

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 1254 of 2013

Syeda Anisa Sughra Jafri Petitioner

Versus

Province of Sindh & others Respondents

C.P No. D- 1279 of 2013

Mst. Nikhat Fatima Petitioner

Versus

Province of Sindh and others Respondents

C.P No. D- 1280 of 2013

Mst. Itrat Fatima Petitioner

Versus

Province of Sindh and others Respondents

C.P No. D- 1281 of 2013

Mst. Ishrat Fatima Petitioner

Versus

Province of Sindh and others Respondents

C.P No. D- 1282 of 2013

Syeda Masooma Sughra Jafri Petitioner

Versus

Province of Sindh and others Respondents

Date of hearing: 17.09.2018

Syed Abrar Ahmed Bukhari for Petitioners in C.P. Nos. D-1254 of 2013 and in C.P. No. D-1282 of 2013.
Mr. Shehryar Mehar, learned AAG.

ORDER

ADNAN-UL-KARIM MEMON,J:- The above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common question of law and facts are involved therein. In all the captioned petitions, Petitioners are seeking declaration to the effect that they are entitled for the payment of their salaries from the date of their respective appointments as Junior School Teachers (JST).

2. Brief facts of the case in nutshell are that Petitioners were appointed as Junior School Teachers in BPS-09 and were posted at different Government Schools Karachi, against vacant post vide letter dated 06.10.1998, 05.11.1998, 11.11.1998, 12.11.1998, respectively. Petitioners have submitted that in pursuance of the appointment letters they submitted their joining report at the respective schools in the year 1998. Petitioners have further submitted that they were posted at different schools. Petitioners added that all of sudden their monthly salaries were stopped on the premise that the basic appointments and medical fitness certificates of the Petitioners were found fake/bogus. Petitioners have submitted that they being aggrieved by and dissatisfied with

the impugned stoppage of their salaries preferred departmental appeals to the competent authority of Education department, Government of Sindh but no action was taken in this regard.

3. The order for notice of these Petitions were passed on 13.09.2013 by this Court and on subsequent dates the learned AAG appeared and filed para wise comments on behalf of the Respondent No.2.

4. Mr. Shehryar Mehar, learned AAG has contended that the basic appointment of the Petitioners was fake, therefore they are not entitled for any relief from this Court; that the Petitioners did not meet the criteria as mentioned in the Recruitment rules. Learned AAG stated that the appointment of the Petitioners were made fraudulently; that the documents furnished by the Petitioners were fake and fabricated; that the medical fitness certificates attached with the memo of petition were subsequently found fake as per the report of the Civil Surgeon, Services Hospital, Government of Sindh, Karachi, who opined that the medical fitness certificates were fake and fabricated and that the signatory endorsement on them were not genuine; that so far as joining reports of the Petitioners are concerned the same are not in accordance with law; that the departmental appeals purportedly filed by the Petitioners were got verified and were found not registered with the concerned office. He lastly prayed for dismissal of the instant petitions with cost.

5. Syed Abrar Ahmed Bukhari, learned counsel for the Petitioners in C.P. No. D-1254 and 1282 of 2013 has argued that Petitioners are entitled to the payment of salaries for the period they worked for the Respondent-department; that the service of the Petitioners were not terminated and they are in continuous employment of the Respondent department as such they are entitled for the payment of salaries; that the colleagues of the Petitioners, who were appointed during the ban period have been paid their salaries but the Petitioners are being denied for the salaries of the period they worked; that after successfully getting the appointment letters and joining the service as Junior School Teachers the Petitioners have acquired a vested right and mark up may also be paid along with the salaries, which cannot be nullified/denied by whimsical and arbitrary actions of the Respondents; that the Respondents have acted in violation of the prescribed Rules of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974; that the action of the Respondents is also in violation of the Fundamental Rights of the Petitioners as guaranteed under Articles 18, 24 and 25 read with Articles 4 and 8 of the Constitution; that due to omission/failure of the Respondents to fulfill their legal obligations and timely discharge of their duties/functions, the Petitioners are being deprived of their lawful rights for payment of the salaries to them for the post of JST. He lastly prayed for allowing the instant petitions.

6. We have noticed that this Court vide order dated 06.02.2017 observed that the Petitioners in C.P. No.D-1279, 1280 and 1281 of 2013 were called absent and intimation were sent to them through all modes except publication, today also they are called absent. Since identical issue is involved in all these petitions, therefore these are taken up at the request of learned counsel for the Petitioners for final disposal on merits.

7. We have heard the learned counsel for the parties and have perused the material available on record.

8. A query was raised by this Court as to how the instant petitions are maintainable against the issue of salaries in the light of judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Punjab Text Book Board Lahore & others Vs. Muhammad Akhtar Sherani & others (PLD 2001 SC 1032). In reply to the query, Syed Abrar Ahmed Bukhari, learned counsel for the Petitioners has argued that the Petitioners were validly appointed on the post of JST BPS-09, they joined the service of the Respondent Education Department therefore they are entitled for the salaries. Before dilating upon the issue of salaries of the Petitioners in the present matter, we would like to see as to whether the basic appointment of the Petitioners as JST in BPS-09 was in accordance with law or not?

9. Prima facie the appointment of the Petitioners against the posts of JST is disputed by the learned AAG through his comments. We have perused the comments filed on behalf of the

Respondent No.2. Annexure 'B' attached with the comments which prima facie suggest that the medical fitness certificates of the Petitioners were declared fake/bogus by the Services Hospital, Government of Sindh, Karachi, vide letter dated 26th October 2013, which is finding of fact and cannot be disturbed until and unless proper evidence is led in this behalf, which cannot be done in a Constitutional Petition.

10. It is now evident that when the medical fitness certificates produced by the Petitioners before this Court were found fake and fabricated documents, the question of releasing their salaries does not arise. It is a settled principle of law that for the purpose of maintaining a Constitutional Petition it is the duty and obligation of the Petitioners to point out that the action of the Respondents was in violation of the rules and regulations, which the Petitioners have failed to point out and have also failed to make out any case for discrimination as well as no material was placed as to who were the persons who under identical circumstances were given the salaries.

11. In the light of above facts and circumstances of the case, we have reached to the conclusion that the Petitioners have failed to make out their case for releasing their salaries for the post of Junior School Teacher in BPS-09. Consequently, the instant Petitions are dismissed along with the listed application(s).

JUDGE

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