

**ORDER SHEET  
IN THE HIGH COURT OF SINDH  
BENCH AT SUKKUR**

C.P. No.D-1813, 2159, 3442, 3443 and 3716 of 2013  
C.P. No.D-69 of 2014

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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**Present:**

Mr. Justice Zafar Ahmed Rajput  
Mr. Justice Khadim Hussain Tunio

Date of hearing: 25.10.2022  
Date of decision: 25.10.2022

Mr. Jamshed Ahmed Faiz, Advocate for petitioners in CPD 2159 & 3716/2013

Mr. Achar Khan Gabol, Advocate for petitioners in CPD 3442, 3443 of 2013, 69 of 2014 and for petitioner No. 1 to 4 in CPD 3716 of 2013.

M/s Syed Tanveer Abbas and Badaruddin Memon for petitioner No. 2 in CPD 1813/2013.

Mr. Zulfiqar Ali Naich, AAG Sindh a/w Imdad Ali Larik, Focal Person on behalf of Director School Education (ES&HS) Sukkur Region, Sukkur.

**ORDER**

KHADIM HUSSAIN TUNIO, J- By this common order, we intend to dispose of the above captioned constitutional petitions whereby the petitioners seek directions to the respondent No. 1 (District Education Officer Ghotki) to pay salaries to the petitioners from the date of their joining against various posts of BPS-9 to BPS-15 on contractual basis.

2. Briefly, facts of the instant matter are that in response to an advertisement posted by the then-Director School Education Sukkur Region, the petitioners allegedly

applied for various posts ranging from BPS-9 to BPS-15 for which they were allegedly issued offer letters which are available from Pg-81 to Pg-161 of the court file. The petitioners then joined and started serving at the designated posts under the supervision of respondent No.1/ District Education Officer Ghotki at Mirpur Mathelo. However, when the petitioners approached the respondent No.1 for releasing of their salaries, they were paid no heed and as such the petitioners filed the captioned petitions with the following prayers:-

- a) To direct the Respondents to pay the salaries to the petitioners since their joining.
- b) To restrain the respondents not to take any adverse actions against the petitioners till disposal of this petition.
- c) To grant any other alternate relief which this Hon'ble Court deems fit and proper in the circumstances of the case.
- d) To award the cost of this petition.

3. District Education Officer Ghotki has filed para-wise comments and while not denying the advertisement, he stated that the initial advertisement did not mention the number of vacancies and as such was doubtful; that no such record of the petitioners applying was available in the office of District Education Officer Ghotki and that fake and bogus documents were submitted by the petitioners; that a total of 222 teaching posts and 20 non-teaching bogus posts were made without the approval of the District Recruitment Committee, the employees were adopted and no short listing was done nor the final results were announced; that all these bogus appointments were made illegally by one Mr. Abid Hussain Jakhrani, who even managed his own illegal appointment as BPS-20 against which an inquiry was held and as such, due to illegal appointments of the petitioners beyond the sanctioned strength, the salaries were not released to the petitioners.

4. District Accounts Officer Ghotki also filed his comments while stating that the Deputy Commissioner Mirpur Mathelo had informed him vide his letter No.AB/380/2013 dated 15.05.2013 that the District Education Officer Ghotki at Mirpur Mathelo had made appointments without approval of District Recruitment Committee and such para-wise comments were also filed by the Deputy Commissioner Ghotki before this Court is CP No. D-770 of 2010.

5. Learned counsel for the petitioners jointly contended that the petitioners had applied for the posts as per procedure and the record provided by them is not bogus; that the respondent No.4 admitted that there existed vacancies and advertisement was made as per Sanctioned New Strength (SNE); that the petitioners were all issued offer letters after they applied for the posts; that it was not necessary for the advertisement to contain the number of vacancies; that the recruitment was done according to standard practice and procedure; that an approval from the District Recruitment Officer for advertisement on vacant posts is not a requirement of law rather just there for rule of procedure and caution; that the entire process of recruitment was transparent and correct, hence the petitioners duly appointed are entitled to their salary being civil servants of the Government of Sindh; that the then DEO Abid Hussain Jakhrani has been relieved of all the inquiries; that civil servants are being deprived of their legal and guaranteed right under the service laws; that the petitioners are performing their duties religiously at various posts and have also produced attendance certificates, joining letters and muster rolls, as such all the petitioners are liable to be paid their salary.

6. Learned AAG Sindh along with Director School Education's focal person contended that the then District Education Officer Ghotki namely Abid Hussain Jakhrani had made 242 appointments without approval by the DRC; that after inquiry it came on the record that all the appointments were made over the capacity; that in both inquiries Mr. Abid Hussain Jakhrani was declared responsible; that the inquiry officer/Civil Judge Ghotki also submitted report to the effect that offer letters, service books and medical fitness certificates produced by the petitioners are bogus and manipulated.

