

JUDGMENT SHEET

in the high court of balochistan, quetta.

Constitutional petition no.866 of 2023.

(ID # 100107602369)

Bayazid Khan Kharoti.

vs.

The Secretary Secondary Education, Government of Balochistan & others.

Constitutional petition no.297 of 2023.

(ID # 100107600775)

Khair Muhammad Marri.

vs.

Government of Pakistan through Secretary Education (Schools), Education Department & others.

JUDGMENT

Dates of hearing: 11th December, 2023.

Announced on: 26th December, 2023.

In CP No. 866 of 2023

For petitioner:

(Bayazid Khan Kharoti) absent.
Petitioner No.2 Muhammad Naeem
Khan present in person.

For respondent No.1:

Mr. Muhammad Asif Reki, Advocate
General.
Mr. Shai Haq Baloch, Additional Advocate
General.
Mr. Qadir Bakhsh Baloch, Provincial
Minster for Education Balochistan and Mr.
Amanullah Kanrani, Provincial Minister
for Law & Parliamentary Affairs present
on 26th October 2023

For respondent No.2:

Mr. Adnan Basharat, Advocate for SBK
and Private Testing Company.

For private respondents:

M/s. Munir Ahmed Kakar, Ashfaq Khan,
Habib-ur-Rehman Baloch, Mehrullah
Khan Kakar, Qutab Khan Miankhel,
Advocates,

Mr. Naimatullah Achakzai, Advocate for
HEC alongwith Dr. Zahoor Bazai, DG.
HEC and Mr. Abdul Irfan Consultant
HEC Pakistan.

Mr. Abdul Wahid Shakir Baloch,
Director Education Schools.

Mr. Haroon Rasheed, Deputy Secretary
(Education)

Mr. Aslam Pervaiz, Deputy Director
(Judicial)

Syed Baseer Agha, Assistant Director
(Judicial) Education Department

M/s Ikram Ali & Asad Khan Khattak,
Special Prosecutor NAB alongwith I.O
Muhammad Sumair Assistant Director
NAB.

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In CP No. 297 of 2023

For petitioner:

Mr. Khair Muhammad Marri, Advocate
(Absent).

For respondent No.1:

Mr. Muhammad Asif Reki, Advocate
General.

Mr. Shai Haq Baloch, Additional Advocate
General.

Mr. Qadir Bakhsh Baloch, Provincial
Minster for Education Balochistan and Mr.
Amanullah Kanrani, Provincial Minister
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Mr. Haroon Rasheed, Deputy Secretary
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(Judicial) Education Department

M/s Ikram Ali & Asad Khan Khattak,
Special Prosecutor NAB alongwith I.O
Muhammad Sumair Assistant Director
NAB.

MUHAMMAD KAMRAN KHAN MULAKHAIL, J: By means of this common judgment, we are proposed to dispose of the Constitutional Petition Nos. 866 & 297 of 2023, as identical questions of law and facts are involved in these petitions.

2. The Constitutional Petition No. 866 of 2023 has been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution') by the petitioner, assailing the advertisement and process of appointments in the Education Department on the strength that gross illegalities and irregularities are being committed in the Department particularly by the ex-government (Education Minister), while the test conducted by the department through *Sardar Bahadur Khan Women University (SBKWU)* is also against the recruitment policy framed by the Government of Balochistan; that the said (*SBKWU*) is neither a qualified body to conduct test nor is having any testing service and nor even any experience to conduct such test, that too of the teaching staff at school level; that the appointment of such a large number of teachers through an unauthorized and inexperience body/institution/university in haphazard and cursory manner clearly demonstrates the intention of the

appointing authority, however, no concrete steps were taken to ensure the transparency in the entire process; that appointments are being made on basis of nepotism, favoritism, corrupt practices and corruption will have direct impact upon the future generation of the province at large; that the appointments are being made on the basis Recruitment Policy 2019, however, the said policy is neither transparent nor in line with the judgments rendered by this court from time to time; that the respondent No.2 was awarded contract to conduct the test against the vacant posts, however, the respondent has further sublet the contract to a private testing service, which is again in violation of the Policy; whereas this court in number of judgments has declared the process of conducting test through private testing service to be illegal, but again awarding the contract or subletting the contract to the private testing service is not only illegal but in clear violation of the judgments of this court; that the appointments within very narrow spam of time through respondent No.2 manifests gross illegalities and irregularities and it is apprehended that through such illegal act, the transparency would be compromised; finally prayer was made for cancellation of the process, with further direction to conduct the same through Balochistan Public Service Commission.

