

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-119 of 2023

(Anwaruddin Rajper Vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing and order: 23-05-2024.

Mr. Haji Shamsuddin Rajper, advocate for the petitioner.
 Mr. Muhammad Juman Sahito, advocate for respondent.
 Mr. Shehryar Imdad Awan, Assistant Advocate General,
 Sindh.

ORDER.

Adnan-ul-Karim Memon J:- The Petitioner is seeking direction to the Respondents to release his monthly salary/arrears, which has been stopped without reason. Since the matter pertains to the year 2023 and needs to be resolved by the head of the department concerned. But due to their reluctance, cases of like nature are piling up before this Court. Chief Secretary Sindh shall take stock of this factum and resolve the issue at his end without fail.

2. Upon, query by this Court from the learned AAG and Respondents as to why the salaries of the Petitioner have been stopped. He submitted that the ID of the petitioner was blocked due to certain reasons therefore this matter needs to be resolved by the administrative head of the department in the first instance. This proposal seems to be fair.

3. The pivotal question before us is whether the salaries/arrears of the Petitioner can be withheld without providing an opportunity of hearing to him.

4. In our view, he who seeks equity must do equity and approach the Court with clean hands, ill-gotten gains cannot be protected. It is argued by the Respondents that Petitioner had got his appointment through the backdoor and, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to him.

5. We, based on contentions of the parties with the material produced before us, have concluded that we cannot determine the veracity of these documents, their claims, and counter-claims as these are disputed questions of facts between the parties, which cannot be adjudicated by this Court while exercising the Constitutional Jurisdiction.

6. In view of the foregoing, this Court cannot give sanctity to the documents produced by them and leave it for the Competent Authority of the respondents to determine the genuineness or otherwise of the documents, claims, and counter-claims, the issue of salary and arrears if any be determined by the head of the administrative department, therefore, on the aforesaid plea the Constitutional Petition filed by the petitioner cannot be maintained. On the subject issue, this Court seeks guidance from the pronouncement of the Judgment of the Supreme Court in the case of the *Government of Punjab through Chief Secretary and others vs. Aamir Junaid and others* [2015 SCMR 74], which provides guiding principle on the aforesaid issues. An excerpt of the same is reproduced as under:-

“Undoubtedly such order passed by the learned High Court is absolutely valid and it has been left to the department itself to scrutinize/examine the eligibility of the respondents those who pass the test would be retained as employees by applying the rule of locus penitential, notwithstanding that there was some irregularity in the process of selection, may be on account of one of the members, who is said to have acted as an appointing authority was not competent to sit in the same meeting, whereas those who are not eligible or qualified shall go. This is for the department now to act fairly in terms of the direction of the learned High Court and take further action.”

7. In the light of dicta laid down by the Supreme Court in the case of Government of the Punjab *supra*, we direct the Chief Secretary, Sindh to constitute a Committee headed by the administrative head of the concerned Department, conduct an inquiry into the extent as to why the salary of the petitioner/ arrears if any, has been withheld, after providing ample opportunity of hearing to the Petitioner and fix responsibility in the matter and take action against the delinquent officials strictly under law and the observations made by the Supreme Court in the aforesaid case and submit a report to this Court through Additional Registrar of this Court, within three weeks, from the date of receipt of this order. However, if the appointment of the petitioner is found genuine his salary must be released forthwith after proper proceedings. It is made clear that if the administrative head of the department concerned who is Competent Authority shall also determine the genuineness or otherwise of the documents, claims, and counter-claims of the parties and if he finds appointment of the petitioner made without observing codal formalities, etc. in violation of rules and regulations, he shall conduct a separate inquiry in this respect and submit such comprehensive report before this Court through Additional Registrar. However, it is made clear that after submission of the compliance report, if his cause still subsists the aggrieved party may approach the competent forum for redressal of his grievances. In the intervening period, Additional Advocate General Sindh Sukkur shall provide complete information to the competent authority about the issue of salary/arrears of the petitioner if any including blocking of his ID, after consultation with the administrative head of the department concerned. He shall also submit his report accordingly.

8. The petition stands disposed of in the above terms.

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