

# THE HIGH COURT OF SINDH, KARACHI

Present:

*Justice Mohammad Karim Khan Agha*

*Justice Nisar Ahmed Bhanbhro*

## CP No.D-511 of 2025

[Meer Shahnawaz Khoso v. the Province of Sindh and others ]

Petitioner : Meer Shahnawaz Khoso through Mr. Muhammad Fahad, Advocate.

Respondents : through Mr. Ali Safdar Depar, AAG

Dates of hearing : 04-03-2025

Date of decision : 17-03-2025

## J U D G M E N T

**Mohammad Karim Khan Agha, J.** – Through this petition, the petitioner has prayed as under:

“i. To declare that the act of Respondent No. 03 issued the impugned letter dated 22-01-2025 with malafide intention and without any lawful authority, as the petitioner fulfills all the requisite experience and qualifications required as per the advertisement and the amended Policy-2021 for the post of Junior Elementary School Teacher (JEST) BPS-14 under the disabled quota. Therefore, the act of Respondent No. 03 is illegal, unlawful, and contrary to the Policy-2021, having no legal effect.

ii. To declare that the appointment of the petitioner as a Junior Elementary School Teacher (JEST) BPS-14 under the disabled quota, in accordance with the advertisement and the criteria set forth in the amended Policy-2021, is valid. Further, to declare that Respondent No. 03 has misinterpreted the court order dated 12.01.2023, as the said order does not apply to the petitioner.

iii. Suspend the operation of the impugned letter dated: 22-01-2025 as the respondents deprived the petitioner for the said post without lawful authority, therefore the act of the respondents is illegal, unconstitutional without lawful authority.

iv. To set aside the impugned letter dated 22-01-2025, as the petitioner was appointed in accordance with the amended Policy-2021. The District Selection Committee (DSC) recommended the petitioner after scrutinizing all requisite qualifications and experience. Further, to direct the appointment of the petitioner to the post of Junior Elementary School Teacher (JEST) BPS-14 under the disabled quota, as the petitioner qualified on merit, met all the requirements, and possesses experience exceeding the required criteria, in accordance with the Policy-2021 and the recommendation of the DSC.

v. To direct the respondents to consider the petitioner for the post of Junior Elementary School Teacher (JEST) BPS-14 under the disabled quota in the School Education & Literacy Department.

Government of Sindh, as the petitioner is fully qualified for the said post and was recommended by the District Selection Committee (DSC). The act of the respondents in depriving the petitioner of the said post is illegal, unlawful, and against the basic principles of the Constitution and the law.

vi. Direct the respondents to pay the salary along with arrears to the petitioner as the petitioner has been deprived without any lawful justification.”

2. Briefly the facts of the case are that the petitioner has been appointed on the disabled quota vide notification dated 26.06.2023. However, the same has been withdrawn vide Directives dated 22.01.2025, on the basis of an order dated 12.01.2023, passed by the learned Sukkur Bench of this Court in CP No.D-297 of 2022. Per petitioner, paragraph 3 of the Amendment Policy, which has been suspended by this Court, does not apply to the Petitioner because he does not come from the hard area but his appointment is on a disabled quota, from a Union Council, which is not enlisted in the 'hard area' vide notification dated 19.03.2021.

3. The learned counsel for the petitioners contended that the act of Respondent No. 3 in issuing the impugned order dated 22-01-2025, directing Respondent No. 4 to cancel the petitioner's appointment, was done without lawful authority. The petitioner's appointment followed the completion of all legal formalities, making the actions of the respondents illegal, unlawful, and devoid of any legal effect. Per counsel, C.P. No. D-297/2022, pending before the Sukkur Bench, was transferred to Karachi and assigned a new case number, C.P. No. D-1105/2023. The petitioner is aggrieved by the order dated 12-01-2023, which suspended the appointment process for candidates who scored below 40% in their test. The petitioner had obtained 34%, while the passing marks were set at 33% under Paragraph 2 of the Policy 2021, as amended on 08-12-2021. However, the court's suspension order specifically applied to Paragraph 3 of the policy and did not affect the provision under which the petitioner had qualified. In accordance with the order dated 26-01-2023, the Sindh Cabinet decided to reduce the passing marks to 33%. However, the court directed that this adjustment would not apply to the fresh recruitment process for 2023. Since the petitioner's appointment falls under the 2021 recruitment process, the revised policy does not affect their eligibility. Moreover, in its order dated 16-05-2024 in C.P. No. D-1273/2023, the court clarified that similar issues had already been resolved and directed that the aforementioned orders did not apply to the disabled quota. The court also referred to the Supreme Court's directive to the Chief Secretary of Sindh to fulfill the quota for differently-abled persons in accordance with the policy. When the petitioner's file was forwarded to Respondent No. 3 for salary processing and database profiling, Respondent No. 3 issued a letter to Respondent No. 5,



