

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. C.P. No.D- 257 of 2013
2. C.P. No.D- 841 of 2013
3. C.P. No.D-1133 of 2013
4. C.P. No.D- 1696 of 2013
5. C.P. No.D- 383 of 2014
6. C.P. No.D- 503 of 2014
7. C.P. No.D- 2989 of 2017
8. C.P. No.D- 3169 of 2017

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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18.01.2022

M/s. Mohsin Raza Gopang and Nazeer Ahmed Bhatti, Advocates for the petitioners in C.P. Nos.D- 257/2013, 841/2013, 1133/2013, 1696/2013, 383/2014, 503/2014 and 3169/2017.

Mr. Muhammad Arshad S. Pathan, Advocate for the petitioners in C.P. No.D- 2989/2017.

Mr. Rafique Ahmed Dahri, Assistant A.G. Sindh.

Mr. Khalid Saeed Soomro, Advocate for respondents (Chief Officer/Administrator/Account Officer, District Council Dadu).

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J U D G M E N T

SALAHUDDIN PANHWAR, J.- All the above *referred Constitutional Petitions* are being taken up, heard and disposed of vide this **single Judgment**, as common questions of **law** and **facts** are involved therein. Basically, the Petitioners by invoking jurisdiction of this Court are seeking direction to the respondents to **release** their monthly **salary**, which has been **stopped** from the date of their **appointment** and up-to-date.

2. The petitioners have mainly *averred* in their petitions that they were *appointed* on various posts **SUG** and **non-SUG** cadre, in the year **2012** and onward in **District Council Dadu**. And after fulfilling all the **codal** formalities, they *resumed* their duties at their respective places of posting and some of them *received* their **salaries** for a **month**. Per petitioners, they have been working on their *respective* posts till **today**, but their *salaries* have not been *paid*. The Petitioners *protested* and *approached* the respondents, but they kept them on hollow hopes. It has also asserted that the **Respondent**-District Council had acted **without lawful** authority, thus has violated the basic provision of **Article-199** of the Constitution of the Islamic Republic of Pakistan **1973**. The

Petitioners, in support of their version, have *relied* upon various **documents** attached with the memo of Petitions i.e. **advertisement, appointment orders, medical letters** and other documents. Hence they being *aggrieved* by and **dissatisfied** with the aforesaid action of the *Respondents* have filed the instant **Petitions** with the following prayers :-

"C.P. No.D- 257 of 2013.

- a) That this Honourable Court may be pleased to **direct** the respondent **No.03** and **04** to **release** the **salaries** of all the petitioners of all the **outstanding** Months *immediately* and this Honourable Court may further be **pleased** to **declare** the act of **non-payment** of the Salaries of the petitioners by the Respondent **No.03** and **04** as **null** and **void**.
- b) That this Honourable Court may further be pleased to **direct** the Respondent **No.03** and **04** for **not** causing any sort of **harassment** to the petitioners in any manner whatsoever.
- c) Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances.
- d) Costs be borne by the respondents.

C.P. No.D- 841 of 2013

- a) That this Honourable Court may be pleased to direct the respondent **No.03** and **04** to release the **salaries** of all the petitioners of all the *outstanding* Months immediately and this Honourable Court may further be pleased to declare the **act** of non-payment of the **Salary** of the petitioners by the Respondent **No.03** and **04** as **null** and **void**.
- b) That this Honourable Court may further be pleased to direct the Respondent No.03 and 04 for not causing any sort of harassment to the petitioners in any manner whatsoever.
- c) Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances.
- d) Costs be borne by the respondents.

C.P. No.D- 1133 of 2013

- a) That this Honourable Court may be pleased to direct the respondent **No.03** and **04** to release the **salaries** of the petitioners of all the *outstanding* Months immediately and this Honourable Court may further be pleased to **declare** the **act** of **non-payment** of the Salary of the petitioners by the Respondent **No.03** and **04** as **null** and **void**.
- b) That this Honourable Court may further be pleased to direct the Respondent **No.03** and **04** for not *causing* any sort of **harassment** to the petitioners in any manner whatsoever.

- c) Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances.
- d) Costs be borne by the respondents.

