

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

**C.P. No.D-1790 of 2010**

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon.

Dodo and others

-----

Petitioners

Vs.

Province of Sindh & others

-----

Respondents

Date of Hearing: 14.03.2019

Mr. Bharat Kumar Suthar, advocate for petitioner No.50/applicant.

Mr. Allah Bachayo Soomro AAG alongwith Mr. Dolat Ram, District Education Officer, Elementary, Secondary & Higher Secondary Tharparkar at Mithi.

\*\*\*\*\*

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - The instant petition was disposed of vide order dated 11.12.2012 with following observations:-

*“Both listed applications are disposed of, by consent of the parties, in the following terms.*

1. *It is stated by the respondents' representatives present in Court, that no doubt order was passed in this petition on 26.4.2011 to appoint the petitioners and in compliance thereto all the petitioners have been taken into employment except petitioners No.50, 169 and 197. He further says that as and when vacancies occur and appointments are made, the abovementioned petitioners being petitioners No.50, 169 and 197 in this petition, shall be given preference and shall be appointed in compliance with order dated 26.4.2011. With this assurance Mr. Jhamat Jethanand, learned counsel for the petitioners, is satisfied, however, he says that respondents may not raise any objection with regard to age limit in respect of abovementioned petitioners. For this, respondents' representatives say that in view of order passed by Honorable Supreme Court of Pakistan in Civil Appeal No.42-K/2011 and 43-*

*K/2011, dated 27.6.2012, the abovementioned petitioners shall be at liberty to file applications for relaxation in upper age limit and same shall be considered by the respondents sympathetically.*

2. *As regard the petitioners No.24 and 219 are concerned, the representative of STEVTA present in Court, says that these petitioners, according to his information, were not working with STEVTA, however, he says that if petitioners No.24 and 219 have any record of their previous appointments/ service with STEVTA, they may contact him in his office alongwith the record and if their previous employment/ service is proved they shall be extended relief in terms of above order.*

*In view of above, the petition stands disposed of alongwith listed applications.”*

2. On 15.08.2018, petitioner No.50 [Muhammad s/o Abdullah] filed application (MA No.10432 of 2018) under Article 204 (A) (C) of the Constitution of Islamic Republic of Pakistan, 1973 r/w section 3 & 4 of the Contempt of Court Ordinance, 2003 for initiating contempt proceedings against the alleged contemnors for their willful defiance of the aforesaid order of this Court.

3. We queried from the learned counsel for the applicant that the respondents have complied with the order passed by this court in its letter and spirit and what is left for this court to decide.

4. Mr. Bharat Kumar Suthar, learned counsel for petitioner No.50/applicant has argued that present petitioner alongwith others jointly filed C.P. No.D-1790 of 2010 and the same was disposed of by consent with direction to the petitioners to move applications to the respondent No.3 within 15 days and after clearance from Medical Board as well as Police, they would be appointed on permanent basis; that after order of this Court in above CP, the present petitioner filed application before respondent No.3 and he got medical fitness certificate, then respondent No.3 issued offer order in favour of the applicant for joining but on

political influence respondent No.3 is not allowing him joining; that the case of the applicant is similar with other colleagues of the applicant i.e. petitioners No.125, 169, 197 & 277 who were also over age, and got age relaxation from the competent authority and they have been allowed joining reports; that applicant's date of birth is 23.05.1962 and thereby his age is 54 years but the contemnors by using various tactics have declared the petitioner as over-age; that despite clear directions of this Court alleged contemnors have not redressed the grievance of the applicant and thereby committed contempt of Court. He lastly prayed for strict action against the alleged contemnors.

5. On the other hand, Mr. Allah Bachayo Soomro AAG assisted by Mr. Dolat Ram, District Education Officer, Elementary, Secondary & Higher Secondary Tharparkar at Mithi has argued that the applicant was appointed on contract basis on 09.08.2007 and later on his services were terminated on completion of contract period; that he was again issued offer letter for posting by the then DEO Education on 27.05.2011; that applicant's date of birth as per Primary School Certificate is 23.03.1956 and as such his upper age was above the age relaxation of 15 years granted by Government of Sindh and as per his Certificate his age was two months above 55 years; that according to policy and recruitment rules the age limit for the post is from 18 to 40 years and adding the relaxation of 15 years, the upper age limit becomes 55 years, whereas the petitioner was above the age of 55 years and therefore was/is not eligible/ fit for appointment; that the birth certificate of the petitioner purportedly issued by NADRA wherein his date of birth is shown as 25.03.1962, which on the face of it appears to be bogus and in contravention of actual school record and this certificate of NADRA is managed one, on the basis of bogus School Leaving Certificate; that the applicant is failed in primary Vth class and as per his primary school certificate produced by applicant at the time of applying for recruitment which bears his date of birth as 25.03.1956, admission date 14.12.1963 and

school leaving date as 27.02.1971; that in such situation he was two months above maximum limit of age i.e. 55 years. He lastly prayed for dismissal of listed application.

6. We have heard learned Counsel for the parties on the listed application and perused material available on the record. Learned AAG has leveled serious accusations against the applicant by placing on record certain documents, which prima-facie suggests that some malfeasance and misfeasance on the part of the applicant. In the first instance it may be pointed out, without any fear of denial, that fraud vitiates every solemn transaction and Court of law shall, in no eventuality, endorse and perpetuate a fraud once it is verified to have been committed. Any transaction, which is the result of misrepresentation, is not protected.

7. From the perusal of record, it is clear that at the time of obtaining Medical Fitness certificate from the concerned office, the applicant produced the same for joining his service by misrepresenting the fact that his age is 48 years, in order to come within the age limit as notified by the Government of Sindh, whereas the respondent department has produced the duplicate medical fitness certificate of the applicant, which prima-facie shows the age of the applicant as 55 years. Per learned AAG the Medical Fitness Certificate dated 6.6.2011 purportedly issued by Civil Surgeon Civil Hospital Mithi is bogus one. In our view once it was found that the candidate had obtained job upon a false declaration, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the applicant lies in the listed application that he qualifies for the post applied for whereas in fact the documents negates his stance.

8. In view of the facts and circumstances of the case and for the reasons mentioned as above, we are satisfied with the explanation furnished by the alleged contemnors that substantial compliance of the order dated 11.12.2012

passed by this Court has been made in its letter and spirit, therefore, at this juncture, no case for initiating contempt proceedings is made out against the alleged contemnors. Thus, we are not persuaded to continue with any further on the listed application bearing (MA No.10432 of 2018), having no merits, is accordingly dismissed.

JUDGE

JUDGE

Irfan Ali