

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

Present:
Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon

C.P. No.D-325 of 2017

Aijaz & others	-----	Petitioners
VERSUS		
Province of Sindh & others	-----	Respondents

C.P. No.D-3059 of 2018

Tanveer Ali & others	-----	Petitioners
VERSUS		
Province of Sindh & others	-----	Respondents

Dates of hearing & decision: 27.08.2020

Mr. Ayaz Hussain Tunio, advocate for the petitioners in C.P. No.D-325 of 2017.

Mian Taj Muhammad Keerio advocate for petitioners in C.P. No. D-3059 of 2018.

Mr. Allah Bachayo Soomro Additional Advocate General, Sindh alongwith Khadim Hussain Chairman, Nabi Bux Rind Chief Office and Mir Irfan Talpur Accounts Officer, District Council Sanghar.

JUDGMENT

Adnan-ul-Karim Memon, J. The captioned 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 directions to Respondents to release their monthly salaries, which have been stopped with effect from August, 2016 and up-to-date.

2. Brief facts of the case as averred by the Petitioners in their pleadings are that they were appointed on the posts of Assistant, Junior Clerk, Naib Qasid, Chowkidar, and Malhi, in the year 2011 & 2012 respectively in District Council Sanghar, Local Government Department, Government of Sindh, After fulfilling all the codal formalities, they resumed their duties at their

respective places of posting and received their salaries up to August, 2016. 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 they had been left out on the premise that their appointments were not genuine. Petitioners have averred that the Chairman of Respondent-Council had acted without lawful authority, thus 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 fitness certificates and salary slips. Petitioners being aggrieved by and dissatisfied with the aforesaid action of Respondents have filed the instant Petitions in the years 2017 and 2018.

3. Upon notice, para-wise comments were filed on behalf of Respondents.

4. Learned counsel for the Petitioners consented that Petition bearing No. 325 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. Learned A.A.G representing the Respondents stated that the captioned Petitions are not maintainable on the premise that their basic appointments in the year 2011 and 2012 were dubious and later on found fake. He heavily relied upon the Report submitted by Secretary Local Government Department and argued that NAB authorities have taken cognizance of the matter and has taken away the entire record of the recruitment made by Local Government Department in the year 2011 and 2012 and matter is under investigation. He 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 Respondent-Council since August 2016. In support of his contentions, he relied upon the para-wise comments and Reports submitted by Secretary, Local Government Department in the aforesaid matter, showing the appointments of petitioners as Fake. An excerpt of the statement of Secretary Local Government Department is reproduced as under:-

“ That in the above Petition, neither any allegation has been leveled against the Respondent No.1 nor any relief has been sought. The District Council, Sanghar is a local council and has status of body corporate as defined under Section 7 of the Sindh Local Government Act, 2013. It is responsibility of the Council to handle the matter of District Council, Sanghar including services matters & their salaries of employees as per rules and law.

As per orders passed by Honourable High Court of Sindh, Circuit Court, Hyderabad on dated 21.03.2019, this department examined the record of above (11) petitioners as list provided by Chairman / Chief Officer, District Council, Sanghar (copy attached), it is apprised here that all record of appointments made during 2010 to 2013 has been seized by NAB authority, Karachi and NAB provided list / in the shape of seizure memo of this department, as per list / seizure memo (08) names are reflected in the seizure memo, list attached at " Annex-B". Whereas, Sr. No.01, 05 & 06, the names are not found in seizure memo.

In view of the above position this department is not in a position to verify the genuineness of their appointment order as the record / original files has been seized & enquiry is under process at NAB, Karachi. Moreover, the referred letter No.E&A/LG/5-10/2015 DATED 02.10.2017 & letter No. dated 21.03.2017 regarding verification of appointments orders has been examined, which is found fake / fabricated and not issued by this department, hence the Chairman, District Council, Sanghar may be directed to lodge FIR against the persons for submitting fake / forged verification orders"

6. Looking to the above perspective, and keeping in view the factual position of the case, we asked learned Counsel representing the petitioners to satisfy this Court regarding maintainability of instant petitions on the aforesaid pleas.

