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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
C.P. No.D-97 of 2013.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For Hearing of main case.

14.03.2018.

Mr. Ali Azhar Tunio, advocate for the petitioner.

Mr. Shafi Muhammad Chandio, Addl. A. G.

Petitioner claims to have been appointed on contract basis for three years as Chowkidar vide letter dated 07.09.2007 by the Executive District Officer, Education Shikarpur. His case is that he was paid monthly salaries for 22 months from September 2007 and thereafter abruptly his salaries were stopped, although he had been performing duty in Government Girls Primary School Sachal Sadhayo, Taluka Shikarpur. He moved an application asking for his salaries which was forwarded by respondent No.4/Sub-Divisional Officer Education (Female), Taluka Shikarpur to Executive District Officer Education & Literacy, Shikarpur but to no avail. Finally after completion of contract period of three years his services were terminated verbally without any show-cause notice. In the back drop of said facts, the petitioner has prayed as under :

- a) *To declare that fresh/new appointments in grade-1 to 4 in the Education and Literacy department is illegal and unlawful and in violation of Judgment of this Honourable Court and Honourable Supreme Court of Pakistan.*
- b) *To direct the respondents to confirm/regularize the service/appointment of the petitioner from the date of his initial appointment on the dictum laid down in the Judgment dated 31.05.2011 of this Honourable Court.*

- (1)
- c) *To direct the respondents to make payment of salaries to the petitioner for remaining 14 months as mentioned in para-3 of this petition.*
- d)

2. Respondent No.3/District Education Officer (Male), District Shikarpur has filed the comments declaring that appointment order of the petitioner is bogus and fake and that he was not appointed through due process of recruitment. The Government had appointed only 246 low-paid employees in District Shikarpur. The list of successful candidates was signed by the then Executive District Officer, Shikarpur and forwarded to his office. The said list was verified wherein the name of the petitioner is not mentioned. Regarding claim of the petitioner to have been serving in Govt. Girls Primary School Sachal Sadhayo, it has been stated that the said School was closed and no teacher was posted there for many years. The petitioner has not served in the Department after November 2009 for a single day as such his claim of the salary is not valid. It is further revealed that after decision by this Court at Sukkur Bench, the Education Department had advertised the posts of lower grade for the appointment and in the said process, those genuine employees, who had completed contract period of three and half years were given preference and were appointed, the list of which containing names of 246 employees as stated above was prepared but the petitioner's name does not transpire therein.

3. Mr. Ali Azhar Tunio, learned counsel for the petitioner has emphatically argued that the petitioner is entitled to be regularized in service like several other petitioners, who had earlier filed the petitions on the identical grounds and their petitions were allowed by this Court and the said orders were maintained up to the Honourable Supreme Court. He has further submitted that the petitioner served in the education department for three years continuously, therefore, has earned a right of regularization of his service. The act of the

73

respondents to appoint new persons against the post held by petitioner is tainted with mala fide and ulterior motives. Learned counsel has relied upon the case of Hakim Ali Ujjan and others v. Province of Sindh and others reported in 2012 PLC (C.S) 127 in support of his contentions.

4. On the other hand learned Addl. A. G has contended that the very appointment order of the petitioner is bogus and fabricated; that the name of the petitioner is not mentioned in the list of 246 successful candidates who were appointed through a due process and whose names were forwarded by the then Executive District Officer, Shikarpur to the office of District Education Officer, Shikarpur. According to him, there is no record available with the respondents that petitioner ever served in any School including Govt. Girls Primary School Sachal Sadhayo or had received any salary in pursuance of his alleged appointment. According to him, all the documents submitted by the petitioner to the effect that he was appointed could not be verified to be genuine and in such circumstances this petition has no merits and may be dismissed.

5. We have considered contentions of the parties and have perused the material available on record including case law cited at the bar.

6. From a perusal of the case of Hakim Ali Ujjan (supra), it is obvious that the petitioners in that case were appointed on contract against the permanent posts and their appointment and working in the department was not disputed by the department's representative but in the present case the story is altogether different. The offer and appointment orders submitted by the petitioner along with this petition have been seriously disputed by the respondent No.3 by heavily relying upon the list of 246 successful candidates, which he has also filed along with his comments. Learned counsel for the petitioner has not disputed the fact that the name of the petitioner is not mentioned in the said list,

75

besides he has not been able to establish that if the name of the petitioner is not in the said list then under what process of recruitment the petitioner was appointed. We have read the entire file from cover to cover to find out any proof of the petitioner receiving any salary but have remained unsuccessful. The presumption which can be gathered from the comments of respondent No.3 and arguments of learned Addl. A. G is that the petitioner under the pretext of being appointed on contract basis through alleged bogus order may have continued in service till November 2009 and after finding the fact of his such appointment, his salary was stopped. The petitioner has not been able to establish that after November 2009 he has performed duty in any school to rebut the above said position. Before us also, no material has been placed that the alleged appointment of the petitioner was against a permanent post duly sanctioned to think about extending a benefit of dictum laid down in the case of Hakim Ali Ujjan (supra) to him. In our view when the education department has disputed the very veracity of his appointment order and such claim of the department appears to be supported by the list of successful candidates, wherein the petitioner's name is not mentioned, the petitioner cannot maintain this petition. This being the position, the petitioner does not seem to be entitled to any relief prayed by him. Consequently, in view of above discussion, this petition is dismissed.