

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -4534 of 2019

Faisal Rasheed

Versus

Sindh Employees Social Security Institution.

Constitutional Petition No. D -4535 of 2019

Muhammad Jamil Khan

Versus

Sindh Employees Social Security Institution.

Constitutional Petition No. D -4536 of 2019

Muhammad Naveed

Versus

Sindh Employees Social Security Institution.

Constitutional Petition No. D -4788 of 2019

Syed Khawaja Najeeb Ullah

Versus

Sindh Employees Social Security Institution.

Constitutional Petition No. D -4789 of 2019

Nudrat Buland Iqbal

Versus

Sindh Employees Social Security Institution.

Constitutional Petition No. D -5098 of 2019

Muhammad Yusuf Sheikh

Versus

Sindh Employees Social Security Institution.

Constitutional Petition No. D -5099 of 2019

Rahim

Versus

Sindh Employees Social Security Institution.

Constitutional Petition No. D -5135 of 2019

Syed Hussain Ahmed Qadri

Versus

Sindh Employees Social Security Institution.

Constitutional Petition No. D -5632 of 2019

Muhammad Mohsin Abbasi

Versus

Province of Sindh and others

Constitutional Petition No. D -7236 of 2019

Syed Ali Hasnain Zaidi

Versus

Province of Sindh and others

Constitutional Petition No. D -7638 of 2019

Waseem Ullah

Versus

Sindh Employees Social Security Institution

Constitutional Petition No. D -332 of 2020

Rehan Ali

Versus

Sindh Employees Social Security Institution.

Dates of hearing : 24.02.2021 & 01.03.2021

Date of order : 01.03.2021

Mr. Mujtaba Sohail Raja advocate for the petitioners in C.P No.D-4534,4535, 4536, 4788, 4789, 5098, 5099 and 5135 of 2019.

Mr. Tariq Mehmood, advocate for the petitioner in C.P No.D-5632/2019

Mr. Raj Ali Wahid Kunwar, advocate for the petitioner in C.P No.D-332/2020.

Dr. Rana Khan, advocate for the petitioner in C.P No.D-4789/2019

Mr. Shoaib Ali Khatyan, advocate for the petitioner in C.P No.D-7638/2019.

Nemo for petitioner in C.P. No.D-7236/2019

Mr. Fayyaz Ali Metlo, advocate for SESSI

Mr. Rana Aziz, law officer SESSI

Mr. Ali Safdar Debar, Assistant Advocate General Sindh.

ORDER

Through the instant Petitions under Article 199 of the Constitution 1973, the Petitioners have called in question the disciplinary proceedings initiated by the Sindh Employees' Social Security Institution (SESSI) against them, whereby their services were terminated on the accusation of `Misconduct` on their part.

2. Learned counsel for the petitioners argued that they were appointed after due process of law against the vacant positions. They further argued that the show cause notices and impugned termination letters issued by respondent-SESSI in violation of their fundamental rights. They added that there was/is no justification for the respondent-SESSI to initiate disciplinary proceedings against them by terminating their service on unfounded grounds thus according to them, the entire proceedings undertaken by the respondents is a nullity in

the eyes of law. They further argued that the petitioners have been enjoying their postings and after the lapse of considerable time the respondents have awakened from a deep slumber to say that the appointments of the petitioners were/are not genuine and based on fake academic degrees. They continued by stating that if there is maladministration in appointments, it is the responsibility of the respondents and not the petitioners. Learned counsel referred to various provisions of Regulations of 2006 as well as Rules of 1973 and argued that the orders of their termination from service are/were illegal, unlawful, without lawful authority and/or jurisdiction; and, contrary to the procedure as set out by the law; and, ultra vires to the Articles 2A, 4, 5 & 9 of the Constitution of the Islamic Republic of Pakistan, 1973. They prayed for allowing the instant Petitions by directing the respondent-SESSI to reinstate their service with all back benefits.

3. Conversely, at the outset, learned counsel representing respondent SESSI states at the bar that these petitions are not maintainable in the light of law laid down by the learned Division Bench of this Court in the case of Ghulam Hafiz v. Government of Sindh and others, 1991 PLC (CS) 530, Dr. Farah Naz v. Province of Sindh and others, 2011 PLC (CS) 153, Dr. Syed Ashraf Ali Shah and 2 others v. Province of Sindh and others, 2009 SCMR 249, unreported judgment dated 23.02.2021 passed in C.P. No.D-5196/2017, unreported judgment dated 27.8.2019 passed in C.P. No.D-1151/2019, unreported order dated 15.11.2010 passed by the Hon'ble Supreme Court in Civil Appeal No.87-K/2010, unreported order dated 02.05.2016 passed by the Hon'ble Supreme Court in Civil Appeal No.30-K/2013, Miss Naureen Naz Butt v. Pakistan International Airline through Chairman PIA and others, 2020 SCMR 1625, Sui Sotheran Gas Company Limited, Karachi v. Imdad Ali Pathan and others, 2020 SCMR 1259, Chief Manager State Bank of Pakistan Lahore and another v. Muhammad Shafi, 2010 SCMR 1994, Zia Ghafoor Paracha v. Chairman Board of Intermediate and Secondary Education Rawalpindi and others, 2004 SCMR 35, Mst. Samina Nazeer v. District Education Officer Khanweal and others, 2004 SCMR 290, Abdul Hameed v. Deputy Commissioner Vehari, 1990 SCMR 1435, Arwentech (Pvt.) Limited through authorized representative v. Federation of Pakistan through Secretary Law and others and another, 2020 MLD 2049, Khurram Iqbal v. Deputy Director Food DG Khan and another, 2013 SCMR 55, Muhammad Ali and 11 others v. Province of KPK through Secretary Elementary Education Peshawar and others, 2012 SCMR 673, Deputy District Officer Revenue Kasoor and another v. Muhammad Muneer Sajid, 2013 SCMR 279, Nazar Hussain v. Deputy District Education Officer and others, 2003 SCMR 1269, Syed Mubashir Raza Jaffri and others v. Employees

