

*Judgment Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No. D-5689 of 2019

**PRESENT:**

**Mr. Justice Muhammad Ali Mazhar**  
**Mr. Justice Arshad Hussain Khan**

*Abdul Qayoom Solangi Vs. Province of Sindh and 03 others*

Petitioner: Abdul Qayoom Solangi  
Through Mr. Abid S. Zuberi

Respondents: Province of Sindh & (03) three others.  
Through Mr. Shahryar Mehar, AAG.

Date of Hg: 04.11.2020

**JUDGMENT**

**ARSHAD HUSSAIN KHAN-J.** Through instant constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has made the following prayers: -

- “a) Declare the impugned order dated 10.08.2018, issued / passed by Respondent No.1, as illegal, arbitrary, malafide, having been passed in colourable exercise of powers and not sustainable in law and liable to be set aside.
- b) Declare that the order dated 27.08.2008 and 27.09.2008 whereby the petitioner was declared surplus and absorbed have been cancelled withdrawn by the respondent No.1 through impugned order dated 10.08.2018 is illegal, unlawful against the Law and Rules of Civil Servants.
- c) Declare that the order dated 15.02.2016 issued by the respondent No.2 without approval of the competent authority and in utter violation of Rule 9-A of the Sindh Civil Servants (Appointment, Promotion & Transfer ) Rules, 1974.
- d) Declare that the petitioner was lawfully declared surplus and absorbed in accordance with Rule 9-A of the Sindh Civil Servants (Appointment, Promotion & Transfer ) Rules, 1974.
- e) Declare that the petitioner was Assistant (BS-14) of defunct Sindh Agricultural Supplies Organization (SASO), which had been closed in year 2004 and then petitioner was declared surplus in accordance with law by the competent authority.

- f) Direct the respondents to pay all the salaries / arrears and other benefits to the petitioner on account that petitioner is not at fault but the respondent have issued the illegal impugned order dated 10.08.2018.
- g) Declare that the act of the respondents absorbed many colleagues of SASO who were declared surplus and absorbed in Excise and Taxation Department, only the petitioner is given different treatment in violation of Articles 9 and 25 of the Constitution 1973.
- h) Direct the respondents to act in accordance with law and rules of Sindh Civil Servants without any discrimination and violation of the law.
- i) Set-aside the impugned order dated 10.08.2018 issued / passed by Respondent No.1.
- j) Suspend the operation of the impugned order dated 10.08.2018, being perverse, illegal, arbitrary and not sustainable in law.
- k) Any other relief(s) as this Honourable Court deems fit and appropriate under the circumstances of the case may be granted to the petitioner.”

2. Facts giving rise to instant petition are that the petitioner on 05.06.1995 was offered employment in the Sindh Agricultural Supplies Organization [SASO] as Assistant [BPS-11] on a probation period of one year. Subsequently, services of the petitioner were regularized in the SASO and Service Book was issued to the petitioner. The petitioner performed his duties to the utmost satisfaction of his superiors till the day, the SASO was ordered to be wound up. The services of all the employees of SASO stood dispensed with wef: 31.01.2004 and under the Scheme of Golden Handshake, introduced by the competent authority, the employees of SASO who accepted the offer of Golden Handshake were relieved. However, eighteen (18) employees of different grades were declared surplus and their services were placed at the disposal of respondent No.3 [The Secretary Excise, Taxation & Narcotics Department] for their absorption in any Sindh Government Department. It is stated that though initially the petitioner was not declared surplus along with his other colleagues, however, subsequently, upon representation to Chief Minister Sindh, on 26.08.2008, the petitioner was declared surplus and his services were placed at the disposal of surplus pool of respondent Nos. 1 & 2 for

