

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

C.P. No.D-440 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For hearing of M.A. No.7395/2014.
	2. For hearing of M.A. No.2692/2012.
	3. For hearing of M.A. No.2045/2014.

10-01-2019

Ms. NaseemAbbasi, advocate for the petitioner/ applicant.
Mr. Allah BachayoSoomro, Additional Advocate General, Sindh
Mr. Iftikhar Ahmed Rajput, Litigation Officer, DSE (S), Hyderabad.

ORDER

The listed applications are disposed of by means of instant order.

The case of the Petitioner is that he obtained 62 marks and other candidate, who obtained 61 marks, has been appointed in his place, which has deprivedhim his right of appointment for the post of Primary School Teacher(PST) in Union Council-4 Hyderabad City.The captioned petition was heard and disposed of vide order dated 15.02.2012 with the following observations:-

“In view of this factual position that no person who has obtained less aggregate marks than the Petitioner on Union Council level has been appointed, the Petitioner has failed to establish his right of appointment on the basis of education policy that was published on 10th July 2008 and upheld in a decision of this Court reported in 2012 CLC 16, hence this petition is dismissed. (Emphasis added)

However, it is made clear that if the Petitioner establishes from the record of education department that on Taluka level also other candidate who has obtained less marks than the Petitioner has been appointed then he will be free to move appropriate application in this petition for review of the present order. The Law Officer present in Court states that there are various posts which will be advertised and the Petitioner who claims to be a higher qualified now, whenever he applied pursuant to advertisement, he shall also be considered on its own merits”

Mr. Allah Bachayo Soomro, Learned A.A.G states that the posts had been advertised on Union Council basis under the Teachers Recruitment Policy-2008 and in the union council of the petitioner, another candidate who obtained higher marks was considered for appointment against the aforesaid post and as regards the case of Petitioner, there was no seat available on merit list in his Union Council i.e. (U.C-4 Hyderabad City) therefore, his case was considered on Taluka level basis as per policy-2008, but on Taluka level also the other candidates who had secured higher marks than the Petitioner were considered for the post of PST, therefore petitioner is not entitled for appointment on the post as discussed supra. During the course of arguments, we have been informed that the aforesaid order passed by this court has not been assailed before the Hon'ble Supreme Court of Pakistan.

We have noticed that on 27.03.2012, the petitioner/ applicant filed an application (C.M.A.No.6292/2012), with prayer to review the order dated 15.02.2012 passed by this Court. This Court vide order dated 19.11.2012 converted the review application into an application under Section 151 CPC and observed that the question of wrongful denial of the petitioner's appointment on the basis of criteria laid down in the case of *Shabir Hussain versus District Education Officer, Larkana (2012 CLC 16)* be decided, if petitioner succeeds to demonstrate that a candidate with lesser marks has been appointed even on taluka basis

A query was raised by this Court as to how the instant applications are maintainable against the order dated 15.02.2012 passed by this Court and Teachers Recruitment Policy, which is endorsed by this court in the case of *Shabir Hussain versus District Education Officer, Larkana (2012 CLC 16)*. In reply to the query Ms. Naseem Abbasi, learned counsel for the petitioner/applicant has argued that the petitioner has been non-suited on the ground that he obtained lesser marks, for the post of PST in his Union Council, than the other candidates on merit as well as on the Taluka basis;

that the claim of respondents is in violation of Teachers Recruitment Policy-2008; that as per list of remaining 46 candidate for issuance of offer order, in which at serial No.3 (city male Hyderabad) a candidate who secured 61 marks/numbers in I.B.A. test had been allowed/ issued offer order, who has been performing his duties; that the petitioner is entitled for the aforesaid job rather than a candidate who obtained lesser marks than the petitioner, therefore, she has moved an application for review of the aforesaid order; that the case of petitioner has not been considered by the respondent-department till today on the aforesaid plea; that respondents have adopted discriminatory attitude by singling out the petitioner without any cogent reason. She lastly prayed for direction to the respondents to issue appointment order to the petitioner in compliance with the order dated 15.02.2012 passed by this Court in present matter.

Conversely, learned Additional Advocate General, Sindh has refuted the claim of the petitioner and argued that instant petition was dismissed by this Court on merits, therefore, no further indulgence of this Court is required in the matter; that on the basis of Teachers Recruitment Policy-2008 no candidate has been appointed with lesser marks than the petitioner; that the posts of Primary School Teachers were Union Council based and the petitioner secured lesser marks than the candidate who has been appointed; that in UC-4 Hyderabad (city) where the petitioner belongs to no post of PST was lying vacant as per merit list prepared by District Recruitment Committee; that the request of petitioner merits no consideration. He lastly prayed for dismissal of listed applications.