3. Constitutional Petition No. 297 of 2023 was filed with the similar facts, however, with the additional prayer that since the respondent No.2 is charging heavy fees of Rs. 980 for the test against each post, and thus requested that the same be directed to be reduced to Rs. 200, with further direction to allow the candidates to deposit the fee in all banks in their respective districts.

4. On filing of the petition, the petitioner No. 2 appeared and filed a Civil Misc Application No. 2327 of 2023 under Order I Rule 10 CPC with the request to implead him as petitioner in the petition. Similarly several other applicants filed misc applications with the request to be arrayed as respondents in the petition. All the applications were allowed and the petitioner was directed to file amended title by arraying the newly arrayed petitioner and respondents respectively.

5. The respondent No.1 filed reply, wherein the *locus standi* of the petitioner was questioned on the strength that he is neither aggrieved person nor any of his legal, Constitutional, or fundamental right are likely to be infringed; that the petitioner by means of such frivolous petition has tried to disturb the government affairs, particularly the educational activities, as the government is facing shortage of teaching staff throughout the province; that the test has been conducted and the process is completed by the respondent

No.2, and only the result is to be announced, thus, at this belated stage such a frivolous litigation has not only disturbed the process but also amounts to infringement of legal rights of those candidates who have applied for the post and participated in the test; that the allegations of the petitioners are based on hearsay, presumptions and surmises, which have no legal backing, whereas the entire process has been carried out in accordance with law by observing all legal formalities; finally request was made for dismissal of the petition.

6. The respondent No.2 in his reply while controverting the averments of the petition, also objected the *locus standi* of the petitioner, whereas on merit it was asserted that the allegations so leveled are mere assertion, and from the contents of the petition nowhere it is established nor any document has been brought on record to support the allegations leveled against the government institutions; that the respondent No.1 while complying with the direction of this court, passed in CP No.1304 of 2020, decided to conduct the test through public sector universities, and thus invited the bids, and the respondent No.2 being successful lowest bidder was awarded contract to conduct the tests; that all the aspiring candidates were required to go through the screening test, thus a proper and a comprehensive mechanism was organized for conducting the test and similarly after observing all legal formalities tests were conducted in each district, duly

supervised by the SBK team member and consequently the results were ready for announcement, but all of sudden the instant petition was filed, wherein this court passed the order by restraining the respondents from announcement of the result; that the entire process has been conducted in transparent and impartial manner, free from any doubt, illegality and irregularity, thus, requested that the respondent No.2 be allowed to announce the result and complete the process.

7. Since several interveners approached this court by filing applications, which were allowed to be arrayed as party to the petition, however, all of them are/were simultaneously questioning the petitioners' position, requested for the dismissal of the petition.

8. The Additional General alongwith learned counsel for the respondents/interveners questioning the standing of the petitioner contended that the petitioner has no *locus standi* to file the instant petition, as he is neither a proper party, contesting candidate, aggrieved person, nor having any concern with the advertisement, test/interview or appointment of the persons against the advertised posts. It was further contended that the petitioner's petition does not come within the ambit of Article 199 of the Constitution, nor the petitioner falls within the definition of a "*Person*". The learned counsel Advocate General, learned counsel for the respondent No.2

and applicants requested for dismissal of the petition being barred by law.

Learned Additional Advocate General, learned counsel for the respondent No.1, while relying on the written reply submitted that it is an hardship case for the Education Department, as due to shortage of teaching staff almost 3500 schools have been closed, thus, the appointment of teaching staff is dire need for smooth running of the educational matters; that the entire process right from advertisement till completion of the process, was conducted in legal and transparent manner, they therefore, urged for dismissal of the petition.

Learned counsel for the interveners adopted the arguments of the learned Additional Advocate General and learned counsel for respondent No.1 and requested for dismissal of the petition.

