

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 146 of 2014

(*Pardeep Kumar versus National Testing Services and others*)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **24.10.2023**

Date of decision : **24.10.2023**

Mr. Mushtaque Ahmed W. Abbasi, Advocate for petitioner.
Mr. Mukesh Kumar G. Karara, Advocate for respondent No.6.
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh along with Imdad Ali Larik, Focal Person of Director School Education (Elementary, Secondary & Higher Secondary), Sukkur and Mehboob Ali Shaikh, Assistant Education Officer (Elementary, Secondary & Higher Secondary), Sukkur.

ORDER

Muhammad Iqbal Kalhoro, J. – Petitioner, a resident of Union Council ('UC') 35, Taluka Pano Aqil, District Sukkur and Hindu by religion, applied for a post of Junior School Teacher ('JST') in the Teachers' Recruitment Policy-2012 and was declared successful candidate having obtained 71 marks. But surprisingly, respondent No.6, who had obtained 62 marks, was given preference and selected for appointment in his stead against the vacant post of JST in the same UC. When the petitioner came to know that respondent No.6 was not a resident of Pano Aqil, and she was a permanent resident of Karachi; and by misrepresentation and filing fake documents had succeeded in getting declaration as a successful candidate, he filed an application in writing to the District Education Officer, Sukkur dated 23.12.2013 apprising him of all the relevant facts including the one that she was originally resident of Karachi. Hence her declaration as a successful candidate in the said UC was illegal and void ab initio. But when his application was not entertained or replied, he filed this petition.

2. Learned Counsel representing petitioner has argued that CNIC of respondent No.6 available at page 41 clearly shows that she is a resident of Karachi and not of Pano Aqil. In the first final merit list issued by National Testing Service, she was shown to be a resident of Taluka Sukkur, UC Old Sukkur, but in the second merit list, she was

shown to be resident of Pano Aqil in same UC. Learned Counsel has further stated that the documents filed by respondent No.6 particularly Form 'D', available at page No.75, demonstrates that entries showing her birth place as Pano Aqil, her education at Pano Aqil and her permanent residence as Pano Aqil have been cancelled. More so, the same certificate was issued on 01.03.2013, whereas the test of the candidates had taken place before such date in January 2013, hence there is also issue of cutoff date. Citing these facts and circumstances, learned Counsel has prayed for a declaration deleting name of respondent No.6 from merit list and a direction to respondents to issue offer order of the post to the petitioner.

3. His arguments have been rebutted by learned Counsel appearing for respondent No.6. He has submitted that this petition has been filed mainly on four grounds, that respondent No.6 was overage; that she had obtained less marks than petitioner: 62 marks, whereas petitioner had obtained 71 marks; that she is not resident of UC 35, Pano Aqil; and that she is a permanent resident of Karachi. He submits that no doubt respondent No.6 had obtained 62 marks, but she, being a woman, was allocated 20 additional marks in terms of Teachers' Recruitment Policy-2012, strictly in letter and spirit of the Constitution of Pakistan, which enjoins much emphasis on promotion of women and their induction in civil services. He further submits that respondent No.6 is currently residing at Karachi because of her marriage. But she was born at Pano Aqil, she got educated there, her domicile and PRC belong to Taluka Pano Aqil and said UC. Only after her marriage, she shifted to Karachi to live with her husband, but her domicile and PRC issued from Pano Aqil have never been cancelled and she has never applied for issuance of fresh domicile and PRC of Karachi. Learned Counsel has further drawn our attention to the documents filed by him in this regard to bring home the point.

4. Learned AAG Sindh has supported the case of respondent No.6 and while referring to the comments filed by District Education Officer, Sukkur (respondent No.5) has submitted that the documents submitted by respondent No.6 were found genuine and she was given preference over the petitioner because she was awarded 20 additional marks in terms of Recruitment Policy. He next submits that the controversy requires determination of facts, which this Court, while exercising constitutional jurisdiction, cannot undertake.