7. Mr. Ayaz Hussain Tunio learned Counsel for the Petitioners in C.P. No.D-325 of 2017, in reply has mainly argued that the Petitioners have approached this Court for direction to respondent-Department and their concerned council for payment of their salaries. He next submitted that the Petitioners were appointed as Naib Qasid, Chowkidar, Junior Clerk, Assistant and Malhi, in the year 2011 & 2012 respectively and after fulfilling all the codal formalities they were posted in District Council Sanghar; that since August, 2016 the salaries of the petitioners 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 Committee constituted by Respondent No.1. He next argued that the Appointment orders of the Petitioners are not fake and the contentions of the Respondents are afterthought and 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 without issuing Show Cause Notices and completing other legal and codal formalities under the law, thus the entire proceedings undertaken by the Respondents, with regard to withholding of salaries of the Petitioners are nullity in the eyes of law; that the Petitioners have worked on their posts and received salaries up to August 2016 and after lapse of considerable time the Respondents have awoken from deep slumber to say that the appointments of Petitioners were not genuine. He continued by stating that if there was a maladministration in appointments, it was the responsibility of Respondents and not the Petitioners; that the

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, such action of Respondents is 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 Respondent-department in their respective petitions cannot be considered as Gospel truth to deprive the Petitioners of their salaries on the basis of incorrect pleas; that depriving the Petitioners from their salaries amounts to depriving them 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 Local Government Department and District Council Sanghar; even otherwise the appointment orders of Petitioners are genuine and the Petitioners have nothing to do with the purported fake appointments made in the local Government-department and District Council Sanghar, and that they cannot be held responsible for that. He lastly prayed for allowing the instant Petitions in the light of the order dated 17.12.2020 passed by this Court in Constitutional Petition No. D- 325 of 2017.

8. Learned A.A.G appearing for respondents has refuted the claim of Petitioners, by referring their para-wise Comments. He invited the attention of this Court towards Report of Secretary Local Government and argued that the basic appointments of 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 Petitioners has raised serious objection on the stance taken by Respondents and argued that this is not the true picture, which they are depicting now. In support of his contention, he relied upon the compliance report dated 17.7.2020 submitted by Chairman District Council Sanghar.

9. We asked from learned Counsel representing the Respondents as to whether the posts of Petitioners were advertised. They, in reply to the query, have stated that record reflects 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 Department / Council at the time of their purported appointments.

10. Mian Taj Muhammad Keerio learned counsel for petitioners in C.P. No.D-3059 of 2018 has refuted the claim of respondents and referred page No. 17 of the memo of petition and argued that the posts of Petitioners were duly advertised in daily "Jang" Newspaper on 27.8.2011 and heavily relied upon the salary slips showing payment of salaries up to August 2016

produced along with Memo of Petition. Learned A.A.G. has contended that the alleged appointment / posting orders of Petitioners and salary slips showing payment of salaries up to August 2016 produced along with Memo of Petitions do not validate and legitimize their appointments as genuine. 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 are genuine and hence stoppage of their salaries, without hearing by the Respondents on the basis of the said report is illegal.

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

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

13. In our view, he who seeks equity must do equity. Equity moves in the aid of law and not to defeat the law. Equitable relief could not be granted to the person whose claim is based upon illegality or he / they approach the court with unclean hands, ill-gotten gains cannot be protected. It is argued by Respondents that the Petitioners had got their appointments through backdoor, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to them.

14. We, on the basis of contentions of the parties coupled with material produced before us, have reached to 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.

15. In view of the foregoing, this Court cannot give sanctity to the appointment letters of 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.

16. This Court, on the issue of fake appointments in the department of the Government, seeks guidance from the pronouncement of Judgment of 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.”

17. In the light of dicta laid down by Honorable Supreme Court in the case of Government of Punjab supra, we direct Chief Secretary, Sindh to constitute a Committee headed 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, fix responsibility and take action against the delinquent officials strictly in accordance with law and the observations made by Honorable Supreme Court in the aforesaid case and submit report to this Court through Additional Registrar of this Court, within a period of 90 days, from the date of receipt of this order. The issue of salaries of the petitioners as well as salary amount already deposited before the Additional Registrar of this court shall be subject to final outcome of the report of Chief Secretary, Sindh.

18. The captioned Petitions are dismissed in the aforesaid terms along with pending Application[s].

19. These are the reasons of our short order dated 27.08.2020, whereby we have dismissed the instant petition.

Let a copy of this order be transmitted to the Chief Secretary, Sindh for compliance within stipulated time.

JUDGE

JUDGE