On the other hand, Petitioner No.1 appearing in person, despite service of notice and repeated calls was not in attendance, however, earlier when the question of maintainability was raised, the petitioner No.1 submitted that since the issue of appointment of teaching staff in the education department in a bulk without adopting due course of law and observing legal formalities, will have direct sway over the education of future generation, on the petitioner's children and children of the province at large, therefore, the matter is not

only involved with question of fundamental rights of the citizens of the Province but is also of public interest at large.

9. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

10. Before we grapple with the issue involved in the petition, we feel it necessary to decide the issue regarding objection raised by the respondents with regard to the standing (*locus standi*) of the petitioner. Indeed, the issue with regard to appointment of around about 9000 teaching staff (teachers) advertised by the Government, has been raised through the instant petition, whereas the locus standi/standing of the petitioner has been questioned several times by the respondents on the strength that he has no concern with the issue in hand. It is noteworthy to add here that when the matter is brought before the court with regard to fundamental rights of public at large, the matter can also be termed as of utmost importance commonly known as of “*Public interest litigation*” or “*Public Interest Petition*”. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be “*publicity interest litigation*” or “*private interest litigation*” or “*politics interest litigation*” or the latest trend “*paise income litigation*”. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck

vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. It is necessary to take note of the meaning of expression '*public interest litigation*'. In Strouds Judicial Dictionary, Volume 4 (IV Edition), '*Public Interest*' is defined as under:

"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

In Black's Law Dictionary (Sixth Edition), "*public interest*" is defined as follows:

"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean

anything the particular localities, which may be affected by the matters in question.

"The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "*Public Interest Litigation*" or "*Public interest Petition*" means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens.

11. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations and prior to proceeding to the matter/petition, the Court has to be satisfied about (a) the credentials of the applicant/petitioner; (b) the prima facie correctness or nature of information given by him; (c) the

information being not vague and indefinite. The information should show gravity and seriousness involved. The court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions.

The information furnished by the petitioner through the instant petition is certainly genuine, in view of the fact that the government has itself noticed the veracity of the allegation by constituting a committee to inquire into the matter, thus, at least the information cannot be termed as devious. Similarly, the petitioner being citizen of the province having no political background, personal interest and any malice against the respondent has come to the court with the stance to take notice of the appointment of such large number of teachers but without adopting the due course of law, whereas, the appointment of teachers in the education department is not a matter of any individual rather the fundamental right of every citizen of the Province is involved. The question of standing (*locus standi*) has been dealt in number of judgments by this court and by the Hon'ble Supreme Court. While dealing with the question of

locus standi, the Hon’ble Supreme Court, in the case of *Province of Sindh v. Lal Khan Chandio*¹, has held that:

“The learned AAG and Additional Attorney General, in addition to the aforesaid contentions, have assailed this petition on the ground that the petitioner does not have standing (locus standi) and that the petition does not seek, “the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II” of the Constitution, in terms of clause (3) of Article 184 of the Constitution. This case is in the nature of public interest in respect whereof this Court does not require standing.”

In case of *Imran Khan and others v. Election Commission of Pakistan*², the Hon’ble Supreme Court of Pakistan held that:

“Likewise, the rule of locus standi has also not been held applicable to the cases involving questions of public importance with reference to enforcement of the Fundamental Rights, especially in the domain of Public Interest Litigation to ensure a meaningful protection of the Rule of Law to all citizens, as has been laid down in judgments reported as Miss Benazir Bhutto v. Federation of Pakistan and another (PLD 1988 SC 416), Mian Muhammad Nawaz Sharif v. President of Pakistan and others (PLD 1993 SC 473), Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455) and Muhammad Yaseen v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132).”

¹ 2016 SCMR 48

² PLD 2013 Supreme Court 120.

Similarly, in case of *Akhtar Hassan Khan v. Federation of Pakistan*³ the Hon'ble Supreme Court held that:

“Question No V: Whether the petitioners have locus standi to challenge the privatization of HBL?”

