

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-827 of 2024
(Old C.P. No.D-2166/2019/Hyderabad)
(*Mehboob Ali Vs. Province of Sindh & others*)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:

Adnan-ul-Karim Memon, J.

Amjad Ali Bohio, J.

Date of hearing & Order 23.09.2024

Mr. Gulab Khan Qaimkhani, advocate for petitioner

Mr. Muhammad Sharif Solangi, Assistant A.G Sindh a/w Sajid Ali,
focal person and DEO Umerkot.

ORDER

Adnan-ul-Karim Memon, J. The petitioner Mehboob Ali Naib Qasid (BPS-02) School Education and Literacy Department, District Umerkot has invoked the jurisdiction of this Court under Article 199 of The Constitution of the Islamic Republic of Pakistan, 1973, seeking directions to the relevant authorities to provide him with a specific posting within the department.

2. The petitioner was appointed as Naib Qasid in 2012 but was not allowed to join the service at Government High School Muhammad Aslam Palli, Taluka Umerkot. Despite trying to get a posting order, the petitioner was unsuccessful. This led him to file a petition with the court on September 4, 2019, requesting a posting order for the post of Naib Qasid.

3. The petitioner filed this petition in 2019, seven years after the first cause of action, claiming the right to hold the post of Naib Qasid. The learned AAG has argued that the petition was/is barred by laches, a legal doctrine that disallows claims made after an unreasonable delay. The petitioner's counsel countered that the petition was/is not barred by laches because the petitioner's appointment letter remained valid, and therefore, his right to the post was/is still constitutionally protected. The counsel argued that the appointment of the petitioner was/is legal, valid, and lawful hence, the petitioner continuously approached the respondent department to join him on duty but he was not allowed, and his efforts went all in vain, compelling him to approach this court,

therefore this Court should enforce his right under Article 199 of the Constitution.

4. We have heard the learned counsel for the parties at length and have perused the record with their assistance.

5. It is settled that the appointment letter or order grants a legal right, which cannot be revoked or canceled without following due process, including a right to a hearing and the lis cannot be dismissed based on laches. This proposition is supported by the decision of the Supreme Court in the cases of Ishtiaq Ahmed v. Hon'ble Competent Authority (2016 SCMR 943) and Mst. Basharat Jehan v. D.G, Federal Government Education & Others (2015 SCMR 1418).

6. The right to life, as guaranteed by Article 9 of the Constitution, extends to the right to livelihood. This means that the petitioner has the right to earn a living. However, a respondent department can terminate the services of the petitioner if he fails in all respects, but only if it is done under the law, and the termination of service if any must follow established legal procedures and cannot be arbitrary or unfair. We are also equally conscious of the legal position that illegally gotten things cannot operate as a bar nor lapse of time could be made a reason to declare an 'illegality' as 'legality' but a suspicion alone shall not be sufficient to escape the requirement of 'due process' because it is not whims or fancy of an executive functionary to deprive one of his right due process alone. Therefore, the respondents were/are not legally justified to withhold the posting order/joining letter of petitioner except after due process particularly when the respondents do not dispute or deny his appointment letter. A departure from 'due process' resulting in taking away or infringing a fundamental right will be sufficient to entertain such a petition. Reference may be made to the case of Pir Imran Sajid & Ors v. MD /GM & Ors 2015 SCMR 1257.

7. In view of the above discussion, we find the petitioner's case needs to be looked into by the Secretary of the Education Department Government of Sindh a fresh and pass a speaking order after hearing the petitioner within two weeks.

JUDGE

JUDGE