

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1089 of 2023

(Iftikhar Hussain Awan and others v. Province of Sindh & others)

Present:

**Mr. Zulfiqar Ali Sangi, J.**

**Mr. Abdul Hamid Bhurgri, J.**

Date of hearing : **21.05.2025**

Date of decision : **21.05.2025**

Mr. Noor Hassan Malik, Advocate for petitioner.

Mr. Ali Raza Baloch, Additional Advocate General Sindh along with  
Majid Hameed Shaikh, Additional Deputy Commissioner, Muzafar Ali  
Shah, DEO (Sec) Ghotki, Zarina Channa, Ex-DEO

## **ORDER**

**Abdul Hamid Bhurgri, J.** – Through the instant petition, the petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. The case advanced by the petitioners is that the respondents caused an advertisement to be published through the Education Department in various leading newspapers, inviting applications for the appointment of teaching personnel against vacancies reserved for domiciled residents of Sindh Province. The petitioners, being otherwise qualified, submitted applications for the posts of Junior Elementary School Teacher (JEST) and Primary School Teacher (PST) under the quota reserved for persons with disabilities. In due course, admit cards were issued and the recruitment test was conducted by the Sukkur IBA University (SIBA).

3. According to the results pleaded, Petitioner No.1 secured 36 marks in PST, Petitioner No.2 obtained 45 marks in JEST and 40 in PST, while Petitioner No.3 attained 36 in JEST and 39 in PST. The grievance of the petitioners is that despite having passed the test, they were not issued offer letters. Upon inquiry from Respondents Nos. 3 to 6, the petitioners were verbally informed that they had failed to furnish disability certificates and CNICs reflecting disabled status, and thus could not be considered. Upon

subsequently obtaining such documentation, the petitioners again approached the authorities, who allegedly declined consideration, purportedly intending to unlawfully allocate the quota to favoured individuals.

4. The petitioners also drew attention to the fact that 5% of the advertised posts were reserved for persons with disabilities, and alleged that the failure to appoint them was solely due to a lack of awareness regarding the requirement of supporting documentation at the time of application. It was further submitted that an identically situated petitioner in C.P. No. D-659 of 2022 had been granted relief by this Court vide a speaking order dated 15.03.2023, and that their case stood on the same legal and factual footing, thus meriting identical relief on the principle of parity.

5. The petitioners, being aggrieved by the actions of public functionaries and asserting the violation of their fundamental rights, contend that their case squarely within the ambit of Article 199 and seek the following reliefs:

- (a) *To direct the respondents to appoint the petitioners for the post of JEST/PST on disable quota on production of disability CNICs and disability certificates as they have successfully passed the JEST/PST test conducted by SIBA in flying colours and not to discriminate them.*
- (b) *Interim orders are solicited whereby restraining the respondents from making fresh appointment in disable quota for the post of JEST/PST in Ghotki District still final disposal of the petition.*
- (c) *Any other relief(s) which this Honorable Court deems fit, just and proper in favour of the petitioners.*

6. The official respondents filed comments denying the petitioners' entitlement. They averred that all petitioners had applied under the general merit category, not under the disability quota. Specifically, Petitioner No.1 secured 33 marks in JEST and 36 in PST, both below the qualifying threshold of 40. Petitioner No.2 secured 45 in JEST and 40 in PST but did not qualify within his Taluka based on merit. Petitioner No.3 obtained 36 in JEST while

the last candidate appointed in his Taluka had obtained 44; thus, he too was not recommended.

7. In rebuttal, the petitioners' counsel submitted a statement dated 07.05.2025, annexing the merit list of Taluka Ghotki which allegedly reflected that Petitioners Nos.1 and 2 had applied under the disability quota, and their non-recommendation was due to submission of certificates after the prescribed cut-off date. When confronted with this, learned AAG sought time to verify the records. On 21.05.2025, the learned Additional Advocate General submitted a detailed statement enclosing the online application forms of the petitioners.

8. Upon perusal of the said forms, this Court noted that all petitioners had categorically applied under the general merit category and had not claimed any disability status in their applications. Although learned counsel for the petitioners maintained reliance on the merit list entries, such argument could not overcome the categorical declarations within the application forms.

9. In light of the above, we are constrained to observe that the petitioners' own documentary evidence, namely, the application forms submitted online, clearly establishes that they applied under the general merit quota. The argument that their names were reflected under the disabled quota in a subsequent merit list is insufficient to counter this. Reference to C.P. No. D-659 of 2022, in support of their claim, is misplaced.

10. Upon a careful reading of the judgment in C.P. No. D-659 of 2022, it is manifest that the petitioner in that matter had indisputably applied under the disability quota, and the sole impediment to his appointment was late submission of the disability certificate. In that context, the Court granted relief on the principle that delay in providing such a document did not vitiate a legitimate claim under the quota.

11. The factual matrix in the present case, however, is entirely distinguishable. Here, the petitioners did not apply under the disability quota at all. Therefore, reliance on the aforementioned

precedent is legally untenable and of no assistance to the present petitioners.

12. The contention that conflicting merit lists exist and that this Court ought to resolve such factual disputes by issuing writ directions cannot be entertained in constitutional jurisdiction. This Court, in exercise of its writ jurisdiction under Article 199, is not competent to adjudicate upon disputed questions of fact, particularly when the petitioners' own application forms explicitly state that they do not claim any disability status.

13. In view of the unambiguous documentation placed on record by the respondents none of which was controverted by the petitioners this Court finds no merit in the petition. It is well-settled by the august Supreme Court, inter alia in *Mst. Kaniz Fatima through legal heirs v. Muhammad Salim and others* (2001 SCMR 1493), that:

*“Even otherwise such controversial question 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 case of *Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others* reported in 2011 SCMR 279 following observation were made.

*“The upshot of the above discussion is that learned single Judge in chambers as 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 recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused”.*

14. In view of the foregoing analysis, it is manifest that the present petition is replete with disputed facts and suffers from material concealment. The petitioners not only failed to establish any breach of their fundamental rights but have also not approached this Court with clean hands. Their assertion of having applied under the disability quota stands belied by their own application forms. Though the petition is liable to be dismissed with exemplary costs for the attempt to mislead this Court, we exercise restraint and refrain from imposing costs, albeit with a cautionary note to the petitioners to eschew such conduct in future.

15. Accordingly, the petition being devoid of merit is hereby dismissed with no order as to costs.

JUDGE

JUDGE

Naveed Ali