absorption in any government department. The petitioner, while being in surplus pool, was ultimately ordered to be absorbed against the vacant post as Excise and Taxation Inspector [BPS-14] in the Excise and Taxation Department with immediate effect by order dated 27.09.2008 and 29.09.2008 issued by respondent Nos. 1, 2 and 3, as all the posts falling in BPS-11 were already up-graded to that of BPS-14, under Notification issued by the Finance Department. It is also stated that subsequently a false and baseless complaint was moved stating that the petitioner had forged the documents with regard to his grade as he was originally an employee in BPS-05 in SASO but by forging his appointment order in BPS-11 as an Assistant, the petitioner got himself appointed as Excise & Taxation Inspector [ETI] in the Excise & Taxation Department. Upon the said complaint, a preliminary enquiry was conducted by the Deputy Secretary of the Excise Department, who recommended that the petitioner should be reverted back to his original position i.e. junior clerk in the first instance. Pursuant thereto, the petitioner was relieved from Excise Department to report SGA & CD. The petitioner filed C. P. No.D-08/2009 in this Court against the said inquiry. Subsequently, on the directions of Chief Minister dated 12.02.2009, an enquiry was conducted by respondent No.2 who later on submitted his report that the complaint has no weight. The said report was also approved by respondent No.1/Chief Secretary, who subsequently issued letter dated 26.03.2009 to respondent No.3 for release of withheld salary to the petitioner. Upon closer of the inquiry proceedings, the petitioner withdrew the said petition.

It is further stated that after closure of the above inquiry, after a lapse of about 10 years, the Excise & Taxation Department, vide letter dated 28.01.2016, addressed to respondent No.2, seeking cancellation of petitioner's absorption as ETI as well as his reversion to his original post, junior clerk [BPS-05] as previously held in SASO. Consequently, respondent No.2, vide its order dated 15.02.2016, whereby order dated 27.09.2008 was cancelled / withdrawn and the petitioner was repatriated to his parent department i.e. Agriculture Department immediately. The petitioner filed appeal dated 08.03.2016 before the Chief Minister against his illegal and unlawful repatriation to respondent No.4 [The Secretary, Agricultural Department]. The

petitioner also filed CP No.965/2016 before this Court against the repatriation order dated 15.02.2016 and this Court, vide order dated 23.11.2016, directed respondent No.1 to conduct an enquiry to show that the petitioner was originally employed in SASO in BS-11 as Assistant and further directed to respondent No.2 to look into the matter if the salary of the petitioner is found unpaid, necessary steps be taken for the release of salary of the petitioner. Pursuant thereto the petitioner's salaries were released and the petitioner also received arrears of salaries on 23.01.2018. It is further stated that CP No.D-965/2016, was disposed of by this Court, vide judgment dated 25.01.2018. The petitioner assailed the said judgment before the Honourable Supreme Court of Pakistan in Civil Petition No.D-325-K of 2018. The Honourable Supreme Court, vide order dated 17.07.2018, dismissed the petition with the observations that the petitioner may approach the High Court for non-compliance as the High Court has the powers to implement its own judgment in accordance with law. Consequently, the petitioner filed contempt application [Misc.24060/2018] against the then respondents 1, 2 & 3 for non-compliance. The respondents filed order dated 10.08.2018 [impugned herein] issued by respondent No. 1 in compliance of the judgment of this Court but the compliance of the judgment was not in letter and spirit as directed by High Court in Para-20 of the judgment. Therefore, the petitioner, having been dissatisfied with the compliance order dated 10.08.2018, filed yet another contempt application bearing CMA 33732/2018 against the Chief Minister Sindh. Subsequently, the said application was dismissed by this Court, vide order dated 08.11.2018 on the ground that the respondents have substantially complied with the judgment dated 25.01.2018 and as such no case of contempt was made out against the alleged contemnor. Thereafter, the petitioner filed Civil Petition No.1467-K/2018 against the dismissal order dated 08.11.2018 before the Honourable Supreme Court of Pakistan, which was also dismissed, vide order dated 18.07.2019. In the circumstances, the petitioner, having no other equally efficacious remedy available under the law, invoked the constitutional jurisdiction of this Court through instant petition.