47. *The petitioners in these two petitions have admittedly no personal interest as petitioner in Constitution Petition No.5 of 2011 is a former Federal Secretary, Government of Pakistan and the averments made in the petition reflect that he is a public spirited person motivated with a desire that the national strategic assets if privatized should reflect transparency which allegedly is lacking in the instant case. Similarly petitioner in Constitution Petition No.15 of 2004 represents a party which may not claim a large constituency but is motivated by a similar spirit. These petitions are in the nature of public interest litigation and the Courts in exercise of its constitutional jurisdiction qua matters of public importance relating to enforcement of Fundamental Rights have been liberal particularly if the issue raised is relatable to a public injury arising from breach of public duty. In S.P. Gupta and others v. President of India and others (AIR 1982 SC 149), the Court observed as follows:--*

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of person by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or

³ 2012 SCMR 455.

socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."

48. Similarly this Court in *Miss Benazir Bhutto v. Federation of Pakistan (PLD 1999 SC 416)* held that:-

"After all the law is not a closed shop and even in the adversary procedure, it is permissible for the next friend to move the Court on behalf of a minor or a person under disability, or a person under detention or in restraint. Why not then a person, if he were to act bona fide activate a Court for the enforcement of the Fundamental Rights of a group or a class of persons who are unable to seek relief from the Court for several reasons. This is what the public interest litigation/class action, seeks to achieve as it goes further to relax the rule on locus stands so as to include a person who bona fide makes an application for the violation of any constitutional right of a determined class of persons whose grievances go unnoticed and unredressed. The initiation of the proceedings in this manner will be in aid of the meaningful protection of the rule of law given to the citizens by Article 4 of the Constitution, that is, "(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan"

This Article does not say as to what proceedings should be followed, then whatever be its nature must be judged in the light of the purpose, that is, the enforcement of any of the Fundamental Rights. It is, therefore, permissible when the lis is between an aggrieved person and

the Government or an authority to follow the adversary procedure and in other cases where there are violation of Fundamental Rights of a class or a group of persons who belong to the category as afore-stated and are unable to seek redress from the Court, then the traditional rule of locus standi can be dispensed with, and the procedure available in public interest litigation can be made use of, if it is brought to the notice of the Court by the person acting bona fide. On the language of Article 184(3), it is needless to insist on a rigid formula of proceedings for the enforcement of the Fundamental Rights. If the framers of the Constitution had intended the proceedings for the enforcement of the Fundamental Rights to be in a strait-jacket, then they would have said so, but not having done that, one would not read any constraint in it. Article 184(3) therefore, provides abundant scope, for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction. It would be for the Supreme Court to lay down the contours generally in order to regulate the proceedings of group or class actions from case to case."

In view of the above, the objection so raised with regard to the standing of the petitioner, does not carry any weight and the petition involved with the fundamental and basic right of each citizen is maintainable to be proceeded further, thus, the objections so raised are overruled.

12. The debatable question before this court is whether the manner and procedure adopted by the respondent for appointments of teaching staff throughout the province is/was in accordance with the Recruitment Policy and the guidelines framed by this court from time to time. The respondent No.1 in order to fulfill the vacant posts of

teaching staff, decided to initiate process and accordingly a summary was forwarded to the Chief Minister with the proposal that the test against the 8690 vacant posts of different nomenclatures of teaching staff (BPS-09 to 15) shall be conducted through a well reputed University and the School Education Department shall supervise the whole recruitment process in order to ensure transparency. The Secretary S&GAD while agreeing with the proposal also pointed out that the Provincial Cabinet in its meeting held on 12th August 2020 has already expressed dissatisfaction on Private Testing Service, thus, the respondent No.1 approached several universities outside Balochistan to find out if they were interested in conducting the screening test, however, only IBA Sukkur and NUML University expressed their interest, but the Chief Minister while approving the name of the NUML University also directed to solicit the expression of interest of Universities in Balochistan for conducting the screening test and interviews. Meanwhile, the respondent No.2 submitted bids, which being lowest was accepted and Letter of Acceptance dated 20th February 2023, was issued to the respondent No.2, thereafter, contract agreement dated 23rd February 2023 was executed between the parties. Albeit, the respondent No.2 after executing the contract with the respondent No.1 and obtaining the task was required to conduct the screening test, but instead of initiating the

process, the respondent No.2 further sublet the contract to a Private Testing Service, whereas, as per Clause 2.6.1, of the Contract provides that *“THE REPUTED PUBLIC SECTOR UNIVERSITY in consultation with the Schools Education Department/CLIENT DEPARTMENT shall conduct District based test.”* Needless to observe here that this Court earlier in several judgments and orders has already restrained the Private Testing Services from conducting the test and directed the Government to cancel all the process of Testing Service. The order dated 24th December 2020, passed in Constitutional Petition No. 1304 of 2020 is reproduced for ease reference:

