

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-1125 of 2024
(old C.P No.D-1165/2022/Hyderabad)
(Nabi Bux & others Vs. Province of Sindh & others)

Constitution Petition No.D-1129 of 2024
(old C.P No.D-2007/2022/Hyderabad)
(Tarachand & another Vs. Province of Sindh & others)

Constitution Petition No.D-1147 of 2024
(old C.P No.D-2300/2022/Hyderabad)
(Muhammad Ramzan Vs. Province of Sindh & others)

DATE ORDER WITH SIGNATURE OF JUDGE

Before;
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Date of hearing & Order 23.09.2024

Mr. Vasand Thari, advocate for petitioners.
Mr. Ayaz Ali Rajpur, Additional A.G Sindh a/w Shahid Iqbal,
Assistant Executive Engineer, Public Health Department, Sindhri,
Mirpurkhas

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ORDER

Adnan-ul-Karim Memon, J. The petitioners have filed captioned Constitutional Petitions against respondents departments i.e. Public Health, Finance, and Health Department, seeking their regularization/confirmation in service and further demanding payment of withheld/arrears of salaries, as per policy.

2. Common issues of law and fact exist among these petitions. It is urged that the respondent departments have defaulted in payments of salaries to the petitioners and infringed their rights to be regularized/confirmed in the services.

3. Learned counsel for petitioners relied upon the common order dated 02.09.2024 passed by the Division Bench of this court in Constitution Petition No.D-358 of 2024, which along with similar other petitions was disposed of in the following terms.

“9. The competent authority should determine document authenticity and conduct a separate inquiry if necessary. Aggrieved parties can file separate applications after the compliance report. The Additional Advocate General should provide information to the competent authority and submit a report to this court.”

4. Learned counsel seeks similar treatment in these matters. Petitioners also seek reinstatement of their services as well as regularization.

5. Learned Assistant A.G Sindh has resisted these petitions on the premise that there are disputed questions of facts involved in the matters, as such these petitions cannot be entertained. At this stage, we confronted him with the proposition that the issue of the salary including regularization of service of the petitioners, if any needs to be resolved at the end of the respondents' departments and this Court cannot decide the subject issue under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, at the same time, if the petitioners are working with the Government Departments, their salary and other ancillary issues must be resolved within a reasonable time, as these issues cannot be left unattended for an indefinite period. Learned A.A.G without filing comments, though notices have been issued to the respondents to put their defense, they failed to do so for the reason best known to them, submit that these matters are required to be resolved by the competent authority of the respondents if the cause of the petitioners still subsists. The proposal seems to be reasonable.

6. The cases from years are pending resolution by department heads. However, reluctance has led to a backlog of the cases at the dock of this court.

7. The Chief Secretary Sindh should address these issues in co-ordinations with the concerned departments and resolve the same at their end first, for the reasons that this Court cannot determine the veracity of documents presented by the parties due to disputed facts on the issue of salaries based on the documents.

8. In such circumstances Constitutional jurisdiction of this court is not suitable for resolving such factual disputes as this court cannot validate the documents and leaves their genuineness to the competent authority to see.

9. In principle, salary and arrears including reinstatement/regularization of service of the petitioners if any, be determined by departmental heads as discussed supra and if the petitioners are working for longer periods then the issue of their

regularization of service be taken care of, if the law permits; however, the services of petitioners have already been dispensed with, such factum must be disclosed in the findings after hearing the parties.

10. On the aforesaid proposition, this Court seeks guidance from a Supreme Court judgment in the case of the Government of Punjab through Chief Secretary and others vs. Aamir Junaid and others [2015 SCMR 74], regarding departmental determinations. The judgment states that departments should fairly determine employees' eligibility and take appropriate action, including the issue of the salary if they are validly appointed to the subject posts as pointed out by the petitioners in their pleadings.

11. In the light of dicta laid down by the Supreme Court in the case of the Government of the Punjab supra this Court directs the Chief Secretary of Sindh to form a committee to investigate the timely issue of release the withholding salaries and regularization of petitioners and other ancillary issues, if any. The committee should conduct a hearing and identify responsible officials. Action should be taken against delinquent officials based on law and Supreme Court guidelines. Salaries must be released promptly if the appointments of the petitioners are found to be genuine and if they are working on the respective posts. The aforesaid exercise shall be undertaken within three weeks.

12. The competent authority of the respondents should also determine document authenticity and conduct a separate inquiry if necessary. Aggrieved parties can file separate applications after the compliance report. The Additional Advocate General should provide information to the competent authority of the respondents and submit a report to this court.

13. All these petitions stand disposed of in terms of the preceding paragraphs.

JUDGE

JUDGE