

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D-1394 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For hearing of M.A. No.7593/2014.
2. For hearing of main case

02.03.2023

Mr. Ahsan Gul Dahri, advocate for petitioners.

Mr. Rafique Ahmed Dahri, Assistant Advocate General Sindh along with Ahmeduddin Director Schools Education Primary Hyderabad and Abdul Fattah Dahri District Education Officer (Primary) SBA.

KHADIM HUSSAIN JUNIO, J.- The petitioners applied for Primary School Teacher positions and even cleared the test conducted by NTS which put them very high amongst the applicants that qualified the test. The petitioners, despite being assured that appointment letters were to follow, never received the same and the posts of Primary School Teachers were handed out on the basis of political pressure and monetary gain. The petitioners, time and again, approached the respondents, but their prayers were left unheard.

2. It is contended by the learned counsel for the petitioners that petitioner No.1 is very qualified as she possesses M.Sc. (Biochemistry), B. Ed. and other qualifications while the petitioner No.2 possesses B-Com, B. Ed. as well as other qualifications; that the petitioners went through proper procedure of verification of documents and testimonials and only then were issued admit cards in order to assist their appearance in the written test; that the petitioners have superseded the competition in the written test and have yet been kept on false hopes about receiving their appointment letters; that there exists political pressure on the respondents; that the petitioners were informed by respondent No.5 that if they fail to meet the bribe amount that he demands then they will be issued no appointment letters. He, therefore, prayed that the Hon'ble Court may be pleased to direct the respondents to issue appointment letters towards appointment of the petitioners as Primary School Teachers.

3. Conversely, learned Assistant Advocate General Sindh contended that vacancies were to be filled based on a set quotas for disability and minority which were to be considered before the normal candidates until the same were fully filled out at 2% for disabled quota and 5% for minority quota and since those seats were filled, no more seats were left.

4. Para-wise comments were submitted on behalf of respondent No. 2 Chief Program Manager, RSU, Education & Literacy Department and respondent No. 3

Deputy Program Manager, RSU, Education & Literacy both of whom admitted the fact that Education & Literacy Department called on applications from candidates for the posts of High School Teachers, Junior School Teachers and Primary School Teachers against school specific UC and need based vacancies. It was also admitted by them that the petitioner No. 1 Qurat-ul-ain had applied from UC-3 Nawabshah and obtained 84 marks in the written test, placing her at the 3rd position in the merit list whereas petitioner No. 2 Sameena applied from UC-8 Nawabshah and obtained 83 marks in the written test, also placing her at the 3rd position in her UC.

5. Respondent No. 5 District Education Officer, in his written statement, contended that only two seats from UC-3 Nawabshah were lying vacant, one in male category at GBPS Sajakpura Nawabshah and another in the mix category at GGELS Himat Ali Shah Nawabshah. UC-8 only had two seats in which one seat was lying vacant in male category at GBPS Syed Abad 1st Shift and one seat in the female category was lying vacant at GGPS Linepar Model School Nawabshah and as per notified recruitment policies as per Teachers Recruitment Policy 2012, the recruitment had to start with the minority and disabled candidates and until the same were fulfilled, general candidates could not be considered as such the case of the petitioners merits no consideration.

6. Having heard and perused the record.

7. A perusal of the record shows that a total 227 vacancies of primary school teachers, 88 vacancies of junior school teachers (Sciences), 22 vacancies of junior school teachers (General), 19 vacancies of high school teachers (Sciences) and 1 vacancy of high school teacher (General) were shown in Nawabshah. The distribution of the same based on areas is reproduced hereunder for ready reference:

Nawab Shah	Chanesar-1	67	17	3	6	0
	Chanesar-2	55	6	3	4	1
	Ghandtar	18	4	0	4	0
	Khairshah	50	9	0	2	0
	Nawabshah-1	11	23	6	0	0
	Nawabshah-2	6	11	3	1	0
	Nawabshah-3	2	4	0	0	0
	Nawabshah-4	3	2	0	0	0
	Nawabshah-5	2	7	2	0	0
	Nawabshah-6	3	1	1	0	0
	Nawabshah-7	5	2	0	2	0
	Nawabshah-8	2	10	2	0	0
Nawabshah-9	3	1	1	0	0	

8. Petitioner No. 1 Qurat-ul-ain had applied from UC-3 Nawabshah and obtained 84 marks in the written test, placing her at the 3rd position in the merit list of her Union Council whereas petitioner No. 2 Sameena applied from UC-8

Nawabshah and obtained 83 marks in the written test, also placing her at the 3rd position in the merit list of her Union Council. Respondent No. 5 / District Education Officer in his written statement stated that two vacancies each were available in UC-3 and UC-8 and such fact is backed up by the list provided, issued by his office and is also admitted in the memo of the petition. However, the record submitted by the respondent No. 3 Deputy Program Manager, Reform Support Unit of Education & Literacy Department show that no vacancies whatsoever were available for the said Union Councils. This is in itself contradictory. The vacancies for UC-3 included one post reserved for male candidates and one for mixed candidates whereas for UC-8, one post was reserved male candidates and one for female candidates. Both these UCs had a maximum of 1 seat where the petitioners could have been considered, however the appointments on minority quotas show that the official respondents appointed two minority candidates from each Union Council, essentially not even considering the reserved posts for male candidates. This aspect of the case proves the malafide on the part of the official respondents in that despite the minority quota only being 5%, 100% of the seats in UC-3 and UC-8 were given to female minorities while completely ignoring general candidates who had otherwise scored top 3 in their respective Union Councils. Such appointments appear to have been made through a pick and choose policy rather than being on merit and to promote fairness in the recruitment process and by choosing such a policy in hiring, the official respondents committed gross illegality. We have also been made aware that the top two candidates of both Union Councils were moved to the posts of Junior School Teachers, as such making both the petitioners top scoring candidates in their UCs. The recruitment policy (TRP 2012) also provided that merit for the posts of primary school teachers was to be considered on a union council basis and on the same basis, the petitioners were both eligible for their appointment to the said posts.

9. For what has been discussed above, the official respondents are directed to issue appointment orders to the petitioners for having secured the top position in their Union Council's merit list after observing all codal formalities within sixty (60) days from the date of this order. The official respondents are also strictly directed to ensure that proper recruitment procedures are followed in the future to ensure that recruitment is done on merit rather than any pick and choose policies being adopted and rules being bent for some candidates and not the others.

10. Captioned constitutional petition stands disposed of in the above terms.

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