

# IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

## **C.P No.D-4462 of 2020**

Ghulam Hussain

Versus

Province of Sindh and 02 others.

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**Date of hearing & order: 31.03.2021**

Mr. Majid Ali Khichi, advocate for the petitioner.

Mr. Sibtain Mehmood, Addl. A.G. along with Shahmir Khan Bhutto, Director General, Monitoring and Evaluation, Government of Sindh.

### **ORDER**

**ADNAN-UL-KARIM MEMON, J.** The petitioner has filed this petition under Article 199 of the Constitution, seeking his appointment for the post of Naib Qasid in respondent-School Education and Literacy Department, Government of Sindh.

2. Brief facts of the case as per pleadings of the parties are that in response to the advertisement published in the newspaper daily 'Kawish' dated 27.5.2019 (page 39), the petitioner applied for the post of Naib Qasid and after passing the written test successfully, he was called by the Selection Committee for an interview on 24.6.2020 vide letter dated 24.6.2020 (page 35). His grievance is that despite successful completion of all the codal formalities by him, his case has not been processed, although he was the most qualified candidate for the subject post amongst all the applicants / candidates, who had appeared in the written test and interview.

3. Mr. Majid Ali Khichi, learned counsel for the petitioner, points out that the petitioner has completed his Masters in Journalism and he had applied for the post of Naib Qasid with respondents and despite having been declared a successful candidate, he was not considered and they accommodated their blue-eyed ones, whereas in the comments on the part of the respondents, they accepted the elements of passing the test, however, it is stated therein that the petitioner has not cleared the interview. Per learned counsel, he cleared the interview and was waiting for his appointment, but to no avail.

4. When confronted with the aforesaid factum of the case, the learned Addl. AG has no satisfactory answer to the query raised hereinabove. Prima facie, we find it strange that for the post of Naib Qasid, the interview was conducted, which post only requires qualification of middle / VIII class and the respondents have preferred someone else who ought to be more qualified than the petitioner, but the record is silent on this aspect.

5. We have noticed that the post of Naib Qasid is in BPS-01 as disclosed in the advertisement dated 27.5.2019; and, the rule position is that the initial appointment to posts in basic scales 3 to 10 shall be made on the recommendations of the Departmental Selection Committee after the vacancies in these basic scales have been advertised in the newspapers and the candidate for appointment by initial recruitment must possess the educational qualification and experience and be within the age limit as laid down for that appointment, whereas the posts in BPS 1 and 2 shall ordinarily be filled on the local basis as per Rule 16 of The Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, an excerpt whereof is as under:-

*“16. Posts in BPS 1 and 2 shall ordinarily be filled on local basis.”*

6. The aforesaid rule position does not envisage the procedure adopted by the respondents to fill the subject post, which is prima facie has been held in a cursory manner. The only requirement to fill the subject post is that a candidate must possess the educational qualification and experience and be within the age limit as laid down under the recruitment rules, which the petitioner fulfilled and the respondents ought not to have rejected his candidature on the analogy put forward by them.

7. We have noticed that in response to the aforesaid advertisement, 135 applications were received against two vacant posts of Naib Qasid (BS-01) for rural quota in the Directorate of Monitoring & Evaluation, School Education Department, Government of Sindh and all 134 applicants including the petitioner were issued admit card for the screening test, the screening test was conducted on 11.2.2020; and, based on screening test, 10 candidates were shortlisted for the interview

by the Departmental Selection Committee. All candidates appeared for an interview before the Interview Committee. The reason for nonsuiting the petitioner that the suitable candidates were appointed against the vacant post on the recommendation of the Departmental Selection Committee.

8. We again asked the representative of the respondent-department to show us any successful candidate, more qualified than the petitioner for the subject post, the only reason put forward by him that a more qualified candidate cannot perform the duty of Naib Qasid as such he was not considered for the subject post. In our view, this is hardly a ground to nonsuit the petitioner and the same is based on a mere presumption which has no basis under the law.

9. Since the petitioner applied for the subject post voluntarily and succeeded in the written test as well as in the interview, but his candidature was not considered based on the presumption that he would not work as Naib Qasid, being highly qualified. This objection would be of no legal effect as it would be hit by the prohibition contained in Article 25 of the Constitution.

10. Under Article 5 of the Constitution, it is the imperative obligation of the functionaries of the State to abide by the Constitution and the law because it has been held inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. In this regard, while placing reliance on the dicta laid down by the Honorable Supreme Court in the case of I.A. Sherwani and 14 others v. Government of Pakistan through Secretary Finance Division, Islamabad and others (1991 SCMR 1041), we hold that the Petitioner has been given highly discriminatory treatment for not considering his case for appointment as Naib Qasid. Accordingly, while following the principle of law enunciated in I.A. Sherwani's case (supra), and because of the peculiar facts and circumstances of the present case, while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we hereby declare that the impugned action/order of the official respondents is in violation of the strict and prohibitory command contained in Article 25 of the Constitution, because the petitioner has been treated with sheer discrimination, which cannot be approved on any premises whatsoever.

11. In this view of the matter, the decision taken by the respondents for the appointment of Naib Qasid is erroneous and is of no legal effect.

12. The matter is remanded to the competent authority of respondents for afresh decision on the issue of appointment of Naib Qasid under law, and consider the case of the petitioner for the subject post within two months, from the date of receipt of the order of this Court and submit compliance report through MIT-II of this Court.

13. The Captioned petition is allowed to the aforesaid extent with no order as to costs.

14. These are the reasons for our short order dated 31.3.2021 whereby we have allowed the instant petition.

JUDGE

JUDGE