

**IN THE HIGH COURT OF SINDH AT KARACHI.**

Constitutional Petition No.D-2831 of 2015

**Present.**

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

Nazia Khan ..... Petitioner

Versus

Province Sindh and others ..... Respondents

Date of Hearing: **16.10.2018**

Mr. Mahmood Habibullah Advocate for the Petitioner.  
Mr. Waqarullah Korejo, Law Officer of Education Department.  
Mr. Shahryar Mehar, Assistant Advocate General Sindh.

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

**ADNAN-UL-KARIM MEMON, J:-**, Petitioner seeks appointment as Junior School Teacher (JST) Science in Education Department, Government of Sindh, on the premise that she applied for the aforesaid post and appeared in the NTS examination and succeeded by obtaining 82 marks. Per Petitioner, she got first position in Union Council-III Dawood Chowrangi, Landhi Town, Karachi. Petitioner has raised her voice and grievance by agitating that the District Recruitment Committee (DRC) recommended a male candidate in her place for appointment as Junior School Teacher in BPS-9 on the ground that there was no vacancy available for a female candidate and only male candidates could be accommodated for the aforesaid post. Petitioner has submitted

that this approach of the Respondent-Department repudiates the basic law and protection provided to the citizens of this country under Articles 25 and 27 of the Constitution of the Islamic Republic of Pakistan 1973. Petitioner being aggrieved by and dissatisfied with the aforesaid action of the Respondent-department has filed the instant petition on 19.05.2015. This Court, by looking at the above circumstances, took cognizance of the matter, vide order dated 1.04.2016 and directed the Respondents No. 2 and 3 to appear in person to explain the position. The Respondents No. 2 filed his para-wise comments and took the stance that the appointment of JST was determined on the basis of Union Councils, subject to the availability of need based vacancy position in the respective Union Councils of the candidates. It was further asserted in the comments that since there were no vacancy available for a female candidate in the Union Council of the Petitioner, therefore she was not recommended for the post of JST and male candidates were recommended accordingly on the basis of Teachers Recruitment-Policy- 2012.

2. 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 Mr. Mahmood Habibullah, learned Counsel for the Petitioner assisted this Court and argued that the Petitioner has been seriously discriminated by the Respondents by not considering her for appointment against the post of Junior School Teacher in BPS-09; that Petitioner has obtained 82 marks in NTS-

examination and in accordance with the Teachers Recruitment Policy-2012, 20 additional marks were awarded to her, being a female gender; that the stance of the Respondent No.2 that in UC-III Dawood Chowrangi, Landhi Town, Karachi, they required three male teachers and this requirement was fixed before NTS-examination, which stance of the Respondent is quite absurd on the ground that if any requirement was made for male teachers, than why in the same U.C female candidates were allowed to participate in the NTS examination; that the aforesaid act of the Respondent-department, depriving the Petitioner from the job is highly discriminatory and in violation of Article 25 of the Constitution.

3. On the other hand Mr. Waqrullah Korejo, learned counsel representing the Respondent No.2 has vigorously argued that as per the advertisement dated 23.04.2012 and as per Clause (1) (ii) of Advertisement, the criteria for the post is provided as under:-

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

He next contended that the Petitioner applied for the post of JST (Science) from UC-III Dawood Chowrangi, Landhi Town, Karachi; that the Respondent department called the applications for the post of JST on the approved school specific Union Council wise need base vacancy position; that she appeared in the written test and obtained 82 marks; that DRC merit sheet reveals that

there was no need of female teachers of JST (Science) in UC-III, Dawood Chowrangi, Landhi Town; that according to the data shared by DRC there were three male vacancy positions of JST (Science) in U.C of the Petitioner, therefore she was not considered as there was no need identified by DRC for female teacher of JST (Science) in UC-III; that Teacher Recruitment was made purely in accordance with law/ procedure/Recruitment Policy-2012 and due process of law had been given paramount consideration.

4. Mr. Shahryar Mehar, learned Assistant Advocate General Sindh has supported the assertion of learned counsel representing the Respondent No.2 and request for dismissal of the instant Petition.

