

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-5343 of 2021

Khawaja Zakir-ur-din

& 03 others

Petitioners: Through Mr. Muhammad Akram Qureshi, advocate

Respondent No.1: Through Mr. Abdul Jalil Zubedi, AAG

Respondent No.2: Through Mr. Imtiaz Ali Solangi, advocate

Date of hearing

& Decision: 06.03.2023.

ORDER

Through this petition, the petitioner has brought the lis for the issuance of the writ of quo warranto under Article 199 (1)(b) (ii) of the Constitution of the Islamic Republic of Pakistan, 1973, against the private respondents to vacate the public office presently they are holding, *inter alia*, on the ground that they were/are not qualified to hold the office as their initial appointment was unconstitutional and hit by Article 199 (1)(b) (ii) of the Constitution, 1973.

2. We have inquired from the learned counsel representing the petitioner as to how this petition is maintainable against the Paramedical Staff engaged by the respondent- Sindh Employees' Social Security Institute (SESSI) on a contingent basis for another period of 89 days.

3. The learned counsel replied to the query and submitted that petitioner Khawaja Zakir-ur-din and others have challenged the extension of the private respondents as Paramedical Staff which violates the restraining order passed by this Court in CP No.D-5196/2017, *inter-alia*, on the ground that respondent-SESSI initially appointed respondent No.10 to 54 without advertisement and following the rules and regulations on political influence, therefore this court in the exercise of Article 199 (2) (b) (ii) of the Constitution has the authority to record findings as to whether the appointment of the private respondents to the public office has been made in consonance with the mandate granted by the constitution.

4. Learned AAG has submitted that the respondent intends to make appointments on regular basis in terms of the ratio of the judgment passed by this court in CP No.D-5196/2017 and in the intervening period, as a stop-gap arrangement they have made contingent appointments till regular recruitment process completes.

5. We have heard learned counsel for the parties on the maintainability of the instant petition and perused the material available on record.

6. We have gone through the judgment passed by this Court in CP No.D-5196/2017, in paragraph 17 observed as under:

“17. In view of the consensus reached between the parties, we deem it appropriate to dispose of this petition in the following terms:

a) All the appointments in the respondent institution must be based on the process that is substantially and tangibly fair and within the parameters of its applicable rules and regulations, as well as based on minority/differently-abled quota reserved for those employees, through the competitive process on merits and not otherwise. The said exercise shall be undertaken by the competent authority of the respondent institution within two months from the date of receipt of this order.

b) The Government of Sindh, from onwards shall ensure that the recruitment to every post from BPS-1 to BPS-15, applied by the candidates, in any department of the Government of Sindh be made through the competitive process on open merit with the budgetary sanction, on regular basis (except the posts to be filled in the time-bound projects/with tenurial limitation posts) by invoking the Sindh Civil Servants Act,1973 and rules framed thereunder as well as the relevant recruitment Rules and regulations already notified by the respective departments.

c) In the future, the Government of Sindh/respondents shall also avoid public appointments, having permanent status, on a contract and ad-hoc basis (except the posts provided under Rules 18 to 20 of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules 1974.”

7. This petition is disposed of in the terms of paragraph 17(a)(b)(c) and expects that the respondents shall avoid filling the posts except on regular mode of service. So far as the issue of consideration of regularization of service of the employees of SESSI is concerned, the competent authority of respondents shall take into account the observation recorded in the aforesaid matter and shall ensure that advertisement for the posts from BPS-1 to BPS-15 shall be published in leading newspapers to allow all the deserving candidates to participate and thereafter fulfilling other codal formalities start recruiting the eligible candidates for the post applied for.

JUDGE

JUDGE

Nadir*