“Learned counsel for respondent No.3 intends to file profile of Candidate Testing Service (CTS). But, since we do not need it suffice to go through the profile of company, rather the question was posed that under what authority of law, they are conducting the examinations, therefore, either CEO or Director of the CTS shall appear in person with credentials of their Board of Director, Article/Memorandum of Association and mandate accorded thereunder to explain that under what authority of law, they are conducting the exams. While, Secretary Labour is also directed to appear in person and to explain that why instead of conducting test on their own, they have hired a private company, which apparently seems to grab the money from the unemployed youth of the province. It is unfortunate to observe that on the one hand the State is bound under the Constitution to provide employment to the unemployed youth, but on a

pretext of advertisement of new recruitment, are grabbing money from the unemployed and downtrodden citizen of the country, which is unfortunate at least to say.

The Secretary is directed to cancel all process of Testing Service and come forward with the concrete proposal for conducting test for new recruitments either through Balochistan Public Service Commission (BPSC) or through any other Public Sector Education Institution. However, they may continue the recruitment process subject to the direction of the court and the requisite test shall be conducted by constituting a recruitment committee from the faculty of any Engineering University/College/Polytechnic Institute including the University of Balochistan (UoB) and the Balochistan University of Information Technology and Sciences (BUITS).

The AAG is directed to produce the notification, through which the Government of Balochistan has notified that no private company shall be permitted to conduct the test and interview for recruitment in public sector and if any the Law/Rules in vogue shall also be produced.”

On one hand this court while observing the factum that the private testing service is unable to perform properly and has been restrained from conducting any test, while on the other hand, the Cabinet Division has also placed displeasure and similarly the Summary initiated by the respondent No.1 assented by the S&GAD and legally opined by the Law Department has also excluded the Private Testing Services

from conducting the test, but even then, the respondent No.2 having no authority and being bound under the contract, awarded/sublet the contract to the private testing service for conducting the test and thus, have not only violated the terms of contract but has also acted against the judgments/orders of this court.

13. The petitioner also raised contention that beside violation of the contract on part of the respondent No.2, there are other illegalities and irregularities with regard to process of appointment of the teaching staff and more particularly that huge amounts are being grabbed for appointment of the candidates. Though, such allegations were strongly controverted by the respondents, but while observing the gravity of the matter, vide order dated 30th August 2023, the following order was passed:

4. Suffice to observe here that this petition was admitted for regular hearing, when this news became talk of the town that vacancies in the Government Departments in general and in the Education Department in particular are offered to be sold out against illegal gratification and even during course of hearing of this petition alongwith connected petitions, a number of litigants are appearing before the court and lamently complaining about the issue, therefore, it appears that the recruitment process in the public sector departments are neither transparent nor impartial. Even today some of the individuals were ready to file their affidavits and to swear on oath, that their

relatives/offspring/siblings have been asked to arrange payment for appointment on the subject posts.

Therefore, in view of newly arising situation, the candidates who claim to have paid or have been asked to pay illegal gratification by the government officials, or anyone else on their behalf, shall submit affidavit in this regard. Thus, the Director General Public Relation shall publish a notice for information of general public in the national and local daily newspapers and anyone either candidate himself/herself or his/her/their relative aware or witnessed the payment or demand of any illegal means shall submit their affidavit before Registrar of this Court. The Registrar is directed to compile a list of those individuals and receive the affidavit(s) for our perusal.

In compliance of order, certain individuals filed their affidavits before the Registrar of this court leveling allegations of illegal gratification being paid and received for appointment on the posts by or on behalf of the official respondents. Consequently, the Government of Balochistan, Service & General Administration Department while observing the illegalities so emerged, constituted a fact finding committee to probe into the allegations of irregularities and corruption in the recruitment process vide Notification No. 22-269/2023/SI-I (S&GAD) dated 16th October 2023, whereas, the Provincial Minister for Education appeared before the court and admitted the position of certain illegalities and irregularities committed in the process,

however, apprised the court about shortage of teaching staff in the Province, when on 26th October 2023, the following order was passed:

“Date of hearing: 26th October, 2023.

