

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Constitutional Petition Nos. D – 8056/2017, 8779/2017,**  
**6528/2020, 2080/2018, 3376/2018, & D-1830/2020**

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**Order with signature of Judge(s)**

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**Constitutional Petition No. D – 8056/2017**

For hearing of CMA No.1100/2022 (Contempt)

**Constitutional Petition No. D – 8779/2017**

1. For order on CMA No.1189/2021 (Urgency)
2. For hearing of CMA No.1190/2022 (Contempt)

**Constitutional Petition No. D – 6528/2020**

1. For order on CMA No.5514/2022 (Contempt)
2. For order on MIT-II Report dated 24.11.2021

**Constitutional Petition No. D – 2080/2018**

For hearing of CMA No.1264/2022 (Contempt)

**Constitutional Petition No. D – 3376/2018**

For hearing of CMA No.1262/2022 (Contempt)

**Constitutional Petition No. D – 1830/2020**

For order of CMA No.1243/2022 (Contempt)

**03.03.2022**

Mr. Rafiq Ahmed Kalwar, advocate for the petitioners  
Mr. Mansoor Ali Panhwar, advocate for the petitioners  
Mr. Muzafar Ali Dehraj, advocate  
Mr. M. Yasir, advocate  
Mr. Ali Safdar Depar, AAG along with  
Ghulam Ali Birkmani, Additional Secretary (Services-I), SGA&CD,  
Mengraj Mal, Focal Person, Finance Department, Government of Sindh, and  
Khurshheed Hussain, Section Officer (Legal).

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Urgency granted.

Mr. Mansoor Ali Panhwar, learned counsel for the petitioners in CP No.D-8056/2017 has submitted that some of the petitioners have been appointed, but the cases of remaining petitioners are not being considered or decided by respondent No.2 on the pretext that the present petition is pending before this court and this court vide order dated 20.01.2020 directed respondent No.2 to decide the cases of all the remaining petitioners within four weeks, however, no compliance report has been submitted. Learned counsel further referred to the order dated 02.09.2020 and 28.04.2021 when the subject petitions were disposed of with a direction that the cases of differently-abled persons (DAPs) which have not been rejected so far would be considered by the competent authority and if those persons qualified for appointment on the sanctioned/designated post, their cases may be considered for appointment in the respective departments keeping in view 5% quota as prescribed under the Sindh Empowerment of Persons with Disabilities Act, 2018. Learned counsel further submitted that the purported compliance report filed by the

respondents is just an eyewash just to discard the basic spirit of the order. He next submitted that this court vide order dated 14.10.2021 directed to submit assessment/criteria for appointment by the DRC particularly for differently-abled persons and finally this Court vide order dated 15.10.2021 passed the following order:

*“Admittedly Focal Persons of the Department of Empowerment of Person with Disabilities present contends that they have filled 700 posts on differently-abled person quota as reserved, however, around 3926 posts are yet vacant and to be filled. Admittedly, petitioners applied in different departments after advertisement, but they were not considered, therefore, they filed petitions before this Court, and petitions were disposed of by order dated 27.2.2020 wherein Chief Secretary Sindh was directed to submit a comprehensive report and consider the case of the petitioners individually. Focal Person contends that DRC is the competent authority and DRC(s) considered the cases of the petitioners, however, failed to qualify the same except 191 petitioners. It has further come on record that yet the concerned department has not framed policy/criterion of differently-abled person and their recruitment by different DRC(s) on different posts, hence Chief Secretary Sindh shall constitute a committee comprising of the Additional Secretary SGA&CD and the officers of the Differently-abled Persons Department and other relevant / well-acquainted officers, they shall chalk out the mechanism with regard to the appointment on differently-abled person quota in light of the judgment passed by the Apex Court in the case of Malik Ubaidullah v. Government of Punjab [Civil Petition No.140-L of 2015]. That mechanism shall be prepared within one month.*

