

IN THE HIGH COURT OF SINDH, CIRCUIT  
COURT LARKANA

C.P. No.D-1235 of 2015

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR  
MR. JUSTICE SYED SAEEDUDDIN NASIR

Petitioner : Dr. Muhammad Hassan  
through Mr. Sarfaraz Ali Abbasi, associate of  
Mr. Shamsuddin Abbasi, Advocate.

Respondents No. 1 to 3: through Mr. Asif Hussain Chandio, Advocate.

The State : Mr. Abdul Hamid Baugari, Addl. A.G.

Date of hearing : 29<sup>th</sup> October 2015

Date of Order : 29<sup>th</sup> October 2015.

ORDER

SALAHUDDIN PANHWAR, J:- Through instant petition, petitioner prays as under:

- a) That this Honourable Court may be graciously be pleased to declare impugned order dated 01.10.2015 passed by respondent No.3 is illegal, null void and without justification and lawful authority and against the merits as the same are issued without adopting certain procedure.
- b) That this Honourable Court may graciously be pleased to grant stay and issue writ of suspension of impugned notifications issued by Respondent No.3 till the final disposal of this petition.
- c) Award costs to the petitioner.
- d) Any other equitable relief be granted to the petitioner.

2. Precisely, relevant facts as set out in the instant petition are that the petitioner was employee of Health Department Government of Sindh, CMC Larkana, working as ENT Specialist BPS-18; that after promulgation of SMBBMU Act-2008 the petitioner was transferred on the terms and conditions of Act-2008 and since then, being regular and confirm employee, he is working with University; petitioner was appointed as Additional Registrar and was working diligently without any complaint; such appointment was approved by Syndicate; that all of sudden by order dated 01.10.2015 the petitioner has been removed from the post of Additional Registrar; that petitioner was not provided right of hearing, accordingly, petitioner claimed impugned order as perverse, arbitrary and without justification.

3. Respondents No. 1 to 3 filed their objections contending therein that petitioner has not availed the departmental remedy under the provision of Civil Servant Act 1973, thus instant petition is not maintainable; that petitioner is qualified person in specific area, hence it would be proper and just that he shall perform his duty in the area only. It is also contended that field of Administration/Management requires MBA or equivalent qualification preferably in first class.

4. Heard perused the record.

5. While perusal of instant petition in juxtaposition of objection, it is matter of record that petitioner is yet a Civil Servant which alone *fact* is sufficient for failure of the instant petition. Be as it may, there is no denial to fact that post of Additional Registrar was required to be filled under certain criteria which the petitioner lacks. One *legally* cannot claim the



continuity of fruit of a mistake or *illegality* solely on ground of having earned some interests; nor he/she shall be justified in resisting an act of authority in *undoing* a wrong or illegality. A mistake or illegality can be rectified *rather* should be rectified as soon as it is noticed. Even otherwise, it is well established principle of law that *what one cannot get directly can never get indirectly*. Thus it would not be justified to appoint any person on a particular post without having such pre-requisition/qualification. Accordingly, instant petition being devoid of merits was dismissed by short order dated 29.10.2015 and these are detailed reasons.

6. While parting since respondents categorically contended that such post requires special qualification, hence respondents shall ensure that such post is filled within three months by a person, qualified for such post and acting charge shall not be extended more than six months from the date of posting with compliance report.

Karachi, dated:

Sajid