Old-Age Benefits Institutions (EOBI) and others, 2014 SCMR 949, Muhammad Raza v. Federation of Pakistan and others, 2020 YLR 1103, and Basharat Hussain and another v. Provincial Government through Chief Secretary and 4 others, 2018 PLC (CS) Note 151. Per learned counsel, petitioners managed their illegal appointments without codal formalities to their respective posts which required certain qualifications which they were/are lacking, as such their petitions are liable to be dismissed with costs.

4. At this stage, we asked the learned counsel representing respondent-SESSI whether a regular inquiry was conducted before imposing the major penalty of their removal from service under clause 3 of clause (b) of sub-section (1) of Section 4 of the Efficiency & Discipline Rules, 1973. He reiterated his submission as discussed supra; and, added that neither advertisement for the subject posts was published in the newspapers, nor Recruitment Committee was constituted, nor any test was conducted and nothing in this regard was done by the ex-management of respondent-SESSI at the time of their purported appointment on the aforesaid posts. Learned counsel emphasized that it is well-settled law that he, who seeks equity, must do equity and approach the Court with clean hands, ill-gotten gains cannot be protected as 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. However, learned counsel reluctantly accepted the plea that no regular inquiry was conducted to probe the allegations leveled against the petitioners of having fake academic qualifications at the time of their initial appointments in SESSI, however, he insisted that, since their basic appointment is illegal and they were given ample opportunity of hearing during disciplinary proceedings to produce their credentials to the competent authority for verification for which they utterly failed to comply the directions of the competent authority, which amounts insubordination, thus they committed misconduct. However, he in principle agreed that if the petitioners produce the original of all such documents/certificates of their academic qualification before the Nazir of this Court for onward verification by the Higher Education Commission of Pakistan, then these petitions may be disposed of in terms of verification of their qualification degrees, which they were having at the time of their initial appointment and not subsequent one. Be that as it may, the pivotal question before us is whether the services of the petitioners can be dispensed without holding regular inquiry; and, providing an opportunity of hearing?

5. Heard the learned counsel for the parties on the subject issue and perused the material available on record and case-law cited at the bar.

6. We, based on contentions of the parties with the material produced before us and case-law cited at the bar, have concluded that we cannot determine the veracity of the documents placed on record by the petitioners about their credentials, 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 petitions filed by the petitioners cannot be adjudicated under Article 199 of the Constitution. At this stage, we are equally conscious of the fact that the respondent-SESSI did not realize their own mistake by recruiting the petitioners in the year 1998 and onwards without advertisement disclosing academic pre-requisites and continued to avail their services; and, after a considerable period, they perceived that their basic appointments were not under the regulations of SESSI. Prima facie, this is hardly a justification to keep mum on the subject issue for a long time. However, this Court, on the issue of such 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. 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.”

7. In the light of dicta laid down by the Honorable Supreme Court in the case of Government of the Punjab supra; and, to conclude the matter, at the first instance, we deem it appropriate to direct the learned Nazir of this Court to collect Original Qualification Degree Certificates from the petitioners, which they were holding at the time of their initial appointment in SESSI. He is directed to immediately send the copies of the Original Qualification Degree Certificates of the petitioners to the Higher Education Commission of Pakistan/concerned authorities for its authenticity and verification. In the

meanwhile, the petitioners are directed to cooperate with the Nazir of this Court and submit their Original Qualification Degree Certificates, which they were holding at the time of their initial appointment in SESSI, within two weeks from the date of receipt of this Order. In case of non-submission of their credentials with the Nazir of this Court, these petitions shall be treated as dismissed. There shall be no extension in depositing/submitting the documents with Nazir. Commissioner SESSI is directed to constitute a Committee headed by him, conduct an impartial inquiry of alleged appointments made in SESSI in violation of recruitment rules and, without codal formalities as discussed in the preceding paragraphs and subsequent events, after providing ample opportunity of hearing to the petitioners/beneficiaries 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 report before the next date of hearing. The SESSI must not ignore the fact that these petitioners were appointed when they were not informed of any academic pre-requisites for appointment on such posts in the absence of advertisement and the option of voluntary retirement, if any, must also be kept in mind.

8. The competent authority of the Higher Education Commission of Pakistan is directed to look into the Academic Qualification Certificates of the petitioners and others; and, ascertain its genuineness or otherwise and submit the report to the Nazir of this Court in a sealed envelope within one month. The said exercise shall be completed within the stipulated time.

9. These petitions are adjourned; and, to be taken up after one month.

Let a copy of this order be transmitted to the Higher Education Commission of Pakistan and Commissioner SESSI for compliance.

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