*Needless to mention that cases of the petitioners shall be re-examined in view of their policy / criterion as framed by them and shall also assign the reasons for every petitioner if DRC(s) are of the view that those petitioners are not entitled for the relevant post. At this juncture, it is pertinent to mention that this order shall be applied for the petitioners and not as rem; however, the criterion shall be applicable for all differently-abled persons for future vacancies. Needless to mention that age limit shall not come in the way of the petitioners if they have crossed the maximum limit of fifteen years i.e. 43 years and that shall be considered up to 47 years as the petitions are pending since 2017. This exercise shall be completed within three (03) months. Contempt applications stand disposed of.*

The petitioners have filed listed contempt applications in their respective petitions on the ground that they applied for lower scale posts on the disability quota in pursuance of the advertisement published from time to time, however, they could not be accommodated for unknown reasons. They being aggrieved of not being offered the subject posts, filed the aforesaid Constitutional petitions by invoking the Constitutional jurisdiction of this Court. The captioned petitions were disposed of vide order dated 28.04.2021. However, in the contempt proceedings, this Court vide order dated 15.10.2021 directed that cases of the petitioners shall be re-examined in view of their policy/criterion as framed by them and shall also assign the reasons for every petitioner if DRC(s) are of the view that those petitioners are not entitled to the relevant post. At this juncture, it is pertinent to mention that this order shall be applied for the petitioners and not as rem; however, the criterion shall be applicable for all differently-abled persons for future vacancies. Needless to mention that age limit shall not come in the way of the petitioners if they have crossed the maximum limit of fifteen years i.e. 43 years and that shall be considered up to 47 years as the petitions are pending since 2017.

Mr. Rafiq Ahmed Kalwar, learned Counsel for the petitioners, has raised his voice of concern that despite clear directions, the alleged contemnors have not complied with the order passed by this Court in its letter and spirit based on the quota reserved for differently-abled persons. He lastly prays for the initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional, and deliberate act of disobeying the above-mentioned orders passed by this Court.

Learned AAG states that this court vide order dated 20.01.2020 in CP No.D-790/2018 and other connected petitions observed no more individual applications be entertained by the provincial government for the consideration unless the advertisement is published for the availability of the vacancies. He also relied upon the order dated 20.10.2021 passed by this court in CP No.D-5679/2021 and submitted that when the aforesaid legal position was confronted to the learned counsel for the petitioners he did not press his petition and stated that he would follow the legal formalities as required for the appointment of the petitioners on disable quota. Learned AAG further referred to his statement dated 25.01.2020 along with comments of the Chief Secretary, Sindh that aggrieved persons may be advised to apply against the advertisement be placed in newspapers by concerned departments in pursuance of the order of the Hon'ble Supreme Court of Pakistan in CP No.64/2013 and CP No.77/2014 filed by Dr. Shahnawaz Munami and others v. Government of Pakistan and others. Learned AAG further relied upon the statement dated 19.02.2020 and submitted that applications were invited through advertisement on 19.11.2017 and thereafter the concerned departments worked extensively for making a list of candidates which were forwarded to the respective district recruitment committees (DRCs) of districts of Sindh to carry out recruitment process as per rule/law, however, he submitted that all those candidates including the petitioners who had applied or will apply would be considered as per rule by the respective departments for appointment against 5% quota of DAPs.

The aforesaid stance of the learned AAG has been assailed by the petitioners through concise objections to the compliance report submitted on 18.12.2020. He further submitted that the respondents have assigned no reason regarding the rejection of cases of the petitioners and referred to annexures, A`B`&`C` attached along with his concise objections. The rest of the petitioners have submitted that DRCs concerned have committed defiance of the court's orders on the premise that they have not been considered for appointment on the quota.

Learned AAG has drawn the attention of report submitted by Secretary (Services) on 23.02.2022 with the following statistics:

1. The total sanctioned strength for initial appointment in BS-1 to BS-17 in the departments is 410,889.
2. The total working strength against initial appointments in BS-01 to BS-17 in the departments is 305,447.

3. The total vacancy position for initial appointment in BS-01 to BS-17 as of 18.12.2018 in the department is 105,442.
4. The number of disabled persons working / appointment BS-01 to BS-17 is 2,300.

After hearing the parties on the listed applications and having gone through the record, prima-facie the respondents have failed to understand the basic concept of Disability and its importance in the lives of persons with disabilities as compared to persons without disabilities.

