

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –2889 of 2020

Ahmed Kehar

Versus

Government of Sindh and 03 others

Date of hearing
& order : 15.10.2020

Mr. Faisal Shahzad, advocate for the petitioner.
Mr. Faiz Muhammad Awan, advocate for respondent No.4.
Mr. Ali Safdar Depar, Assistant Advocate General.

ORDER

ADNAN-UL-KARIM MEMON, J. – - Basically the petitioner is seeking direction to the Respondents to release his monthly salary, which has been stopped with effect from December 2013 till date.

2. The case of the petitioner is that he was appointed as a Dispenser in BPS-09 in Local Government Department, Government of Sindh, vide appointment letter dated 13.12.2013 and after fulfilling all the codal formalities, he resumed his duties at his place of posting. Per petitioner, he has been working on his post till today, but his salary has not been paid to him up till now. Petitioner protested and approached the respondents, who kept him on hollow hopes. Petitioner has further added that the respondents have given reason that his appointment was found fake and NAB Sindh has taken over all the documents for probe. It is averred that the Respondents had acted without lawful authority, thus has violated the basic provision of Article-25 of the Constitution of the Islamic Republic of Pakistan. Petitioner, in support of his version, has relied upon various documents attached with the memo of petition i.e. appointment order, joining report and posting order. The petitioner being aggrieved by and dissatisfied with

the aforesaid action of the respondents has filed the instant Petition on 15.06.2020.

3. Upon query by this Court from the respondents as to why the salary of the petitioner has been stopped. Learned AAG stated that the captioned petition is not maintainable on the premise that his basic appointment made in the year 2013 was dubious and was later on found fake ; that no codal formalities were adopted at the time of his alleged appointment, with further assertion that the petitioner is not working in Local Government Department since his purported appointment made in December 2013.

4. Looking at the above perspective and keeping in view the factual position of the case, we asked the learned counsel representing the petitioner to satisfy this Court regarding maintainability of the instant petition on the aforesaid pleas.

5. Mr. Faisal Shahzad, learned counsel for the petitioner, has contended that since December 2013 respondents have stopped the salary of the petitioner without issuing any show cause notice or seeking explanation in this regard ; that the Appointment Order of the petitioner is genuine and has been verified. He next argued that Appointment Order of the petitioner is 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 petitioner cannot be deprived on account of the illegal acts of the Respondents. It is further asserted that the salary of the petitioner cannot be stopped by the respondents without issuing show cause notice 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 salary of the petitioner is nullity in the eyes of law ; that the petitioner has enjoyed his postings and after lapse of considerable time the respondents have awoken from deep slumber to say that the appointment of the petitioner is not genuine. He continued by stating that if there is maladministration in appointments, it is the responsibility of the respondents and not the petitioner. He lastly prayed for allowing the instant Petition.

6. We have heard learned Counsel for the parties and perused the material available on record on the aforesaid pleas. We asked the learned counsel for the petitioner as to whether the post of the petitioner was advertised or not. He was unable to show from the record that advertisement was published in the newspapers for the subject post, or Recruitment Committee was constituted or

any test was conducted, or anything in this regard was done by the concerned Department at the time of his purported appointment on the aforesaid post.

7. The pivotal question before us is whether the salary of the petitioner can be withheld without providing an opportunity of hearing? 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 learned AAG that the petitioner had got his appointment through the backdoor, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to him.

8. We, based on contentions of the parties with the material produced before us, have concluded 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 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 present petition filed by the petitioner cannot be maintained.

9. This Court, on the issue of fake appointments in the department of the Government, is guided by the pronouncement of the Judgment of the Honorable Supreme Court in the case of Government of Punjab through Chief Secretary and others V/S 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 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.”

10. In the light of dicta laid down by the Honorable 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, conduct an inquiry of alleged fraud / forgery in the appointment as discussed in the preceding paragraphs and subsequent events, after providing ample opportunity of hearing to the petitioner and fix responsibility in the matter and take action against the delinquent officials strictly under law and

the observations made by the Honorable Supreme Court in the aforesaid case and submit the report to this Court through MIT-II within a period of ninety (90) days from the date of receipt of this order.

11. In view of the aforementioned facts and circumstances, the instant petition stands dismissed with no order as to costs.

J U D G E

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Nadir*