

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-4332/2014

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

**Before: Mr. Justice Munib Akhtar
& Mr. Justice Nazar Akbar**

Petitioner No.1 : Abdul Hameed

Petitioner No.2 : Ayaz Hussain Channa
Through M/s. Malik Naeem Iqbal &
M. Saleem Khaskheli, Advocates.

Respondents No.1 : Province of Sindh

Respondents No.2 : Higher Education Commission, Sindh
Through Abdul Jalil A. Zubadi, A.A.G.

Respondents No.3 : University of Karachi

Respondents No.4 : Selection Board

Respondents No.5 : The Syndicate of University of Karachi.
Through Mr. Moin Azhar Siddiqui,
Advocate.

Respondents No.6 : Sher Muhammad Mehrani
Through M/s. Samiullah Soomro and
Abdul Hafeez, Advocates.

Date of hearing : 12.03.2015.

ORDER

Nazar Akbar, J. The petitioners are M.A in Sindhi literature and applied for the post of lecturer in the department of Sindhi, university of Karachi pursuant to the advertisement published by the university in daily Dawn dated

05.2.2012 and its corrigendum dated 30.9.2012. They were persuaded to apply for the post of lecturer after going through the following information in the advertisement for the post of lecturer.

“LECTURER

First Class Master's Degree or equivalent degree awarded after 16 years education in the subject from an HEC recognized University/Institution with no 3rd Division in the academic career.

Condition of 3rd Division shall not be applicable in the qualification of appointment as lecturer in Universities or Degree Awarding Institutions provided that the candidate holds a higher degree viz. M.Phil/PhD or equivalent degree with not more than one 3rd Division in entire academic career.

Furthermore, the candidate with 2nd division in the Master's Degree but holding higher degree i.e. M.Phil/PhD or equivalent degree with 18 years of education may be considered.

Note:

1) All those applying for the post of Assistant Professor or Lecturer (excluding in-service regular teachers of the University & such candidates holding PhD degree in the subject) are required to appear in NTS Test. Only short listed candidates will be called for interview and presentation before the Selection Board.”

The petitioners claimed that they appeared in NTS test and obtained highest marks. They were called for the interview by the selection board and according to them they successfully passed the interview. However, they have not been given appointment letters as the Respondent No.6, who is Ph.D in Sindhi literature has been preferred and the Selection Board has recommended his name to the Syndicate for appointment against the post of lecturer. Their grievance in para-8 of the petition is that the recommended candidate who hold a Ph.D degree did not appear in NTS test and secured less marks in the interview then marks obtained by the petitioners. However, they have not placed on record any documents showing marks obtained by them and Respondent No.6 at the interview. The petitioners claim that they have been discriminated by the unreasonable policy of exempting the candidate with Ph.D degree from appearing in the NTS test and awarding him 10 extra marks for holding Ph.D qualification. The petitioners having successfully passed the NTS test and interview have acquired legitimate expectation to be appointed as lecturer and

the appointment of Respondent No.6 is discriminatory and malafide as he was not given equal opportunity of competing with petitioners by going through NTS test. Therefore, through this petition they have sought the following relief(s).

- i. Declare that the decision of exempting the Ph.D qualified candidates from the NTS test taken in its meeting held on 2nd June, 2012 and awarding 10 grace marks to the same is illegal, unlawful, unconstitutional, malafide, arbitrary, discriminatory, capricious, against public policy and in grave violation of principles of natural justice, equity and fairness, hence, set aside the same forthwith.
- ii. Restrain the Respondents, their agents or anyone acting on their behalf from finalizing the appointments for the post of Lecturers in the proposed meeting to be held on 29.08.2014 and/or re-advertising the post of the Lecturers in BS-18 until the final disposal of the petition.
- iii. Direct the Respondents to issue appointment orders to the Petitioners against the post of Lecturers after deducting Ten grace marks awarded to the Respondent No.6 in the interview.
- iv. Grant any other relief, which this Hon'ble Court may deem proper and appropriate in the circumstances of the case.
- v. Grant cost of this petition.