C.P. No.D- 1696 of 2013

- a) That this Honourable Court may be pleased to **declare** the letter **No./SO-III(LG)6-18/2013/2594** dated **21.06.2013** and impugned order whereof bearing **No.GD/Estt/2013/133**, dated **11.07.2013**, as illegal, ultra vires, **null** and **void**, ab-initio in the eyes of law, while **directing** the Respondents to deal with the petitioners strictly in accordance with relevant Law and procedure.
- b) That this Honourable Court may also further be pleased to direct the Respondent **No.03** and **04** to **allow** the Petitioners to **resume** their duties at their places of posting as mentioned above.
- c) That this Honourable Court may further be pleased to direct the respondents to release the Salaries of the petitioners forthwith without any further delay, while declaring the act of not releasing the Salaries of the Petitioners as illegal, ultra vires, null and void ab/initio.
- d) that this Honourable Court may further be pleased to **direct** the respondent **No.03 & 04** for not causing any sort of harassment to the petitioners in any manner whatsoever in future.
- e) That this Honourable Court may also further be pleased to grant Ad-interim / Permanent Injunctions against the respondents restraining them from implementation of impugned order **No.GD/Estt/2013/133**, dated **11.07.2013**, through themselves or through their subordinates, while suspending the same impugned order till disposal of present petition.
- f) Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances.
- g) Costs be borne by the respondents.

C.P. No.D- 383 of 2014

- a) That this Honourable Court may be pleased to **declare** the letter **No./SO-III(LG)6-18/2013/2594** dated **21.06.2013** and impugned order whereof bearing **No.GD/Estt/2013/133**, dated **11.07.2013**, as **illegal**, ultra vires, null and void, ab-initio in the eyes of law, while directing the Respondents to deal with the petitioners *strictly* in accordance with relevant Law and procedure.
- b) That this Honourable Court may also further be pleased to direct the Respondent **No.03** and **04** to allow the Petitioners to resume *their* duties at their places of posting as mentioned above.
- c) That this Honourable Court may further be pleased to direct the respondents to release the Salaries of the petitioners forthwith without any further delay, while declaring the act of not releasing the Salaries of the Petitioners as illegal, ultra vires, null and void ab/initio.

- d) that this Honourable Court may further be pleased to direct the respondent **No.03 & 04** for not causing any sort of harassment to the petitioners in any manner whatsoever in future.
- e) That this Honourable Court may also further be pleased to grant Ad-interim / Permanent Injunctions against the respondents restraining them from implementation of impugned order No.GD/Estt/2013/133, dated **11.07.2013**, through themselves or through their subordinates, while suspending the same impugned order till disposal of present petition.
- f) Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances.
- g) Costs be borne by the respondents.

C.P. No.D- 503 of 2014

- a) That this Honourable Court may be pleased to declare the **letter No./SO-III(LG)6-18/2013/2594** dated **21.06.2013** and impugned order whereof bearing **No.GD/Estt/2013/133**, dated **11.07.2013**, as **illegal**, ultra vires, null and void, ab-initio in the eyes of law, while directing the Respondents to deal with the petitioners strictly in accordance with relevant Law and procedure.
- b) That this Honourable Court may also further be pleased to direct the Respondent **No.03** and **04** to allow the Petitioners to resume/continue their duties at their places of posting as mentioned above.
- c) That this Honourable Court may further be pleased to direct the respondents to release the Salaries of the petitioners forthwith without any further delay, while declaring the act of not releasing the Salaries of the Petitioners as illegal, ultra vires, null and void ab/initio.
- d) that this Honourable Court may further be pleased to direct the respondent No.03 & 04 for not causing any sort of harassment to the petitioners in any manner whatsoever in future.
- e) That this Honourable Court may also further be pleased to grant Ad-interim / Permanent Injunctions against the respondents restraining them from implementation of impugned order No.GD/Estt/2013/133, dated **11.07.2013**, through themselves or through their subordinates, while suspending the same impugned order till disposal of present petition.
- f) Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances.
- g) Costs be borne by the respondents.

