

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No.D- 480 of 2022

(Muhammad Laique & others v. P.O Sindh & others)

Present:

Zafar Ahmed Rajput, J.
Zulfiqar Ahmad Khan, J.

For the Petitioners : Mr. Sohail Ahmed Khoso, Advocate.

For the Respondents : Mr. Shahriyar I. Awan, Assistant A.G
a/w Hafiz Shahabuddin, Director
Schools (ES&HS), Sukkur and Ali
Ahmed Rajper, District Education
Officer (ES&HS), Khairpur.

Date(s) of hearing : **25-05-2023**
Date of Order : **25-05-2023**

ORDER

Zafar Ahmed Rajput, J. Learned counsel for the petitioners files statement to the effect that under instructions he does not press instant petition on behalf of petitioners No.3&4 (*Nishan Ali and Niaz Hussain*) with permission to said petitioners to file petition if fresh cause of action accrued to them in future in consequence of a Constitutional Petition pending adjudication before this Court at Principal seat regarding re-setting of passing marks for the candidates belonged to hard areas. Accordingly this petition **to the extent of petitioners No.3&4 stands dismissed as not pressed** leaving the said petitioners at liberty to maintain petition on fresh cause of action, if so advised and permissible under the law.

2. Petitioners No.1&2 (*Muhammad Laique s/o Jewan Khan and Irshad Ahmed s/o Najamuddin*) resident of Union Council Khenwari Taluka Nara-Khairpur being eligible candidates applied for the post of Primary School Teacher (PST) pursuant to an advertisement got issued by the respondent No.4

(*Project Manager, SIBA Testing Services, Sukkur IBA University*). The cut-off date to apply for the said post was initially 26.03.2021, which was subsequently extended to 09.04.2021. The said petitioners secured 46 and 45 marks respectively in the test conducted on 04.09.2021 by the respondent No.4. The appointment for the post of PST, under said advertisement, was on Union Council basis subject to availability of school specifying vacancy in their UCs. As such, both petitioners were entitled to appointment on the said post from U.C Khenwari, but their right of appointment was declined by the respondent No.3 (*District Education Officer (ES&HS), Khairpur*) on the ground that during recruitment process, residential area / ward of the petitioners came into U.C Tajjal Shareef on account of delimitation, held under Notifications dated 19.11.2021 and 28.12.2021, issued by the Election Commission of Pakistan and Notification dated 27.04.2022, issued by the Government of Sindh, Local Government & Housing Town Panning Department, under Section 16 of the Sindh Local Government Act, 2013. It is an admitted position that at present two posts of PST are lying vacant in U.C. Khenwari and the last candidate, who was appointed by the respondent No.3 from said U.C secured 42 marks.

3. There is no denial to the fact that both the petitioners are having requisite qualifications and they after completing all codal formalities, attended written test, conducted by the respondent No.4 and passed the same by securing 46 and 45 marks respectively. Total four posts of PST are filled till date against six vacant posts, out of them, two candidates secured lesser marks than the petitioners and their eligibility for the appointment has been declined by the respondent No.3 only on the ground that after delimitation, their ward became part of another U.C. Tajjal Shareef. We are afraid, both the petitioners have been treated by the respondent No.3 indifferently and against rules, law and principle of equity. It is a matter of record that when alleged vacancies were announced and applications were invited, both the petitioners were resident of

U.C Khenwari. Even their written test was conducted by the respondent No.4 on 21.09.2021 and they appeared in the test as candidates from U.C. Khenwari, therefore, subsequent change of their ward from U.C Khenwari to U.C Tajjal Shareef has no impact on their very right of applying and appointment from U.C Khenwari. Even otherwise, under Section 19 Election Act, 2017, delimitation of the constituencies is only for the purposes of holding national elections, whereas, under Section 221 of the said Act, delimitation is only for holding elections of Local Government constituencies, which had no retrospective effect at all. It is a settled principle of law that statutes / notifications / executive and administrative orders would operate prospectively unless they expressly provide for retrospective operations. For reference, case of Government of Pakistan v. Muhammad Ismail and another, reported as **2021 SCMR 1246** may be referred.

4. For the foregoing facts and circumstances of the case, we **allow** this petition by directing to the respondent No.3 to put up case of both the petitioners for their appointment to the post of PST before DRC and after completing all codal formalities, issue appointment orders in accordance with law and as per Teachers Recruitment Policy, 2021. Such exercise shall be completed within a period of 60-days hereof under compliance report to this Court through its Additional Registrar.

5. Instant petition stands **allowed** in the above terms along with pending application(s).

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