3. Upon notice of the present petition, parawise comments on behalf of respondents 1 & 2 were filed refuting the contents of the memo of petition. Inter alia, it has been stated that the C.M. Secretariat forwarded a complaint made by Mr. Ahmed Sufyan Khan, against the petitioner, disclosing therein that the petitioner was Jr. Clerk in SASO, at Sukkur, who by committing forgery managed his documents and got absorption in BPS-11/14 rather than BS-05. The said complaint was subsequently forwarded to E&T Department to conduct an enquiry into the matter. Accordingly, the E & T Department appointed Mr. Shafiq Ahmed Shaikh, the then Dy. Secretary as Enquiry Officer, who conducted enquiry and recommended (i) Not only Mr. Abdul Qayoom Solangi may be taken to task under relevant rules and laws for fraudulent act committed by him but also against all officials at the helm of affairs irrespective of their rank and status who helped him with ulterior motives and (ii) Mr. Abdul Qayoom Solangi should be reverted to his original position i.e. Jr. Clerk in the first instance. It has been stated that the E & T Department on receipt of enquiry report from SASO moved a note for Chief Secretary, Sindh, proposing for repatriation of services of the petitioner to SGA & CD. The then Chief Secretary Sindh agreed and passed orders to proceed against the petitioner under RSO-2000 for forgery and misconduct. It has been further stated that the impugned order has been issued on the basis of enquiry report conducted in pursuance of the directions of this Court in CP No.965 of 2016 and as such the same is not liable to be set aside. Lastly, it has been stated that in the light of the order dated 08.11.2018, passed by the High Court of Sindh at Karachi in CP No.965 of 2016 and order passed on 18.07.2019 by the Honourable Supreme Court of Pakistan, instant petition may be disposed of.

4. Respondent No.3, the Secretary, Excise, Taxation & Narcotics Department, Government of Sindh, has also filed parawise comments to the petition admitting more or less all the facts of the petition. However, in reply to para-13 to the petition, it has been stated that the petitioner may be put to strict proof as to the allegations of purported “departmental intrigue and jealousy” as well as victimization to the petitioner by respondent No.3. The actions of respondent No.3 are based on merit, lawful and proper. It has been stated that the orders of

respondent No.3 for transfer and posting are purely administrative imperatives and lawfully issued in the best interest of the Department. It has also been stated that the petitioner may be put to strict proof as to when respondent No.3 had admitted to the appointment of the petitioner as an Assistant [BS-11] in SASO as claimed in the ground "L" of the petition. Lastly, it has been prayed that the petition may be disposed of in view of parawise comments.

5. Similarly, parawise comments on behalf of respondent No.4 have been filed stating therein that on the directions of this Court, vide order dated 23.11.2016, passed in CP. No.965 of 2016, the then Chief Secretary, Government of Sindh, had conducted an enquiry in the matter in hand and after hearing the representatives of the department and particularly the petitioner had determined that the substantive post of the petitioner was junior clerk [B-05]. It has also been stated that in order to ascertain the actual designation of the petitioner, ex-employee of SASO [Defunct], the Director General Agriculture Extension Sindh, Hyderabad, was directed to conduct an enquiry, vide letter No.SO(A-IV)17(3)492/SASO/08 dated 22.04.2016, whereupon the Director General, Agriculture Extension, Sindh, Hyderabad, reported that the petitioner was appointed as junior clerk [BS-05] in SASO on 09.06.1996. Further the petitioner had claimed Golden Handshake as junior clerk [BS-05] and in this regard the petitioner also received amount of Rs.16200/- on account of encashment of 180 days earned leave, which was one part of the golden handshake scheme. It has been further stated that respondent No.2, vide letter dated 05.12.2016, requested to this department for release of salary. In pursuance thereof it was apprised to Section Officer [LR] SG&CD that Mr. Solangi has not yet submitted his joining / duty report in this department and as such department is not in a position to release his pay/salary.

