

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Constitutional Petition No.D-2760 of 2011.

PRESENT:

**Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Muhammad Iqbal Mahar,**

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Petitioner : Asadullah Abro, through Messrs Habibullah G. Ghouri and Faiz Muhammad Larik, Advocates.

Respondent : District Education Officer Kamber-Shahdadkot, at Kamber & others, through Mr. Naimatullah Bhurgri, State Counsel, alongwith Abdul Rasool Brohi, Focal Person to D.E.O. Kamber.

Date of hearing : 24.08.2016.

Date of order : 24.08.2016.

ORDER

ZAFAR AHMED RAJPUT, J.- Through instant Constitutional Petition, the petitioner seeks directions to the respondents for the release of his salary.

2. It is alleged that after being declared successful candidate in the test conducted by Sindh University Testing Center, Jamshoro and Departmental Recruitment Committee, the respondent No.1 issued offer letter dated May 3rd 2010 for the appointment of petitioner to the post of Primary School Teacher (PST) on contract basis for a period of 3 years. Thereafter, respondent No.3 executed a School Specific Contract Under Recruitment Policy, 2008 dated 16.6.2010 ("the Contract"), whereby the petitioner was directed to join duty in Govt. Primary School, Khatan Khan Mughari, UC Wagan, Taluka Warah, District Kamber-Shahdadkot at Kamber. It is case of the petitioner that the respondents have failed to pay him salary for a single day despite requests made by him time and again.

3. District Education Officer (Primary), Kamber-Shahdadkot at Kamber, the respondent No.1, has filed his statement to the petition, which is reproduced as under: 83

"It is most respectfully submitted that the petitioner Asadullah was appointed as PST. He belongs to UC Wagan. His actual total merit score is 114. he was awarded extra marks of B.A & B.Ed. So his score was increased up to 128. This DRC was disputed. Then Secretary Education, Govt. of Sindh nominated Mr. Jairamdas, the then E.D.O Education, Sukkur as an Enquiry Officer. The operative paragraph of the enquiry report is reproduced hereunder.


Mr. Asadullah S/o Sono Khan Abro appearing at Sr. 217 in the joining report Date base has been awarded marks of B.A & B.Ed, whereas, he has passed only intermediate in the year 2008, hence needs further scrutinization of the merit. (P.S copy of enquiry report enclosed).

In the light of above enquiry report it is crystal clear that the petitioner's actual score is 114. So he cannot maintain merit criteria of UC Wagan. So his salaries were not released by the Department. It is worth to mention here the petitioner had got opened his fake I.D with the help of District Accounts Officer Kamber and draw some salaries. After verification his I.D has been blocked by the same Officer Kamber."

4. The learned Counsel for the petitioner submits that no show-cause notice has been issued by the respondents to petitioner for awarding him extra marks of B.A & B.Ed and his appointment has not been cancelled, so also no action whatsoever has been taken against the officer responsible for awarding more score to petitioner than his entitlement. Relying upon the case of Administrator, District Council Larkana and another v. Gulab Khan and another, reported as **2001 SCMR 1320**, the learned Counsel further submitted that even though the appointment of petitioner was illegal and made in violation of relevant recruitment




rules, the salary of petitioner could not be withheld on such ground.

5. On the other hand, learned State Counsel has contended that the appointment of petitioner was fake and bogus  and he is not entitled for the salary amount under the Contract.

6. heard the learned Counsel for the parties and perused the material available on record.

7. The petitioner claims salary amount on the strength of offer letter and School Specific Contract Under Recruitment Policy, 2008. There is no denial to the fact that the petitioner was awarded marks of B.A and B.Ed, whereas he has passed only intermediate in the year 2008. On the basis of B.A and B.Ed his merit score was increased up to 128, while his actual merit score was 114, hence, he could not maintain the merit criteria, and therefore, his salaries were not released by the respondents; however, he managed some salaries by opening his fake I.D with the help of District Accounts Officer, but after verification his, I.D was blocked by the Accounts Officer.

8. As per the terms of the Contract available as annexure "D" with the memo of petition: *"If at any stage it is discovered that the contract teacher obtained the appointment on the basis of forged / bogus documents or through deceit by any means, the appointment shall be considered void, the contract teacher will also be barred from holding any job in Government in future and the contract teacher shall be liable to refund all the amounts received from the*



Government, in addition to such other actions as may be initiated under the law."

9. The case law cited by the learned Counsel for the petitioner is distinguishable, so far the facts of this case are concerned, as in the cited case the Hon'ble Supreme Court of ²⁹ Pakistan held that the salary of the employees cannot be withheld on the ground that their appointment was illegal being made in violation of relevant recruitment rules. Here in this case, the appointment of the petitioner is void, requiring him to refund all the amounts received from the Government.

10. We are, therefore, of the considered view that since the petitioner failed to meet with merit criteria for the post of PST, he is not entitled to be appointed as PST and to draw any service benefit including the salary under the aforementioned Contract. This petition, therefore, being devoid of merit is dismissed with no order as to costs.

Qazi Tahir PA/*