

IN THE HIGH COURT OF SINDH KARACHI

Present:-

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

1. C.P. No.D-5542/2016

Noorullah Abro and 12 others Petitioners

V.S

Province of Sindh and others Respondents

2. C.P. No.D-5577/2016

Agha Fahad Ahmed Khan Petitioner

V.S

Province of Sindh and others Respondents

3. C.P. No.D-5586/2016

Mohsin Khan and 6 others Petitioners

V.S

Province of Sindh and others Respondents

4. C.P. No.D-5595/2016

Sajid Ali Mangi and 2 others Petitioners

V.S

Province of Sindh and others..... Respondents

5. C.P. No.D-5601/2016

Abdul Waheed and 8 others Petitioners

V.S

Province of Sindh and others..... Respondents

6. C.P. No.D-5613/2016

Abdul Qayyoom Petitioner

V.S

Province of Sindh and others Respondents

7. C.P. No.D-5619/2016

Pir Zulfiqar Ali Petitioner

V.S

Province of Sindh and another Respondents

8. C.P. No.D-5626/2016

Rizwan and 10 others Petitioners

V.S

Province of Sindh and others Respondents

9. C.P. No.D-5660/2016

Waseem Abbas Baloch and another Petitioners

V.S

Province of Sindh and others Respondents

10. C.P. No.D-5680/2016

Hyder Ali Liskani and 2 others..... Petitioners

V.S

Province of Sindh and others..... Respondents

11. C.P. No.D-5808/2016

Riaz Hussain Kanasaro and another..... Petitioners

V.S

Province of Sindh and others..... Respondents

12. C.P. No.D-6006/2016

Manthar Ali Petitioner

V.S

Province of Sindh and another Respondents

13. C.P. No.D-6324/2016

Atta Muhammad Malik and another Petitioners

V.S

Province of Sindh and others Respondents

14. C.P. No.D-6893/2016

Abdul Rasheed and 2 others Petitioners

V.S

Province of Sindh and others..... Respondents

15. C.P. No.D-251/2017

Javed Ahmed Petitioner

V.S

Province of Sindh and others Respondents

16. C.P. No.D-423/2017

Amanullah Khoso Petitioner

V.S

Province of Sindh and others..... Respondents

17. C.P. No.D-786/2017

Amanullah Petitioner
 V.S
 Province of Sindh and others..... Respondents

18. C.P. No.D-1102/2017

Vicky Kumar Petitioner
 V.S
 Province of Sindh and others..... Respondents

19. C.P. No.D-1250/2017

Ali Raza and another Petitioners
 V.S
 Province of Sindh and others..... Respondents

20. C.P. No.D-5537/2017

Mehboob Ali Petitioner
 V.S
 Province of Sindh and another Respondents

Date of hearing: 24.08.2017

Mr. M.M. Aqil Awan, Advocate for the
 Petitioners in C.P. No. D- 5542/2016.
 M/s, MB. Khatiyani and Masood Ahmed Noorani
 Advocates for the Petitioners in
 C.P. No. D- 5542/2016, 5586 of 2016,
 C.P. No.D-5808/16, C.P. No. D- 5680/2016,
 C.P. No. D- 5660/2016,
 C.P. No. D- 6324/2016 and C.P. No. D- 1102/2017.
 Mr. Zulfiqar Ali Domki, Advocate for Petitioner.
 in C.P. No.D-5619/2016.
 Mr. Mukesh Kumar G. Karara, Advocate
 For Petitioner in

C.P. No.D-5595 of 2016.
 Mr. Abdul Wahab Baloch Advocate
 for Petitioner in
 C.P. No.D-5613 of 2016.
 Mr. Munawar Ali Memon Advocate for
 Petitioner in C.P. No.D-6006 of 2016
 And C.P. No. D- 5537/2017.
 Mr. Imran Iqbal Khan Advocate for
 Petitioner in C.P. No.D-251 of 2017.
 Mr. Siraj Ahmed Mangi Advocate for
 Petitioner in C.P. No.D-423/2017.
 Mr. Faizan Hussain Memon Advocate for
 Petitioner in C.P. No.D-5601/2016,
 C.P. No.D-786 & 1250/2017.
 Mr. Waqar Alam Abbasi Advocate
 in C.P. No. D- 5626/2016.
 Ms. Saleha Naeem Advocate in
 C.P. No. D- 5577/2016.
 Mr. Obaid-ur-Rehman Khan Advocate
 for Petitioner in C.P. No. D- 6893/2016.
 Mr. Abdul Jalil Zubaidi AAG along with
 Mr. Muhammad Ramzan Awan, Secretary
 Local Government Deptt,
 Mr. Anis Ahmed Dasti, Secretary
 Local Government Board,
 Mr. Ahmed Ramzani, Director-I,
 Local Government Board, Government of Sindh.

