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BEFORE THE PESHAWAR HIGH COURT, BENCH AT
MINGORA DARUL QAZA SWAT

W.P. No. _____ of 2022

*Muhammad Mubashir S/o Sahib Gul Resident of Village Gurnai, U.C
Mankiyal Tehsil Bahrain District Swat.*

.....(Petitioner)

VERSUS

1. *Government of Khyber Pakhtunkhwa through Secretary
Education at Peshawar Secretariat Peshawar.*
2. *District Education Officer (Male) at Gul Kada Saidu Sharif
Swat.*
3. *Deputy District Education Officer (Male) at Gulkada Saidu
Sharif Swat.*
4. *Farid Khan S/o Afarin Khan Resident of Zarenyal, Mankiyal,
Tehsil Bahrain District Swat.*
5. *Sajid Karim S/o Abdul Karim Resident of Gorranai, Tehsil
Bahrain District Swat.*
6. *Anwar Zeb S/o Aurang Zeb Resident of Ayun, Tehsil Bahrain
District Swat.*
7. *Muhammad Riaz S/o Abdul Karim Resident of Darolai, Tehsil
Bahrain District Swat.*
8. *Naik Amal S/o Muqadar Khan Resident of Goranai Tehsil
Bahrain District Swat.*
9. *Amir Zeb S/o Sherin Jan Resident of Darolai, Tehsil Bahrain
District Swat.*
10. *Faramosh S/o Muhammad Zahid Resident of Ayun, Tehsil
Bahrain District Swat.*
11. *Raza Khan S/o Qasim Khan Resident of Ayun Tehsil Bahrain
District Swat.*
12. *Muhammad Afzal S/o Muhammad Nazir Resident of Ayun,
Tehsil Bahrain District Swat.*

.....(Respondents)

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WRIT PETITION UNDER ARTICLE 199, CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, amended up to date, whereby respondent No.2,3 did not appoint the petitioner on the PST post (Primary School Teacher) in Union Council Mankyal Tehsil Behrain District Swat, and violated the rule and policy for the appointment of PST post.

Prayer:

On acceptance of instant writ petition the impugned appointment order Endost No.3268-4033/PSTs / Appointment / Adhoc/E TEA dated 30/9/2022 up to the extent of U.C Mankyal Tehsil Behrain Swat, may kindly be set aside to the extent of respondents No.4 to 12, because the petitioner has passed S.S.C exam from the board of intermediate & Secondary Education Peshawar on the basis of Shahadat ul Sanwia Aama, and the petitioner may kindly be appointed on or any other vacant post at U.C Mankyal.

- b) Declaring the appointment of respondents No. 4 to 12 to be illegal and ineffective upon the right of petitioner.
- c). Any other remedy though not specifically been prayed and to which the petitioner is entitled may also be granted in favour of petitioner.

Respectfully Sheweth:

Briefly stated the fact given rise to this constitutional petition.

1. That the petitioner belong to Union council Mankyal Tehsil Behrain District Swat, and has passed in 2011 the secondary School certificate (S.S.C) from the Board of intermediate and secondary education at Peshawar on the basis of Shahdatul Aama, the petitioner obtained 203 marks out of 375 marks. The BISE Peshawar issue S.S.C certificate and DMC of the petitioner. (Copy of S.S.C Certificate is annexure A and DMC is annexure B)

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2. That the petitioner got further education i.e. F.A and B.A on the basis of S.S.C certificate and has got master degree in Islamiat from the University, of Abdul Wali Khan in 2021.(Copies Degrees and Certificates F.A, B.A and M.A are attached as Annexure C,D,E).
3. That the respondent No.2 advertised various post including Primary School Teacher (PST) and invited application for the vacant post through E.T.E.A till 15/12/2021, the fourteen post of PST were vacant in U.C Mankyal in the website of E.T.E.A. (Copy of Advertisement is attached as annexure F).
4. That the petitioner apply for the vacant post in U.C Mankyal and passed E.T.E.A exam and obtain 51/100 Marks, therefore, the respondent No.2 placed the petitioner at Serial No. 6, up to 5th / Last tentative merit list (P.S.T Male) in the union council Mankiyal.(Copy of tentative merit list as annexure G).
5. That the respondent No. 2 raised objection on petitioner's DMC of SSC in tentative 4th merit list and of 5th / last merit list. However, it is pertinent to be noted that petitioner have twicely provide the S.S.C- DMC and S.S.C certificate to the respondent No. 2.
6. That at last respondent No. 2 verbally declare the petitioner D.M.C of SSC is half / insufficient not contain on detail of all subject, therefore, petitioner provided equivalency certificate from inter Board committee of Chairman (I.B.C.C) Govt. of Pakistan but respondent turn deep ear to the certificate. (Copy of IBCC Certificate is attached as annexure H).
7. That the respondent No. 2 without lawful order remove the petitioner name from the candidate for the post of PST at Serial No. 6 at U.C Mankyal and the impugned appointment order Endost No.3268-4033/PSTs / Appointment / Adhoc/ETEA dated 30/9/2022 were issue by the respondent No. 2.(Copy of appointment is annexure I)

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8. That the appointment order Endost No.3268-4033/PSTs / Appointment / Adhoc/ETEA dated 30/9/2022 upto the extent of U.C Mankyal Tehsil Bahrain, District Swat is illegal, against the term and condition of advertisement etc. on the following grounds.

