

# **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**C.P No.D-2073 of 2017**

*(Mansoor Ahmed v. P.O Sindh and others)*

Present;

*Mr. Justice Zulfiqar Ali Sangi;*

*Mr. Justice Riazat Ali Sahar;*

Petitioner: Mansoor Ahmed son of Qadir Bux Mahesar,  
**through** Mr. Muhammad Qayoom Arain,  
Advocate

The State: **Through** Mr. Ali Raza Balouch, Additional  
Advocate General Sindh

**Date of hearing:-18.09.2025**

**Date of order:-18.09.2025**

## **ORDER**

**ZULFIQAR ALI SANGI, J.**– Through the instant petition, the petitioner has sought directions against the respondents for issuance of his appointment order as Primary School Teacher (PST) in Union Council Kamal Dero, Taluka Kandiaro, District Naushahro Feroze. His grievance is that though he stood at Serial No.10 in the NTS merit list, two out of six advertised posts were left unfilled after certain higher-ranked candidates were excluded by the District Recruitment Committee (“DRC”). He contends that withholding of his appointment order is arbitrary and violative of Articles 4, 9, and 25 of the Constitution.

2. The petitioner argues that since candidates at Serial Nos.5 to 9 were either ineligible or unwilling to accept appointment, two posts remained unfilled. He, being next on merit, was entitled to appointment against one of them. He submits that pendency of C.P. No.D-1019 of 2015 concerning candidates at Serial Nos.5 and 7 does not legally restrain the respondents from filling the vacant posts, particularly when no stay order exists.

3. The official respondents contend that no vested right accrues merely because the petitioner participated in the recruitment process. They submit that the two unfilled posts were reserved for higher-ranked candidates at Serial Nos.5 and 7, whose claims are sub-judice in C.P. No.D-1019 of 2015. Until that matter is finally adjudicated, they are restrained from offering those posts to anyone else. It is further argued that the DRC did not recommend the petitioner, who was placed at Serial No.10, and in absence of any mala fides, the Court cannot compel the authorities to bypass the prescribed rules.

4. We have heard the parties and examined the available record with their able assistance.

5. The case of petitioner is based on the point that his name was included in the merit list therefore he is entitled for the appointment. The law on this issue is settled beyond cavil. The Hon'ble Supreme Court has repeatedly held that mere participation in a recruitment process or inclusion in a merit list does not confer a vested or indefeasible right to appointment. In *Muhammad Iqbal v. Province of Sindh* (2010 SCMR 1886), it was held that successful participation in the selection process only confers a right to fair consideration, not to appointment. In *Mumtaz Hussain v. Govt. of Punjab* (2011 SCMR 317), the Supreme Court reiterated that no vested right accrues until an appointment order is formally issued. In *Muhammad Yasin v. Federation of Pakistan* (2012 SCMR 152), the Apex Court held that the Government retains discretion not to fill advertised posts if justified by circumstances, and no candidate can claim appointment as of right. In *Shafique Ahmed Khan v. NESCOM* (PLD 2016 SC 377), it was emphasized that only upon issuance of an appointment order in accordance with law does a candidate acquire enforceable rights. Thus, the petitioner's claim that he acquired a vested right merely because he was next in line on the merit list is untenable.

6. Another arguments that two post were unfilled at the time of appointment process and the petitioner being qualified is to be appointed has also no force in the eyes of law as the record demonstrates that two out of six advertised posts were not filled because the eligibility of candidates at Serial Nos.5 and 7 was sub-judice before this Court. Those posts were, therefore, reserved. The Supreme Court in *Azhar Iqbal v. Lahore Development Authority* (2015 SCMR 605) held that appointments cannot be made contrary to the rules or beyond the recommendations of the competent selection authority. Unless and until litigation concerning higher-ranked candidates is finally decided, the posts cannot be treated as vacant in the ordinary sense so as to entitle a lower-ranked candidate to claim them.

7. The petitioner has also failed to establish mala fide or arbitrariness in the respondents' conduct. On the contrary, their decision to reserve posts pending adjudication of C.P. No.D-1019 of 2015 appears reasonable. In *Lt. Col. (Retd.) Muhammad Akram v. Registrar, Peshawar High Court* (2018 SCMR 1010), the Supreme Court held that unless arbitrariness or violation of rules is demonstrated, courts cannot substitute the judgment of the appointing authority.

8. In light of the above discussion, we hold that mere inclusion in the merit list does not create a vested right to appointment; The two unfilled posts were lawfully reserved for higher-ranked candidates whose claims are pending adjudication; No illegality, arbitrariness, or mala fide has been established against the respondents. Accordingly, the petition is **dismissed** being devoid of merit.

**JUDGE**

**JUDGE**

*M.Ali\**