

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 392 of 2023

(*Mushtaq Ali Maitlo versus Province of Sindh & others*)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **22.02.2024**

Date of decision : **22.02.2024**

Petitioner is present in person.

Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh along with Hafiz Shahabuddin Indhar, Director Schools Education (Elementary, Secondary & Higher Secondary), Sukkur and Imdad Ali Larik, Focal Person of Director Schools Education (Elementary, Secondary & Higher Secondary), Sukkur.

ORDER

Muhammad Iqbal Kalhoro, J. – Petitioner, a retired Associate Professor, Education Department, Government of Sindh, has filed this petition seeking correction in the seniority list dated 3rd November, 2021, whereby respondents No.4 to 6 have been shown senior to him and placed at serial No.15, 25 and 28 respectively, while the petitioner is shown at serial No.32. His case is that he was appointed as HST on 20.02.1986, whereas the respondents were appointed as HST after him, and given seniority over him wrongly.

2. According to petitioner, he had filed many representations before respondent No.1 / Secretary, School Education and Literacy Department, Government of Sindh, Karachi against awarding illegal and unlawful seniority to respondents No.4 to 6, but in vain, and meanwhile, he retired on 14.10.2022. Ultimately, finding no other remedy, he has filed the petition.

3. Respondent No.1 has filed the comments stating that respondent No.4 / Mst. Huma Athar was appointed on 26.04.1992 against female quota. The seniority of female teachers is separately maintained from male teachers in BPS-17 and BPS-18, but on promotion in BPS-19, a combined seniority list of all male and female teachers is prepared and maintained. She was given promotions on due dates in BPS-17 and

BPS-18 as per seniority of female teachers which had nothing to do with seniority of the petitioner. Regarding respondent No.5 / Muhammad Haji Buriro, it has been stated that he was appointed as trained HST on 06.06.1989, whereas petitioner became trained HST on 07.03.1991; hence, the former was given precedence in seniority over the petitioner. In respect of respondent No.6 / Yar Muhammad Baladi, it is stated that his seniority was maintained in pursuance of SGA&CD's advice bearing No. SOI(SGA&CD)-05/01/2016(03) dated 21.08.2020, and his name was placed below the name of Mr. Khursheed Ahmed Shaikh and above the name of Mr. Masroor ul Hassan; hence, claim of petitioner against him is not justified either.

4. Petitioner has argued that since he was appointed on permanent basis on 20.02.1986, before the respondents, he would be treated as senior to them. His seniority in service shall accordingly be ordered to be maintained over and above respondents No.4 to 6. His stance has been rebutted by learned AAG and the officials, present in Court, who have filed a statement to the effect that according to Recruitment Rules, 1989, the regular qualification for the post of HST (Science Teacher) was B.Sc. with B.Ed. or equivalent qualification. But in case of non-availability of trained hand, the untrained HSTs (Science Teacher) were appointed on fixed pay. According to learned AAG, the appointment of petitioner was on fixed salary on temporary basis in basic pay scale as untrained Biology Teacher (Science Teacher). He was not qualified as per the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, which stipulate basic qualification for HST as B.A/ B.Sc./ B.Com at least 2nd Division with B.Ed. There is a caveat however to it that in case of non-availability of trained teachers (in B.Ed.), in spite of two open advertisements, untrained candidates could be appointed on fixed pay at the minimum of the pay scale. The petitioner did his B.Ed. in 1991 and hence he was given running pay scale and regularized since then, and therefore, his seniority was counted from such date.

5. We have considered arguments of the parties. Rule 10-A of the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975, prescribes inter se seniority of civil servants appointed in a batch or on the same date. According to it, the seniority of a civil servant shall be reckoned from the date of his regular appointment. Petitioner, not being eligible lacking requisite qualification of B.Ed., was appointed initially on temporary basis as untrained Biology Teacher (HST) on fixed

pay per month in basic pay scale in the light of caveat allowing leeway to appoint teachers in absence of trained teachers. He became eligible and his service therefore stood regularized only on attaining qualification of B.Ed., which was a prerequisite even for an initial appointment. Although petitioner has emphasized on his first appointment on 20.02.1986 to be on regular basis, but has not disputed that he did his B.Ed. only in the year 1991, and therefore, in our view, he became eligible and his service became regular only in the year 1991.

6. The comments reproduced above show that seniority list of respondent No.4 / Mst. Huma Athar was separately maintained being a female teacher, and it had no adverse impact over seniority of the petitioner, whereas respondent No.5 was appointed as trained HST (with degree of B.Ed.) on 06.06.1989 before the petitioner got such qualification and crossed the eligibility criteria in the year 1991. However, regarding seniority of respondent No.6, a reference to a notification dated 21.08.2020 has although been made in the comments, without however submitting its copy on the record for a perusal and appreciation by this Court. It is not clear whether he was appointed as trained HST or untrained HST like petitioner and in what year. It is not clear either that why he was given seniority over, if it was the case, the petitioner, whether it was in lieu of his appointment as being trained HST earlier to the petitioner or for any other reason and why the referred advice was issued determining his seniority over and above the petitioner.

7. We, therefore, finding the petition meritless to the extent of respondents No.4 and 5 accordingly **dismiss** it. However, to the extent of respondent No.6 **refer** his case to the Secretary, School Education and Literacy Department, Government of Sindh, Karachi / respondent No.1 for a decision afresh, after affording petitioner and respondent No.6 a proper opportunity of hearing, through a speaking order within sixty days. After such period, a copy of such order shall be communicated to this Court for a perusal in chamber.

Petition is **disposed of** along with pending application(s), if any, in the above terms

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