

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

## **C.P No.D-6352 of 2016**

Faheem Ahmed Attari and 70 others ..... Petitioners

Versus

Province of Sindh and others ..... Respondents

## **C.P No.D-3577 of 2017**

Syed Rizwan Ali Kazmi and 08 others ..... Petitioners

Versus

Province of Sindh and others ..... Respondents

## **C.P No.D-4000 of 2017**

Muhammad Javed & 23 others ..... Petitioners

Versus

Province of Sindh and others ..... Respondents

## **C.P No.D-4689 of 2017**

Shaikh Muhammad Iqbal and 04 others ..... Petitioners

Versus

Province of Sindh and others ..... Respondents

## **C.P No.D-5379 of 2017**

Kamran Aziz Khan and 13 others ..... Petitioners

Versus

Province of Sindh and others ..... Respondents

**C.P No.D-7211 of 2017**

Ghulam Hussain and another ..... Petitioners

Versus

Province of Sindh and others ..... Respondents

**C.P No.D-4510 of 2018**

Muhammad Irfan and 99 others ..... Petitioners

Versus

Province of Sindh and others ..... Respondents

**C.P No.D-5645 of 2018**

Waqas Khan and 03 others ..... Petitioners

Versus

Province of Sindh and others ..... Respondents  
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**Dates of Hearing: 07.05.2019 & 23.05.2019**

**Date of Decision: 27.05.2019**

M/s. Shoa-un-Nabi & Nadeem Shaikh, Advocates for the Petitioners.

Mr. Abdul Jalil Zubedi, AAG.

Mr. Shaukat Ali Shaikh, Advocate for DMC Malir, Karachi.

Mr. Iqbal Khurram, Advocate for KMC.

Ms. Azra Moqueem, Advocate for KMC.

Mr. Abdul Khalil, Advocate for DMC Central, Karachi.

Mr. Ahmed Zameer, Advocate for DMC Korangi, Karachi.

Mirza Saleem Akhtar for DMC South, Karachi.

Mr. Salman Sabir for DMC East, Karachi.

**J U D G M E N T**

**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. Basically the Petitioners are seeking direction to the

Respondents to release their monthly salary, which has been stopped with effect from August, 2015 and up-to-date.

2. Brief facts of the case as averred by the Petitioners are that they were appointed on the posts of Teaching and non-Teaching staff, in the year 1997 & 2009 respectively in Education Department of Karachi Municipal Corporation (KMC). After fulfilling all the codal formalities, they resumed their duties at their respective places of posting and received their salaries up to July, 2015. Per Petitioners, they have been working on their respective posts till today, but their salaries have not been paid. Petitioners protested and approached the Respondents, who kept them on hollow hopes. Petitioners added that the Respondents reinstated the service of the colleagues of the Petitioners with the reason that their appointments were found to be genuine, whereas they have been left out, whose appointments is genuine. Petitioners have averred that the Respondent-KMC and its respective DMC's had acted without lawful authority, thus has violated the basic provision of Article-25 of the Constitution of the Islamic Republic of Pakistan. Petitioners, in support of their version, have relied upon various documents attached with the memo of Petitions i.e. appointment orders, medical letters and salary slips. Petitioners being aggrieved by and dissatisfied with the aforesaid action of the Respondents have filed the instant Petitions in the year 2016 and 2017.

3. Upon notice to the Respondents, para-wise comments were filed on behalf of Respondents No. 3 to 5 except Respondent-KMC.

4. Learned counsel for all the Petitioners consented that Petition bearing No. 4000 of 2017 may be treated as leading Petition and same may be disposed of at Katcha Peshi stage along with other connected petitions.