For Petitioner: Bayazid Khan (petitioner) present in-person.

Khair Muhammad Shaheen Attorney for petitioner in CP No. 1091 of 2023.

For respondents: Mr. Muhammad Asif Reki, Advocate General.

Dr. Qadir Bakhsh Baloch, Provincial Minister for Education Balochistan.

Mr. Amanullah Kanrani, Provincial Minister for Law & Parliamentary Affairs.

Mr. Shai Haq Baloch, Addl: A.G.

Mr. Zafar Iqbal Khan, DG NAB (Balochistan).

Mr. Jaffar Raza, Deputy Prosecutor General NAB.

Mr. Zameer Ahmed Chalgari, Special Prosecutor NAB.

Mr. Ali Ahmed Kakar, Advocate.

Barrister Jehandad Kakar, Advocate.

Mr. Mansoor Ahmed Khosa, Advocate.

Mr. Habib-ur-Rehman Baloch, Advocate for interveners.

Mr. Mehrullah Khan Kakar, Advocate.

Mr. Qutab Khan Miankhail, Advocate.

Mr. Abdul Wahid Shakir Baloch, Director Education.

Mr. Haroon Rasheed, Deputy Secretary Education.

Mr. Muhammad Aslam Pervaiz, Deputy Director Education.

Mr. Abdul Baseer Agha, Assistant Director Education.

In pursuance of our earlier order dated 21st September 2023, Mr. Zafar Iqbal Khan, DG NAB (Balochistan) along with Mr. Jaffar Raza, Deputy Prosecutor General NAB and Mr. Zameer Ahmed Chalgari, Special Prosecutor NAB are in attendance and submitted interim report regarding recruitments in Education Department & Population Welfare Department, he states that this interim report has been submitted for perusal of the Court only to show the progress, and therefore, the same may not be shared with or delivered to anyone else till its finalization. The reports are taken on record and further order will be passed after perusal of the same in chamber.

2. *Dr. Qadir Bakhsh Baloch, Provincial Minister for Education Balochistan is in attendance and apprised the Court about difficulties being faced by the Government for smooth functioning of schools. He also provided the details regarding total number of Primary and Middle schools and stated that due to acute shortage of teachers at presently as many as (6000) schools are being run through single teacher, while during the last three months, (3400) schools have been closed down due to non-availability of requisite teaching staff; that monthly almost (300) teachers are being retired, and thus, all these shortcomings raised to the necessity for immediate recruitments of teachers in the Education Department.*

3. *In response to court's query, Mr. Haroon Rasheed, Deputy Secretary (Judicial) Education Department provided the figures, which shows that at presently (48000) teachers are recruited at primary and middle level, while (6000) teachers are serving on senior positions as SSTs.*

In response to court's query, it further transpired that as many as 1,100,000 (1.1 million) students are enrolled out of which 34 to 39% dropout calculates approximately to the tune of 400,000 students, meaning thereby that at presently 700,000 students are regularly attending the schools and dividing these numbers of students on total number of 54000 teachers, it brings that only 13 students are being taught by one teacher.

Since these are statistical data, which cannot be ascertained without comprehensive report, therefore, the Secretary Education (Schools) Government of Balochistan is directed to submit a report.

4. *Petitioner present in-person produced copy of Notification No.22-269/2023/SO-I(S&GAD)*

dated 16th October, 2023 issued by the Government of Balochistan S&GAD, whereby, with prior approval of the competent authority the Government of Balochistan has constituted a Joint Inquiry Committee to probe into the allegations of irregularities and corruption in the recruitment process of the departments, which reads as under:

“Notification

No.22-269/2023/SO-I(S&GAD). With prior approval of the Competent Authority, the Government of Balochistan, Services & General Administration Department is pleased to notify the following Joint Inquiry Committee to probe into the allegations of irregularities and corruption in the recruitment process of the department.