C.P. No.D- 2989 of 2017

- a) The Honourable Court may be pleased to direct the respondents No.3 to 5 to release the salaries of all petitioners for their outstanding months/arrears immediately/forthwith and further direct the respondents to regularize the salaries by issuing it regular without it delay. Further declare that act of non-payment

of salaries of the petitioners by the Respondents No.3 to 5 illegal, unlawful act.

- b) That the Honourable Court may be pleased to direct the Respondents No.3 to 5 for causing no any sort of harassment to petitioners in any manner whatsoever.
- c) Any other relief which this Honourable Court deem fit and proper.
- d) Costs of the petition.

C.P. No.D- 3169 of 2017

- a) That this Honourable Court may be pleased to declare the **letter No./SO-III(LG)6-18/2013/2594** dated **21.06.2013** and impugned order whereof **bearing No.GD/Estt/2013/133**, dated **11.07.2013**, as illegal, ultra vires, null and void, ab-initio in the eyes of law, while directing the Respondents to deal with the petitioners strictly in accordance with relevant Law and procedure.
- b) That this Honourable Court may further be pleased to direct the respondents to release the Salaries of the petitioners forthwith without any further delay, while declaring the act of not releasing the Salaries of the Petitioners as illegal, ultra vires, null and void ab-initio.
- c) That this Honourable Court may further be pleased to direct the respondent No.03 & 04 for not causing any sort of harassment to the petitioners in any manner whatsoever in future.
- d) Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances.
- e) Costs be borne by the respondents."

3. Pursuant to the notices, respondents No.03 and 04 have filed their comments, which are available at **page-649**. Being relevant, contents of the same are **reproduced** as under:-

"02. That the contents of Para No.2 of the petition are denied. It is submitted that **no advertisement has been published** in any widely circulated newspaper inviting applications for particular posts, grade and experience as required according the post applied, which is in contravention of the standing orders of the Governments coupled with the **article 18 of Constitution of Pakistan** and standing **orders of the Hon'ble Supreme Court** passed in Human Rights **Case No: 104/1992** dated; **19-01-1993**. Which is reproduced as under:-

*"While enquiring in to various complaints of violation of fundamental/human rights, it has been found that the federal Government, Provincial Governments, Statutory Bodies and Public Authority have been making **initial recruitments**, both Adhoc & Regular to posts and offices **without** publicity and properly **advertising** the vacancies and at times converting adhoc appointments in to regular appointments. This **practice** is prime facie **violation** of fundamental rights as the **Articles***

*18 of Constitution guarantees to every citizen freedom of professions. Subject to notice to the all concerned and subject to final orders after full hearing in the matter, it is **ordered** as an interim measure that the violation of this Fundamental/Human Right shall be **discontinued** forth with. Steps shall immediately be taken to rectify so as to bring the practice in accord with the constitutional requirements".*

i)- That the **administrator** was not *empowered* to appoint any official in the District Council. The requirement for any appointment is **firstly** the resolution is to be placed in the Council seeking **permission** for **appointment** of any post and **secondly** after approval from council the same posts are to be **filled** by **advertising** the required posts for which the Committee is to be constituted by the Chairman.

These **formalities** were not **complied** with which shows that all the orders were **fake**, false, fictitious and frivolous.

ii)- **In fact** the than **Administrator** sought permission **vide letter No: DC/DU/-38**, dated **7th March 2011** from the Secretary Government of Sindh, Local Government Department in which **25** vacant posts have been mentioned and the Secretary Local Government Department has approved the **permission** of **25** posts **subject to completion** of all required codal formalities in this regard vide his letter **No: SO-III(LG)6-14/2012** dated **20th March 2012**, but the than Administrator had misused his powers and made **fake appointment** of **284** persons which was neither permitted nor was under his **competency**.

