

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-858 of 2024
(Zahid Hussain & others Vs. Province of Sindh & others)

DATE **ORDER WITH SIGNATURE OF JUDGE**

Before:

Adnan-ul-Karim Memon, J.

Amjad Ali Bohio, J.

Date of hearing & Order 23.09.2024

Mr. Kanji Mal Meghwar, advocate for petitioners

Mr. Muhammad Sharif Solangi, Assistant A.G Sindh

=

ORDER

Adnan-ul-Karim Memon, J. The petitioners have filed this petition under Article 199 of The Constitution of the Islamic Republic of Pakistan, 1973, whereby they have sought the following relief(s):-

a. That this Honourable Court may be pleased to declare that the impugned tentative recommendation list of the District Selection Committee for the post of PST (BPS-14) of Taluka Mithi is illegal, ab initio void, and in clear contravention of Para 20 of Recruitment Policy as well as Notification Dated: 19-03-2021 and same is liable to be canceled.

b. That this Honorable Court may be pleased to declare that the notification dated: 31-05-2024 issued by Respondent No. 02 is illegal, ab initio void, and having no force of law, and same was issued in clear violation of the order dated: 06-06- 2024 passed by this Honourable Court.

c. That this Honourable Court may be pleased to direct the Respondent No. 04 (Chairman District Recruitment Committee/District Education Officer Elementary, Primary of District Tharparkar) to appoint all the petitioners in Phase-III to the post of Primary School Teacher BPS-14 in hard area Union Councils.

d. That this Honourable Court may be pleased to suspend the operation of the impugned notification dated: 31-05-2024 & impugned tentative recommendation list issued by District Education Officer Tharparkar at Mithi till final disposal of this Petition.

e. Cost of the petition be saddled upon the respondents.

f. Any other relief be granted to the petitioner as deemed fit and proper.

2. The petitioners, who applied for the posts of Primary School Teacher (PST) and Junior Elementary School Teacher (JEST), claim that they secured 40 or above marks in the written test conducted by the IBA Sukkur. They submit that the Government of Sindh declared certain areas as hard areas, including 09 Union Councils of Taluka Mithi, Rural, in

pursuance of the Teachers, Recruitment Policy, 2021. The petitioners allege that the District Recruitment Committee is trying to appoint candidates from soft areas (urban) to hard area vacancies, violating the court's order to complete the merit list within 3 months. They also submit that the respondent issued a notification on 31.05.2024, providing guidelines for a combined merit list instead of separate lists for hard and soft areas, which is a violation of the court's order. The petitioners request this court to set aside the notification dated 31.05.2024 as illegal and void.

3. The Additional Advocate General (AAG) has argued that the letter dated May 31, 2024, was not implemented pending the outcome of Petition No. D-297/2022. The AAG further stated that the respondent department is adhering to the open merit criteria and appointing teachers in Mithi Taluka based on merit. Therefore, the AAG has requested that this petition may be dismissed.

4. We have heard the learned counsel for the parties at length and have perused the record with their assistance.

5. During the arguments, we have been informed that the Division Bench of this Court vide order dated 12-01-2023 in CP No.D-297/2022 passed the following order;

With regard to policy for appointment below 40% marks, this Court takes judicial notice and restrain School Education department to recruit or issue any appointment order to any candidate who secured/obtained below 40% marks, even in the hard areas. Paragraph No.3 of notification dated 8th December, 2021 issued by Secretary to Government of Sindh, School Education & Literacy Department Karachi with regard to 33% passing marks for hard area candidates is suspended and no appointment order shall be issued on the basis of the said notification. However, the Education Department would be competent to initiate fresh recruitment process as per original policy through under similar fashion through third party test. Secretary Education & Literacy Department Karachi shall be in attendance and shall submit detail of complete vacant seats and list of missing as well as closed schools.

6. If this is a position of case and keeping in view the order dated 12-01-2023 passed by this Court, this matter needs to be transmitted to the Chief Secretary Sindh, who in co-ordination with Secretary Education and Literacy Department, is directed to look into the matter of the petitioners at his end, if the grievances of the petitioners are found to be genuine, the same shall be redressed under policy and law within three weeks, after hearing the parties concerned. However, the Chief Secretary shall also

look into the factual position of the case and if he finds any candidate obtained lesser marks than the petitioners and subsequently appointed, then appropriate directions shall be issued to the competent authority for the relief so claimed, which shall be in line with Articles 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973.

7. This petition stands disposed of in the above terms.

JUDGE

JUDGE