

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. D-23 of 2020**

*(Ms. Firdos Noor Malik Vs. Province of Sindh & others)*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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**Before;**

*Adnan-ul-Karim Memon, J;*  
*Muhammad Abdur Rahman, J;*

**Date of hearing and order: 16-05-2024.**

Mr. Alam Sher Bozdar, advocate for the petitioner.  
 Mr. Ghulam Mustafa G.Abro, Additional A.G, Sindh along  
 with Dilawar Soomro AEO/Focal Person District Education  
 Officer (ES&HS), Ghotki.

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**ORDER.**

**Adnan-ul-Karim Memon J:-** Petitioner seeks her appointment against the post of Junior Elementary School Teacher (JEST) in Taluka Mirpur Mathelo District Ghotki.

2. The case of the petitioner is that the Government of Sindh Education Department framed the Teachers Recruitment Policy-2017 on a Union Council basis and because of the said policy got advertised posts of Junior Elementary School Teacher (BPS-14) and Early Childhood Teacher (ECT BPS-15). She applied for the post of Junior Elementary School Teacher from Taluka Mirpur Mathelo District Ghotki. The test was conducted by the Institute of Business Administration Testing Service Sukkur (IBA), and according to the petitioner, she had qualified by obtaining 68 marks as per merit-wise recruitment test held on November 11 to November 25 of 2018 at various Divisions of Sindh Province, however, she was not considered for the subject post on the premise that she failed to approach the office of District Education Officer (Elementary, Secondary and Higher Secondary) Ghotki at Mirpur Mathelo.

3. learned counsel for the petitioner submits that though the petitioner had obtained 68 marks in the aforesaid test and acquired the first position amongst female candidates of Taluka Mirpur Mathelo, she was not considered on the premise that she submitted Domicile and PRC within time framed under the advertisement i.e. 20-04-2018 and blue-eyed candidates were accommodated against the said post, which was/is sheer violation of law and the recruitment policy-2017. He requests for allowing this petition, as prayed for.

4. Learned AAG; however, submits that the instant petition is not maintainable as the petitioner did not approach the office of respondents to submit her required documents; because she did not possess her domicile and PRC Form-D within time as set forth in the advertisement i.e. cutoff date 20-04-2018 which was an essential requirement for appointment under policy of school education and literacy Department of Government of Sindh. He further submitted that the petitioner neither appeared physically nor provided her required PRC and Form-D in due course of time and now the matter is past and closed transaction. He prayed for the dismissal of the petition.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. There is no dispute that the petitioner applied in time and qualified the test and obtained 68 marks; however, the only issue involved in the matter whether the petitioner had submitted her Domicile Certificate issued to her on 28-01-2009 and PRC Form-D after cutoff date i.e. 20<sup>th</sup> April 2018. On the subject issue the Supreme Court in the case of the Government of Punjab through Secretary (S&GAD) Lahore and another vs. Zafar Maqbool Khan and others (2012 SCMR 686) which was related to Punjab Provincial Management Service Rules 2004 held that the eligibility of a candidate had to be determined under the advertisement for the post, service rules

governing the appointment, and any amendment or instruction backed by the law.

7. At this stage, the petitioner has submitted that the name of the petitioner ought to have been recommended for the subject post, for the reason that not only the application and all relevant testimonials of the petitioner were scrutinized by the respondents, thereafter she was allowed to participate in the recruitment process without any objection and ultimately she was declared successful candidate by obtaining 68 marks and by not recommending her candidature for the subject post, the respondents had also committed illegality and exercised erroneous discretion based on the analogy that her PRC was issued by the Deputy Commissioner Ghotki after the cutoff date though she possessed the Domicile Certificate issued to her in the year 2009, which discloses her permanent place of residence i.e. village Garhi Chakar, Taluka Mirpur Mathelo, District Ghotki. It is argued that non-submission of PRC within the due date was not a mandatory requirement and the Official Respondents instead should have considered the score/marks obtained by Petitioner so that her case for appointment as Junior Elementary School Teachers should have been considered on merits, rather than, ousting her on technical grounds.

8. Learned AAG while controverting the arguments of Petitioner has drawn our attention to the General Instructions for Appointment Process as contained in the said Policy, where under, the DRC is required to examine and verify the original documents of the candidates, list whereof is mentioned in the said Policy, which includes the above referred Form-D PRC, under the heading of 'verification of documents, the closing date is mentioned as 20<sup>th</sup> April 2018. It is further argued that Official Respondents have adopted a uniform yardstick in recruiting teachers, as the requirement of submitting PRC Form-D is even mentioned in the above referred public advertisement.