iii)- It is also important to note that the than **Deputy Commissioner Dadu** had requested the Sectary Local Government Department, Government of Sindh Karachi **that 284 fake appointments** were made without observing the codal and legal formalities vide his letter **No: DC/PA/514/2013** dated **05-06-2014** and requested the Government to **conduct inquiry**. Consequently the Secretary Local Government Department, Government of Sindh Karachi cancelled the appointments referred to above vide order **SO-III(LG)/6-18/2013** dated **21st June 2013** and the than Chief Officer District Council Dadu in compliance with the orders of the Sectary Local Government Department, **cancelled** the Appointments Orders vide order No: **GD/Estt/2013/133/** dated: **11-07-2013** but *subsequently* the same Chief officer District Council Dadu with malafide intention passed the order keeping the same appointments in abeyance referring to the Government General order **No: PA(AS-HTP)Enq/Appointments/06/12/13** dated: **06 -11-2013** of Sectary Local Government, but in fact the above letter relied upon by the Chief Officer has no concern what so ever to the cancellation order passed by the Sectary Local Department.

iv)- It is also very important to mention here that the Sitting Chairman District Council Dadu requested vide his **letter No GD/Estt/168/2018**, dated **19-02-2018** to the Secretary Local Government Deptt: to verify whether any permission was accorded to the than Administrator District Council Dadu for appointing against existing vacancies in the District Council Dadu in that reply to the letter of Chairman, the **Sectary Local Government Department informed vide letter No. SO-III(LG)/6-14/2012 dated 28th February 2018** that the permission was accorded to appoint only **appoint 25 persons** against the different posts (**BPS-02**) (**PBS-8**).

v)- That some posts such as Sub Engineer, Accounts Officer and Chief Officer are to be appointed by the Secretary Local Government being (**SCUG**) Sindh Council Unified Grade and the reaming posts such as Naib Qasid, Clerk Chowkidar etc are to be appointed by the Chairman District Council with the approval of Council being **Non SCUG**, but in this case the **powers** of Sectary have also been **utilized** by the **Administrator** by appointing **SCUG** posts such as Sub Engineer (**BPS-11**) etc.

vi) That the petitioners have **neither** produced any **academic** prescribed or even **experience** certificates **nor** the **attendance** certificate have been produced by any of the petitioner which shows that they had **attended** any **branch** of office of the District Council in **compliance** of **fake** order. As against this Chairman District Council Dadu has obtained statement from various branches working under him regarding the petitioners on which all the head of branches submitted statements that no such person has even attended his branch.

(Such Documents are submitted as annexure A to M)

03. That the contents of Para **No.3** are replied that since the very appointments of the petitioners were not in accordance with law nor observing required formalities, than there is no question for approaching to the Civil Surgeon for Medical Examination and if so the Medical certificates has got no legal sanctity.

It is also pertinent to mention here from the perusal of their alleged **medical fitness certificates** it is clear that there is very much **contradictions** in the number of series of **offer orders**, signatures and hand **writing** of the Medical Officers which clearly shows that the how it is possible that one and same day more than **187** persons were medically examined by one and same Civil Surgeon Dadu having different signatures."

As well as the respondents have also taken additional pleas, which are that:

"Some Additional Pleas

1. That the fake orders were passed by the **Ex-cadre** persons posted temporally who have filed their comments **admitting** the

claim of the petitioners as valid may not be **considered** as they had malafidely issued **fake** orders and same persons have filed Comments.

2. That the comments by the sitting Chairman may be considered in place of comments filed earlier by the than Administrator.

3. That it is important mention here that since the Distinct Council came in to being till **2012** the total strength of district Council Dadu is not even **284** than how at the short time the huge quantity of **284** persons could be appointed which is beyond the powers of Administrator and financial capacity of District Council."

4. Learned counsels for the petitioners, *inter alia*, while arguing the case, placed reliance upon the cases of **Administrator, District Council, Larkana and another Vs Ghulab Khan and 5 others** (2001 SCMR 1320), **Muhammad Akhtar Shirani and others Vs Punjab Text Book Board and others** (2004 SCMR 1077) and **Muhammad Jameel and 45 others Vs Taluka Nazim, Taluka Municipal Administration Khairpur and 5 others** (2014 P L C (C.S.) 479), and contended that the petitioners were appointed in accordance with law; that they appeared in **walk-in-interview** and after getting the appointment orders **joined** their service(s) as well as they are **discharging** their respective duties and during the period they were *transferred* from **one** place to another; whereas the respondents have **withheld** their **salaries** on the pretext of their **appointments** being **bogus** and **fake** in all respects.

