petitioner untenable, in view of the Teachers Recruitment Policy-2012 and material produced before us and on the basis, we have reached at the conclusion that the Petitioner applied for the aforesaid post from UC Buffer Zone-I, North Nazimabad, Karachi wherein the last candidate secured 84 marks plus 20 gender marks total score 104 and as per record there was only one vacancy occurred for the post of JST.

13. Reverting to the second plea of the Petitioner that he belonged to UC Buffer Zone-II, North Nazimabad, Karachi, suffice it to say, that record does not reflect that when the Petitioner initially applied for the post of JST, he submitted his application form from

Union Council, Buffer Zone-I that is why NTS issued Final Merit List of UC Buffer Zone-I, wherein his name appeared at Sr. No.9 which is not disputed by the Petitioner, however, he asserted that he moved an application to the Chief Programme Manager RSU for correction in the Merit List by producing certain documents in support of his stance. At this stage, the parties are leveling allegations and counter allegations against each other, in our view, we have limited jurisdiction to dilate upon the allegations and counter allegations.

14. After perusal of the material placed before us, in our view, the Petitioner has failed to substantiate his claim for the post of JST from Union Council, Buffer Zone-II, Taluka North Nazimabad, Karachi, which prima-facie show that the Petitioner belonged to UC North Nazimabad Buffer Zone-I and not Buffer Zone-II, therefore, his claim is untenable under the law.

15. In the light of the above facts and circumstances of the case, this Petition is devoid of merits and is accordingly dismissed with no order as to cost along with all the listed application(s).

Karachi
Dated: 13.12.2018

JUDGE

JUDGE

Nadir/PA