GROUNDS:

- i. That the impugned appointment order is illegal and against the condition mention in the advertisement and government policy, because the District Education Officer (Male) Mardan has appointed a candidate namely Afsar Ali S/o Sarbaz Ali Khan in U/C Maho Derai, on similar qualification having certificate from IBCC.(Copy is attached as annexure J).
- ii. That the petitioner DMC of SSC is correct and issue by the Govt. recognized BISE Peshawar the admission for the SSC was granted by BISE Peshawar on the basis of shahdat Ama certificate.
- iii. That the competent authority have not raised objection on the DMC of SSC of petitioner. The F.A certificate, B.A degree and Master degree were granted by Abdul Wali Khan University on the basis of SSC certificate / DMC.
- iv. That the recognized board of intermediate & secondary education Mardan had not raised any objection on the DMC of SSC of petitioner that DMC of SSC is insufficient / half for the admission of F.A exam similarly the Abdul Wali Khan University has also not raised any the objection on DMC of SSC of petitioner.
- v. That the petitioner have already read the other subject in Shahadat Ama which is clear from DMC of Shahdat Ama, while compulsory subject were passed through SSC exam and the DMC was issue by BISE Peshawar.

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- vi. That the equivalency certificate in respect of Mark of SSC and Shahdat Aama were issue by the I.B.CC Goot. of Pakistan wherein petitioner have got 605 marks.
- vii. That some other grounds will be taken at the time of arguments with the prior permission of this Honourable Court.

It is therefore, humbly prayed that on acceptance of instant writ petition the impugned appointment order. Endost No.3268-4033/PSTs / Appointment / Adhoc/ETEA dated 30/9/2022 up to the extent of U.C Mankyal Tehsil Behrain Swat, may kindly be set aside to the extent of respondents No.4 to 12, because the petitioner have passed S.S.C exam from the board of intermediate & Secondary Education Peshawar on the basis of Shahadat ul Sanwia Aama, and the petitioner may kindly be appointed on or any other vacant post at U.C Mankyal.

- b) Declaring the appointment of respondent No. 4 to 12 to be illegal and ineffective upon the right of petitioner.
- c). Any other remedy though not specifically been prayed and to which the petitioner is entitled may also be granted in favour of petitioner.

PETITIONER

Through Counsel


19-10-22

MUHAMMAD ARIEF ADVOCATE

High Court,

C.T.C
Under
M. Arif Adv

List of books:

1. Constitution of Pakistan.
2. Other law books as per need.

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P No.1192-M/2022

Muhammad Mubashir son of Sahib Gul resident of village Gurnai
Union Council Mankiyal Tehsil Bahrain District Swat Versus
Government of Khyber Pakhtunkhwa through Secretary
Education and 12 others.

Present: Mr. Muhammad Arif, Advocate for petitioner.
Mr. Khawaja Salahuddin, Additional Advocate general for
official respondents.

Date of hearing: 20.06.2023

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Through instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Muhammad Mubashir, the petitioner, seeks the following prayer:

"It is, therefore, humbly prayed that on acceptance of the instant writ petition, the impugned appointment order bearing endorsement No.3268-4033/PSTs/Appointment/ Ad hoc/ETEA dated 30.09.2022 up to the extent of U.C Mankiyal Tehsil Bahrain Swat, may kindly be set aside to the extent of respondents No.4 to 12 because the petitioner has passed SSC exam from Board of Intermediate and Secondary Education Peshawar on the basis of Shahadat-ul-Sanwia Aama, and the petitioner may kindly be appointed on or any other vacant post at U.C Mankiyal.

- a) Declaring the appointment of respondents No.4 to 12 to be illegal and ineffective upon the right of petitioner.
- b) Any other remedy, though not specifically been prayed and to which the petitioner is entitled may also be granted in favour of petitioner."