requesting justification for the petitioner's appointment. In response, Respondent No. 5 issued a letter to Respondent No. 2 on 22-12-2023, confirming that the petitioner had secured 34% in the IBA test and was appointed as a Junior Elementary School Teacher (JEST) (BPS-14) at GBHSS Sann, Taluka Manjhand, under the disabled quota. Respondent No. 5 further clarified that the District Selection Committee (DSC) had held a meeting on 02-12-2022, prior to the court's decision on 12-01-2023, during which the petitioner was recommended for appointment under the disabled quota. Subsequently, the petitioner received a posting order dated 07-08-2023. The petitioner underwent the required scrutiny process and was appointed in compliance with all applicable rules and regulations. As the petitioner was duly qualified, the unlawful deprivation of his appointment is impermissible in law. The respondents' actions violate Articles 4, 9, 18, and 25 of the Constitution of the Islamic Republic of Pakistan, which guarantee equality before the law, protection of the law, and the right to pursue lawful professions based on merit. The petitioner's appointment was made in full compliance with the prevailing policy and court directives. The arbitrary and unlawful cancellation of the petitioner's appointment contravenes their right to employment and disregards established legal principles. The respondents failed to adhere to the latest judicial directives and instead relied on a misinterpretation of an outdated order that had been clarified by the Honorable High Court. This recklessness and non-compliance have caused irreparable harm to the petitioner and constitute an abuse of authority. In its order dated 16-05-2024 in C.P. No. D-1273/2023, the Honorable High Court explicitly clarified that its previous orders did not apply to the disability quota. The court also referenced the Supreme Court's directive, instructing the Chief Secretary of Sindh to ensure the fulfillment of the disabled quota appointments as per policy decisions. Furthermore, the Honorable High Court of Sindh, in its order dated 12-01-2023 in C.P. No. D-297/2022, suspended the appointment process for candidates who scored below 40%. However, this suspension only applied to Paragraph 3 of the notification dated 08-12-2021 and did not affect Paragraph 2, under which the petitioner had qualified with 34%, while the passing criteria was set at 33%. Given that the petitioner is fully qualified for the position of Junior Elementary School Teacher (JEST) BPS-14 under the disabled quota, Respondent No. 3, acting without lawful authority and in clear violation of the policy dated 08-12-2021, issued instructions for the cancellation of the petitioner's appointment. This action is in direct contravention of the rules, regulations, and merit-based appointment process established by the policy guidelines and mandated under the Constitution. As per the court's order dated 26-01-2023, the Sindh Cabinet's decision to set passing marks at 33% was deemed inapplicable to the fresh recruitment process for 2023. However, since the petitioner's appointment was part of the 2021 recruitment process, the revised policy does not impact their eligibility. Despite these clear



judicial directives, Respondent No. 3, with mala fide intent, issued directions on 22-01-2025 to Respondent No. 4 for the withdrawal of the petitioner's appointment, citing the 12-01-2023 order, which had already been clarified by subsequent judicial rulings as inapplicable to the petitioner's case. This action constitutes discrimination and a failure to provide the petitioner with equal protection under the law and as such the impugned order should be set aside.

4. Learned AAG while referring comments of respondent No.2 submitted that the petitioner is a civil servant allegedly claiming reinstatement nevertheless this petition filed under Article 199 is not maintainable under Article 212(2) of the Constitution; that before initiating the recruitment process, the Government of Sindh has formulated the Recruitment Policy, 2021, inter alia, highlighting the minimum threshold marks 55 marks for qualifying any post applied for which was later reduced / amended to 33 marks vide Notification dated 8.12.2021. The posts were, therefore, advertised through print media clearly mentioning the criteria including the cut-of-date as March, 26, 2021. The Recruitment Policy was notified vide Notification No. SO (GA) SELD (Recruit/ Policy/2021 dated 24th Feb 2021, which, inter alia mentioned the quotas reserved for different categories like, differently disable persons, and minority. Therefore, the candidates were at liberty to apply on general seats or on the reserved quota by clearly mentioning in the Application Form with supportive evidences. It is further submitted that the CNIC attached with the memo of Petition which is placed at page-39(33) of memo of Petition clearly shows to have been issued on 04.11.2021 (after about 07-month of cut-of-date i.e. 26.3.2021). Non-submission of old CNIC established that the same was not having the logo of "Disability" establishes that the Petitioner had not applied on the disabled quota. Even if it is considered for the sake of arguments that the Petitioner had ever applied on the alleged Disability Certificate which was issued by the District Officer (Social Welfare) Department on 20.6.2014 has no legal standing and consequences in the light of Order dated 08.2.2023 passed by Hon'ble High Court of Sindh Bench at Sukkur in CP No. D-1489 of 2022. According to learned AAG, the recruitment recommended on the reduced minimum threshold marks 33% was revoked in the light of orders passed by this Court which has held that no appointment below 40% will be considered and as such the petition be dismissed.

