

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

C.P No.D-335 of 2014

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner : *Through Mr. Ayaz Hussain Tunio,
Advocate.*

Respondents : *Through Mr. Allah Bachayo Soomro,
Addl. Advocate General, Sindh a/w
Ghulam Nabi Talpur AEO, Badin.*

Date of Hearing : *26.10.2021*

Date of Decision : *03.11.2021*

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner is seeking appointment as Junior School Teacher (Science) (JST) on the premise that he secured 66 marks in National Testing Service (NTS) test and his credentials were duly verified by the competent authority, thus, he is eligible to be appointed on the aforesaid post on merit.

2. At the outset, we have asked learned counsel for the petitioner, that how this petition is maintainable when the respondent-department has rejected his claim vide statement dated 5.12.2017 with certain observations which adversely affected his case.

3. *Mr. Ayaz Hussain Tunio*, learned counsel for the petitioner, has replied to the query and mainly contended that the petitioner is eligible for the post of JST from Union Council Khairpur, Taluka Tando Bago District Badin as he secured the highest number of marks in the written test conducted by NTS. Learned counsel referred to the order dated 31.10.2016 passed by this Court whereby direction was given to the Chairman District Recruitment Committee (DRC) to examine the case of the petitioner and submit report with a fair opportunity to him to appear and produce all academic antecedents and certificates and after considering the relevant certificates the competent authority was directed to decide his case whether he is entitled to the job or otherwise. Learned counsel emphasized that to defeat the very purpose of the present lis, the respondent-department accommodated another

candidate in his place on the premise that he secured equal marks; however since he was old was accommodated and appointed. He being aggrieved by and dissatisfied with the aforesaid decision filed the instant petition on the premise that all educational certificates which he submitted before the competent authority were duly verified and declared as genuine documents, thus, it was not an occasion for the respondents to reject his claim and accommodate another candidate. Per learned counsel, this is hardly a ground to reject the candidature of the petitioner. Learned counsel referred to various documents attached with the memo of petition and argued that this petition does not involve any disputed question of fact, thus, the petitioner's case is covered from every corner of law as such the respondents are under obligation to issue him offer letter for the post of JST under the Teachers Recruitment Policy.

4. Learned Addl. A.G. pointed out that under the Teachers Recruitment Policy, 2017 if the candidates obtain equal marks, then age will be the decisive factor; that petitioner and Mr. Jai Shankar obtained equal (66) Marks in the test conducted for the post of JST from U.C Khairpur, with further assertion that the date of birth of Mr. Jai Shankar is 2.5.1987, while that of the petitioner is 28.9.1989, as such the DRC gave preference in the merit list to Mr. Jai Shankar, being senior in age, thus, he could not be accommodated for the post of JST. Learned A.A.G concluded by saying that there is no post lying vacant in the U.C Khairpur, therefore, the petitioner cannot be adjusted. He prayed for dismissal of the instant petition.

5. The question is that what would be the fate of candidates who secure equal marks? And what is the methodology used by the Teachers Recruitment Policy, 2017 to break tie-in marks?

6. As per the Teachers Recruitment Policy in a case where the marks mentioned above are equal, the candidate senior in age is to be ranked higher. On merits, we have considered the facts and circumstances of the case. It is important to discuss the right of the petitioner to be appointed as JST as agitated by him. We have noted that the action of respondents against the petitioner does not impinge on the petitioner's fundamental and statutory right. We are of the considered view that even a successful candidate does not acquire an indefeasible right to be appointed and that it could be legitimately denied. The public notice inviting application for the appointment has

been held only to be an invitation to the qualified candidates to apply for an appointment. On their mere applying or selection, they do not acquire any right to the post.

7. The material placed before this Court explicitly shows that the respondents considered his case on the aforesaid pleas and rejected vide statement dated 5.12.2017 with the reasons discussed supra and we are not inclined to deprive the private respondent, who has already been appointed for the subject post, as per the Teachers Recruitment Policy, and on this score alone this petition fails on the ground that the private respondent is senior in age as per clause 19 (IV) (A) of Teachers Recruitment Policy, 2017.

8. No case is made out for interfering with the impugned order dated 5.12.2017 passed by (Chairman DRC).

9. The petitioner having appeared before the DRC without any protest and having taken a chance is now estopped by conduct from challenging the selection process and the selections now made. This Court is justified in refusing to grant any relief in favor of the petitioner. We are fully satisfied with the entire selection procedure/ and the writ petition has absolutely no merit and, therefore, is liable to be dismissed. Accordingly, we do so. However, there will be no order as to costs.

JUDGE

JUDGE

Hafiz Fahad