7. We have heard the learned counsel for the respective parties, learned AAG and perused the record available before us.

8. Before entering into the merits of the case, it is important to note that even according to the offer letters that are now in question, all the petitioners were appointed as contractual employees and thus their relationship is regulated and governed by the principle of master and servant rather than an employer and employee. The Hon'ble Supreme Court has been pleased to hold in numerous pronouncements that a contract employee, whose terms and conditions of service are governed by the principle of "master and servant", does not acquire any vested right to approach this Court in its constitutional jurisdiction to seek redressal of his grievance; in fact he is debarred from approaching this Court in its constitutional jurisdiction and the only remedy available to him is to file a Suit for damages alleging breach of contract; after accepting the terms and conditions for contractual appointment, the contract employee has no locus standi to file a Constitutional Petition seeking writ of prohibition and or mandamus against the authorities.

9. Reverting to the merits of the case, it is an admitted position that an advertisement was made in the local newspaper by the Director School Education Sukkur Region for various posts ranging from BPS-9 to BPS-15 with the last date as 26.03.2012. The contents of the advertisement, when perused, do not include the total number of vacancies and against this open advertisement, the then District Education Officer Mr. Abid Hussain Jakhrani issued as many as 242 offer letters, 222 against teaching staff and 20 for non-teaching staff positions. Mr. Abid Hussain Jakhrani played a vital role in this scheme of bogus appointments as surfaced from the record. According to the inquiry and the record available before us, he was a BPS-19 officer of STEVTA and was posted in his own pay and scale after he was absorbed through Notification dated 29.06.2012 of the Chief Secretary Sindh. After occupying this BPS-20 post of District Education Officer, Mr. Abid Hussain Jakhrani not only got the advertisement published that did not include vacancies, in connivance with other officials accepted bogus and fake documents and then issued offer letters against 242 posts in total. The number of vacancies was never advertised in the newspaper advertisement through which qualified candidates were invited to send their applications, and even if a candidate was qualified, he had no vested right to be appointed. According to the inquiry report, the vacancies were only limited to 86, yet the appointments made were 242 which were almost three times more than the vacancies. Be that as it may, what is not advertised cannot be filled up. Even if there were further requisitions at a later date, these posts could not be created or filled up in lieu of the earlier advertisement which was not even authorized or approved by the District Recruitment Committee. The recruitments were allegedly

not done by short listing any of the candidates, even the educational documents provided by the petitioners after an inquiry were found to be bogus and were never even verified. All the offer orders/appointment letters issued by Mr. Abid Hussain Jakhrani, per findings of the committee, were illegal and could not stand. In the concluding paragraph of the inquiry report, it was observed that:-

“In view of the above facts, the under-signed is of the opinion that the appointments were made by Mr. Abid Hussain Jakhrani, the then District Education Officer Ghotki without completing all codal formalities and without adopting proper procedure of verification of Education & Professional Qualification certificates. Further, the relevant requisite record had neither been provided on the day of enquiry nor provided by the present District Education Officer Ghotki...”

10. That being said, it is the case of the petitioners that they were issued offer letters after duly qualifying for the posts for which they were accepted after providing medical fitness certificates and educational certificates. It is an admitted fact now that none of these documents were in fact submitted, nor verified and were in fact forged. The allegations against the petitioners were of securing employment on the basis of forged documents which could not be disproved by them rather, in the statement of claim there was not even a whisper that the allegations of the respondents regarding securing employment on the basis of forged document was wrong. It is evident that the petitioners cheated the process and obtained the job fraudulently thereby failing to maintain integrity. Since the petitioners secured employment on the basis of forged documents, the appointments were void ab initio. Vide order dated 22.04.2021 of this Court, a scrutiny committee was also devised to ascertain the legality of the appointments made by the then DEO Mr. Abid Hussain. The committee also found that the petitioners/candidates could not even provide proof of submission of applications

and the inward register maintained did not have signs of the concerned office maintaining it, as such it was impossible to ascertain whether the applications were even received on the relevant date or managed later on. The committee also found that the service books provided by the petitioners were not genuine as they were not available in the official record of the DEO and that the appointment orders and the joining orders had the same date on them despite the appointments being in many different talukas. These findings of the committee further suggest that the whole process was based on fraud. Not only this, these findings of the committee involve disputed question of facts that cannot be adjudicated by this Court while exercising its constitutional jurisdiction. Even otherwise, the proposition of law is settled that fraud vitiates even the most solemn of proceedings and any superstructure built on a foundation of fraud must fall. In this respect, reliance is placed on the case reported as ***Al-Mezan Investment Management Company Limited and others v. WAPDA FIRST SUKKUR COMPANY LIMITED and 2 others (PLD 2017 SC 1)***.

11. For what has been discussed above, the petitioners were unable to prove that their appointments were done after a competitive process and that the documents they had provided were genuine, as such they could not claim any benefits enjoyed by a workman/civil servant appointed through a proper competitive process. For these reasons, captioned constitutional petitions were dismissed vide short order dated 25.10.2022 and these are the reasons for the same.

**J U D G E**

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