

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

C.P. No.D-261 of 2015.

PRESENT:

Mr. Justice Khadim Hussain M. Shaikh
Mr. Justice Arshad Hussain Khan

Petitioners : Through Mr. Habibullah G. Ghouri,
Advocate.

Respondents : Through Mr. Munawar Ali Abbasi, Assistant
A.G.

Date of Hearing: 27.8.2019.

Date of order : 27.8.2019.

ORDER

Arshad Hussain Khan, J:-The petitioners through instant constitutional petition have sought following reliefs:-

- a) *That this Honorable Court may graciously be pleased to direct the Respondents to issue offer and appointment orders in favour of the petitioners for the post of Junior School Teacher and Primary School Teacher in Union Council Kamber-III, District Kamber-Shahdakot as per merit list issued by the Respondents.*
- b) *To declare the action of Respondents to appoint any other candidate in violation of merit list Annexure "A-B", as null and void.*
- c) *To issue a writ of prohibition restraining the Respondents from filling the vacancy of the petitioners for the post of Junior and Primary School Teachers respectively Union Council Kamber-III, District Kamber-Shahdadkot.*
- d) *Award costs of the Petition.*
- e) *Any other equitable relief be granted to petitioners.*

2. Brief facts of the petition as stated therein are that the petitioners being candidates participated in the recruitment test conducted by National Testing Service (NTS) for the post of Junior School Teacher (JST) and Primary School Teacher (PST) in respect of Union Council Kamber-III, District Kamber-Shahdadkot, and were

declared successful as per final merit list displayed by respondent No.4 (Reforms Support Unit, Education and Literacy Department, Government of Sindh, Karachi) on its website on 04.09.2013, wherein the names of the petitioners were appearing at serial Nos.2, 4, 12 and 21. It has been further stated that as per vacancy position issued by the respondents, the petitioners are entitled for their appointments for the said posts of JST and PST. It has been also stated that the respondents in violation of final merit list while ignoring the petitioners have started issuing appointment orders to those candidates who have obtained marks lesser than the petitioners, which is clear violation of fundamental rights of the petitioners. It has also been stated that the action of the respondents is illegal and without lawful authority and jurisdiction. Further the petitioners, having no other alternate and efficacious remedy available to them, approached this Court by invoking constitutional jurisdiction.

3. Upon service of notice of this petition, respondents No. 1 and 4 filed their respective para-wise comments.

4. Respondent No.1 (District Education Officer, Kamber Shahdadkot) in his para-wise comments, while denying the allegations levelled in the petition, has stated that Petitioner No.1 (Ishtiaq Hussain Bhutto) secured 80 marks, Petitioner No.2 (Asif Ali Bhutto) secured 78 marks and Petitioner No.3 (Muhammad Ali Bhutto) secured 72 marks for the post of JST (General). It has been also stated that the vacancy of female & mixed Junior School Teachers (JST) were allocated after stream wise distribution of seats at Taluka level, viz. Taluka Kamber 10% Taluka pool 2% (disabled) has been reserved in accordance with the rules wherein 3 posts (01 for disabled quota & 02 for Taluka) 10% quota, deducted from UC-3 Kamber and also 01 post from UC Jian Abro and 01 post from UC Dost Ali total 04 posts reserved for 10% pool of Taluka Kamber. Details of the said posts were provided as 0 Male, 01 Female, 03 Mixed total 04 posts. Whereas the remaining status of open vacancies of JST (General) UC-3 Kamber as 0 Male, 04 Female & 02 mixed total 6 posts. It has been also stated that the last appointment on seat of mixed JST in UC-3 Kamber was made on merit basis by considering Ms. Naheed Akhtar daughter of Manzoor Ahmed Chacho bearing seat No.173000255, with 73 plus 20 gender marks, total 93 marks. Last mixed seat on Taluka quota on merit was given to a candidate, namely Ms. Sanam Daughter of Moula Bux

bearing seat No.173000121 with 73 plus 20 gender marks total 93 marks. Hence, Petitioners No.(1) Ishtiaq Hussain, (2) Asif Ali Bhutto & (3) Muhammad Ali Bhutto, who could not fulfill the merit criteria, were not considered for appointment. Similarly, the Petitioner No.4 (Irshad Ali Bhutto) belongs to UC-3 Kamber, had secured 84 marks in NTS test for the post of PST (Male), whereas the last seat of PST (Male) in this UC went to Mr. Khalid Hussain son of Manzoor Ahmed bearing seat No.175003365, who obtained 91 marks. Last mixed seat went to Mr. Imtiaz Ali son of Manzoor Hussain Bhutto bearing seat No.175006576 who obtained 89 marks. Hence, the petitioner Irshad Ali Bhutto was not considered for appointment as he could not fulfill the criteria of merit. Accordingly, all above seats were allocated as per criteria fixed at UC and Taluka level and in accordance with the Teachers Recruitment Policy, 2012. Lastly, it has been stated that in view of the facts mentioned in the comments the petition is liable to be dismissed.

5. Respondent No.4 in his para-wise comments also denied the allegations levelled in the petition. It has been stated that NTS was hired by Education & Literacy Department to conduct written test and after conducting the test declared the result wherein the Petitioners No.1 to 3 appeared in the written test for the post of JST (General) and obtained 80, 78 and 72 marks respectively and whereas the Petitioner No.04 appeared in the written test for the post of PST and obtained 84 marks. It has been also stated that the vacancies were need based positions for the post of JST (General) in respect of 04 female and 02 mixed positions in UC-03 Kamber, Taluka Kamber District Kamber- Shahdadkot. The last recommended candidate (Naheed Akhtar Chacho) obtained 93 marks which was higher score than the Petitioners No.1 to 3, hence they were not recommended by DRC Kamber-Shahdadkot. Whereas the vacancy positions of PST were 01 male, 09 female and 05 mixed vacancies in UC-03 Kamber, Taluka Kamber District Kamber Shahdadkot. The last recommended candidate (Ahsan Ali) obtained 89 marks which was higher score than the Petitioner No.4, hence the Petitioner No.4 was not recommended by DRC Kamber Shahdadkot. It has been stated that the vacancies/posts of JST and PST were filled in accordance with law/procedure/Teachers Recruitment Policy, 2012, hence the allegation of the nature as mentioned in the petition cannot be

attributed towards the respondents and the petition is liable to be dismissed.