Learned counsel for the petitioner has relied on **2009 PLC (C.S.) 206** Government of Balochistan, Department of Health through Secretary, Civil Secretariat, Quetta..Vs.. Dr. Zahida Kakar and 43 others & **2013 PLC (C.S) 299** Mst. Faiza Iqbal and 7 others ..Vs..Government of Punjab, through Secretary Education, Lahore and another.

In reply Mr. Moin Azhar Siddiqui learned counsel for official respondent has challenged the very maintainability of this petition on the ground that neither the petitioners have any vested right to claim appointment as Lecturers nor the petition is maintainable against Karachi University, a private institution with no statutory rules. The result of NTS is only a method of short listing candidates holding master degree and the marks obtained in NTS do not add to the qualification of the candidates. The decision of the Selection Board about the suitability of the candidates is not based on the result of NTS test, therefore, reference to NTS test and the score of marks in the NTS test is of no consequence to claim appointment for the post of lecturer. The learned counsel

for the Official Respondent has further contended that the petitioners were fully aware of the criteria for selection of the lecturer through advertisement and they have not shown any grievance at the time of applying for the post of Lecturer that the exemption to Ph.D degree holder from appearing in NTS test amounts to discrimination as against the candidates holding only master degree in the subject. Learned counsel for the University has relied on 2005 SCMR 534 (Secretary Finance & others ...Vs... Ghulam Safdar) in support of his contention that merely by appearing in the written examination and interview the Petitioners have not acquired any vested right.

Learned counsel for the Respondent No.6 (Dr. Shar Muhammad Mirani) has contended that after going through the entire process of selection of the candidates for the post of Lecturer according to the prescribed rules and policy of the university, the Petitioners are precluded from raising any objection to the rules and policy. In his para-wise comments Respondent No.6 has contended that the Petitioner filed this petition on 26.8.2014 and by misrepresentation obtained injunction orders against the proposed confirmation of Respondent No.6, in the meeting of the syndicate (Respondent No.5) which was supposed to be held in this connection.

We have considered the arguments advanced by the counsels, perused the record and examined the case laws relied upon by the Petitioners and Respondents No.3 to 5. The petitioners herein are trying to claim discrimination on the ground of appearing in NTS test for holding the master degree as discriminatory against the candidates who is Phd degree holder and exempted from appearing in the NTS. The candidates with Phd degree cannot be treated at par with the candidates having only master degree. The petitioners and the respondent No.6 cannot be in the same class of persons, who applied for the post of Lecturer pursuant to the requirements of the policy of recruitment announced by Respondents No.3 to 5. No case is made by the Petitioner for invoking article 25 of the constitution for enforcement of their appointment against the post of

Lecturer as a matter of right. It is an admitted position that neither the policy of Respondent for appointment of Lecturer in University of Karachi is governed by Statutory rules nor the huge gape of qualification of the Petitioners and Respondent No.6 in the academic qualification for the post of Lecturers i.e. master degree as against the Phd degree can be over looked by the concerned Respondent to entertain the claim of Petitioners. It is also not unreasonable to prefer a candidate for the post of Lecturer holding a degree of Ph.D in the subject over a candidate with only master in the subject. Both the case relied upon by the Petitioner's counsel are not relevant in the facts of the case in hand.

Mr. Moeen Azhar Siddqui Advocate for respondent has relied on 2005 SCMR 534 (Secretary Finance & others ...Vs... Ghulam Safdar). In this case, the Hon'ble Supreme Court has held that mere selection in written examination and interview test would not, by itself, vest candidates with a fundamental right for enforcement of the same by invoking constitutional jurisdiction of High Court. It is settled law that High Court in exercise of constitutional jurisdiction cannot decide the question of suitability of candidates of particular post which falls within the exclusive domain of public functionaries. We are not convinced by the arguments advanced by learned counsel for the petitioners. He has failed to make out a case of vested right as well as discrimination against the respondent No.6. We did not notice violation of any rules and regulations disclosed by the said respondents at the time inviting applications for the post of Lecturer in department of Sindhi, University of Karachi.

This petition was dismissed by short order dated 12.03.2015 and these are the reasons for having done so.

Karachi.

Dated:_____

JUDGE

JUDGE