

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 6433 of 2014 : Mst. Nuzhat Habib vs.
Province of Sindh & Others

C P D 2549 of 2014 : Malik Munawar Hussain & Another vs.
Province of Sindh & Others

For the Petitioners : Mr. Fareed Ahmed Dayo, Advocate
(IN CP D 6433 of 2014)

Mr. Altaf Hussain, Advocate
(IN CP D 2549 of 2014)

For the Respondents : Mr. Samiullah Soomro, Advocate

Mr. Ali Safdar Depar
Assistant Advocate General

Date/s of hearing : 27.09.2022

Date of announcement : 27.09.2022

ORDER

Agha Faisal, J. The petitioner, *admittedly* having been appointed on contractual basis and regularized in Grade 17, has filed CP D 6433 of 2014 assailing the notification dated 04.12.2014 (“Impugned Notification”), whereby her employment was terminated by the competent authority / respondent no. 2. The Impugned Notification was suspended herein vide *ad interim* order dated 12.12.2014, the benefit whereof continued to be enjoyed until today.

CP D 2549 of 2014 was filed seeking issuance of a writ of *quo warranto* against the petitioner and it was articulated before us that the very appointment / regularization of the petitioner was in dissonance with the law in general and specifically in derogation of the edict of the august Supreme Court in *Ali Azhar Baloch*¹. Since the controversy was common *inter se*, hence, the petitions were listed / heard conjunctively today. Vide short order announced in Court upon conclusion of the respective arguments, CP D 6433 of 2014 was dismissed and consequently CP D 2549 of 2014 was disposed of as having become infructuous. These are the reasons for the short order.

¹ *Ali Azhar Khan Baloch & Others vs. Government of Sindh & Others* reported as 2015 SCMR 456. Emphasis was placed upon paragraph 197 thereof.

2. At the very onset, Mr. Fareed Ahmed Dayo Advocate was confronted as to how the present petition was maintainable since the very statute pursuant whereto the Impugned Notification was rendered contained a specific provision for appeal. It was queried as to how the present petition could have been instituted while abjuring the statutory appellate process.

3. Mr. Dayo admitted that the Impugned Notification was appealable² at the relevant time; however, it was insisted that this Court enjoyed parallel competence in exercise of its writ jurisdiction on the premise that it was imperative for this Court to evaluate and determine whether there were any *procedural lacunae* in the process that culminated in the Impugned Notification.

4. It is an admitted position that the petitioner³ was engaged as a contractual employee and it was asserted by Mr. Dayo that such contractual appointment was made in Grade 17. There is also no cavil to the fact that the said petitioner was *regularized* in Grade 17. Our attention was drawn to the relevant passage in *Ali Azhar Baloch*, wherein it had been illumined as follows:

“... In terms of Rule 3(1)(i) it is provided that all civil posts connected with the affairs of the Province in Basic Pay Scale 16 to 22, except those specified in the schedule, shall be filled by the Sindh Public Service Commission through competitive process. Such posts are required to be advertised publically...”

The departmental process culminating in the Impugned Notification was predicated upon the petitioner’s appointment process having been manifestly irregular; *inter alia* in the absence of any advertisement, shortlisting, call letters, tests, interviews etc.; however, since we had called into question the very maintainability of the petition, therefore, it is considered prudent to eschew any observations with regards to merit.

5. *Admittedly*, there was a statutory forum provided to the petitioner to assail the Impugned Notification in appeal, within a specified time frame. However, resort was had to the writ jurisdiction of this Court, while avoiding the opportunity and forum provided by law.

² 10. Appeal. Notwithstanding anything contained in any other law for the time being in force, any person aggrieved by any final order under section 9 may, within thirty days of the order, prefer an appeal to the Sindh Service Tribunal established under the Sindh Service Tribunals Act, 1973.

³ In CP D 6433 of 2014.

6. Petitioner's counsel had remained unable to articulate any justification as to why the statutory right to appeal was abdicated by the petitioner and has further failed to provide any cogent rationale or cite any law for this Court to assume jurisdiction in a matter for which an entire dispute resolution hierarchy had been provided by law⁴. The august Supreme Court, while allowing an appeal against an order of the High Court, held in *Sardar Khalid*⁵ that by allowing recourse to writ the High Court erred in law by short circuiting the normal procedure of law, while exercising equitable jurisdiction which is not in consonance with the law.

7. Even otherwise, the petitioner seeks to agitate issues of a factual nature, requiring appreciation of conflicting claims and documentation. While such an exercise is amenable for adjudication before the statutory hierarchy, it is now settled law that entertaining of a fact finding exercise, requiring appreciation of evidence and adjudication of conflicting claims, is discouraged in the exercise of writ jurisdiction of this Court⁶.

8. In view hereof, we are constrained to observe that CP D 6433 of 2014 is *prima facie* misconceived, hence, dismissed along with pending application/s. As a corollary thereof, CP D 2549 of 2014 has become infructuous and is disposed of accordingly.

JUDGE

JUDGE

⁴ *State Bank of Pakistan vs. Imtiaz Ali Khan & Others* reported as 2012 PLC (CS) 218 Supreme Court.

⁵ Per Chaudhry Ijaz Ahmed J. in *Haji Sardar Khalid Saleem vs. Muhammad Ashraf & Others* reported as 2006 SCMR 1192.

⁶ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.