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

The issue involved in the listed application under section 151 CPC is simple. The education department has filed comments which prima facie establish that the petitioner had obtained 62 marks and as per Teachers Recruitment Policy-2008, he was awarded additional qualification marks and

as per record, the candidate who was appointed has secured higher marks than the petitioner. Perusal of record clearly reflects that since there was no vacancy available in the U-C of petitioner, therefore, according to Teacher Recruitment Policy-2008, his case was considered on Taluka levelbasis, where he failed to succeed. The allegation of the petitioner is that a candidate who secured less marks than him was appointed, however the record shows contrary position.

We have noticed that petitioner has notbeen declared eligible for the post, he applied for, and therefore, we feel no hesitation to hold that the petitioner was/is not entitled to be appointed for the post of PST, the petitioner has failed to point out the name of any candidate who had obtained lesser marks and was appointed, therefore the benefit of the order passed by this court as discussed supra cannot be given to the petitionerwhich was conditional in nature that if the Petitioner establishes from the record of education department that on Taluka level also other candidate who has obtained less marks than him and has been appointed then he would be free to move appropriate application in this petition for review. Prima facie no such development has been pointed out by him and therefore, the contentions of the learned AAG are tenable under the law.

Further, the Petitioner in his Application (C.M.A.No.6292/2012), has highlighted the violation of the order dated 15.02.2012 passed by this Court, we under the circumstances of the case cannot enlarge the scope of disposal order dated15.02.2012 passed by this Court and allow the parties to argue thematter on merits of the case or refer the matter to the respondentsfor further deliberation on the issue.

We have scrutinized the record and are of the considered view that merely conversion of review application into 151 CPC application cannot be made basis for appointment of the petitioner on the aforesaid post.

In present matter the petitioner has heavily relied upon the aforesaid order passed by this Court and argued that the petitioner is entitled for the appointment on the aforesaid post. We do not agree with the contentions of learned counsel for the petitioner for the simple reason that mere passing of the written test is not the sole criteria to claim appointment on any public post, and there are other prerequisites for the appointments in education department to be adopted, even otherwise the aforesaid appointments were made by the respondents under the Teachers Recruitment Policy, 2008 which was endorsed by this Court in the aforesaid case and the Hon'ble Supreme Court of Pakistan in Civil Petition No.186-K of 2013 has made an elaborative observation on the issue involved in the listed application. An excerpt of the same is reproduced as under:-

“The Education Department Government of Sindh, for the purpose of filling a number of posts of Junior School Teacher (JST), Primary School Teacher (PST) and High School Teacher (HST), invited applications through advertisement in newspapers on 06.04.2007. A total number of 3, 75,000 candidates applied for the posts. The petitioners were among them 1, 75,000 candidates passed the written test and eventually 2050 candidates selected on merit for appointment. The successful candidates, including the petitioners, were informed through office orders to collect their letter of offer for appointment to the said posts. However before the appointments could be materialized the entire examination was approved by the provincial government. The Petitioners filed Constitution Petition before the High Court of Sindh on 27.03.2012 seeking appointment. their petition was dismissed by the impugned judgment on two grounds, firstly that the Court had in the case of ShabbirHussain v Executive District (Education) Larkana (2012 CLC 16) upheld the annulment of the selection and secondly, that the Constitution Petition has been filed with the delay of five years and thus suffered from laches.

2. We heard the learned counsel for the petitioners, whose only argument was that some of those who were selected along with the petitioners were subsequently appointed and thus the petitioners be treated alike. In support of his contention, reliance was placed on HameedAkhtarNiazi v The Secretary Establishment Division (1996 SCMR 1185).

3. Responding to the above contentions, the learned Assistant Advocate General Sindh submitted that the appointments of

some of the successful candidates were made on the orders of the Court and not by the Education Department on its own.

4. The record shows that certain appointments were undoubtedly made but on the orders of the Court. It further transpires that such orders were made with consent of the counsel representing the Department. However, the learned counsel was unable to refer to any judgment of the High Court which had allowed the petition of the successful candidates on merits. The consent order obviously cannot be cited as precedent, more so when the scrapping of the examination was maintained by the High Court. Additionally, the Constitution Petition suffered from laches. By now, almost 8 years have passed by when the selection was made and it is too late in the day to direct the appointment of the Petitioners. The petition, is therefore is dismissed and leave refused.”

In view of the facts and circumstances of the case and for thereasons alluded as above,thus, we are not inclined to continue with any furtheron the listed application bearing CMA.No.2692/2012, having nomerits, is accordingly dismissed.Consequently, theapplications bearing CM.A No 7395/2014 and CM.A No.2045/2014 are dismissed with no order as to cost.

JUDGE

JUDGE