

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-1379 of 2022

Before:

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Naib Hussain son of Imdad Hussain,
through Mr. Irfan Ali Maitlo, Advocate.

Respondents : Federation of Pakistan and others,
through Syed Naveed Ahmed Shah,
Deputy Attorney General
Province of Sindh and others through Mr.
Zulfiqar Ali Naich, Assistant Advocate
General Sindh

Date of Hearing: 08.05.2025.

Date of Order. 08.05.2025.

ORDER

Abdul Hamid Bhurgri, J.- Through this petition, the petitioner has sought following reliefs:-

- (a) Declare that inaction of respondents not to regularize the petitioner illegal, unconstitutional, discriminatory and without lawful authority.*
- (b) Direct the respondents to regularize the petitioner forthwith of the basic of the experience and their previous performance.*
- (c) Restrain the respondents their agents, employees, attorneys or any person acting on their behalf from terminating the services of the petitioner, till final adjudication of this petition.*
- (d) Direct the respondents to pay the previous as well as present salaries to petitioner in accordance with law of minimum wages.*
- (e) To grant any other relief, which this Honourable deems fit and proper in the circumstances of the case.*

2. Case of the petitioner is that on 19.07.2002 National Commission for Human Development Ordinance, 2002 (Ordinance XXIX of 2002) invited applications for teachers in various primary school in district Sukkur. He has also applied for the same and was appointed against fixed salary of Rs.1500/-. The petitioner has joined his services in the respondent's department in year 2004 and he was performing his duty honestly. On 03.09.2015 respondent No.8 visited the school of petitioner and illegally

demanded bribe of Rs.15000/- from petitioner, on his refusal respondents illegally stopped his monthly salary and he is serving without salary till today. He further contended that the respondents have appointed 35 candidates as teacher in their department from taluka Salehpat district Sukkur out of them 32 candidates were regularized by respondents on 09.09.2021. Thereafter one other candidate was also regularized by the respondents but the petitioner has been discriminated. Hence he filed this petition for regularization of his services and release of salaries.

3. Respondents No.1,4,7 and 8 filed their joint comments on the petition. The respondents stated in para No.7 of the comments as under:-

“7. Para No. 7 of the petition is denied being incorrect. That the petitioner's agreement was expired on 30-06-2015 and his agreement was not extended due to his irregularity and unpunctuality from the School and in this he has been issued warning and notices but he did not improved himself. Subsequently his agreement was cancelled on 01-07-2015 and informed him accordingly that his services are not further required to Education Department and NCHD. He has already been paid all due honorarium till 30-06-2015 and nothing is pending to pay on part of NCHD”.

4. It is further contended by the respondents that as per directive of Council of Common Interest (CCI) in its meeting dated 11.11.2020 decided as under:-

“the Feeder Schools run by NCHD & BECS will be adopted by the Provinces w.e.f. 01-07-2021.” In compliance of the said decision the M/O FE & PT has handed over 5770 Community Feeder Schools with 6461 Feeder Teachers and 316,381 enrolled Students to respective Province”.

5. The District Education Officer, the respondent No.6 also filed his statement, wherein he submitted that petitioner is not employe of NCHD according to the list provided by the Government of Sindh, School Education and Literacy Department, Karachi, as such the petition is not maintainable and that may be dismissed. He produced list of the employees of NCHD provided by the Government of Sindh, School Education and Literacy Department along with his statement.

6. The counsel for the petitioner submits that the petitioner has been discriminated by the officials as the others who were appointed along with

petitioner have been regularized and he is also entitled for the same treatment.

7. Learned DAG states that in view of the comments filed by the respondents No.1,4,7 and 8, the petitioner is no more employee of NCHD. Moreover, as per the decision of Council of Common Interest (CCI) these employees have been transferred to respective provinces. He contended that the matter involves different factual controversies and the relation between the petitioners and answering respondents is that of master and servant, as such they cannot invoke the constitution jurisdiction of this Court. He prayed for dismissal of the petition.

8. Learned AAG submits that after the decision of Council of Common Interest (CCI) the list was sent to the Government of Sindh by NCHD, the name of the petitioner does not transpire in the list of employees as such the petitioner is not entitled for the relief he claimed. He also prayed for dismissal of the petition.

9. We have heard learned counsel for the petitioner as well as learned DAG and AAG. The comments of the official respondents clearly reflects that the petitioner is no more employee since 2015; his contract was over as he was not punctual. According to the respondents in compliance of the decision of Council of Common Interest (CCI) they have transferred the Human Resource to the respective provinces. The Education and Literacy Department Government of Sindh has also stated that the petitioner is not their employee as the list they have received from NCHD, the name of petitioner does not transpires.

10. In view of the above, the petition is not maintainable as the same is misconceived. The contention of the petitioner has been denied by the respondents hence, disputed facts cannot be decided through the constitution petition. Resultantly, this petition is devoid of merits is hereby dismissed with no order as to costs.

Judge

Judge