02 Petitioner contends that he belongs to Union Council Mankiyal, Tehsil Bahrain District Swat. He has passed

(D.8) HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR
HON'BLE MR. JUSTICE SHAHID KHAN

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Secondary School Certificate (SSC) in the year 2011 on the basis of Shahadat-ul-Aama from Board of Intermediate and Secondary Education (BISE), Peshawar and obtained 203 marks out of 375. He also passed his FA and thereafter B.A from Abdul Wali Khan University in the year 2021. Pursuant to advertisement of respondent No.2, he applied for the post of Primary School Teacher (PST). He appeared in the test conducted by ETEA and secured 51/100 marks. Initially, his name was there in the provisional merit lists, however, later on respondent No.2 raised an objection regarding his Detailed Marks Certificate (DMC) of SSC and despite providing his DMC twice, respondent No.2 declared him ineligible on the ground that his DMC does not contain details of all subjects, as such, the petitioner provided equivalency certificate from Inter Board Committee of Chairman (IBCC) but respondent No.2 without any lawful justification removed his name from the merit list and the issued the impugned appointment order, which is illegal, unjust and against the terms and conditions of the advertisement

03. Respondents No. 2 & 3 furnished their para-wise comments, wherein they have refuted the allegations of the petition on different legal and factual objections. It was alleged by the respondents that petitioner has not passed the SSC rather passed only three subjects, thus, he lacked the basic qualification and that it was made clear in the advertisement

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that no extra marks for Shahadat-ul-Sanwia Aama, shahadat-ul-Sanwia Khasa and Shahadatul Alia, shall be awarded.

04. Arguments heard and record perused.

05. It is reflected from record that the petitioner as per equivalency certificate issued by Inter Board Committee of Chairmen (IBCC) has the qualification of Shahad-ul-Sanawia Aama with three additional subjects at SSC level, as such, did his SSC in the year 2011 by securing 605 out 900 marks. He did his Intermediate from BISE Mardan in the year 2015, Graduation from Abdul Wali Khan University Mardan in the year 2016-17 and MA in Islamiyat from Abdul Wali Khan University. It has not been denied by the respondents that the petitioner has succeeded in getting 6th merits position from the Union Council Mankiyal in the 4th & 5th tentative merit lists. It has also not been denied by the respondents that the petitioner has provided the SSC certificate, equivalency certificate, and detailed marks certificate (DMC) to the respondents. The objection of the respondents was that since the petitioner has not appeared in all subjects of Secondary School Certificate Examination, thus, his marks of metric could not be counted in the merit list and since he has not passed his metric in all subjects, he was ineligible for his selection. The basic qualification for appointment of Primary School Teacher (BSP-12), as per the advertisement of respondents, was the bachelor degree from recognized university. The philosophy for

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equivalency certificate for metric was further study and the petitioner after SSC did his intermediate, graduation and thereafter Master. It has not been disputed that the petitioner has the qualification of Bachelor which was the basic qualification for the Post of PST. As per the Higher Education Commission's Equivalence and Accreditation Committee, the Commission recognizes the Sanad "Shahadatul Alia fil Uloomel Arabia wal Islamia from Wafaq ul Madaris Al-Arabia, Multan. Pakistan as equivalent to Bachelor (Pass) degree involving 14-year of schooling for the purpose of job and further study upon qualifying compulsory subjects viz. English and Pakistan Studies at Bachelor (Pass) level from Allama Iqbal Open University (AIU) and provision of Matric and Intermediate Certificates, respectively. Thereafter on 4th July 2023, a notification was issued with the subject: Equivalence Of Deeni Asnad Issued By Approved/Recognized Deeni Institutions dated 4th July 2023 which for convenience is reproduced as under:

Higher Education Commission
 (Attestation & Accreditation Division)
 Sector H-9, Islamabad (Pakistan)

F. No. 8-1 6/HEC/A& N 2023 Islamabad the July 4, 2023
 Subject: Equivalence of Deeni Asnad Issued by Approved/Recognized Deeni Institutions.

Consequent upon approval of the Competent Authority, it is enlightened that the Higher Education Commission (HEC) recognizes the Sanad "Shahadatul Alia fil Uloomal Arabia wal Islamla" as equivalent to the corresponding Bachelor (Pass) degree involving 14 years of schooling, subject to fulfillment of condition as mentioned in letter No. I (61/A&A /2017/HEC/1260 dated October 13, 2017 (Annex-A). Similarly, Sanad "Shahadatul Almiya fil Uloomal Arabia

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wal Islamia" awarded by approved Deeni Institutions (Annex-B) is recognized by HEC as equivalent to the corresponding Master's degree in Arabic/Islamic Studies involving 16 years of education. This recognition is applicable for teaching Arabic/Islamic studies in educational institutions and for pursuing higher studies.

