

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Justice Arbab Ali Hakro

Justice Riazat Ali Sahar

C.P No.D-2595 of 2018

[Abdul Ghaffar Shaikh and another vs. Province of Sindh & Others]

C.P No.D-205 of 2025

[Nawaz Ali Jamari vs. Province of Sindh & Others]

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| Petitioners by | : | Mr. Muhammad Sachal Awan advocate |
| Respondents by | : | Mr. Muhammad Ismail Bhutto A. A.G |
| Dates of Hearing | : | <u>13.01.2026</u> |
| Date of Decision | : | <u>13.01.2026</u> |

JUDGMENT

ARBAB ALI HAKRO, J:- Since both petitions revolve around an identical factual and legal substratum, they are being decided through this consolidated Judgment.

2. The petitioners in both matters assert that they were serving in the office of the Right Bank Outfall Division-I, Sann, on a work-charge basis. They contend that, pursuant to the directions rendered in C.P No.D-426 of 2009 and the connected petitions, their services were regularised vide orders dated 25.07.2017. However, despite the issuance of such orders, respondent No.5 allegedly declined to permit them to assume charge in terms thereof.

3. Learned counsel for the petitioners submits that petitioners Abdul Ghaffar Shah and Abdul Ghani were performing duties as “Darogha”, whereas petitioner Nawaz Ali was serving as “Naib Qasid” on a work-charge basis under the Right Bank Outfall Drain. He maintains that, in compliance with the earlier judicial directives, petitioner Abdul Ghaffar was regularised

as Darogha, petitioner Abdul Ghani as Malhi, and petitioner Nawaz Ali as Naib Qasid through separate orders dated 25.07.2017, duly issued by the Executive Engineer, RBOD Division-I, Sann. It is further argued that all petitioners were declared medically fit, yet respondent No. 5 is unlawfully obstructing their joining, thereby amounting to a blatant disregard of the regularisation orders. He, therefore, seeks a direction compelling the respondents to allow the petitioners to join their respective posts.

4. Conversely, learned Additional Advocate General Sindh submits at the outset that the petitioners were not parties to the petitions referred to by them and therefore, cannot derive any benefit from the orders passed therein. He contends that the petitioners were never appointed on a work-charge basis, nor were any such posts sanctioned in the SNE. According to him, the petitioners are attempting to mislead the Court. He further argues that appointments to public posts must strictly adhere to codal formalities, such as advertisement, competitive process, test and interview, none of which were fulfilled in the present case. It is asserted that respondent No.3 never issued the letters relied upon by the petitioners. Hence, the petitioners are not entitled to any relief and the petitions merit dismissal.

5. Having considered the submissions advanced at the bar and having examined the comments filed by the Respondent No.5 and Re-Joinder filed to the same by the Petitioners, it emerges that the controversy raised through the present petitions is not confined to a mere legal question but is inextricably linked with profound and foundational disputes of fact. The petitioners assert that they were engaged as work-charge employees under the Right Bank Outfall Division-I, Sann, and that, pursuant to various judicial directions, their services were regularised by orders dated 25.07.2017. On the other hand, the respondents have categorically repudiated these assertions, maintaining that the petitioners were never appointed on a work-

charge basis, that no sanctioned posts existed in the SNE, and that the alleged orders relied upon by the petitioners were issued without lawful authority or competence. This stark divergence in factual positions strikes at the very root of the petitioners' claim.

6. The first and most fundamental factual dispute pertains to the very existence of the petitioners' initial engagement. While the petitioners maintain that they were continuously serving as work-charge employees, the respondents have unequivocally denied this, stating that no such appointments were ever made, no work-charge posts were sanctioned, and no recruitment process, whether through advertisement, scrutiny or selection, was undertaken.

7. The petitioners' reliance upon the orders dated 25.07.2017 also does not advance their case in any meaningful manner. The respondents have challenged the legality, authenticity and competence of the authority issuing such orders, asserting that the petitioners were not beneficiaries of any judicial directive, were not parties to the earlier petitions relied upon and that the Executive Engineer lacked the competence to issue such orders in the absence of sanctioned posts or compliance with mandatory codal formalities. Whether the alleged orders were validly issued, emanated from a competent authority, and were supported by sanctioned strength are all questions that require factual verification from the departmental records. This exercise cannot be undertaken by this Court in proceedings under Article 199 of the Constitution.

8. Even the ancillary reliance placed by the petitioners upon medical fitness certificates does not materially assist them. The respondents have disputed the officer's competence to initiate such correspondence and questioned the propriety of the process. It further reinforces the conclusion

that the matter is riddled with factual controversies that cannot be resolved on affidavits alone.

9. It is by now a well-settled principle, consistently reiterated by the Supreme Court, that where the adjudication of a claim necessitates resolution of disputed questions of fact, particularly those relating to the existence of an appointment, the competence of the authority or the validity of the recruitment process, the constitutional jurisdiction is not the appropriate forum. This Court cannot, in exercise of its extraordinary jurisdiction, embark upon a factual investigation or assume the role of a trial forum. The proper course for the petitioners is to approach the competent administrative authority, which alone is vested with the power to examine the relevant record, verify the authenticity of the documents relied upon and determine the legality of the departmental actions.

10. For the reasons discussed above and keeping in view the consistent jurisprudence of the Supreme Court that constitutional jurisdiction cannot be invoked for the resolution of disputed and foundational questions of fact, we are not persuaded to grant the relief sought by the petitioners. The record placed before us does not conclusively establish their initial engagement as work-charge employees, nor does it demonstrate that the alleged orders dated 25.07.2017 were issued by a competent authority or in accordance with sanctioned strength and codal formalities. These matters require factual verification from the relevant departmental records, which fall squarely within the domain of the competent administrative authority.

11. Accordingly, without entering into the disputed factual arena, these petitions are **disposed of** with the observation that the petitioners may, if they so choose, approach the Secretary, Irrigation Department, Government of Sindh, Karachi, who shall examine their claim in light of the entire

departmental record, determine whether they were ever engaged as work-charge employees, assess the legality and competence of the appointment orders issued in favour of the Petitioners and thereafter pass a reasoned and speaking order strictly in accordance with law.

The office is directed to transmit a copy of this Judgment to the Secretary, Irrigation Department, Government of Sindh, Karachi, for information and compliance.

JUDGE

JUDGE

Sajjad Ali Jessar