

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P No. D – 2505 of 2016

Before:

*Mr. Justice Zulfiqar Ali Sangi,
Mr. Justice Abdul Hamid Bhurgri,*

Petitioner : Altaf Hussain son of Ghulam Hussain Solangi,
Through Mr. Muhammad Nasir Malik, Advocate

Respondents : Province of Sindh, through Secretary Education
and Literacy Department Sindh Secretariat
Karachi and three other official respondents,
through Mr. Zulfiqar Ali Naich, Assistant Advocate
General

Respondent No.5 : *Nemo*

Date of hearing : **20.03.2025.**
Date of decision : **20.03.2025.**

ORDER

Abdul Hamid Bhurgri, J.- The petitioner, through the instant petition, has called into question the recruitment process initiated in the year 2012 by the Education and Literacy Department, Government of Sindh, for the post of Primary School Teacher (PST).

2. The petitioner asserts that, being a qualified and eligible candidate, he duly applied for the post of PST pursuant to the public advertisement announcing vacant posts. He subsequently appeared in the written test conducted by NTS on 22.01.2013 at Government Boys High School, Mirpur Mathelo. Having successfully cleared the test, his name was placed at serial No.17 in the merit list of Union Council Langho, Taluka Ubauro, District Ghotki, where 20 posts were advertised to be vacant. Despite fulfilling all requisite criteria and submitting his testimonials before respondent No.4 and the District Recruitment Committee (DRC), the petitioner alleges that no appointment order was issued in his favour instead, respondent No.5, whose name appears at serial No.80 of the merit list was allegedly favoured for appointment. The petitioner submits

that respondent No.5 is domiciled in Solangi Mohalla, Ubauro City, and that her appointment was manipulated with the assistance of her in-laws, who are serving officers in the Education Department, Ubauro. He contends that his fundamental rights were infringed by this act of nepotism and favouritism. The petitioner further avers that Abdul Rasheed, at serial No.16, was issued an appointment order, while Mst. Gulnaz at serial No.18 was considered but later excluded for want of PRC and Form-D. The petitioner claims misuse of the reserved quota for disabled and minority candidates by the official respondents in a manner inconsistent with the advertised criteria. Feeling aggrieved, he has sought the following reliefs:

- (a) *That this Honourable Court may kindly be pleased to declare that the act of official respondents is illegal, unlawful, null, void and without any justification as they have made discrimination with the petitioner by depriving him from his legitimate right.*
- (b) *That this Honourable Court may kindly be pleased to direct the official respondents to act fairly, justly and reasonably with the petitioner and issue appointment order of Primary School Teacher BPS-9 as per need based vacancy position as the petitioner is eligible for the same post.*
- (c) *That this Honourable Court may kindly be pleased to declare that after issuance of Final merit list the amendments or alterations in the process of recruitment of successful candidates is totally illegal, unlawful and with mala fide in order to fulfill their sweet will by appointing their cherished persons such act is totally against the Constitution of Islamic Republic of Pakistan.*
- (d) *That this Honourable Court may kindly be pleased to get enquiry conducted from the official respondents regarding the selection process for the post as there are many successful and eligible candidates who have been deprived by the official respondents.*
- (e) *To grant any other relief, which this Honourable Court deems fit and proper under the circumstance of the case.*

3. Learned counsel for the petitioner contended that the petitioner, being a successful candidate with his name placed at serial No.17, was arbitrarily and unlawfully overlooked due to his socioeconomic vulnerability. He alleged that respondent No.5 was unlawfully favoured for appointment owing to her familial connections in the Department. Counsel argued that the official respondents deliberately amended the recruitment process to suit their own interests and unlawfully allocated minority and disability quotas without any lawful basis or qualifying candidates. The learned counsel submitted that the petitioner, having exhausted all available remedies, seeks invocation of this Court's extraordinary jurisdiction to rectify the manifest injustice committed against him.

4. Conversely, the learned Assistant Advocate General contended that although the petitioner did qualify in the test, the merit list of Union Council Langho earmarked 6 seats for male candidates and 12 for a mixed category. He added that the respondent No.5 was validly domiciled in Village Boori, Union Council Langho, and thus eligible. It was further argued that the petitioner did not fall within the merit bracket prepared by the DRC, and hence could not be appointed. The learned AAG emphasized that the recruitment was fair, transparent, and merit-based, having been conducted through NTS. According to learned AAG, the 2% quotas for disabled and minority candidates were applied taluka-wise, in accordance with the advertisement. It was argued that the petition is based on misconstrued facts and *mala fide* assumptions, and that the petitioner has not approached this Court with clean hands.

5. We have heard learned counsel for the parties and carefully perused the record.

6. Comments filed by respondent No.4 reveal that respondent No.5 did apply from Union Council Langho and submitted her domicile and Form-D (Certificate No.2160 dated 11.07.2009), showing Village Boori situated within Union Council Langho. A copy of the merit list was also annexed, contradicting the petitioner's assertions. Thus, the claim of the petitioner being a successful candidate is effectively controverted by documentary

evidence and, therefore, this Court, in constitutional jurisdiction, cannot adjudicate upon disputed questions of fact. In the case of *Mst. Kaniz Fatima through legal heirs v. Muhammad Salim and 27 others* (2001 SCMR 1493), the Honourable Supreme Court has held as under:-

“Even otherwise such controversial questions could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan”.

Similarly, in *Anjuman Fruit Arhtian and others v. Deputy Commissioner, Faisalabad and others* (2011 SCMR 279), following observations were made:

“The upshot of the above discussion is that learned single judge in chambers has rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused”.

7. Furthermore, the petition suffers from incurable delay. The recruitment process under challenge pertains to the year 2012, while the petition has been instituted in 2016. No satisfactory explanation has been furnished for this inordinate delay of four years. The doctrine of laches squarely applies. In the case of *State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others* (PLJ 2012 SC 289), the Honourable apex Court has held as follows:-

“---Laches was a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its endorsement, if it was found by the Court of law that its case was hit by the doctrine of laches/limitation--- Right remains with the party, but he cannot enforce it--- Limitation is examined by the Limitation Act, 1908 or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of Limitation/laches, same right then vests/accrues in favour of the opposite party.”

Likewise, in the case of *Asghar Khan and 5 others v. Province of Sindh through Home Secretary Government of Sindh and 4 others* (2014 PLC (C.S) 1292), it was held as under:-

“We feel no hesitation in our mind to hold that the petition is hit by laches. The consideration upon which the court refuses to exercise its discretion where the petition is delayed is not limitation but matters relating to the conduct of parties and change in the situation. Laches in simplest form mean failure of a person to do something which should have been done by him within a reasonable time if remedy of constitutional petition is not availed within reasonable time the interference can be refused on the ground of laches. Even otherwise, grant of relief in writ jurisdiction is discretionary, which is required to be exercised judiciously. No hard and fast rule can be laid down for the exercise of discretion by the Court for grant of refusal for the relief in the exercise of extraordinary jurisdiction”.

8. In light of the foregoing discussion, we are of the considered view that the petition is not only barred by delay and laches but also involves disputed questions of fact that cannot be resolved in Constitutional jurisdiction. Consequently, the petition is bereft of merit and is hereby dismissed.

Judge

Judge

ARBROHI