

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

Constitutional Petition No.D-1264 of 2012

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Constitutional Petition No.D-791 of 2012

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

CPD 1264 of 2012

Petitioners

Muhammad Sachal and others

Through M/S Ali Azhar Tunio,  
and Rashid Ali Tunio Advocate

CPD 791 of 2012

Petitioners

Imtiaz Ali and others

Through M/S Ali Azhar Tunio,  
and Rashid Ali Tunio Advocate

Respondents:

Province of Sindh and others

Through Mr. Liaqat Ali Shar,  
Additional Advocate General, Sindh

Date of hearing:

02-10-2025

Date of Decision:

02-10-2025

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**ORDER**

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**NISAR AHMED BHANBHRO J.-** This common order shall decide the fate of the captioned petitions, wherein the Petitioners have sought indulgence of this Court to declare fresh/new appointments in grade-1 to 4 in the Education and Literacy Department as illegal, unlawful, violation of law and to direct the respondents to confirm/regularize the services/appointments of the petitioners from the date of their initial appointment and payment of salary.

2. Mr. Rashid Ali Tunio holding brief for his senior Counsel Mr. Ali Azhar Tunio, contended that the petitioners Muhammad Sachal Lodro, Muneer Ahmed Brohi, Sikander Ali Bakhrani and Mumtaz Ali Solangi in CPD No 1264 of 2012 and Petitioners Imtiaz Ali and Ali Bux in CPD No 791 of 2012 were appointed in Education and Literacy Department Government of Sindh in Taluka Lakhi Ghulam Shah, District Shikarpur against the posts of Chowkidar/Naib Qasid in year 2007, after fulfilling the codel formalities. He submitted that Constitution Petition No. D-327 of 2009 (Mohammed Sachal and others V. PO Sindh and others) and Constitution Petition No D 80 of 2011 (Imtiaz Ali and others V. PO Sindh and others) were filed by the Petitioners before this Court which were disposed of by Learned Division Bench vide orders dated 01.12.2011 and 01.06.2012 respectively. He submitted that orders of this Court were not complied with. He further submitted that the petitioners were appointed on contract basis for a period of three years in the year 2007, after completion of contract period services of petitioners were terminated verbally without any show cause notice, vide office order dated 08.01.2011 under the charges of bogus appointment. He submitted that the ground of bogus appointment was mala fide, which was taken to remove petitioner and create vacancies for accommodating blue eyed boys. He contended that the respondents after termination of service of the petitioners and 359 other employees, advertised the vacant posts and started fresh appointment process through advertisement in daily "Fast Times" dated 25-09-2011. He argued that the petitioners were appointed against the regular/permanent post in the Education & Literacy Department in the year 2007 and 2008 and they have gained considerable experience thus they should be taken into job under compassionate circumstances. Lastly, he argued that the petitioners have no other alternate efficacious and expeditious remedy but to invoke the constitutional jurisdiction of this court. He prayed to allow this petition.

3. Mr. Liaqat Ali Shar, Learned Additional Advocate General contended that the petitioners were not appointed in government service but they managed bogus appointment letters and joined duty in connivance with officials of Education Department. He contended that the appointment letters of the petitioners on scrutiny were found fake, bogus, fabricated and managed. He argued that the Petitioners were terminated from service under the charges of bogus appointment and termination letters were served upon them individually vide office letter dated 08.01.2011. He contended that Petitioners were never taken in Government

Service. He contended that the order passed by this Court in C.P No. D 327 of 2009 was complied with by the respondents within due time. He further contended that the petitioners in both the petitions managed bogus appointment orders and they were liable to be prosecuted for forgery. He contended that the Education Department had appointed only 246 employees in grade 1 – 4 in District Shikarpur, the names of the petitioners did not transpire in the list of 246 employees recommended by District Recruitment Committee. He prayed for dismissal of the Petition with heavy costs.

4. Heard arguments. Perused material made available before us on record.

5. Perusal of the material available on record evidenced that the appointments of the petitioners were denied by the education department since very day and such assertion was also made by the Respondents in the petitions filed earlier by the Petitioners. The then District Education Officer Shikarpur in its reply to the instant petition stated that on verification, the appointment letters in the names of petitioners were found bogus, therefore, through office letter dated 08-01-2011, they were intimated about their job status. The Petitioners were not in service, therefore, issue of regularization did not arise. The petitioners did not controvert the stance taken by the education department by filing any document in rebuttal to establish that they were genuine appointees. It appears that petitioners in CPD 1264 of 2012 namely Muhammad Sachal, Muneer Ahmed and Sikander Ali had filed Constitutional Petition No.D-327/2009 Re “Mohammad Sachal and others Versus Province of Sindh and others,” the petition was disposed of by Learned Division Bench of this Court vide orders dated 01-12-2011. The operative part of the order reads as under:

*“This contention by the learned counsel for the petitioners cannot be countenanced. It is so, besides other reasons, for the reasons that under Article 03 of the Constitution exploitation is prohibited and if a person is made to work but is not paid for the work done by him, it amounts to exploitation. Consequently, this constitutional petition is disposed of by directing the respondent No.2 to ensure that all the arrears of salaries of the petitioners are paid to them till the date their employment was terminated. This must be done within a period of one month. The petitioners shall, however, be at liberty, if they are aggrieved, to challenge termination of their employment in accordance with the law”.*