5. We have heard the parties and perused material available on record. The claim of the petitioner is mainly predicated on controversial facts: objection over residence of respondent No.6 at Pano Aqil in the subject UC, the due notice of which was brought to the notice of competent authority viz. Education Officials, yet the objection did not sustain having been found ill-founded. No doubt the petitioner had obtained more marks than respondent No.6 i.e. 71, but respondent No.6 was given additional 20 marks in view of the fact of her being woman strictly in terms of Teachers' Recruitment Policy-2012 which took her ahead of the petitioner in merit list. That Policy still holds field and has not been challenged by the petitioner or for that matter by any other candidate since then. In arguments, learned Counsel too has not contested the same on any ground.

6. Objection to age of respondent No.6 is addressed duly by the notification dated 19th July 2011, whereby Government of Sindh has been pleased to accord relaxation of 15 years generally to all the persons wishing to apply for the Government jobs. The claim of the petitioner that respondent No.6 is a resident of Karachi is largely based upon her CNIC, showing her residence at Karachi. But this point has been clarified by the learned Counsel for respondent No.6 that due to marriage, she shifted to Karachi to live with her husband and she then got her CNIC issued accordingly. But this would not alter her birth place in the subject UC at Pano Aqil. Further, her domicile and Form 'D' (PRC) of the same area have not been cancelled since. Neither she has applied for it, nor there is any document showing any PRC (Form 'D') or domicile issued to her by the relevant District Administration of Karachi. Respondent No.6 has also filed a copy of Form 'D' and her domicile certificate, a perusal of which negates contention of petitioner's Counsel that the entries against serial No.1 to 3 showing her birth place, place of education and permanent residence stand cancelled. These entries in the copy of certificate produced by respondent No.6 are intact and not cancelled.

7. More so, we are of a view that there is a proper procedure to be followed for cancellation of Form 'D' and domicile and other relevant certificates. A proper order is passed by the Deputy Commissioner concerned cancelling these certificates only when a person requests for it and applies for issuance of such certificates from any other part of the country. No material has been brought on record before us that respondent No.6 has applied for cancellation of these certificates before

relevant officials at Sukkur and filed application for issuance of the same certificates at Karachi. Besides, this controversy relating to the certificates' cancellation, since is agitated by both the parties conversely, appears to be a factual one and needs evidence for its determination, which this Court, at this juncture, cannot pursue.

8. We have seen comments of respondent No.5 against the reply of Para No.15. It has been clearly stated therein that Government of Sindh has accorded relaxation in upper age limit in general vide notification dated 19th July 2011; hence, respondent No.6 was found eligible as per aforesaid relaxation policy. Further, respondent No.6 has submitted documents viz. UC Certificate, Domicile and PRC Certificates, which clearly show her residential status in UC 35, Pano Aqil. From such comments, it is obvious that the certificates produced by respondent No.6 were taken note of by the competent authority and found satisfactory. Only after such satisfaction in regard to all the aspects of the matter viz. her age, her marriage, her residential status and additional 20 marks, she was found eligible for appointment. However, because of the pendency of this petition since 2014, her entitlement to the appointment has not been translated into reality: issuance of offer/posting order to her.

9. In view of above discussion resulting from examining all the aspects of the matter, we have come to view that petitioner has no case to agitate in the constitutional jurisdiction of this Court. The competent authority, already aware of the contested facts, has found respondent No.6 eligible for appointment. In absence of any convincing material showing decision making process by the competent authority is tainted with *mala fide* or ulterior motives; or establishing a right of appointment to the petitioner, we cannot interfere in such decision and substitute our opinion for the opinion of the relevant officials. Notwithstanding the point that respondent No.6 was issued Form 'D' on 01.03.2013, allegedly after cutoff date, would be open to the competent authority to consider before finally issuing offer/posting order to her.

Accordingly, this petition is **dismissed** along with pending application.

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