5. We have considered the submissions of the parties and perused the material available on record.

6. As per the pleadings of the parties and arguments extended thereon, there is no dispute with regard to passing of NTS-examination by the Petitioner for the post of Junior School Teacher (BPS-9). 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?**

**ii) Whether there was no need of female teachers of JST (Science) in UC-III, Dawood Chowrangi, Landhi Town?**

7. From scrutiny of the record, an important question emerges that if there was no vacancy available for female candidates, what

was the need by the Respondent-department to issue public notice, inviting male and female candidates for appointment on the aforesaid posts. In such circumstances of the case, we are of the view that the Respondent department has to account for, which they have completely failed to discharge their burden, compelling this Court to see the happening in the present proceedings to resolve the issue in hand.

8. On merits, record reflects that in National Testing Service, Petitioner obtained 82 score and as per Teacher Recruitment Policy-2012, twenty additional points were given to the Female candidates under the Gender Policy, as per Clause 20 of the Teachers 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 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.”***

9. As per the vacancy position shown in the District Recruitment Committee report there were three seats available in UC-III Dawood Chowrangi, Landhi Town, Karachi. Per version of

the Respondents, these were fixed for male candidates only. Report further reflects that three male candidates, who obtained 80, 75 and 74 marks respectively in the aforesaid Union Council were recommended for the post JST in BPS-09 on the premise that there was no female seat available in the aforesaid Union Council.

10. We are shocked to see the above position, though the Petitioner succeeded in obtaining 102 marks, which marks were higher than the male candidates, but the Respondents did not consider her for appointment as JST and surprisingly, in her place a male candidate was appointed. Prima-facie this exploitation of the Respondent-department is highly discriminatory and demands prompt action under Article 27 of the Constitution, which safeguards against discrimination in services.

11. In view of the preceding paragraph, we are of the view that this assertion of the Respondent department that there was no position of female candidate in UC-III Dawood Chowrangi, Landhi Town, Karachi could not be upheld. Article 27 of the Constitution provides that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.

12. Returning to the assertion of the Respondent-department that they had displayed at RSU official website, the vacancy position on the need basis in the concerned Union Council before

initiation of recruitment process, since no material has been placed on record to authenticate the aforesaid claim, in absence of such material, we are not inclined to accept the aforesaid claim of the Respondent-department. An excerpt of the order dated 1.11.2017 is reproduced as follows:-

***“On perusal of para wise comments it appears that Respondents have not filed the availability of vacancy on need basis in UC III Landhi Town and Dawood Chowrangi Karachi.***

***Per learned counsel paragraph 4 of the advertisement provides that the application forms and the details of vacant positions are available at RSU official website, however nothing has been placed on record along with para wise comments, that the vacancy is on the need basis in the concerned Union Council.***

***Learned counsel for Respondent No.2 is directed to file details regarding vacancy position in Union Council Dawood Chowrangi and Lanndhi Town within a period of 07 days with date of all the jobs on the next date of hearing.”***

13. We have perceived that for appointment in public/government service, both male and female candidates can apply for the advertised posts and female candidates cannot be deprived to participate in the recruitment process. In the present case Petitioner participated in recruitment process for the post of JST and succeeded, the only plea, which the Respondent department took in the present case, has already been disapproved in the foregoing paragraphs. The prime reason for disagreement with the submission of the respondents being that if the vacancy position would have been available at RSU official website or through publication in the News-paper, the female candidates would not have applied for the aforesaid posts and if this is the position of the case then Article 27 of the Constitution would in

our view come to rescue the female candidates. Therefore, we are of the considered view that the Respondents have deprived the Petitioner, being female gender for the post of JST on wrong plea that there was no vacancy available for female candidates in UC-III, Dawood Chowrangi, Landhi Town, Karachi, this criterion for selection and appointment is not in accordance with Article 27 of the Constitution.

14. In the light of above facts and circumstances of the case, we have reached to the conclusion that the Petitioner has made out her case for appointment for the post of Junior School Teacher. Consequently, the instant Petition is allowed in the terms whereby the Competent Authority of the Respondent-department is directed to issue appointment order in favour of the Petitioner for the post of Junior School Teacher in BPS-09 within a period of one month from the date of receipt of this judgment.

15. Foregoing are the reasons for our short order dated 16.10.2018, whereby we have allowed the captioned petition.

Karachi  
Dated:- 18.10.2018.

JUDGE

JUDGE

**Shafi Muhammad / P.A**