

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No.D-718 of 2012

Present:
Mr. Justice Aqeel Ahmed Abbasi &
Mr. Justice Muhammad Faisal Kamal Alam

Dated of hearing : 27.04.2016
Date of decision : 27.04.2016
Plaintiffs : 1. Ali Hassan, 2. Altaf Hussain, 3. Manthar Ali,
4. Mohammad Ramzan and 5. Majid Ahmed
through M/S Abdul Naeem Pirzada and Ali Gul
Abbasi, Advocates.
Respondent No.1 : Government of Sindh through Mr. Shaharyar
Awan, A.A.G.
Respondent No.2-4 : Taluka Municipal Administration (defunct) now
Administrative / Transitive Officer, Taluka
Officer Finance, (defunct) Taluka Account
Officer and Taluka Nazim / Administrative
through Mr. Khuda Bux Awan, Advocate.

ORDER

Muhammad Faisal Kamal Alam, J: - Through instant petition, the above named petitioners, who are claiming to be the employees of respondent No.2, have primarily sought relief for regularization of their services and setting aside of the letter No.SO-IV(LG)2-247/2009 issued by respondent No.1 (Government of Sindh, Local Government Department) dated 30.12.2009 for cancellation of all appointment orders in respondent No.2, in the light of earlier Judgment of this Court handed down in C.P.No.D – 249 of 2011. Following is the prayer clause in the petition:

“(a). To, direct the Respondents to consider the case of the petitioners for regularization, on the basis of equality basis as extended to the other employees of Taluka Municipal Administration, Sukkur in Constitution Petitioner No.D-249 of 2011, as the petitioners are also victim of said impugned

cancellation of appointment order dated 30.12.2009 issued by the Respondent No.1.

(a) To declare that the act of the Respondents by refusing to consider the case of the petitioners for regularization, on basis of that the benefit of said Judgment cannot be extended to other employees who were party to said Judgment.

(b) To direct the Respondents to release the back salaries/wages illegally malafidely withhold by Respondent, which is against the constitutional rights.

(c) To award the costs.

(d) To grant any other equitable relief, which this Honourable Court deems fit and proper under the circumstances of the case, in favour of the petitioners."

2. As per the averments of instant petition, the above petitioners were appointed in Grade-2 after fulfillment of codal formalities against vacant posts in respondent No.2, erstwhile Taluka Municipal Administration, Sukkur City, which has now become Sukkur Municipal Corporation. In support of their contention, the petitioners have filed office orders, which reflect that the petitioners were offered jobs purely on temporary and contractual basis as sanitary workers, and the said Office Orders have been appended as Annexures 'B', 'B-1', 'B-2' and 'B-3' with the petition.

3. The petitioners' counsel vehemently argued that the aforereferred Judgment is fully applicable to the case of the present petitioners and they should be given equal treatment by issuing directions to the respondents for regularizing the services of the petitioners. A copy of the Judgment has been placed on record and is available at page-417 of the present case file.

4. On the other hand, respondents have contested the present petition by specifically disputing the claim of petitioners. According to the respondents, these petitioners never joined the services of respondent No.2 and, therefore, question of regularizing their services / employment does not arise and consequently, the benefit of the aforereferred Judgment of this Court cannot be extended to the present petitioners, particularly when they were not even party to the above referred proceedings in C.P.No.D – 249 of 2011, which culminated in passing of the decision, which is now being relied upon by the present petitioners. In this regard, present Municipal Commissioner of Sukkur Municipal Corporation has filed a separate Statement under his signature and has specifically stated therein that the above named petitioners neither joined the services of respondent No.2 nor their service record is available in the Municipal Administration, Sukkur and, therefore, these petitioners have neither been discriminated against nor they are entitled to for any equal treatment as claimed by them. The Respondents have also relied upon an order of the Honourable Supreme Court passed in Civil Review Petitions No.4-K to 16-K, 21-K and 24 of 2015, wherein the Honourable Supreme Court has refused to consider the ratio of its two earlier reported cases, viz. 2001 S C M R 934 (*Pakistan International Airlines Corporation (PIAC) through Chairman and others Vs. Nasir Jamal Malik and others*) and 2002 PLC (CS) 1083 (*Abdul Hafeez Abbasi and others Vs. Managing Directors, Pakistan International Airlines Corporation, Karachi and others*) on the ground that in review petition, the applicants (petitioners) before the Honourable Supreme Court were seeking their respective remedies on the basis of fake / fictitious documents.

5. In rebuttal, the present petitioners have though filed rejoinder but have not placed on record any documentary evidence, such as employment / service card or any salary slip to effectively rebut the stance of respondents. Conversely, in rejoinder the petitioners have stated that the petitioners No.1, 4 and 5 have been discharged from their respective duties though in discriminatory manner (as alleged).

6. After hearing the learned counsel for the parties and taking into account the present record of the case, we are of the considered opinion, that in view of the above seriously disputed facts, as the employer (respondent No.2) has categorically denied any relationship of employment with petitioners, whereas, such disputed facts cannot be resolved by this Court in its constitutional jurisdiction under Article 199 (of the Constitution), as the matter requires evidence. Accordingly, present constitutional petition is not maintainable. In addition to this, stance of respondents has substance; that when the petitioners did not join its employment then the principle laid down in the aforereferred Judgment of this Court cannot apply to the case of present petitioners. Even for the arguments' sake, if the petitioners were ever issued above referred office orders, the same were conditional, whereas, one of the basic conditions of employment is that a person should join the employment after fulfilling other requisite formalities. The case of the present petitioners lacks all such basic factors of an employment. For the foregoing reasons, we had dismissed instant petition by our short order dated 27.04.2016.

JUDGE

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