6. During the course of arguments, learned counsel for the petitioner while reiterating the contents of the petition has contended that the impugned order has been issued in violation of Article 25 of Constitution of Islamic Republic of Pakistan 1973, as well as discriminatory in nature as such is not sustainable in law. It is further contended that respondent No.1 while issuing the impugned order has completely failed to take into account the directions of this Court

passed in constitutional petition D-965 of 2016, filed earlier by the present petitioner. In fact, respondent No.1 failed to comply with the directions of this Court issued in C.P. No. D-965 of 2016 in letter and spirit. Learned counsel further contended that through the impugned order, in fact, the respondents punished the petitioner by repatriating him to his parent department, which was abolished in the year 2004 and is not in existence as such the act of the respondents is arbitrary being based on malice liable to be set aside. It is also contended that the petitioner has legal right to be dealt with in accordance with law and violation thereof amounts to infringement of fundamental rights guaranteed under the Constitution and as such the same is reviewable under writ jurisdiction of this Court. Lastly, contended that the petitioner has no other efficacious and adequate remedy available under the law except to invoke the constitutional jurisdiction of this Court and as such is entitled to the reliefs claimed in the case.

7. Learned AAG, representing the respondents, in his arguments also reiterated the contents of para-wise comments filed on behalf of the respondents. He while supporting the impugned order has vehemently opposed the petition.

8. We have heard learned counsel for the parties and have perused the material available on the record.

From perusal of the record, it appears that the petitioner against the order dated 15.02.2016 issued by respondent No.2, whereby his absorption order dated 27.09.2008 in Excise & Taxation department as Inspector (BS-14) was cancelled, had earlier filed C.P D-No.965 of 2016 before this Court against the present respondents. Subsequently, this Court, vide its detailed judgment dated 25.01.2018, disposed of the aforesaid petition. Relevant portions whereof for the sake of ready reference are reproduced as under:

“20. In the wake of above discussion, the aforementioned Constitutional Petitions are disposed of in the following terms along with pending application(s):-

- (a) Government of Sindh/Competent Authority is directed to take decision whether Petitioner's initial appointment in (Defunct) SASO is as Junior Clerk in BPS-5, now in BPS-11 or as Assistant in BPS-11.
- (b) The Competent Authority to pass an appropriate order as provided under Rule 9-A of Sindh Civil Servants

(Appointment, Promotion and Transfer) Rules 1974, and the dicta laid down by the Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch & others vs. Province of Sindh & others [2015 SCMR 456], after granting Petitioner in C.P No.965 of 2016 a meaningful hearing within a period of two months.”

9. Record further transpires that the petitioner has challenged the above said judgment before the Honorable Supreme Court of Pakistan in Civil Petition No.325-K of 2018, which was disposed of vide order dated 17.07.2018. Although the petitioner in the present petition has not annexed Memo of the Civil Petition whereby it could be ascertained that what grounds were taken by the petitioner to challenge the judgment of this Court, however, from the order passed on 17.07.2018 it appears that the petitioner only sought implementation of the judgment of this Court. Relevant portion of the order dated 17.07.2018 passed by the Honourable Supreme Court in Civil Petition No.325-K of 2018 for the sake of convenience is reproduced as under:

“ 2. Petitioner, present in person, states that his grievance is not being redressed and the competent authority despite judgment rendered on 25.01.2018 has not rendered any hearing to decide the matter as per direction of the High Court. The learned High Court vide impugned judgment directed the competent authority to pass an appropriate order within two months. The petitioner may approach the learned High Court for non-compliance and/ order against the authority concerned as it is the High Court who is competent to implement its own judgment in accordance with law. No case for interference is made out. This petition is accordingly dismissed and leave is declined.”