5. Upon, query by this Court from the Respondents as to why the salaries of the Petitioners have been stopped. All the learned Counsel representing the Respondents have stated in their one voice that the captioned Petitions are not maintainable on the premise that their basic appointments in the year 1997 and 2009 were dubious and found fake. They heavily relied upon the Report submitted by the 'High Powered Committee' constituted, in compliance of the order dated 05.10.2017 passed by this Court in C.P No.D-42 of 2013 [*re-Syed Zulfiqar Ali Shah vs. Province of Sindh and others*]. They further submitted that no codal formalities were adopted at the time of their alleged appointments, with further assertion that the Petitioners are not working with them since August 2015. In support of their contentions, they relied upon their respective para-wise comments and Reports submitted by the Secretary, Local Government Department in the aforesaid matter, showing the appointment of the petitioners on the aforesaid posts as Fake. Looking at the above perspective, and keeping in view the factual position of the case, we asked the learned Counsel representing the petitioners to satisfy this Court regarding maintainability of the instant petitions on the aforesaid pleas.

6. Syed Shoa-un-Nabi, learned Counsel for all the Petitioners in reply has mainly argued that the Petitioners have approached this Court for direction to KMC and their concerned DMCs for the payment of their salaries. He next submitted that the Petitioners

were appointed as Primary School Teachers in BPS-07 in the year 1997 & 2009 (Teaching and non-Teaching staff ) by the Education Department, KMC Karachi and they were posted in different Districts by the Respondent-KMC; that since August, 2015 their salaries are stopped without issuing any Show Cause Notice or seeking explanation in this regard; that the Appointment orders of the Petitioners are genuine and have been verified by the High Powered Committee constituted by the Respondent No.1. He next argued that Appointment orders of the Petitioners are not fake and the contentions of the Respondents are afterthought and a heavy burden lies upon their shoulders to prove their contentions; that the Respondents are responsible for the alleged act of irregular appointments, if any, and the Petitioners cannot be deprived on account of the illegal acts of the Respondents; that the salaries of the Petitioners cannot be stopped by the Respondents without issuing Show Cause Notices and completing other legal and codal formalities under the law, thus according to him, the entire proceedings undertaken by the Respondents, with regard to withholding of the salaries of the Petitioners are nullity in the eyes of law; that the Petitioners have enjoyed their postings and received their respective salaries up to July 2015 and after lapse of considerable time the Respondents have awoken from deep slumber to say that the appointments of the Petitioners were not genuine. He continued by 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 some of the colleagues of the Petitioners and the Petitioners have been deprived of their salaries and the aforesaid assertions of the

Respondents are against the basic spirit of law. Per learned Counsel, since the Petitioners were appointed in accordance with law and there was no illegality in their appointments, therefore, the comments filed by the Respondent-DMC's in their respective petitions cannot be considered as Gospel truth to deprive the Petitioners of their respective salaries on incorrect pleas; that depriving the Petitioners from their salaries amounts to depriving from their livelihood, therefore, the instant Petitions can be heard and decided on merits. He further argued that the Petitioners are innocent and victim of internal tug of war between the officials of the Local Government Department and KMC and concerned DMC's even otherwise the appointment orders of the Petitioners for the aforesaid posts are genuine and the Petitioners have nothing to do with the purported fake appointments in the KMC and its concerned DMCs of Local Government Department, Government of Sindh and that they cannot be held responsible for that. He lastly prayed for allowing the instant Petitions in the light of the order dated 23.12.2016 passed by this Court in Constitutional Petition No.D-4809 of 2016.

7. Learned Counsel appearing for DMCs have refuted the claim of the Petitioners, by referring their para-wise Comments and have taken the stance that after promulgation of the Sindh Local Government Ordinance, 2001 all the staff employees had been merged in the Education Department of KMC and issues of salaries have to be resolved by KMC and not DMC's. Learned Counsel invited attention of this Court that as per Report of High Powered Committee constituted under the orders of this Court in another Petition as discussed supra, the basic appointments of most of the

Petitioners in the present petitions have been declared as “Fake”. Therefore, at this juncture no premium can be given to them by this Court. At this stage, learned counsel for the Petitioners has raised serious objection on the stance taken by the Respondents and argued that this is not the true picture, which they are depicting now.

