

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH HYDERABAD**  
**C.P.No. D- 828 of 2023**

Date of hearing	Order with signature of Judge.
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- 1.For orders on M.A No.4127/23.
- 2.For orders on office objection
- 3.For orders on M.A No.4128/23
- 4.For hearing of main case

**18-05-2023**

Mr. Wali Muhammad Khoso, Advocate for the Petitioners.

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Through this petition, the petitioners have sought the following relief(s):-

Direct the respondents No.1 to 3 to give equal treatment to the petitioners in the light of order dated 28.04.2023 passed in Civil Petition for Leave to Appeal No.204-K, 205-K and 206-K of 2022 by the Supreme Court of Pakistan in the same subject matter and thereby place the cases of the petitioners before the grievance redressal committee by providing opportunity of hearing.

Direct the respondents No.1 to 3 to consider the petitioners being eligible candidates for recruitment to the posts of Primary School Teacher (BPS-09) who secured 60% or above marks as required by the Recruitment Policy, 2008 and one of the conditions contained in advertisement dated 24.09.2008 and act in accordance with law.

Any other relief(s) which this Honorable Court deems, fit, just and proper in favour of the petitioner.

Heard counsel for the petitioners and perused the record. At the very outset, petitioner's counsel has been confronted as to maintainability of this petition inasmuch as the relief being sought pursuant to order dated 28.04.2023 passed in CPLA Nos.204-K to 206-K of 2022 (*Ali Muhammad & Others v Province of Sindh & Others*) does not pertain to the present petitioners; hence, cannot be granted and in response, he has relied upon the case of *Hameed Akhtar Niazi*<sup>1</sup> therefore, according to him, the petitioners are fully entitled for the same relief. He further submits that the judgment in the case of *Ali Muhammad & Others* arose out of an order dated 03.11.2021 passed by this Court in C.P No. D-639 of 2011 and other connected matters; however, the present petitioners had filed application(s) under Order 1 Rule 10 CPC in such petitions to become petitioners which were never decided and therefore, the relief so granted by the Honorable Supreme Court also applies to the present petitioners.

From perusal of the record it appears that certain petitioners filed C.P No. D-639 of 2011 and other connected matters, wherein they were seeking appointment as Primary School Teacher (PST) on the ground that

<sup>1</sup> Hameed Akhtar Niazi v The Secretary Establishment (1996 SCMR 1185)

they had obtained more than the required marks and were entitled, as such, to be appointed as Primary School Teacher (PST). The said petitions were dismissed vide order dated 03.11.2021 by a learned Divisional Bench of this Court. The said order was impugned by the petitioners in the case of **Ali Muhammad & Others** (CPLA No.204-K of 2022 and other connected matters), wherein on 28.04.2023 the following consent order was passed: -

*“These cases were fixed yesterday and the learned Additional Advocate General Sindh was directed to call the Secretary, School Education and Literacy Department, Government of Sindh, who is present in Court along with Deputy Secretary, School Education and Literacy Department.*

*Learned counsel for the petitioners argued that all the petitioners secured qualifying marks in the aptitude test, but they were not appointed, whereas the Secretary, School Education and Literacy Department, submits that the appointment letters were issued by Union Council wise to the candidates, who secured higher marks than the petitioners. In order to resolve this controversy to some logical end, the Secretary School Education and Literacy Department suggests that a Redressal Committee has already been constituted to deal such type of disputes and he undertakes that the case of the petitioners will be placed before the said Committee within a period of 10 days and the Committee will provide proper opportunity of hearing to the petitioners after due notice to them through their counsel and the learned counsel undertakes that he will communicate the same to the petitioners, because no addresses of the petitioners are mentioned in the memo of petitions, which is otherwise not proper manner to file CPLA in this Court.*

*The Secretary further undertakes that after receiving the dossiers of the petitioners, the Redressal Committee shall decide the matter within a period of two months and shall communicate its decision to the petitioners through their counsel.*

*In view of the consensus arrived at between the parties through their counsel and the learned Additional Advocate General as well as Secretary School Education and Literacy Department, by consent, these petitions are disposed of in the above terms”.*

From perusal of the aforesaid order, it appears that it is a result of some consensus between the petitioners therein and the Additional Advocate General as well as Secretary School Education & Literacy Department, whereas there is no judgment or finding of the Honorable Supreme Court. It is only that the petitions have been disposed of on such terms. In that case any reliance placed on the case of *Hameed Akhtar Niazi (Supra)* is misconceived inasmuch as there is no independent adjudication of any legal issue by the Supreme Court, the benefit of which could be availed by the petitioners. The principle enunciated in *Hameed Akhtar Niazi (Supra)* is that where a question of law is decided by the Supreme Court in a service matter, then it can be applied to those as well who had not litigated. This is not the ratio of the order passed in the case of **Ali Muhammad & Others (Supra)**. The consent order obviously cannot be

cited as a precedent so as to make it binding on this Court. Therefore, any reliance placed on such a consent order is of no help to the case of the present petitioners. Reliance may also be placed on order<sup>2</sup> dated 1.4.2015 passed by the Supreme Court in Civil Petition No.186-K of 2013 in more or less identical facts. Similar view has been expressed by a learned Division Bench of this Court in the case of *Mst. Jameela*<sup>3</sup>.

As to filing Order 1 Rule 10 CPC application(s) to become interveners is concerned, apparently the petition in which such applications were filed already stands dismissed and now even if such applications are pending, they cannot be granted as impliedly they appear to have become infructuous. It further appears that the petitioners have not sought any further remedy in respect of their Order 1 Rule 10 CPC application(s) in the said petitions; nor they have approached the Honorable Supreme Court for any further relief. It further appears that such petitions were filed in 2011, whereas, the present petitioners filed their respective application(s) under Order 1 Rule 10 CPC to become interveners in the year 2021 and admittedly their case was badly hit by *laches* as well.

In view of hereinabove facts and circumstances of this case, we do not see any reason to entertain this petition; being misconceived and not maintainable; hence the same was **dismissed** in *limine* by means of a short dated 18.05.2023 and these are the reasons thereof.

**JUDGE**

**JUDGE**

**\*Hafiz Fahad\***

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<sup>2</sup> "The consent order obviously cannot be cited as precedent, moreso when the scrapping of the examination was maintained by the High Court. Additionally, the Constitution Petition suffered from laches. By now, almost 8 years have passed by when the selection was made and it is too late in the day to direct the appointment of Petitioners."

<sup>3</sup> [2020 PLC (CS) 176] *Mst. Jameela v Province of Sindh* (incidentally authored by one of us; Adnan-ul- Karim, J.)