06. Since the referred to above notification pertains to "Shahadat-ul Alia fil Uloomal Arabia wal Islamla" as equivalent to the corresponding Bachelor (Pass) degree involving 14 years of schooling and there is a condition for recognition that it is applicable for teaching Arabic/Islamic studies in educational institutions and for pursuing higher studies, however, neither there is any condition nor restriction for recognition and grant of equivalency certificate of metric by IBCC according to the notification of the year 2017, which is as under:

In pursuance of recommendation of a committee held under the Chairmanship of Hon'ble Minister of State for Federal Education and Professional Training with the Heads of religious Institutions Ittehad Tanzeem ul Madaris Pakistan and approved thereof by the Higher Education Commission's Equivalence and Accreditation committee in the 6th meeting held on 66 February, 2017 under the Chairmanship of Chairman HEC, the following decisions are made and for information of all stakeholders:

- i. Shahadat-ul-Alia fil Uloom ul Arabia wal Islamia will be recognized by HEC as equivalent to Bachelor (Pass) degree upon qualifying compulsory subjects via English and Pakistan Studies at Bachelor (Pass) level from AIOU or any other Chartered University subject to award of equivalency of Sanvia Aama and Sanvia Khasa by HEC. Equivalence of Shahadat-ul Sanvia Aama and Shahadat-ul Sanvia Khasa will be awarded by IBCC as per their recommendations.
- ii. The concerned Wafaq may admit the students towards Shahodat-ul Sanvia Aama as per their own system of education i.e., Mutawasta equivalent to Middle standard and HEC will not require Middle School Certificate from the holder of Deeni Asnad.
- iii. The students who are desirous to get admission in formal Master degree (other than Islamic Studies or Arabic) in a University after Shahadat-ul Alia may opt any other two (02)

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elective subjects (other than Arabic and Islamic Studies) in addition to compulsory subjects as per their discretion.

07. Moreover, on the basis of equivalency certificate the petitioner has completed his master degree without any clog or restriction, thus, without any specific provision either in the advertisement or the rules, he could not be denied from the right especially, when the petitioner was high in merit position. Likewise, the petitioner alleged that Asif Ali a candidate with similar qualification has been recommended and appointed but the respondents in their comments have not specifically denied from this fact except the repletion that the petitioner has no valid certificate of metric, thus, his further qualification could not be counted. This stance of the respondents is unjustified, unwarranted and without being backed by any law, hence, the petitioner was also deserving for alike treatment as the respondents have treated Asif Ali.

08. It appears from the record that there were 14 vacant posts in the Union Council of Mankiyal against whom only 12 appointments were made and still there are vacant posts, hence, there is no need to put on notice the private respondents who have been appointed rather as discussed above, the petitioner has made out a case for issuance of writ against the respondents. Thus, for the aforementioned reasons, this petition is disposed of in term of direction to respondents to consider the petitioner for the post of primary school teacher without

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disturbing the already appointed teachers in view of his merit position from the Union Council of Mankiyal, District Swat.

Announced.
20.06.2023
Judgement written on.
23.08.2023.

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JUDGE


JUDGE

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M. Arif Adas

(19) خدمت جناح و شریک ایجوکیشن آنسر (سوانہ) بی اے گل کالج لہور

Handwritten signature and date: 28/9/23

موضوع: درخواست سیراڈ کے مسائل / عمدہ بیشتر ولہ صاحبہ صاحبہ کو
یو این کونسل مانگیال تحصیل جی پور میں بطور P.S.T پینس
مطابق کینڈا ر ہا ٹیڈور ڈ بیٹوہ پنچ برڈرٹ پیشین
نمبر W.P.No 1192-M/2023 توری کرے تاکہ صحت صادر فرمایا جائے۔

ضابطہ عالی: مسائل صحت کے لئے ضروری ہے۔

1۔ یہ کہ مسائل کے بارے میں توری برڈرٹ P.S.T کے ساتھ در یو این
کونسل مانگیال تحصیل جی پور میں صحت سروس کے لئے کینڈا ر ہا ٹیڈور
بیٹوہ پنچ برڈرٹ پیشین W.P.No. 1192-M/2023 کا ڈاکو کیا جا۔
جو کہ مسائل کے حق میں صدر ہ 2023، 2023 کو فیصلہ ہو رہا ہے۔
الغرض برڈرٹ W.P.No. 1192-M/2023 کے لئے درخواست لیا گیا ہے۔

2۔ یہ کہ یو این کونسل مانگیال تحصیل جی پور میں تاحال دو
اسٹاف یا برڈرٹ P.S.T کے لئے یہ بہ ہی وجہ مذکورہ حال
اسلامی مسائل کو توری کی احتیاجات صادر فرمایا جائے۔

CT: M. Anj

غرض M. Anj 8/9/23

محمد بیشتر ولہ صاحبہ گل کالج گورنمنٹی یو این کونسل
مانگیال تحصیل جی پور میں صحت سروس
یو این ٹیلی فون نمبر 03119990434

Handwritten signature and date: 28/9/23

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