The aforesaid issues have already been set at naught by the Honorable Supreme Court in the case of *Malik Ubaidullah and others*, need no further deliberation on our part. An excerpt whereof is reproduced as under:-

*“3. Disability means lacking one or more physical powers, such as the ability to walk or to coordinate one’s movements, as from the effects of a disease or accident, or through mental impairment.3 According to the UN Convention on the Rights Of Persons With Disabilities (“CRPD” or “Convention”) ratified by Pakistan in 2011, persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”*

The Honorable Supreme Court in the aforesaid case has held that

*“The purpose of the constitutional right to human dignity is to realize the constitutional value of human dignity; to realize a person’s humanity; his free will; the freedom to shape his life and fulfill himself. It is a person’s freedom to write his life story.”*

*That employment is equally important to all people, without it, social inclusion and economic independence are unlikely to be achieved. Among the crucial social functions that employment can facilitate are financial independence and social inclusion. It has also been found to improve social status, provide social support and enable workers to make a contribution, thereby leading to an increase in self-worth<sup>11</sup>. Employment has the potential to improve a person’s financial situation, open up opportunities for social contact, build (new) friendships and increase people’s self-esteem. By contrast, unemployment can cause not only poverty and social exclusion but also result in a lower sense of self-worth. The effects of unemployment on physical health like symptoms of somatization disorder, depression, and anxiety were significantly greater in unemployed than employed individuals. The situation for people with disabilities may have consequences of a greater extent as they tend to be looked upon as dependents of their families and relatives and are not expected to be gainfully employed or independent. Work has been, and will undoubtedly continue to be, central to all human societies. One of the major difficulties faced by persons with disabilities is that employers have the erroneous assumption that these people will probably underperform in most areas of their duties – something which is actually not the case. Another plausible issue is that when the majority of workplaces are not made accessible to people with disabilities, employers may feel that they will have to make an unwarranted investment to provide facilities for people with disabilities, and some do not believe in employment potential of such people. Our Constitution, as a whole, does not distinguish between a person with or without disabilities. It recognizes the inherent dignity of a human being; equal and inalienable rights of all the people as the foundation of freedom, justice, and peace. Every person is entitled to all the rights and freedoms set forth therein, without distinction of any kind. It, therefore, applies equally to persons with disabilities, guaranteeing them the full enjoyment of their fundamental rights without discrimination. The triangular construct of the right to life, dignity, and equality under the Constitution provides a robust platform for mainstreaming persons with disabilities.”*

*“Section 10 of the Ordinance provides as under:*

**10. Establishments to employ disabled persons.**

*(1) Not less than two percent of the total number of persons employed by an establishment at any time shall be disabled persons whose names have been registered with the Employment Exchange of the area in which such establishment is located and against whose names in the register maintained under section 12 an endorsement exists to the effect that they are fit to work.*

*(2) The disabled persons employed against any post in pursuance of subsection (1) shall be entitled to the terms and conditions which are not less favorable than those of the other persons employed by the establishment against similar posts.*

*(3) When calculating the percentage of the posts in an establishment for the purposes of employment of disabled persons, the fraction of 0.5 and above shall count as a whole number."*

*"Section 10 of the Ordinance provides that not less than 2% of the total number of persons employed by an establishment at any time shall be PWDs. The total number of persons employed means the total sanctioned posts of the establishment, i.e., an Organization, Authority, Department, or Ministry. 2% of the total sanctioned posts or workforce of the establishment becomes the Disability Quota for the establishment."*

*"The Allocation of 2% Disability Quota on the basis of the advertised posts as compared to the sanctioned posts is adverse to the interest of the PWDs for the reasons that 2% Disability Quota can only be actualized if there is a minimum of 50 posts advertised to secure one post for the PWDs. If the advertisement is for less than 50 posts (due to the vacancies arising at that particular time), Disability Quota on the basis of the advertised posts cannot be worked out, depriving the PWDs of their prospect of employment. This can go on for a long time as posts are advertised as per vacancies which vary from time to time, therefore, if Disability Quota were to be based on the advertised posts, the fate of the PWDs would continue to hang in the balance and remain uncertain unless the posts advertised happen to be above 50. It is, therefore, in the interest of the PWDs that the Disability Quota for the establishment is first worked out on the basis of the total sanctioned posts and then apportioned against the total sanctioned strength of different categories of posts. Thereafter, the posts can be successively filled as and when the vacancies arise through advertisement, keeping the total Disability Quota in mind rather than the number of posts advertised."*