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

6. The world can some times feel like a very harsh, cruel and dark place for many individuals and probably more so for persons suffering disabilities who might face/feel social discrimination, job discrimination, marginalization etc and a lack of facilities which enable them to access certain places. Fortunately,



recognizing such problems which such differently abled persons face the Government of Sindh initially promulgated the enlightened Sindh Differently abled persons (Employment, Rehabilitation and Welfare) Act 2014 which was later repealed and replaced with the Sindh Empowerment of “Persons with Disabilities” Act 2018 pursuant to the United Nations Convention on the Rights of “Persons with Disabilities” which was ratified by Pakistan in 2011 where the aforesaid convention laid down the following principles for empowerment of Persons with Disabilities as under;

- (a) respect for inherent dignity, individual autonomy including the freedom to make one’s own choice, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of ‘Persons with Disabilities’ as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

7. Such Principles are reflected in the aforesaid Act. Undoubtedly, this Act was a step in the right direction, of which many further steps need to be taken to support and enhance the rights of the less empowered in society such as women, minorities and the poorest segments of society in all aspects of human life such as health, education and social security to ensure their right to life under Article 9 of the Constitution, in an Islamic welfare state which is obliged, even under Articles 4 and 25 of the Constitution, to treat all individuals equally and without any discrimination and in accordance with law.

8. Section 11 of the Sindh Empowerment of “Persons with Disabilities” Act 2018 deals with the Skills, Development and Equity in Employment of persons with disabilities the most important of which for our purposes is Section 11 (12) which is set out below for ease of reference;

*“(12) The Government shall reserve a quota of five percent (5%) at various levels for the ‘Persons with Disabilities’ in the Government departments, institutions, entities, and corporate entities owned and managed by the Government. The Government shall through notification provide for such relaxation of upper age limit for employment of person with disabilities as it thinks fit.” (bold added)*

9. In this case the petitioner applied for and was offered a job as Junior Elementary School teacher in BPS 14 which he accepted and his appointment letter was issued on 07.07.2023 subject to certain terms and conditions. It is clear vide letter of office of the Education Officer Elementary Secondary School Jamshoro dated 22.12.2023, in which district he was posted, that he was



appointed on a disabled quota having secured 34 marks in the relevant examination.

10. The fact that he was disabled is clear from Government of Sindh Provincial Co-coordinator from Social Welfare Department's Disability Certificate which is reproduced as under for ease of reference which is dated many years before his job application. As such we find the Government's objection to his disability because it was not marked on his CNIC as frivolous especially as he was appointed on a disabled quota and his disability certificate would have been seen by them before his appointment letter was issued;

**"GOVERNMENT OF SINDH  
PROVINCIAL COORDINATOR, SOCIAL WELFARE DEPARTMENT  
(PROVINCIAL COUNCIL FOR THE REHABILITATION OF DISABLED PERSONS)**

**DISABILITY CERTIFICATE  
ASSESSMENT BOARD FOR THE DISABLED PERSONS, JAMSHORO SINDH**

Dated: 20-6-2014

Reg: No. DO/SW/JO/DC/108/229

- |   |   |
|---|---|
| 1. Name: <u>Mir Shahmawaz Khoro</u>   | 2. <u>Abdul Majeed Khoso</u>  |
| 3. Spouse: <u>-</u>   | 4. <u>NIC/CNIC/NIDOP No.41504-0376009-5</u>                         |
| 5. Date of Birth: <u>01-07-1988</u>   | 6. Type of Disability: <u>                    </u>                  |
| 7. Qualification: <u>Intermediate</u>   | 8. Nature of Disability: <u>Permanent</u>                           |
| 9. Cause of Disability: <u>Accidental Injury (left Leg)</u>                   |   |
| 10. Permanent Address: <u>Goth Unarpur Taluka Manjhand District Jamshoro.</u> |   |
| 11. Present Address: <u>Same</u>  |   |
| 12. Finding of the Board  | (i) Fit to Work (ii) Not fit to work                                |
| 13. Recommendation of the Board   | (i) Recommended for all the benefits admissible under disable quota |

Sd/-  
Medical Superintendent/Chairman

Sd/-  
District Officer (SW) Jamshoro"

11. Thereafter through a blanket letter from Directorate General of HR & Training, School Education and Literacy Department Government of Sindh dated 22.01.25 the petitioners services along with other were terminated. Such letter is reproduced below for ease of reference.

