

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

**Constitutional Petition No. D – 6300 of 2020**

Bashir Ahmed Abbasi Kalhoro

*Versus*

The Government of Sindh and others

Date of hearing & Order : 15.04.2021

Petitioner present in person.

Mr. Ahmed Ali Ghumro, advocate for respondent No.2.

Mr. Ali Safdar Depar, Asst. Advocate General.

**ORDER**

**Adnan-ul-Karim Memon, J.** Through the instant Petition, the Petitioner, in pith and substance has called in question the impugned order dated 31.05.2018 issued by the Chief Secretary, Government of Sindh, whereby the private respondent No.2 was reinstated in service as Junior School Teacher (BS-14) under the orders of Worthy Chief Minister, Sindh. For convenience sake, an excerpt of the order is reproduced as under:

*“The Chief Minister Sindh, has been pleased to reinstate in service Mr. Ghulam Murtaza Abro S/o Jan Muhamad, Junior School Teacher (BS-14) Personal ID:10231354, Government Boys High School Saint Joseph Larkana.*

*2. He is directed to report to the District Education Officer (E.S/SH) Larkana District.”*

2. Petitioner, who is present in person submits that respondent No.2, who is merely a Junior School Teacher in Larkana and is not entitled to hold such post. He has drawn our attention to an order dated 16.12.2016 on page 17, whereby a major penalty of dismissal from service was imposed upon respondent No.2 because of serious allegations mentioned in the said order, including harassment to female staff and influencing the School Administration to close the School and creating hindrance. It is submitted by him that in addition to the above, various criminal cases are pending against him. It is further submitted that vide impugned order dated 31.05.2018 (page-19) respondent No.2 was reinstated by the Chief Minister, Sindh, which order is Coram non-judice as the

Chief Minister Sindh has no authority or jurisdiction whatsoever to reinstate the respondent No.2. It has been pointed out that several departmental appeals filed by respondent No.2 from time to time against the actions taken against him because of his persistent misbehavior were dismissed, and despite this, he was reinstated through the impugned order and has been allowed to resume his duty. It has been alleged that respondents No.3 to 5 are in collusion with respondent No.2 and have been supporting him in his illegal activities. He prayed for allowing the instant petition.

3. On the other hand, Mr. Ahmed Ali Ghumro learned counsel for respondent No.2 has refuted the claim of the petitioner and referred to the para wise comments filed on behalf of respondent No.2, and argued that this petition is incompetent under the law. He further pointed that the petitioner is habitually blackmailer; and, is indulged in filing frivolous petitions against the civil servants, private persons, and politicians, then withdraw the same after settling his score with them; therefore, he has not come with clean hands. Per learned counsel, the petitioner is not a Social Worker; and, he is extracting money illegally from the people by filling these types of petitions with malafide intention. Learned counsel further pointed out that the petitioner is not an aggrieved person under Article 199 of the Constitution, as such this petition is liable to be dismissed with costs. Learned counsel referred to various documents attached with his para-wise comments and argued that Chief Minister, Sindh is the competent authority, being a Head of all departments under the Sindh Rules of Business, 1986. He lastly prayed for dismissal of this petition.

4. Mr. Ali Safdar Depar, learned AAG has supported the impugned order passed by the worthy Chief Minister, Sindh, however, he is not in a position to cite any provision of law, whereby the worthy Chief Minister, Sindh, is competent/appellate authority in terms of the Sindh Civil Servants (Appeal) Rules, 1980 to reinstate a Junior School Teacher in his official capacity.

5. We have heard learned counsel for the parties on the subject issues and perused the material available on record with their assistance.

6. Prima facie under the Sindh Rules of Business, 1986, the Chief Minister is the Chief Executive of the Province; and, has no direct role whatsoever in the matter of a Junior School Teacher, about his appointment, posting, transfer, promotion, and disciplinary issues. On the aforesaid proposition, the Hon'ble

Supreme Court in the case of The STATE v. ANWAR SAIF ULLAH KHAN (PLD 2016 Supreme Court 276) has held as under:

“32. Illegal interference of Ministers and legislators, etc. in the exercise of the executive authority of the competent authorities in the civil service has also been commented upon and set aside by different High Courts and Tribunals, etc. in many cases and some of such cases are detailed below with a summary of what was held therein:

Mahmood Bakhsh, etc. v. Secretary Irrigation, Government of Punjab, Lahore, etc. (1986 CLC 286):

A Provincial Minister has no jurisdiction to direct the competent authorities under the Canal and Drainage Act to include a particular area in the Canal Commanded Area.

Muhammad Rashid v. Azad Jammu & Kashmir Government through Chief Secretary and 20 others (PLD 1987 SC(AJ&K) 60):

A Minister's order regarding grant of the lease was void ab initio.

Ch. Muhammad Zaman, etc. v. Azad Government of the State of J & K, etc. (PLD 1987 (AJ&K) 52):

Imposition of a penalty by an Advisor to the President was without jurisdiction.

Masti Khan v. The State (PLD 1987 Lah. 212):

An order passed by a Chief Minister of a Province transferring investigation of a criminal case was without lawful authority.

Muhammad Zaman and 8 others v. The Minister for Consolidation and 3 others (PLD 1988 Lahore 416):

A Provincial Minister for Consolidation has no jurisdiction to interfere in a consolidation scheme or to order reconsolidation.

Abdul Rauf v. Director, Local Government and Rural Development, Sargodha and another (1989 PLC (C.S.) 436):

Transfer of an employee at the instance of a Provincial Minister was without jurisdiction.

Ashnagar v. Secretary Education, Government of NWFP, Peshawar, etc. (1989 PLC (C.S.) 439):

Dismissal order passed at the direction of an MPA was set aside as without jurisdiction.

Muhammad Ayub and 6 others v. Minister for Education, Punjab Province, Lahore and 2 others (1990 PLC (C.S.) 278):

Termination of service upon a verbal direction of a Provincial Minister was set aside as without lawful authority.

Shagufta Bibi v. Deputy Education Officer (Women). Tehsil and District Sahiwal (1990 PLC (C.S.) 345):

An order of transfer of an employee passed in compliance of an order of a Provincial Minister was set aside as without lawful authority.

Muhammad Afzal v. District Education Officer (Female), Rahimyar Khan and 2 others (1989 PLC (S.C.) 677):

An order of termination from service passed in compliance of a direction of a Provincial Minister was set aside as without lawful authority.

Muhammad Asif v. Secretary Government of Punjab, etc. (1990 PLC (S.C.) 257):

In the matter of transfer of an employee, a Provincial Minister does not figure anywhere in the rules and administrative instructions.”

7. In view of the above legal position of the case, learned AAG and learned counsel representing respondent No.2, agreed for disposal of this petition with the direction to the competent authority to enquire into the allegation leveled against private respondent a fresh; and, submit the report to the competent authority for appropriate order. Petitioner also seeks disposal of this petition by setting aside the impugned order dated 31.05.2018.

8. In the light of the above facts and circumstances of the case, this petition is disposed of in the terms that the order dated 31.05.2018 passed by Chief Secretary Sindh is set aside. Consequently, the competent authority of the respondent-Education department is directed to initiate the disciplinary proceedings against respondent No.2 a fresh and consider all the pleas of the petitioner, by giving him an ample opportunity to produce the documentary evidence, if any, about misconduct of respondent No.2; and, respondent No.2 shall also be given a meaningful hearing by providing him the opportunity to produce all the documentary evidence in his defense. The aforesaid exercise shall be undertaken within three months from the date of order of this court. In meanwhile respondent, No.2 shall remain suspended.

9. This petition stands disposed of with no order as to costs.

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