8. Mr. Khurram Iqbal, learned Counsel, representing Respondent No.2 (KMC) in all the Petitions has filed a statement today and argued that as per Notification dated 04.2.2016, the function of Education Department had been transferred to District Municipal Corporations, Karachi Division and the KMC has no concern with the subject matters. Besides that the Education Department along with two other departments was transferred to the six DMCs and District Council Karachi. Accordingly KMC paid salaries up to 31-01-2016. Since then there is no provision existed in the KMC Budget with regard to the Petitioners, as there is no budgetary position/Head of Account, has existed. Besides this financial crises and paucity of Funds, KMC is not liable and responsible to pay the salaries to the Petitioners. In support of his contention, he relied upon the letter dated 15.08.2018 issued by Director (Legal Affairs), Human Resource Management Department, KMC, which reads as under:-

“No.Sr.Dir(HRM)/Dir-L.A/KMC/2018/795

Dated 15.08.2018

Subject: CONSTITUTION PETITION NO.D-4510 OF 2018 FILED BY MR. MUHAMMAD IRFAN V/S PROVINCE OF SINDH AND OTHERS IN THE HIGH COURT OF SINDH.

Ref: NO.SR.LA/KMC/2018/924,

Dated: 08-08-2018.

Please refer to your letter on the subject under reference. The parawise comments on the issue are as under for kind perusal and further necessary action:-

1. No comments as the services of the Petitioners belong to Education Department DMCs.
2. Reason for stoppage of salaries of Petitioners for a long period is well known by the Education Department DMCs.
3. The contents of the para belong to Education Department KMCs.
4. Formal.
5. As per para 02 above.
6. **The Education Department along with two other departments were transferred to the 06 Six DMCs and District Council Karachi. Accordingly KMC paid salaries upto 31-01-2016. Since then there is no provision is existed in the KMC Budget as no Budgetary position/Head of Account is exist. Beside this Financial Crises and paucity of Funds KMC is not liable/responsible to pay the Petitioners.**

Sd/-

Director (Legal Affairs)  
Human Resource Management  
KMC”

9. Mr. Abdul Jalil Zubedi, learned AAG has referred his comments filed on behalf of the Secretary, Local Government, Government of Sindh and has taken the plea that it is the responsibility of the Council concerned to handle the matters of their employees as per law and rules and the Sindh Local Government has nothing to do with the issue of their salaries. He next argued that the employees who had been appointed, in 1997 & 2009, without completing the codal formalities and supported the stance of the learned Counsel representing the DMC’s

10. We asked from the learned Counsel representing the Respondents as to whether the posts of the Petitioners were advertised. They, in reply to the query, have stated that record does not reflect regarding the aforesaid factum; that there was no advertisement in the newspapers for the posts, no Recruitment Committee was constituted, no tests were conducted, and nothing



was done by the then concerned Departments at the time of their purported appointments on the aforesaid posts.

11. Learned AAG has contended that the alleged appointment/posting orders of the Petitioners and salary slips showing payment of salaries up to July 2015 produced along with Memo of Petitions do not validate and legitimize their appointments as genuine. However, he pointed out that in compliance with the order dated 5.5.2016 passed by this Court in C.P No.D-42 of 2013, a High Powered Committee comprising of 05 members examined the cases of the employees of KMC and their concerned DMC's, whereby the committee opined that their basic appointments on the aforesaid posts as Fake and recommended as under:-