9. In the present case, the respondents have not disputed that the Petitioner was/is not a resident of village Garhi Chakar, Taluka Mirpur Mathelo, District Ghotki but premised their case on the assertion that the Petitioner had submitted her PRC after the cut-off date i.e. 20<sup>th</sup> April 2018 as such she was not qualified for the post of Junior Elementary School Teacher BS-14. If this is the stance of the respondents, in this regard, reliance is also placed on a reported decision of the Supreme Court in Jehanzaib Malik v Balochistan Public Procurement Regulatory Authority **2018 SCMR 414**. In this reported decision, the petitioner's appointment as Director in the Respondent's authority (of the reported decision) was challenged on the ground that he did not possess the requisite qualification or experience at the relevant time. The learned Baluchistan High Court accepted the Petition and the order was assailed by the petitioner before the Supreme Court, which concluded that the Petitioner (of the reported case) did possess the qualification of a Master in Business Administration in January 2014 and also obtained the requisite marks. However, the Institute of Business Administration Karachi (IBA, Karachi) issued the degree formally on 7<sup>th</sup> March 2015, that is, after the cut-off date of 28.08.2014 when he was appointed as Director. With this undisputed factual background, the Supreme Court concluded that the issuance of the degree after seven months by the Institute was a factor beyond the control of the petitioner, but the degree itself mentioned that the latter completed his MBA in January 2014, that is, well within the cut-off date of 28.08.2014.

10. In the present case, the Domicile certificate was issued to her much before the cutoff date i.e. 20<sup>th</sup> April 2018, which shows that the petitioner was a resident of the concerned area, the mere submission of PRC a little bit late could not debar her from considering her case for the appointment, for the reason that certificate of domicile is issued under the Pakistan Citizenship Act, 1951 read with the Pakistan Citizenship Rules, 1952, a PRC in Sindh is issued under the Sindh Permanent Residence Certificate Rules, 1971, and to obtain the

job, the candidate would require PRC, which shows his/her place of residence as Sindh, which may at best be a piece of evidence in considering his/her eligibility for the aforesaid purposes. Therefore we are of the considered view that the decision of respondents was/is erroneous and was/is liable to be set aside.

11. We are of the considered view that this could hardly be a ground to refuse the appointment of Petitioner. We cannot endorse the assertion of learned AAG, since we are of the view that this could not be an inherent disqualification for the post applied for by the Petitioner as per Recruitment Rules, if it is so the same could have been condoned by the Competent Authority by exercising its power and authority, as provided under the law.

12. In view of the foregoing legal position, we are of the considered view that the Government has the domain to frame policy of appointment and also provide qualification for appointment against a particular post, and thus, appointment against such post through initial appointment or otherwise cannot be claimed without fulfillment of criteria and the requisite qualifications as provided under the Recruitment Rules as discussed supra, however, the case of Petitioner is quite different as she has already been declared successful candidate in written test and interview for the post of Junior Elementary School Teacher BS-14, but her appointment has been withheld on the premise that she did not submit her PRC within cut-off date i.e. 20-04-2018.

13. In the light of the above factual position of the case in respect of the submission of Domicile/PRC after the cut-off date does not debar the Petitioner from appointment against the post of Junior Elementary School Teacher BS-14 since as per relevant rules this assertion cannot be made the basis of rejection of the selected candidate. At the most, in our view, sometime or opportunity should have been provided to the Petitioner to do the needful, which on the face of the record is warranting.

14. We have noticed that the domicile certificate of the petitioner was issued on before the cutoff date and PRC is to be followed by the domicile certificate merely issuing Form-D a little bit late does not debar the candidate from appointment.

15. In light of the above facts and circumstances of the case, we are of the considered view that the decision of the respondents and DRC refusing the appointment of Petitioner for the post of Junior Elementary School Teacher BPS-14 is erroneous and not sustainable under the law.

16. Thus we have concluded that the petitioner has made out her case for appointment to the post of Junior Elementary School Teacher BPS-14. Consequently, the instant Petition is allowed with direction to the competent authority of respondents to issue the offer of appointment to the petitioner for the post of Junior Elementary School Teacher BPS-14 forthwith. The pending application(s) also stand disposed of in the above terms.

**Judge**

**Judge**

Nasim/P.A