

*Order sheet*

## IN THE HIGH COURT OF SINDH AT KARACHI

Before:  
Mr. Adnan-ul-Karim Memon  
Mr. Adnan Iqbal Chaudhry

**Const. Petition No.825 of 2016**

Sabir Hussain and another

Versus

The Secretary Education and Literacy Department Karachi and 02 others

Date of hearing  
& order: 21.10.2020

Mr. Imtiaz Mansoor Solangi, advocate for the petitioners.  
Mr. Hakim Ali Shaikh, Addl. A.G. along with Nawaz Ali Shah Jeelani, Assistant Director, Secondary Education Karachi, and Javed Ali Khawaja, Litigation Officer, School Education.

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**Adnan-ul-Karim Memon, J.** - The petitioner is seeking direction to the Respondents to release his monthly salary, which has been stopped with effect from 8.7.2011 to date.

2. The case of the petitioners is that they were appointed as a Sindhi School Teacher in BPS 14 and Junior School Teacher in BPS-14 in Education & Literacy Department, Government of Sindh, vide appointment letters dated 08.07.2011 and after fulfilling all the codal formalities, they resumed their duties at their place of posting. Per petitioners, they have been working on their post till today, but their salary has not been paid to them up till now. Petitioner protested and approached the respondents, who kept him on hollow hopes. Petitioner has further added that the respondents have given the reason that their appointments were found fake. 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. Petitioners, in support of their version, have relied upon various documents attached with the memo of petition i.e. appointment order, joining report, and posting order. The petitioners being aggrieved by and dissatisfied with the aforesaid action of the respondents has filed the instant Petition on 10.02.2016.

3. Upon, query by this Court from the respondents as to why the salary of the petitioners has been stopped. Learned AAG stated that the captioned petition is not maintainable on the premise that their basic appointments made in the year 2011 were dubious and later on found fake; that no codal formalities were adopted at the time of their alleged appointments, with the further assertion that the petitioners are not working in Education & Literacy Department, Government of Sindh since their purported appointment made in July 2011.

4. 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 the maintainability of the instant petition on the aforesaid pleas.

5. Mr. Imtiaz Mansoor Solangi, learned counsel for the petitioners, has contended that since July 2011 respondents have stopped the salary of the petitioners 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. He next argued that Appointment Orders of the petitioners are not fake and the contentions of the respondents are an 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. It is further asserted that the salary of the petitioners 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 about the withholding of the salary of the petitioners is a nullity in the eyes of law; that the petitioners have enjoyed their postings and after the lapse of considerable time the respondents have awakened from a deep slumber to say that the appointment of the petitioners is not genuine. He continued by stating that if there is maladministration in appointments, it is the responsibility of the respondents and not the petitioners. 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 posts of the petitioners were advertised or not. He was unable to show from the record that advertisement was published in the newspapers for the subject posts, 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 their purported appointments on the aforesaid post.

7. The pivotal question before us is whether the salary of the petitioners 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 petitioners had got their appointments through the backdoor, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to them.

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 petitioners 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 Secretary Education & Literacy Department, Government of Sindh to constitute a Committee headed by him and comprising of the Director, Secondary Education Karachi, 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 under the 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 ninety (90) days from the date of receipt of this order.

11. The instant petition stands disposed of as above with no order as to costs.

JUDGE

JUDGE

shahzad