

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

C.P.No.D- 2347 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For orders on MA 8693/2017.
3. For hearing of main case.

Date of hearing: 27.08.2019.

Date of order:

Mr. Nauman Sahito, Advocate for petitioner.
Mr. Allah Bachayo Soomro, Additional A.G.

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Learned A.A.G. has filed comments on behalf of respondent No.5, taken on record, a copy whereof has been supplied to the counsel for petitioner.

MUHAMMAD IQBAL KALHORO. J:- Petitioner, who is resident of Union Council (UC) Abul Hassan, Taluka Daur, District Shaheed Benazirabad, applied for a post of Primary School Teacher (PST) in terms of an advertisement in 'Daily Kawish' published in April 2012 and was declared successful after due process and her name was listed at Serial No.13 of final merit list of said UC issued on 08.01.2013. Thereafter, she was called by respondents/District Recruitment Committee where her documents were verified and she was allocated school in her UC. However, she was not given an offer letter for appointment and when contacted the respondents she was asked to submit her PRC (Form 'D') which she submitted in February 2014. Thereafter, she kept on approaching the respondents to get an offer letter for appointment of PST but in vain hence this petition.

2. Respondents have filed the comments not disputing the petitioner qualifying examination for PST on merits as claimed by her but asserted that she was not recommended for the said post due to her failure to submit PRC / Form 'D' within time which is the main document to determine a candidate's eligibility for appointment in a particular UC. The comments further reveal that the petitioner was able to submit such Form after 20 months of the cut-off date viz. 20.06.2012, in February 2014.

3. Learned counsel for the petitioner has contended that act of non-issuance of offer letter to the petitioner by the respondents is illegal, arbitrary and discriminatory; that the petitioner qualified entire process and was declared successful for PST in

subject UC, yet she has been denied posting / offer order; that along with application form she had submitted her domicile certificate and other documents establishing her residence in the said UC and therefore she was allowed to appear in the process which she qualified on strength of her merit; that she has been non-suited on a technical ground of non-submission of her PRC; that as soon as she was issued PRC, she immediately submitted it with the respondents but they refused to heed her appointment for the said post; that on account of her success in due process of recruitment, the petitioner has acquired a vested right to appointment and that she has been discriminated against with reference to other successful candidates appointed by the respondents. Learned counsel in support of his arguments has relied upon 2014 PLC (C.S) 413, 2016 PLC (C.S) 360 and an unreported order dated 25.09.2014 passed by this court at Circuit Court, Larkana in C.P.No.D-375 of 2014.

4. On the other hand, learned AAG has submitted that appointment of PST in terms of the advertisement was UC based and the petitioner was declared successful from UC Abul Hassan Taluka Daur District Shaheed Benazirabad on account of her application form but at the time of final scrutiny of her documents, she failed to produce PRC / Form 'D', hence she was not considered eligible for appointment.

5. We have considered submissions of the parties and perused the record. It is not disputed that petitioner had applied for the post of PST in UC Abdul Hassan Taluka Daur District Shaeed Benzirabad and was allowed to participate in the examination only after an initial/preliminary scrutiny of her educational certificates including her domicile. At the time of such scrutiny, no one from among the respondents questioned her candidature from the said UC and allowed her to continue with the process. This would essentially mean that DRC members had no doubt, and understandably it was due to certificates submitted by the petitioner, that she belonged to said UC and was entitled to attempt for the post available there. It is noteworthy that in the certificates which the petitioner submitted along with her application form is her domicile that was issued on 21.08.2004 much prior to initiation of subject process, and confirms her residence in the said area. It may be mentioned that certificate of domicile to be issued in terms of section 17 of the Pakistan Citizenship Act, 1951 is awarded to an applicant when Authority is satisfied that he/she has resided in Pakistan for a period not less than one year immediately before making the application, and has acquired a domicile therein. In this case, the petitioner acquired domicile certificate in the year 2004 and is an admitted resident of the said area. There is nothing on record to show that any one from the area or from among other candidates who had filed applications for the same post had made even

an endeavor to dispute candidature of the petitioner from the said UC or had raised any objection over her.