2. The committee shall comprise of the following members:-

<i>1.</i>	<i>Chairman CMIT</i>	<i>Chairman</i>
<i>2.</i>	<i>Secretary Finance</i>	<i>Member</i>
<i>3.</i>	<i>Secretary S&GAD</i>	<i>Member</i>
<i>4.</i>	<i>DG Treasuries</i>	<i>Member</i>
<i>5.</i>	<i>DG Anti-Corruption</i>	<i>Member/ Secretary</i>
<i>6.</i>	<i>Rep of ISI</i>	<i>Member</i>
<i>7.</i>	<i>Rep of MI</i>	<i>Member</i>
<i>8.</i>	<i>Rep of IB</i>	<i>Member</i>

TORs of the Committee

- a) Scrutinize the record of recruitments in all departments carried out during the last three months.*
- b) Consider complaints received from various quarters in this respect.*
- c) Point out the discrepancies, loopholes, irregularities, deviation from approved policies, and corruption in the process of recruitment.*

- d) *Fix responsibilities where any evidence of any irregularities is found.*
- e) *Co-opt any additional member if necessary.”*

5. *When the said notification was confronted to the Provincial Minister for Education, he conceded the said position and states that the Government is willing to ascertain the factual position with regard to allegations of irregularities and corruption in the recruitment process of the department(s).*

6. *Be that as it may, when the Government of Balochistan itself has noticed and feels it necessary to probe into the matter about the allegations of corrupt practices for appointments in various departments including Education Department, thus, under the circumstances, the vice Chancellor Sardar Bahadar Khan Women University SBKWU is directed to produce the bid documents, whereby it has succeeded to obtain the contract of testing service with other necessary details, with direction that if it has executed any further contract with any private individual/testing company for conducting the test for recruitments in the Education Department on next date of hearing. The C.E.O of the private company shall be informed through Registrar SBK for appearance in the court.*

“7. *During course of hearing, the Provincial Minister for Education further apprised the court that due to this acute urgency, it would be more appropriate if the court pass any order to expedite the recruitments.*

In view of the contention so raised, when he was asked to suggest that what can be more appropriate way-out to address the issue and to ensure the merit-based recruitment, he states that instead of conducting test for recruitment in the government department, it would be more appropriate to assign the task to the National Testing Council of Higher Education

Commission, while a high power interview panel can also be constituted, comprising of a Member of Balochistan Public Service Commission, Member of CMIT and other officials of Education Department, to be chaired by the Divisional Commissioner of the concerned division.

Keeping in view the above suggestion, the capacity and competency of the Higher Education Commission, when it is already conducting test upto PHD level, the provincial government can provide spacious premises for conducting the test either in the building of Boys Scouts or in the IT University Takatu Campus. He was further asked to explain about the rationale behind the up-gradation and time scale granted to the teachers, he sought time to ascertain the same and submit a report in this behalf through concerned officials of the Education Department.

8. *Consequent to the above, discussion and keeping in view the large scale complaints, alleged corruption & corrupt practices, nepotism, favoritism and cartelization of Teachers and Clerk Associations, in addition to haphazard and cursory manner shown by the former government's Ministers altogether bring the dark shadow of suspicious and dubious practices reported in the recruitment process of the education department, when it also appears that the Government is ready to review and reinstate the recruitment process strictly in accordance with the directions given by Court, therefore, office to issue notice to the Regional Director Higher Education Commission ('HEC') Balochistan, Director General (Academics) of HEC and SBK and its partner company, if any) through Registrar SBK, which shall accompany the copy of this order for information and compliance."*

Keeping in view the contention of the petitioner, allegations leveled at large through affidavits filed before the Registrar of this Court and more particularly, when the Education Minister Balochistan himself admitted the irregularities committed in the process, since the representative of the HEC was already summoned, thus, on 02nd November, 2023 the representative of HEC alongwith the counsel appeared, when the following order was passed:

7. *In pursuance of our earlier order Mr. Abdul Arfan, Consultant Test Administration of Higher Education Commission ('HEC') alongwith Mr. Naimatullah Achakzai, Advocate is in attendance and he in response to Court's query categorically stated that HEC has a sufficient capacity and ability to conduct large scale tests for any purpose up-to Ph.D level; that the HEC has sufficient Multiple-Choice Questions (MCQs) Data. He, however, stated that the tests, if any, assigned to the HEC can be conducted at divisional level, because, the HEC has not enough human resource to conduct the same at district level.*

Be that as it may, he is directed to file comprehensive report along with proposals for perusal of the Court."