JUDGMENT

ADNAN-UL-KARIM MEMON-J. All the above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common questions of law and facts are involved therein.

2. Brief facts of the case as averred in memo of the petitions are that the Petitioners in response to the Public Notice published in 'Daily Dawn' dated 24.02.2012 and 'Daily Jang' on 26.02.2012, applied for the post of Municipal Officer / Chief Officer in BPS-17 and Town Officer / Chief Officer (BPS-16) of Sindh Councils Unified Grade for (Administration Branch) and after having passed the

written test and the interview conducted in the month of November, 2012, they were appointed in the month of August 2013 on probationary period of two years against the posts applied for. It is further averred by the Petitioners that after appointment, they submitted their joining reports and thereafter they were given posting orders. It is further averred by the Petitioners that they were nominated for Carrier Advancement Training (CAT) at Civil Services and Local Government Academy, Tando Jam. They further averred that the Secretary, Local Government Board issued two impugned letters/orders dated 10.10.2016, relieving the Officers of BPS-16 and 17 in the Local Government Board appointed on 20.12.2013 and thereafter on the premise that they were not appointed by the Board. It is added by them that the impugned orders are purported to have been issued in compliance with the order passed by this Court at Sukkur Bench in C.P. No. D- 293 of 2013, titled as Nadeem Akbar vs. Province of Sindh and others; that the Respondents No. 2 and 3 have taken a plea that the Petitioners were not appointed in SCUG Service (Admin. Branch) as their names were not included in the list of selected candidates, submitted before this Court vide letter dated 08.05.2013 by the then Director-II Sindh Local Board; that said Constitutional Petition was dismissed vide Order dated 31.07.2013. The names of the Petitioners were not included in the list of selected candidates submitted in C.P. No. D-1034/2013 titled as Sarfaraz Ali Pahnwar vs. Province of Sindh & others. They contended that this Court vide Order dated 25.10.2016 passed in C.P. No. D-1930 of 2016 directed

for the action to be taken against the persons, who have acted in violation of rules. It is further added by the Petitioners that the Respondents in their comments have pleaded their case that the offer letters of the Petitioners are bogus and forged, after the recruitment process was over, purportedly to have been issued by the Secretary, Local Government Board. However, salaries of the Petitioners were not paid.

3. Upon notice to the Respondents, para-wise comments were filed on behalf of Respondent No. 2 & 3 and the same were treated as comments in all the Petitions.

4. Learned counsel for all the Petitioners consented that Petition bearing No. 5542 of 2016 may be treated as leading Petition and same may be disposed of at Katcha Peshi stage along with other connected petitions.

5. Mr. M.M. Aqil Awan, learned Counsel for the Petitioners in CP. No. D-5542 of 2016 argued that appointment orders of the petitioners are not fake and the contention of the Respondents is afterthought and heavy burden lies upon their shoulders to prove their contention; that Respondents are responsible for the alleged act of irregular appointments, if any, and the Petitioners cannot be deprived on account of illegal acts of the Respondents; that the services of the Petitioners cannot be terminated in one stroke of pen and relieved them from their posts; that the appointments of the Petitioners cannot be terminated without issuing Show Cause

Notices and completing other legal and codal formalities under the law. Thus entire proceedings undertaken by the Respondents are nullity in the eyes of law; that the Petitioners have completed their probationary period and training, enjoyed their postings and after lapse of four years the Respondents have awoken from deep slumber to say that the appointment of Petitioners are not genuine. He continued in stating that if there is a maladministration in appointments, it is the responsibility of the Respondents and not the Petitioners; that discrimination has been meted out with the Petitioners, while retaining the services of the colleagues of the Petitioners and the Petitioners have been deprived of their jobs on the plea that their names were not borne out in the list provided by the Respondents before this Court in C.P. No. D-293 of 2013 and these assertions are against the basic spirit of law. Per learned Counsel, since the Petitioners were appointed in accordance with law and there is no illegality in their appointments, therefore, the comments filed by the Respondents cannot be considered as Gospel truth to deprive the Petitioners of their respective jobs on false pleas; that depriving the Petitioners from their jobs amounts to depriving from their livelihood, therefore the instant Petitions can be heard and decided on merits. Learned counsel for the Petitioners has lastly prayed for setting aside the impugned orders dated 10.10.2016. Learned counsel in support of his contention, has placed reliance upon the case of Director, Social Welfare NWFP Vs. Sadullah Khan (1996 SCMR 1352), Chairman Minimum Wage Board Vs. Fayaz Khan (1999 SCMR 1004), P I A Vs. Nadeem