6. Respondents in their comments have not disputed petitioner' claim of residing in the said UC, nor they have suspected authenticity of her PRC therein either. The only objection raised by them is that she submitted her PRC after the cut-off date i.e. 20.06.2012, which is against the terms and conditions of recruitment policy. None has disputed that there is no specific clause etc. in the policy dealing with a candidate who after a preliminary scrutiny of his/her documents by DRC is considered to belong to a particular area/UC and allowed to attempt examination/test which he/she qualifies on merit, but is found to have not submitted his/her PRC, etc. and which he / she submits later on. This would essentially leave much room for discretion for DRC to consider the case of each such candidate on its own peculiar merits before denying his/her right earned by him/her by qualifying the test for appointment on merit. It would seem detached from natural norms of justice to non-suit a successful candidate without even providing him an opportunity to file a document which he/she could not along with application form, and yet was allowed to attempt the exams. In our view, if a candidate qualifies the test for appointment on merit and is otherwise eligible in all respects, non-submission of a document of nature like in hand i.e. PRC shall not be deemed as an inherent disqualification disentitling him/her to fruits of his/her hard work. In the cases of such successful candidates, DRC at least shall look into causes of failure of a candidate to submit such a document in time to determine whether he/she was at fault for it or its non-submission was due to circumstances beyond his/her control before disqualifying him.

7. We in view of what has been discussed above dispose of this petition whereby refer the matter back to DRC/the respondents for reconsidering the case of the petitioner for her appointment for the post of PST in the subject UC i.e. Abdul Hassan in the light of above discussion and conclusion within a period of 3 months from today and submit such compliance report through Additional Registrar of this court.

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submit the same . would be hardly justifiable. it would be injustice to eliminate him/her for the same would not be considered as an inherent disqualification impeding his/her appointment. for the post after participation And if there is DRC was satisfied about residence of such a candidate on the basis of documents submitted by her/him already and did not restrain him/her from appearing in the test, it will not non suit such candidate without providing him/her an opportunity and which there is no dispute or no one has raised and that No penalty This silence may seem to be eerie in this particular context, where whole emphasis was on UC-based appointments entailing it for framers of the policy to cater for such a situation, but would not at least reflect adversely against such successful candidate

....A perusal of said advertisement would show that the appointments were UC based and all the applicants were required to submit complete documents alongwith application form till 20th June 2012. It is not disputed that the petitioner had not filed PRC / Form 'D' to establish her residency in said UC nor it has been denied that even at the time of final scrutiny of her papers she could not submit the said documents and it was only after a considerable time in February 2014 when she forwarded PRC / Form 'D' to the respondents. Her candidacy for the said post in absence of such a document qualifying her to get public service in Sindh on the basis of her residence was incomplete. And it was within domain of DRC in terms of recruitment policy to cancel candidature of such a candidate before issuance of an offer letter to him/her. Further the appointment of teachers as per notification was proposed to be made on contract for a period of three (03) years which period has already expired. No doubt petitioner had qualified the process of appointment but her application form short of PRC was not complete and therefore, her candidacy from UC Abul Hassan Taluka Daur District Shaheed Benazirabad was not established. It is well settled that mere qualification in a process of recruitment for a particular post would not vest a right of appointment on the candidate. The petitioner's counsel has not denied that the appointment of teachers in terms of subject notification was UC based and PRC / Form 'D' was the only document whereby she could have established her permanent residence in the said UC for the purpose of recruitment to the subject post. These being the facts of the case, we are of the view that no vested right on the petitioner to be appointed in said UC had been bestowed on her qualifying the process of recruitment. We, therefore, find no merit in this petition and dismiss it accordingly alongwith listed application with no order as to costs. The petitioner however may be allowed to participate in future likewise recruitment process, if she so desires however on its own merits.