6. We have heard learned counsel for the petitioners and learned Addl. A.G. Sindh for respondents and with their assistance perused the material available on record.

7. From the perusal of the record, it appears that the present petition was filed by the Petitioners on 26.02.2015, *inter alia*, seeking directions to the respondents to issue appointment orders to them (Petitioners) for the post of JST and PST in Union Council Kamber-III, District Kamber-Shahdakot as per merit list issued by the Respondents in the year 2013. It is also alleged that respondents by ignoring the petitioners, who have obtained requisite marks, appointed the persons on the basis of liking, who have not only obtained lesser marks as compared to the petitioners but also appointed those persons who have not even participated in the written tests conducted by NTS. The petitioners have also alleged malafide on the part of the respondents for violating the rules, regulations and merits. Further alleged that the respondents have committed fraud and forgery to defeat and defraud the candidates of Union Council Kamber-III and to encroach upon their fundamental rights of job.

8. Record reflects that the petitioners in support of their stance, except the Recruitment Test List issued by the NTS, have not filed a single document which could substantiate their claim. On the other hand, the respondents have denied the assertions of the petitioners and have stated that all the seats were allocated as per criteria fixed at UC and Taluka level and the same have been filled in accordance with the Teachers Recruitment Policy, 2012. The documents filed by the respondents in support of their stance manifestly substantiate their case. Moreover, there is nothing available on the record, which could show that the petitioners ever rebutted the comments of the respondents and the documents annexed therewith. In absence of any rebuttal in respect of the comments and documents annexed therewith, the malafide on the part of the respondents cannot be alleged. Even otherwise, it is well established principle of law that judicial review of an administrative order/action in the absence of any material contrary there on record regarding mala fide, the Court should not interfere with any order of Executive/Authority which otherwise is free from any illegality or jurisdictional flaw. Reliance is

placed on case reported as FEDERATION OF PAKISTAN v. SAEED AHMED KHAN (PLD 1974 SC 151) wherein it has been held as under:-

"Mala fides is one of the most difficult things to prove and the onus is entirely upon the person alleging mala fides to establish it, because, there is, to start with, a presumption of regularity with regard to all official acts, and until that presumption is rebutted, the action cannot be challenged merely upon a vague allegation of mala fides. As has been pointed out by this Court in the case of the Government of West Pakistan v. Begum Agha Abdul Karim Shorish Kashmiri (PLD 1969 SC 14), mala fides must be pleaded with particularity, and once one kind of mala fides is alleged, no one should be allowed to adduce proof of any other kind of mala fides nor should any enquiry be launched upon merely on the basis of vague and indefinite allegations, nor should the person alleging mala fides be allowed a roving enquiry into the files of the Government for the purposes of fishing out some kind of a case.

"Mala fides" literally means "in bad faith". Action taken in bad faith is usually action taken maliciously in fact, that is to say, in which the person taking the action does so out of personal motives either to hurt the person against whom the action is taken or to benefit oneself. "

9. Besides above, record of the present case also transpires that the petitioners have approached this Court seeking cancellation of appointments of those persons, who have been appointed/selected by the respondents as JST and PST, when the entire process/selection has been completed and the posts of JST and PST have been filled by the respondents. Moreover, the petitioners despite having knowledge did not implead the selected/successful candidates (JST and PST) who are necessary and proper party as any order passed by this court would likely to affect them, as such, the present petition is also hit by non-joinder of necessary party. It is well settled proposition of law that in the absence of a necessary party no effective decree or order can be passed. Reliance in this regard can be placed on the cases of Dr. SALEEM JAVED and others v. Mst. FAUZIA NASIM and others (2003 SCMR 965) and Mst. MAQBOOL BEGUM and others v. GULLAN and others (PLD 1982 SC 46).

10. In the present petition, the petitioners have also alleged that the respondents committed fraud and forgery to defeat and defraud the bonafide candidates of Union Council Kamber-III. By raising plea of forgery and fraud the petitioners, in fact, have agitated the factual controversy which cannot be resolved except adducing evidence that too through proper trial and the cases involving such questions do not

qualify for invoking the constitutional jurisdiction of the High Court. Reliance in this regard can be placed on the case of MUHAMMAD YOUNUS KHAN and 12 others v. GOVERNMENT of N.W.F.P. through Secretary, Forest and Agriculture, Peshawar and others (1993 SCMR 618), FEDERATION OF PAKISTAN and 2 others v. Major (Retd.) MUHAMMAD SABIR KHAN (PLD 1991 SC 476) AND ANJUMAN FRUIT ARHTIAN and others v. DEPUTY COMMISSIONER FAISALABAD and others (2011 SCMR 279).

11. It may also be observed that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extraordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by the courts having plenary jurisdiction in matter.

12. The learned counsel for the petitioners has not been able to point out any illegality or material irregularity or violation in the recruitment process of appointment for the post of JST and PST warranting interference in exercise of writ jurisdiction of this court, hence the present constitutional petition is liable to dismissed being devoid of merit.

Foregoing are the reasons for our short order dated 27.08.2019, whereby the petition along with listed application was dismissed with no order as to cost.

JUDGE

JUDGE