Murtaza (P L C (C.S) 334), Syed Sikandar Ali Shah Vs. Auditor General of Pakistan, (2002 P L C (C.S) 1027), Abdul Hafeez Abbasi Vs. M.D. PIA, Ahmed Jamil Vs. NWFP Forest Development Corporation (2004 SCMR 470) Muhammad Akhtar Sheerani Vs. Punjab Text Book Board (2004 SCMR 1077) Collector Custom and Central Excise Peshawar Vs. Abdul Waheed (2004 P L C C.S 301-303), Wapda Vs. Abbas Ali Malano (2004 SCMR 630 636), Federation of Pakistan Vs. Gohar Riaz (2004 SCMR 1666), Abdul Saleem Vs. Government of NWFP (2007 P L C C.S 179), Province of Punjab Vs. Zulfiqar Ali, (2006 SCMR 678) DCO District DI Lower Vs. Rozi Khan (2009 SCMR 663) Fuad Asadullah Khan Vs. Federation of Pakistan (Mian Tariq Javed Vs. Province of Punjab (2008 SCMR 598) Iffat Jabeen Vs. District Education Officer (MEE) Lahore (2011 SCMR 437).

6. Learned counsel for all the Petitioners in the connected Petitions adopted the arguments of Mr. M.M Aqil Awan, learned counsel for the Petitioners in CP. No. D-5542 of 2016.

7. Mr. Abdul Jalil Zubaidi, learned Assistant Advocate General, argued that the Petitioners were not appointed in SCUG Service (Admin Branch), Local Government Board, as their names were not included in the list of selected candidates and such report had been submitted before the learned Bench at Sukkur of this Court in C.P. No. 293/2013 titled as Nadeem Akbar Vs. Province of Sind and others vide Letter No. SLGB/SCUG/AO (Gen)/293 & Director-II, Sindh Local Government Board; that the Constitutional Petition

bearing C.P.No.D-293 of 2013 was dismissed vide order dated 31.07.2013. Accordingly, the Petitioners cannot be termed as legal appointees and members of SCUG Service (Admn Branch). He has further contended that the list of selected candidates, not containing names of the Petitioners, produced before the Circuit Court Larkana in compliance with its order dated 05.09.2016 passed in C.P. No. D-1034/2013 titled Sarfaraz Ali Panhwar vs. Province of Sindh and others was produced before High Court of Sindh Bench at Sukkur also in C.P. No. D-293/ 2013 titled Nadeem Akbar Vs. Province of Sindh and others vide letter No. SLGB/SCUG/AO (Gen) 293 & 297/2013/ 2157 dated 08.05.2013 have recently been produced before High Court of Sindh Circuit Court Larkana vide letter No. SLGB/SCUG/CP. No. 1034 of 2013/2016/1622 dated 22.09.2016 and No. SLGB/SCUG/AO dated 27.09.2016 SLGB/SCUG/AO (Admin-I) D-1034/2013/1643 dated 27.09.2016; that the offer letters of the Petitioners were maneuvered after the recruitment process was over, initiated as per directions of this Court; that the list produced by the Respondents vide letters dated 10.10.2016 contains names of officials/officers appointed by the Competent Authorities; that the Petitioners are not genuine employees, therefore there is no requirement of law to issue Show Cause Notice and hold inquiry into their culpability particularly with their alleged service issues; that since the Petitioner have not come with clean hands, their appointments are fake; that the Petitioners are not owned by the Sindh Local Government Board to be their employees; that after completing

formalities action will be taken against the Petitioners; that Department has initiated process of scrutiny regarding fake appointments in the Local Government Board; that Annexure "E" filed by the Petitioners along with memo of Petition reveals that 12 offer orders have been issued on 30 November 2012 by the same Authority viz. Secretary, Local Government Board, wherein, all the signatures on the said offer letters are fake and forged; that this is a sufficient documentary evidence that the offer orders, which the Petitioners relying, are bogus and forged. In the joining report of Noorullah Abro, the Petitioner in C.P.No.D-5542/2016 offer letter dated 30.11.2012 has been referred to and same is the position in other offer letters. He has further contended that the alleged postings and transfer orders of Petitioners do not validate and legitimize their fake appointments and that the Petitioners have never been nominated by Sindh Local Government Board (Competent Forum) for departmental training/examination prescribed under Rule 10(1) (3) of SCUG Service Rules, 1982, at Sindh Civil Service & Local Government Academy, Tando Jam and the letters submitted as Annexure-J dated 22.09.2016 and 23.09.2016, have not been issued by the Competent Authority; that the impugned orders dated 10.10.2016 were issued by the Competent Authority on the basis of record. He lastly prayed that Petitions be dismissed.

