

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Constitutional Petition No. D –6066 of 2014**

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Shahzad Ali

*Versus*

Province of Sindh and 06 others

Date of hearing & order : 10.11.2020

Mr. Sajjad Ahmed, advocate for the petitioner.

Mr. Ali Safdar Debar, Asst. AG, Sindh, along with Anwar Danish DEO Sec. Korangi, Nawaz Ali Shah Jillani, DSE AD Litigation, and Abdul Fatah, Litigation Officer, DEO Korangi.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Mainly the petitioner is seeking direction to the Respondent-Education & Literacy Department, Government of Sindh to release his monthly salary, which has been stopped with effect from October 1999 to date.

2. The case of the petitioner is that he was appointed as a Junior School Teacher (JST) BPS-09 on deceased quota in Education and Literacy Department, Government of Sindh, vide appointment letter dated 1.10.1999 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. He protested and approached the respondents, who kept him on hollow hopes. He has further added that the respondents have given the reason that his appointment was found fake. Being aggrieved by and dissatisfied with the aforesaid action of the respondents, he has filed the instant Petition on 26.11.2014.

3. Upon, query by this Court from the respondents as to why the salary of the petitioner has been stopped, learned AAG referred to para-wise comments filed by respondent-department and stated that the captioned petition is not maintainable on the premise that his basic appointment made in the year 1999 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 Education and Literacy Department, Government of Sindh since his purported appointment made in October 1999. He relied upon the common judgment dated 30.06.2014 passed by learned Sindh Service Tribunal (SST) in Appeal No.98/2012 and other connected appeals and argued that some of the candidates, who were allegedly appointed in the year 1999 approached the SST by filling their respective appeals, which were dismissed; that the case of petitioner is akin to the case of aforesaid candidates thus this petition is liable to be dismissed in line with the decision of SST.

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

5. Mr. Sajjad Ahmed learned counsel for the petitioner, has contended that since October 1999 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 by concerned Executive District Officer Education, City District Government, Karachi, who accepted his plea and regularized his service w.e.f. the date of his appointment against the vacant post, on humanitarian ground. He next argued that the 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 a lapse of considerable time the respondents have awakened from a 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 Education Department at the time of his purported appointment on the aforesaid post.

7. 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 brought on record, 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, therefore, on the aforesaid plea the present petition filed by the petitioner cannot be maintained. Besides, the common decision of the learned SST is clear in its terms, whereby it was held that the former Executive District Officer Education was beneficiary of his own illegal orders as he got fake appointments. 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.

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

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