- I. The employees who have been appointed in the year 1997 without completing the codal formalities means (advertisement in the newspapers, constitution of the Recruitment Committee and Interview/Tests) are innocent and financially poor may be allowed to continue their jobs and their salaries may be released immediately (except those who have forged in documents, not provided original documents and did not appear before the High Powered Committee).
- II. Officers/officials who have issued/signed the fake orders after receiving the bribe i.e. Mr. Abdul Jabbar Bhatti, the then Director (Education) KMC and Mr. Mansoor Mirza, the Director, Education, KMC. They are responsible and should be sentenced.
- III. The employees who were appointed in the year 2009, after completing all codal formalities should be allowed to continue their jobs (except those who have forged in documents, not provided original documents and did not appear before the High Powered Committee).
- IV. The employees who have been appointed in the year 2009 and have been declared fake due to the duplication of the orders but are most regular and possess relevant qualifications and documents have not been forged in the documents and also produced original documents be allowed to continue their jobs.
- V. Mr. Ashar Durrani, Director (Pay Roll) Karachi Metropolitan Corporation, Karachi is involved in this crisis because when employees were in KMC they had been getting their salaries. Because they were appointed in the year 1997, then why did they pay them salaries in 2009-10?"

12. Learned Counsel for the Petitioners refuted the claim of Respondents and emphasized during the course of hearing that all the documents of the Petitioners regarding their employment with

KMC/DMC's, departments of Sindh Local Government are genuine and hence stoppage of their salaries, without hearing by the Respondents on the basis of the said report of High Powered Committee is illegal. However, said assertion has been rebutted by the Respondents on the basis that the furnished documents of the Petitioners are false.

13. Be that as it may, we are only concerned with resolution of the matter between the parties in accordance with the law.

14. We have heard the learned Counsel for the parties and perused the material available on record on the aforesaid pleas.

15. The pivotal question before us is that whether the salaries of the Petitioners can be withheld without providing an opportunity of hearing?

16. In our view, he who seeks equity must do equity and approach the Court with clean hands, ill-gotten gains cannot be protected. It is argued by the Respondents that Petitioners had got their appointments through backdoor, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to them.

17. We, on the basis of contentions of the parties with the material produced before us, have reached the conclusion that we cannot determine the veracity of these documents, their claims and counter-claims as these are disputed questions of facts between the parties, which cannot be adjudicated by this Court, while exercising the Constitutional Jurisdiction.

18. In view of the foregoing, this Court cannot give sanctity to the appointment letters of the Petitioners and other documents

produced by them and leave it for the Competent Authority to determine the genuineness or otherwise of the documents, claims and counter-claims, therefore, on the aforesaid plea the Constitutional Petitions filed by the petitioners cannot be maintained.

19. This Court, on the issue of fake appointments in the department of the Government, seeks guidance from the pronouncement of the Judgment of the Honorable Supreme Court in the case of Government of the Punjab through Chief Secretary and others vs. Aamir Junaid and others [2015 SCMR 74], which provides guiding principle on the aforesaid issues. An excerpt of the same is reproduced as under:-

“Undoubtedly such order passed by the learned High Court is absolutely valid and it has been left to the department itself to scrutinize/examine the eligibility of the respondents those who pass the test would be retained as employees by applying the rule of locus poenitentiae, notwithstanding that there was some irregularity in the process of selection, may be on account of one of the members, who is said to have acted as an appointing authority was not competent to sit in the same meeting. Whereas those who are not eligible or qualified shall go. This is for the department now to act fairly in terms of the direction of the learned High Court and take further action.”

20. In the light of dicta laid down by the Honourable Supreme Court in the case of Government of the Punjab *supra*, we direct the Chief Secretary, Sindh to constitute a Committee headed by him and comprising of the Secretary, Local Government Department and another appropriate member co-opted by him, conduct an inquiry of alleged fraud / forgery in the appointments as discussed in the preceding paragraphs and subsequent events, after providing ample opportunity of hearing to the Petitioners and fix responsibility in the matter and take action against the delinquent officials strictly in accordance with law and the observations made by the Honourable Supreme Court in the aforesaid case and

submit report to this Court through MIT-II of this Court, within a period of 90 days, from the date of receipt of this Judgment.

21. The captioned Petitions are disposed of in the aforesaid terms along with pending Application[s].

**JUDGE**

**JUDGE**

**Nadir/-**