10. Record also transpires that the petitioner after passing of the above order filed contempt application before this Court in CP No.D-965 of 2016 upon which notices were issued, however, in the meantime respondent No.1, in compliance of order dated 25.01.2018, [date of hearing 21.12.2017] passed in CP No. D-965 of 2016, issued Order dated 10.08.2018 [impugned herein] whereby the earlier order for petitioner’s surplus and absorption in Excise & Taxation Department was cancelled /withdrawn and the petitioner was relieved from Excise & Taxation Department to join his parent department, respondent No.3. The impugned order for the sake ready reference is reproduced as under: -



“ No. SO(LR) SGA&CD-11(38)2008

Government of Sindh  
Service, General Administration  
& Coordination Department

Karachi dated the 10<sup>th</sup> August, 2018

ORDER

In pursuance of judgment dated 21.12.2017 passed by Honourable High Court of Sindh in CP No.D-965 of 2016 filed by Mr. Abdul Qayoom Solangi and with the approval of Competent authority, i.e., Chief Minister Sindh, this Department's order of even No. dated 26.08.2008 and 27.09.2008 regarding declaring Surplus and absorption in respect of Mr. Abdul Qayoom Solangi, ex-surplus employee of defunct SASO (Larkana & Sukkur) as Excise & Taxation inspector (BS-14), in Excise and Taxation Department is hereby cancelled/withdrawn and declared as ab-initio being (out of cadre) and he stands relieved from the Excise & Taxation Department to join his parent department i.e., Agriculture, Supply & Prices Department immediately.

II

Mr. Abdul Qayoom Solangi, Junior Clerk (BS-11), ex-surplus employee of defunct SASO, is hereby repatriated to his parent Department i.e., Agriculture, Supply & Prices Department and Administrative Department is hereby directed to accommodate him to the vacant post of junior Clerk (BS-05) now up-graded in BS-11 or any other equivalent post in its one of formation, as SASO does exist now and also to grant him back dated seniority, on the same analogy as has been done in the case of Mr. Ali Azhar Khan Baloch. Meanwhile, the Petitioner may also be accorded personal hearing by the Secretary, Agriculture Department in line with the judgment of the Honourable High Court of Sindh at the date and time as convenient to him.”

11. Subsequently, the petitioner having been dissatisfied with the impugned order filed yet another contempt application in the CP No. D-965 of 2016 stating therein that the order issued by respondent No.1 is not the true compliance of judgment dated 25.01.2018 [date of hearing 21.12.2017] passed in CP No. D-965 of 2016 and as such a true compliance of the judgment of this Court is required to be made in letter and spirit. The said contempt application subsequently, on 08.11.2018 was disposed of by this Court. Relevant portion of the said order is reproduced as under:-

“7. ....We are cognizant of the fact that Petitioner belonged to (Defunct) SASO, and its employee were not civil servants, therefore, we observed in the Judgment dated 25.01.2018 that his absorption/retaining him in Excise and Taxation cadre was not sustainable in law. Prima-facie, the Respondents have rightly relieved him to his parent department vide order 10.08.2018.

8. In the light of above averments, the Petitioner in his contempt application has highlighted the violation of the judgment dated

25.01.2018 passed by this Court. In the Contempt Proceedings, we cannot enlarge the scope of disposal order dated 25.01.2018 passed by this court and allow the parties to argue the matter on merits of the case or refer the matter to the respondents for further deliberation on the issue.

9. The explanation offered by the respondent vide order dated 10.08.2018, prima facie, is tenable under the law as the case of petitioner was considered by the Competent Authority on the aforesaid issue and submitted compliance report, which is without exception.

10. In view of the fact and circumstances of the case and for reasons alluded as above, we are satisfied with the explanation furnished by the alleged contemnor that substantial compliance of the judgment dated 25.01.2018 passed by this Court has been made in its letter and spirit, therefore, at this juncture, no case for initiating contempt proceeding is made out against the alleged contemnor. Thus, we are not inclined to continue with any further on the listed application bearing CMA 33732/2018, having no merits is accordingly dismissed.”

The petitioner challenged the above order as well before the Honourable Supreme Court of Pakistan in Civil Petition No.1467-K/2018. However, the said Civil Petition was dismissed, vide its order dated 18.07.2019; relevant portion whereof is reproduced as under:-

“ 2. In view of 5-Member judgment of this Court reported in the case of West Pakistan Water & Power Development Authority versus Chairman, National Industrial Relations Commission (PLD 1979 SC 912) such an order of the High Court is not appealable. When confronted with such judgment of this Court, the learned ASC for the petitioner was unable to show any other law pursuant to which present petition could be found to be maintainable.