5. In contra, learned counsel for the respondents/District Council, Dadu as well as the learned **A.A.G Sindh** contended in line of their comments/replies that there was no advertisement issued. All **documents** produced by the petitioners having **overwriting** hence are managed. As per record permission for **appointment** on **25** sanctioned posts was **obtained**, whereas in total **284** persons *including* **petitioners** were appointed beyond the mandate of the District Council. They also contend that the petitioners are falling within both cadres of **SUG** and **non-SUG** and the respondents/District Council was **not competent** to appoint any person on the posts which are falling under **SUG** cadre. Learned Counsel for respondents/District Council *invited* **attention** of this Court, that as per report submitted by the Deputy Commissioner, Dadu, the basic appointments of most of the petitioners in the present petitions have been declared as "**Fake**". Therefore, at this *juncture* no *premium* can be given to them by this Court.

6. **After** hearing the *contentions* raised by the learned counsel for the respective parties as well as *examining* the entire record *meticulously*, it is a

matter of **fact** that the advertisements has not been field. Whereas some document(s) placed in **C.P. No.D- 1696** of **2013** by *claiming* the same as **advertisement**, but it is not a newspaper cutting, but it is only a **simple copy** that can be **prepared/managed** by using the computer *device*, hence it is *apparently* a fake document. **Further**, unambiguously the authority/respondents *firstly* not competent to **recruit 284** persons/appointment, *secondly* in **SUG Cadre**. Nonetheless, learned counsel for respondents/District Council has also *referred* an **inquiry** which was **conducted** by the Deputy Commissioner, Dadu and such report is available at *page-665 of the Court file*). It appears that while *inquiring* into the matter, the Deputy Commissioner has made *reference* to the **judgment** dated 19.01.1993, passed by Hon'ble Apex Court in **Human Right Case No.104 of 1992**, which states that *"While enquiring into various complaints of violation of Fundamental/Human Rights, it has been found that the Federal Government, Provincial Governments, Statutory Bodies and Public Authorities have been making initial recruitments, both Adhoc and Regular to posts and offices without publicity and properly advertising the vacancies and at times converting adhoc appointments in to regular appointments. This practice is prima facie violation of fundamental rights as the Articles 18 of constitution guarantees to every citizen freedom of profession. Subject to notice to the all concerned and subject to final orders after full hearing in the matter, it is order as an interim measure that the violation of this Fundamental / Human Right shall be discontinued forthwith. Steps shall immediately be taken to rectify so as to bring the practice in accord with the constitutional requirements"*.

7. Moreover, Perusal of the report of the Deputy Commissioner particularly last two paragraphs reproduced above (*see para 3 of this order*) *unequivocally supports* all facts as put forwarded by the learned counsel for the respondents/District Council Dadu as well as learned **A.A.G.** **Further**, the Administration was not competent to fill in the posts of SUG Cadre as reflects from comments of the respondents that the than **Administrator** had sought permission for **appointment** 25 vacant posts vide letter **No: DC/DU/-38** dated **7th March 2011** from the Secretary Government of Sindh, Local Government Department and the same was approved accordingly to the extent of 25 posts subject to **completion** of all required **codal** formalities letter **No: SO-III(LG)6-14/2012** dated **20th March 2012**. But the than **Administrator** had misused his powers and made the fake appointments of **284** persons beyond **permission**,

authority and *competency*. Consequently, such act appears a colourful exercise done by the concerned authority.

8. **Under** these *circumstances*, the petitioners have failed to establish their case, *consequently*, all the captioned petitions being *misconceived* and not *maintainable* under law are **dismissed** along-with pending applications accordingly.

9. As regard the recommendation made in the Deputy Commissioner's report that "a **Committee consisting of Senior Officers from Finance Department, Chief Minister's Inspection & Enquiry Team and Local Government Department may be constituted to fix the responsibility upon the officers / officials who are involved in committing such gross irregularities and irregularity**" is concerned, learned A.A.G Sindh is directed to ensure that such *inquiry* be **completed** within a period of **two months** and compliance report with regard to actions whatever being *suggested* and taken against the **delinquent officers** shall be **submitted** to this Court.

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