**"DIRECTORATE GENERAL OF HR&TRAINING  
SCHOOL EDUCATION & LITERACY DEPARTMENT  
GOVERNMENT OF SINDH**

Old Principal Bungalow, Opposite 101  
Science College, Karachi

Karachi, dated the 22 January 2025

To,

*The Director Schools Education,  
(Ele. See & 11. See, & Primary),  
Sukkur/ Hyderabad/Shahheed Benazirabad/Larkano*

SUBJECT: DIRECTIVES REGARDING APPOINTMENT OF DIFFERENTLY ABLED PERSON BELOW 40% AFTER COURT ORDER.



I am directed to refer to the subject noted above and to inform that the joining database of few candidates was submitted by different districts i.e. (Khairpur, Saughar, Larkano, Jamshoro, Ghotki, Jamshoro and Jacobabad) in this office for release of salaries. During the scrutiny of their documents, it was noticed that the said candidates had been appointed and joined as well on differently abled quota in hard areas, who have secured below 40 marks and their joining database is lying pending with the department. In this regard, the explanations were also issued to the concerned DEOs, by the department. (Annex-1)

Honorable High Court of Sindh, bench at Sukkur, had passed an order dated: 12-01-2023, in C.P No. D-297 of 2022, which reads as:

*"With regard to policy for appointment below 40% marks, this Court takes judicial notice and restrain the SEL Department to recruit or issue any appointment order to any candidate who secured/obtained below 40% marks, even in the hard areas".*

Regretfully the said candidates having less than 40 marks were appointed and allowed joining after the orders of the honorable Court, which is the gross violation of the court directives and attract contempt proceedings against the Administrative Department.

*In the light of above court order and with approval of the Competent Authority, you are advised to cancel/withdraw the appointment orders of the aforementioned candidates (List attached) immediately, under intimation to this office for further necessary action, Besides this, it is also advised that, if any order issued to any candidate having below 40 marks after court's order should be cancelled forthwith and no any order should be issued below 40 marks.(bold added)*

*Your expeditious action in this regard will be expected.*

**DIRECTOR GENERAL HR&T**

12. The blanket termination letter/impugned order referred to above lead to the termination of the petitioner and many others because they did not obtain 40 marks in their examinations. However we find that the concerned department by terminating the petitioner through this blanket letter/impugned order misinterpreted the court order which was referred to therein and reproduced above as it did **not** apply to those persons who had been appointed on a disabled quota who only needed to score above 33 marks in the examination and the petitioner scored 34 marks which qualified him through the disabled quota and as such he was wrongly terminated. **His case did not fall within one of a hard area.** The 40 mark requirement had no relevance to the petitioner who had been appointed on the disabled quota under Section 11 (12) of the Sindh Empowerment of "Persons with Disabilities" Act 2018 as referred to above.

13. Even otherwise, if the concerned department which terminated the petitioner was of the view that he was not a part of the disabled quota **despite** already having appointed him on the disabled quota were of the view that he was not in fact disabled they should have served him a notice to this effect before terminating his services which they did not do. In fact his disability certificate which **pre dates** his appointment was never challenged even in these proceedings and as such by implication it has been accepted by the respondents.



14. Not only do we find the impugned order to be without lawful authority and set it aside but we also find that the concerned department adopted a mean spirited approach to the petitioner which lacked any kind of compassion for a differently abled person when his case was crying out for compassion especially as he was the only disabled person who qualified for the job which had the effect of leaving the disabled quota unused and undermining its very purpose. That is assisting differently abled persons who face more challenges in life than fully abled persons especially in the work place.

15. As such the petition is allowed and not only is the impugned order set aside but the petitioner is reinstated from the date of his termination on the disabled quota and shall be paid all back benefits and arrears from the date of his termination until when he again assumes charge.

16. A copy of this order shall be sent to Secretary School Education Government of Sindh for compliance