8. We have heard learned counsel for the parties and perused the material available on record as well as case law relied upon by the learned counsel for the Petitioners.

9. Perusal of record shows that Sindh Local Government Board, Government of Sindh on 24.11.2011 initiated a process of recruitment against the posts in BS-17 and BS-16 of SCUG service (Administration Branch). In this regard, Public Notice was published in 'Daily Dawn' dated 24.02.2012 and 'Daily Jang' dated 26.02.2012. Pursuant to said Public Notice, candidates possessing prescribed qualification and domicile of Province of Sindh were short listed and called for interview by the Selection Committee comprising the following:

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|----|-------------------------|------------|
| 1. | Secretary, LGD, | (Chairman) |
| 2. | Special Secretary LGD | (Member) |
| 3. | Director General (M& E) | (Member) |
| 4. | Secretary SLGB | (Member) |
| 5. | Director -II. SLGB | (Member) |

10. As per record, the Selection Committee after holding the interviews recommended for appointment of 103 candidates against the post in BPS-17 and 86 candidates in BPS-16 of SCUG service. The process of recruitment was challenged before this Court in C.P. No. D-3406/2011 and C.P No.D-117/2012, filed by some other candidates/person on the ground that recruitment against these posts falls within domain of Sindh Public Service Commission. Learned Division Bench at Sukkur disposed of the said Petitions vide Order dated 22.02.2012 with directions to the Sindh Local Government Board "to comply with Rule 4(2) (ii) of SCUG

Rules,1982 in respect of making recommendations for recruitment against these posts after such examination or test and interview as may be conducted by Selection Committee”. The above specified order dated 22.2.2012 was impugned before the Honorable Supreme Court in Civil Petitions No. 69-K and 86-K of 2012. The Honorable Supreme Court vide Order dated 04.09.2012 dismissed the Petitions as withdrawn. The process of recruitment was again challenged in another Petition bearing No. 293/2013 filed before the learned Bench at Sukkur of this Court. The said Petition was dismissed as having become infructuous vide Order dated 31.07.2013 based on earlier order dated 22.02.2012 discussed (supra).

11. Perusal of list of candidates selected by the Selection Committee does not contain names of the Petitioners. According to learned AAG, the offer letters and other documents pertaining to their alleged appointments relied upon by the Petitioners were forged and maneuvered documents. Besides, Sindh Local Government Board does not own the Petitioners to be their employees and claim that the Petitioners have obtained fraudulently the appointment letters, which otherwise are forged. He further argued that no sanctity can be attached to the respective offer and appointment letters produced by the Petitioners in their respective Petitions.

12. Learned Counsel for the Petitioners during course of hearing emphasized that all the documents of the Petitioners regarding

their employment with Sindh Local Government Board are genuine hence, their termination from service without hearing by Respondent No.1 is illegal, however, said assertions have been refuted by Respondent No.1, who is present in Court by stating that the documents furnished by Petitioners are false and forged and Sindh Local Government Board did not sanction their posts and there is no recommendations of the Department with respect to the appointment of the Petitioners for the said posts i.e. Municipal Officer / Chief Officer in BPS-17 and Town Officer / Chief Officer (BPS-16) of Sindh Councils Unified Grade for (Admin Branch).

13. We, on the basis of contentions of the parties with the material produced before us, have reached the conclusion that the names of Petitioners do not appear in the list of candidates selected by the Selection Committee as per criteria laid down in Rule 4(2) of Sindh Councils Unified Grades Service Rules, 1982. No valid document/record with regard to the disbursement of salaries and other emoluments from the respective Councils, under which the Petitioners served, in their respective tenure of posting with effect from 20.12.2012 to 10.10.2016 has been placed on record.

14. In absence of aforesaid material, the petitioners have failed to make out a case of lawful appointments. The entire case is based upon factual controversy which cannot be gone into by this court in exercising of its constitutional jurisdiction.

15. The case law cited by the learned counsel for the Petitioners has no nexus with the case in hand which is distinguished on facts of the case.

16. In view of what has been discussed above, the instant Constitutional Petitions are dismissed along with pending application(s)

JUDGE

JUDGE

Shafi P.A