

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-1494 of 2013

Ashiq Ali Narejo

Petitioner: Through Mr. Jamil Ahmed Rajpar, advocate

Respondents: Through Mr. Abdul Jalil Zubedi, AAG

Date of hearing
& Decision: 03.02.2023.

ORDER

Through the captioned petition, the petitioner is seeking directions to the respondents to issue the appointment letter for the post of Naib- Qasid in District Dadu, inter alia, on the ground that he was appointed as Naib Qasid by the then Executive District Officer, Dadu vide order dated 13.08.2007 on contract basis initially for three years and the petitioner was posted at Government Primary School, Shah Panjo, Taluka Mehar, District Dadu. Subsequently, on the directives of the Government of Sindh, the Education Department, the Scrutiny Committee was constituted to verify the genuineness of the appointment orders, etc. of all the employees who were appointed on a contract basis in 2007. Per the petitioner, the said committee after necessary verification prepared a list of employees of BS-01 to 04 and submitted its report in respect of 256 employees of District Dadu whose appointment orders and other credentials were found correct, proper, legal, and valid. According to the petitioner, in the said list the name of the Petitioner was mentioned at serial No. 136. Thereafter the then Executive District Officer, Dadu vide letter dated 14.11.2008 intimated such position to the District Accounts Officer, Dadu, for releasing of salaries of 256 employees which included the name of the Petitioner also, therefore, he is entitled to the salary from the aforesaid period.

2. Mr. Jamil Ahmed Rajpar, learned counsel for the petitioner, contended that in the Government of Sindh, Education Department many as 7187 non-teaching employees in BS-01 to 4 were recruited on a contract basis in the year, 2007 and their contract expired in 2010. Accordingly, the Secretary Education Department floated a summary dated 29.06.2010 to the worthy Chief Minister,

Sindh with a proposal to extend their contract period for six months, and the said summary was approved by the worthy Chief Minister, Sindh on 14.07.2010. In pursuance thereof, almost all such contract employees barring a few were given appointment letters on a permanent/regular basis. However, the Petitioner was ignored and kept on high hopes that he would be given the appointment letter on a permanent/ regular basis shortly, but to date, the petitioner has not been given the appointment letter/order. Learned counsel placed reliance upon the cases of *Akhtar Niazi v. Secretary, Establishment Division*, **1996 SCMR 1185**, *Khawaja Abdul Hameed Nasir v. National Bank of Pakistan and others*, **2003 SCMR 1030** and *Muhammad Haleem and another v. General Manager (Operation), Pakistan Railways Headquarter, Lahore and others*, **2009 SCMR 339** and prayed for allowing the instant petition.

3. Mr. Abdul Jalil Zubedi, learned AAG, referred to the comments of respondent No.3 and submitted that after approval of the Chief Minister Sindh, a Notification dated 10th August 2007 was issued regarding relaxation of the ban to make appointment against 256 vacant posts of BPS-1 to BPS-4 in Dadu District. After fulfillment of all codel formalities, the concerned Executive District Officer Education Dadu issued posting orders, hence, the offer /posting orders being relied upon by the petitioner appeared to be fake and fictitious, therefore, there is no legal sanctity and validity. After the appointment of 256 persons, there stands no vacant post in Dadu District. Learned AAG submitted that after verification conducted through a committee constituted by the Executive District Officer Education Dadu vide his letter dated 20-11-2008 only 256 candidates were found to be genuine whose posting orders were confirmed to the District Accounts Officer Dadu vide letter dated 13-12-2008; that the petitioner was not found illegible by the Committee as such his candidature was rejected and not entered in the scrutiny list. Since the petitioner was not recommended by the Scrutiny Committee, thus his claim of salary is not justified.

4. We have heard the learned counsel for the Petitioner and learned AAG and perused the material available on record.

5. The pivotal question before us is whether the petitioner can claim the appointment for the post of Naib Qasid on regular basis in District Dadu based on the offer of appointment letter dated 25.05.2007 and appointment order dated 13.08.2007 issued by the Executive District Officer Education, District Government (Dadu) and fitness certificate issued by Civil Surgeon, Civil Hospital, Dadu, Joining Report and Certificate of Attendance.

6. The learned AAG has disputed the appointment order of the petitioner on the premise that the same is not genuine.

7. We, based on contentions of the parties with the material produced before us, have concluded that we cannot determine the veracity of these documents, the claims, and counter-claims of the parties as these are disputed questions of facts between the parties, which cannot be adjudicated by this Court while exercising the Constitutional Jurisdiction under Article 199 of the Constitution and since the Executive District Officer vide letter dated 14.11.2008 forwarded the names of the candidates to the District Accounts Officer Dadu as valid for posting which list includes the name of the petitioner at Sr. No.136. However, the aforesaid documents are disputed by the learned AAG, therefore, on the aforesaid plea the present petition filed by the petitioner cannot be adjudicated which requires evidence. On the issue of fake appointments in the department of the Government, we are guided by the pronouncement of the Judgment of the Honorable Supreme Court in the case of Government of Punjab through Chief Secretary and others v. Aamir Junaid and others 2015 SCMR 74 and in such circumstance, without prejudice the rights of the parties, we leave the subject issue to be determined and decided by the Secretary Education, Government of Sindh, to the effect whether the appointment letter issued to the petitioner to the post of Naib Qasid was genuine or otherwise; and, whether the colleagues of the petitioner who were appointed in the same line in terms of the order of the competent authority vide summary for Chief Minister Sindh dated 29.06.2010, were/are performing their duty, if yes, then the case of the petitioner, if found genuine, the similar treatment shall be given to the petitioner, however, that is subject to eligibility and qualification of the petitioner for the post of Naib Qasid. The aforesaid exercise shall be completed within two weeks after providing a meaningful hearing to the petitioner.

8. This petition is disposed of in the above terms.

JUDGE

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