Consequently, on 13th November 2023, the learned counsel for the HEC submitted a breakup regarding cost likely to be incurred on recruitment test, however, the same being found irrational and excessive, thus, the HEC was once again directed to furnish complete details/break up of operational cost for conducting the test, consequently a

comprehensive report was submitted with the stance that Rs. 1250/- would be incurred on test for each candidate, and compromising or reducing the price would amount to compromise the quality of their test ability.

14. The petitioner had also assailed the up-gradation of the teaching posts, while during course of hearing on 13th November 2023 the officers of the Education Department, appeared and apprised the court that up-gradation of the teaching staff was based on a National Education Policy ('NEP') rendered by Government of Pakistan, in pursuance whereof the Government of Balochistan has also announced the '*Balochistan Education Sector Plan 2020-2025*' and on basis of recommendations made therein all sisters provinces have already upgraded the nomenclature of non-gazetted teaching staff up to middle level. Keeping in view the fact that the said notification was issued as a policy matter and in the best interest of the teaching staff, while to the extent the petitioner could not point out any illegality or irregularity, therefore the prayer made in the petition to the extent is declined.

15. In view of the situation arising out of the above and admission on part of the government and the allegations leveled by the petitioner coupled with the fact that certain affidavits were received and in order to ensure the transparency in the process of appointment of teaching staff,

one of the most important profession, the entire process being carried out by the respondent No.2 in complete derogation of the Policy 2019 and judgments of this court, is hereby declared as null and void and the contract agreement dated 23rd February 2023 being violated by the respondent No.2 is terminated. Consequently, these cases are remanded with consent to the Chief Secretary, Balochistan with direction to re-initiate the process in the following manner:

- a. *The respondent No.1 shall enter into a fresh contract/agreement with the Education Testing Council (HEC) in respect of the test for the posts of teaching staff advertised vide advertisement dated 25th February 2023.*
- b. *The Education Testing Council of HEC is directed to conduct the test afresh through a proper mechanism according to the caliber of teaching staff (BPS-09 to 15), which process shall be supervised by the Commissioner and Deputy Commissioner of the respective division and District.*
- c. *Since, the fee of Rs. 980 has already been deposited by the candidates, while the HEC has fixed the rate of Rs. 1250, (to be negotiated by the Chief Secretary with HEC), thereafter, the additional amount, whatever it may be, shall be deposited by the respective candidates, who have already applied for the post.*
- d. *Meanwhile, the Government of Balochistan shall facilitate and arrange a bridge financing between*

the respondent No.1 and the HEC, by paying the amount involved in this behalf, however, the amount already deposited by the candidates shall be recovered from the respondent No.2 or the private testing service, as the case may be, and the amount additionally deposited by the candidates, after recovery shall be adjusted against the amount being paid to the HEC in bridge financing.

e. Since, the advertisement was made on 25th February 2023 and considerable period has been elapsed and during such period the rights of other aspiring candidates have also been created/emerged, therefore, the respondent No.1 is directed to advertise the posts afresh by inviting only fresh applications from those aspiring candidates, who have not applied earlier, whereas, the candidates who have already applied need not to apply again.

f. That the passing candidates shall be interviewed by a Committee comprising of following shall be constituted:

<i>i. Commissioner,</i>	<i>Chairman</i>
<i>ii. District Education Officer (Male)</i>	<i>Member</i>
<i>iii. District Education Officer (Female)</i>	<i>Member</i>
<i>iv)Accounts officer of the district</i>	<i>Member</i>

The Committee after interviewing the candidates, shall submit the merit list to the respondent No.1.

g. The new advertisement for inviting fresh applications shall be made within 15 days from receipt of copy of this judgment, while the testing process shall be initiated by or before 15th January

2024, which shall be completed by or before 29th February 2024 and thereafter, the process shall be completed before 31st March 2024.

However, the Chief Secretary Balochistan is directed to depute a well conversant officer of his personal staff for filing progress report of all four stages (advertisement, tests, results and final appointments), to the registrar of this court for our perusal in chamber.

The petition stands partly accepted and disposed of in the above terms.

Quetta,
Announced in open Court
On 26th December 2023.

JUDGE

JUDGE