

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

C.P No.D-2380 of 2013

**BEFORE: Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry**

Petitioner : *Through Mr. Bashir Ahmed Qureshi,
Advocate.*

Respondents : *Through Mr. Allah Bachayo Soomro,
Addl. Advocate General, Sindh a/w Noor
Ahmed Reform Support Unit and Ghulam
Nadir DEO Tharparkar.*

Date of Decision : *26.10.2021*

ORDER

ADNAN-UL-KARIM MEMON, J:- Through instant constitutional petition, the petitioner seeks appointment on the post of PST & JST as he claims to have qualified the written test conducted by National Testing Service.

2- As per Petitioner, official respondents started recruitment process after processing the application of the petitioner, on different dates, respondent No.2 conducted written test through National Testing Service (NTS). Petitioner has submitted that after conducting the written test, Respondent No.2 issued final merit list of successful candidates concerning the recruitment test for Junior School Teachers. Petitioner asserted that he secured 69 marks out of 100 and stood top in the Union Council-Sonal Beh, Tharparkar District Tharparkar. Petitioner further claims that he having successfully qualified for the written test had a legitimate expectation of recruitment for the post applied for. Petitioner further added that he was /is qualified for the post of Junior School Teacher but he has been ignored and in his place, one Dolat Ram, belonging from another Union Council, was appointed, which act on the part of official Respondents is against the basic spirit of law. Petitioner further added that he approached Respondent No.3 for redressal of his grievances but to no avail, as he was informed by the officials of Respondent No.3

that there is no seat vacant for him in Union Council-Sonal Beh, Tharparkar, on the premise that the aforesaid seat has been filled. Per Petitioner, he was surprised rather shocked to know that there is no seat for him after qualifying written test and securing the position in Union Council-Sonal Beh. Petitioner averred that in terms of Rule 4 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, Respondent No.3 is the competent authority for appointment of candidates from BPS-9 to BPS-11. Petitioner further added that Respondents are under legal obligation to complete the process by recruiting the successful candidate/Petitioner, however, the official Respondents have failed to recruit/consider the Petitioner without any lawful justification or reason and appointed another candidate as Junior School Teacher in Union Council-Sonal Beh. Petitioner asserts that Dolat Ram does not belong to Union Council-Sonal Beh, rather he belongs to Union Council-Sonal Beh-U. Petitioner being aggrieved by and dissatisfied with the appointment of Dolat Ram without arraying him as party in the proceedings has filed the instant petition.

3- Mr. Bashir Ahmed Qureshi learned counsel for the Petitioner has argued that the Respondents have violated the rights of the Petitioner by failing / delaying to issue appointment letter, despite the fact that the Petitioner has successfully passed the prescribed examination; that after successfully clearing the examination, the Petitioner has acquired a vested right and interest to be appointed on the post of Junior School Teacher (BPS-14) which cannot be nullified / denied by the whimsical and arbitrary actions of the official Respondents; that the Respondents are acting in violation of the prescribed Rules as mentioned under the terms of Rule 4 of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, where the Respondent No.3 is the Competent Authority for appointment of the candidates; that the action of the Respondents is in violation of the Fundamental Rights of the Petitioner guaranteed under Articles 18, 24 and 25 read with Articles 4 and 8 of the Constitution; that due to omission/failure of the official Respondents to fulfill their legal obligations and timely discharge of their duties / functions, the Petitioner is being deprived of her lawful rights to be considered for appointment against the post of Junior School Teacher (BPS-14). Learned counsel for the Petitioner emphasized that the appointment of another candidate in place of the Petitioner is against the Teachers

Recruitment Policy 2012 as well as against the basic spirit of the law as such his appointment is liable to be canceled. He lastly prayed for allowing the instant petition.

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

5. Record reflects that the Petitioner applied for appointment as Junior School Teacher (BPS-14) to be filled on merit subject to availability of need-based vacancy in Union Council of a candidate. The record further reflects that in National Testing Service Petitioner obtained 69 Marks, whereas the successful candidate obtained 73 Marks, which are higher Marks than the petitioner. We are therefore of the considered view that the criterion for selection and appointment, provided under Teachers Recruitment Policy 2012 is fair, just, and reasonable. This Court has already decided a similar matter in the case of *Shabbir Hussain vs. Executive District Officer (Education), Larkana, and five others* (2012 CLC 16).

6. As regards the contention of learned A.A.G. that the Courts may not interfere with the policy matters of educational institutions. We agree with the said contention of learned A.A.G. This proposition of law is enunciated by the Hon'ble apex court in the case of Government College University, Lahore through Vice-Chancellor and others Vs. Syeda Fiza Abbas and others. (2015 SCMR 445).

7. In view of the aforesaid facts and circumstances of the case, we are of the considered view that mere success in written test could not, by itself, vest a candidate with the fundamental right for enforcement through Constitutional jurisdiction of this Court. Besides that, the petitioner obtained fewer marks than the last successful candidate.

8. Based on contentions of the parties and perusal of the material produced, it seems that the appointment letter had already been issued to the candidate (not a party to the proceedings), who qualified for the post of Junior School Teacher, thus this Court cannot overlook this aspect of the case also while issuing a writ like a mandamus.

9. It is a settled principle of law that to maintain a Constitutional Petition it is the duty and obligation of the Petitioner to point out that the action of the official Respondents violated the rules and

regulations, which the Petitioner has failed to point out and has thus failed to make out a case of discrimination as well.

10. In the light of the above facts and circumstances of the case, we have concluded that the Petitioner has failed to make out a case for his appointment as Junior School Teacher. Consequently, the instant Petition is dismissed along with the listed application(s).

JUDGE

JUDGE

****Hafiz Fahad****