*"Summarizing the above we hold that:*

- (i) The 2% (and now 3%) Disability Quota is to be calculated on the basis of the total sanctioned posts of the establishment.*
- (ii) In order to ensure fair and equitable representation of persons with disabilities (PWDs) in every tier of the establishment, the total Disability Quota is to be further apportioned and allocated amongst different categories of posts in the establishment. The determination of different categories is on the basis of their distinct qualifications, selection criteria, and separate merit list.*
- (iii) In case the sanctioned strength of a post is less than, it will be for the establishment to allocate seat(s) from the overall Disability Quota against such a post*
- (iv) if a particular post is not fit for a PWD, the establishment may shift the Disability Quota and adjust it against another post in the establishment so that the overall Disability Quota is not disturbed and maintained at all times.*
- (v) The advertisement for any category of the post must clearly provide the total Disability Quota for that category of posts and the number of seats vacant under the said Disability Quota at the time of the advertisement."*

Prima facie, this is a simple case of enforcement of the orders dated 28.04.2021 and 15.10.2021 passed by this Court as discussed supra.

In our view, all the petitioners and/or remaining petitioners were/are entitled to the benefit of the aforesaid orders passed by this Court, therefore, prima-facie the competent authority of respondents was/is under obligation to issue the order of appointment in their favor on the premise that sufficient time has already elapsed and no further time is required to be given to them to play with the lives of the disabled persons on their wish and will.

We have also scrutinized the stance of the alleged contemnors; prima-facie the explanation offered by the respondents through the purported compliance report is not tenable under the law, Prima-facie, they have not looked into the basic spirit of the orders as discussed supra, and therefore, the stance of the respondents, as discussed in the preceding paragraphs, to that extent is rejected.

The petitioners have pointed out malice on the part of alleged contemnors warranting interference of this Court to take stern action against the alleged contemnors under Article 204 of the Constitution, who failed and neglected to issue appointment orders in their favor on the quota reserved for a differently-abled person as they have been in litigation since 2017 and onwards, thus, we are left with two options; either to initiate proceedings for contempt against the alleged contemnors under the provisions of Contempt of Courts Ordinance, 2003 or Article 204 of the Constitution or to direct the District Recruitment Committees of each District of Sindh/Competent Authority of respondents to implement the orders passed by this Court as well as the Hon'ble Supreme Court of Pakistan in letter and spirit, expeditiously, without any delay and with reasonable dispatch.

We are of the considered view that the interest of justice would be best met if the respondents/alleged contemnors are granted the last opportunity to comply with the direction of this Court as well as the Honorable Supreme Court in the aforesaid cases without fail within one month and to submit a compliance report to this Court on the next date of hearing, failing which stern action shall be taken against the alleged contemnors and all other delinquent officials who have been instrumental in non-compliance of the orders passed by this court and the Hon'ble Supreme Court of Pakistan on the quota reserved for DAPs under the law, on the next date of hearing.

Chief Secretary, Sindh, Head of the DRCs, and the alleged contemnors shall be in attendance in person along with their compliance report/appointment orders of the petitioners/remaining petitioners strictly based on quota reserved for differently-abled persons under the law, on the next date of hearing. However, it is made clear that no further time shall be granted to the alleged contemnors; and, in case of noncompliance, this Court will treat the act of alleged contemnors as contempt on the face of the Court; and will take

resort of Article 204 of the Constitution read with section 3&4 of Contempt of Court Ordinance, 2003.

Re-list after one month and the matters shall be taken up at 11:00 a.m. However, Let a copy of this order be communicated to the Chief Secretary, Sindh, and head of DRCs, for compliance.

JUDGE

JUDGE

Zahid/