6. The case of the Petitioners in CP No.D-791/2012 is also identical, the petitioners Imtiaz Ali and Ali Bux had filed C.P No. D-80/2011, which was disposed of vide order dated 01-06-2012 by Learned Division Bench of this Court. Operative part of the order reads as under:

*“Termination order dated 08-01-2011 by which employment of petitioner No.1 and 3 was terminated have been placed on record by the EDO. Factum of such termination is clearly mentioned in para No.6 of the comments submitted as long ago as on 23-04-2011. Learned counsel for the petitioners states that he does not want to press this petition if permission is given to him to challenge termination of employment of petitioner No.1 & 3. This Constitutional Petition along with pending application is disposed of in the above terms”.*

7. The perusal of order dated 01-12-2011 and 01.06.2012 revealed that the petitioners were intimated about termination of service during the first round of litigation. The Petitioners were set at liberty to challenge the termination orders in accordance with law. However, Petitioners did not challenge the termination orders, instead they again sought regularization of the service through instant petition. Learned Counsel for the Petitioner failed to convince the Court on the legal and factual issue that when the appointment letters of Petitioners were found bogus under what capacity they claimed regularization of services. The question of regularization was tenable, when the appointment of Petitioners on contract basis was found to be genuine. The appointment of Petitioners was declared bogus by the department, learned Division Bench of this court in C.P No. D-327/2009 taking a very lenient view passed order for payment of salary to the Petitioners for the period they worked in the department. The Petitioners were required to establish the existence of fact that their appointments were genuine and done under due process of law for which they were advised to agitate their grievance before the appropriate forum competent to embark upon the factual controversy but they failed.

8. It is significant to underline that even in the instant petition no challenge to the termination orders has been made, which act on the part of petitioners lends support to the stance of the Respondents that Petitioners managed bogus appointment letters. The Department after thorough scrutiny of record found that

under the recruitment process only 246 candidates were genuinely recommended by the District Recruitment Committee and pursuant to such recommendation, the appointment letters were issued to those candidates. the names of the Petitioners were not available in the said list recommended by District Recruitment Committee. Every Department is under an obligation to constitute a District Recruitment Committee for appointment in grade 1 to 4 under the provisions of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974. The recommendation of the District Recruitment Committee was mandatory, any appointment without such recommendation was illegal and cannot sustain. It was for the petitioners to prove the existence of the fact, what they asserted for their appointment through due process of law. This Court cannot interfere into the affairs of the department concerned in the matters relating to recruitment unless it is found that the department failed to operate within the bounds of the law and impinged upon the fundamental rights of individuals. To deal with the recruitment issues or to take disciplinary action against an employee is primarily the function of the competent authority within the department and the role of the Tribunal or Court is rather secondary. The competent authority, being the custodian of record and fact-finding authority, is best suited to decide the question of genuineness or otherwise of a particular document. The decision of the competent authority were subject to judicial review and can be rectified if they were found suffering from any illegality or infirmity, and cannot be interfered with on the bald allegations of mala fides.

9. It is admitted position that the Petitioners knew that the appointment letters in their favor were declared fake and bogus during the scrutiny process. The contention of the Learned Counsel for the Petitioners that they were low grade employees thus a lenient view could be taken and they be taken into service under compassionate circumstances, had no force, as Court of law cannot exercise its jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law. Any relief granted on the touchstone of subjective standards of leniency and compassion, rather than the law, cannot be sustained. If the Petitioners are allowed to continue job on the basis of fake appointment letters it will undermine the concept of transparency, which time and again has been emphasized by the Superior Courts to be maintained in the recruitment process.

10. The Petitioners have sought relief of regularization of service and payment of salary which was declined to them in the earlier petitions; they have brought

these petitions by a slight twist in the prayer clause that the Respondents be restrained from initiating fresh recruitment process. The principle of Res Judicata was attracted in the case of Petitioners, which precluded them from multiple litigations on the same subject matter. So far as the Petitioners' challenge to the fresh recruitment process was concerned, the same in no manner infringed on their rights, on the contrary petitioners when came to know that they were duped through fake appointment letters, they ought to have participated in the fresh process, but they did not. By the lapse of time much water flowed beneath the bridge and the recruitment process under challenge in the instant petition also stood finalized through appointment of suitable candidates thus cannot be set at naught on mere surmises and conjectures.

11. It is well settled law that when the substructure is based on a false claim then the entire superstructure raised thereon cripples to the ground automatically. Once it was brought on record that the Petitioners got entry in the office on the basis of bogus appointment letters, such appointment cannot be legitimized. The Petitioners approached this Court with unclean hands. The legal doctrine of unclean hands holds that a person would be disentitled to derive benefits of an unethical, deceitful, dishonest and illegitimate actions. For the petitioners, it was incumbent to seek equitable relief under writ jurisdiction of this Court conferred under article 199 of the Constitution of Islamic Republic of Pakistan of 1973, by doing equity.

12. The upshot of the above discussion is that the Petitioners failed to establish the genuineness of the appointment letters before the competent fora and got involved in vexatious litigation. Consequently, these Petitions being devoid of merits fail, and dismissed accordingly along with listed applications, with no order as to the costs.

JUDGE

JUDGE

Asghar Altaf/P.A

Approved for reporting

Larkana / 02.10.2025