3. Having heard the learned ASC for the petitioner, we find that the present petition is not sustainable in terms of judgment of this Court referred to above. This petition, as a consequence, is dismissed and leave to appeal is declined.”

12. The petitioner after passing of the above orders, once again challenged the order 10.08.2018 in the present petition almost on the same facts and grounds he had already taken in his earlier CP No. 965 of 2016 as well as in contempt applications, which were disposed by this Court after taking into consideration each and every fact of the petitioner’s case, vide its detailed judgment dated 25.01.2018 and order dated 08.11.2018 respectively. The said orders though were challenged by the petitioner before the Honourable Supreme Court of Pakistan, however, he failed to get any relief therefrom and as such the above orders have attained finality.

13. In the present petition, it is mainly contended that the respondent No.1 while passing the impugned order has failed to comply with the directions of this Court issued in CP. No. D-965 of 2016 in letter and spirit. Record shows that the impugned order has been passed in pursuance of the directions issued in CP No. 965 of 2016, which was also assailed before the same Bench who had passed the judgment dated 25.01.2018, in contempt application on the similar grounds as that of in the present petition. However, the same learned Bench of this Court while showing its satisfaction to the compliance of judgment dated 25.01.2018, dismissed the said contempt application through a detailed order dated 08.11.2018; relevant portions whereof were reproduced in the preceding paras. Since the very same learned Bench who passed the order has shown his satisfaction towards the impugned order as such the same cannot be challenged again in the present petition on any of the grounds mentioned in the petition. More particularly, when the orders passed in CP No. D-965 of 2016, though assailed before the Honourable Supreme Court, has already attained finality as the Honourable Supreme Court upheld the said orders. Even otherwise, it is also settled law that successive petitions on the same cause of action are not competent. Reliance can be placed on the cases of Mirza Maqbool Ellahi v. Capital Development Authority, Islamabad [1998 SCMR 1074], Dr. Hassan Bux Rind and 11 others v. Province of Sindh and 3 others [2011 PLC (C.S.) 228] and Humair Altaf v. Federation of Pakistan [2018 CLC 1632]

14. It may be noted that the jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. Reliance, in this regard can be placed on the judgment authored by one of us, [Muhammad Ali Mazhar, J.] reported as Muslim Commercial Bank Ltd. Through Attorney Vs. Abdul Waheed Abro and 2 others (2015 PLC 259).

15. Besides above, from perusal of the record it appears that the impugned order has been passed on the basis of report wherein it was alleged that the petitioner by committing forgery and misconduct managed his documents and got absorption in BPS-11/14 rather than

BS-05, although such fact has vehemently been disputed by the petitioner, however, the dispute whether the petitioner has committed any forgery or not can only be resolved after recording evidence, which exercise cannot be done in the writ jurisdiction of this Court. It is also well settled that the extraordinary jurisdiction of this Court under Article 199 of the Constitution of Pakistan is intended primarily for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by courts having plenary jurisdiction in the matter. Reliance can be placed on the case of Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others (2011 SCMR 279) wherein the Honourable Supreme Court Pakistan, inter alia, has held under:

“6. It is worth mentioning that it is mandatory and obligatory for a party invoking the Constitutional jurisdiction to establish a clear legal right which should be beyond any doubt and controversy. In the light of alleged forgery and fraud as pointed out by learned Additional Advocate General, we are of the considered view that legal right and entitlement of the petitioners are controversial. It hardly needs any elaboration that disputed question of fact cannot be decided in constitutional jurisdiction.....”

“7.....”

“8. The upshot of the above discussion is that learned single judge in chambers has rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused.”

The upshot of the above discussion is that we find no justification for exercising discretionary and/or extraordinary constitutional jurisdiction of this Court in the matter in hand. Consequently, the writ petition is dismissed.

JUDGE

Karachi;

Dated:

JUDGE