

# THE HIGH COURT OF SINDH, KARACHI

Present:

*Justice Mohammad Karim Khan Agha*  
*Justice Nisar Ahmed Bhanbhro*

**CP No.D-200 of 2014**

[Habib Abdul Qadir and others v. Province Sindh and others]

Petitioners : Habib Abdul Qadir and others through Mr. Shoa-un-Nabi, Advocate.

Respondents No.1&2 : through Mr. Ali Safdar Depar, AAG

Respondents No.3 : through Mr. Talha Abbasi, advocate

Dates of hearing : 03-03-2025

Date of decision : 11-03-2025

## ORDER

**Mohammad Karim Khan Agha, J.** - Through this petition, the petitioners seek directions against the respondents to reinstate Petitioners No. 1 to 6 in their respective jobs, and in the event of failure, to direct the respondents to pay pensionary benefits to them, as granted by this Court in C.P. No. D-3212/2010.

2. Concisely, the facts of the case are that the petitioners were appointed in Sindh Muslim Government Law College on temporary basis and they served in various categories such as peons, security guards etc. Per petitioners, the Respondent No. 3, without any written order, ousted the Petitioners from their job verbally against which the Petitioners agitated through applications as well as hunger strikes; that the petitioners have repeatedly approached Respondent No. 3, but their efforts have been in vain, as Respondent No. 3 has ignored their requests and is unwilling to issue a final order.

3. The learned counsel for the petitioners contended that the petitioners served for years for Respondent No.3 and there is no adverse record against them that would justify depriving them of their legal right to employment and pensionary benefits. During their service, no charge sheet or show-cause notice was ever issued to them, and yet Respondent No. 3 has unjustly failed to issue

any final order. As there is no specific order in this case, the issue of limitation does not apply to the present petition. Petitioner No. 7, the widow of ex-sweeper Chaman Lal, deserves the same treatment as the petitioners in Constitutional Petition No. D-3212/2010.

4. Learned counsel for Respondent No. 3 argued that S.M. Law College, is an autonomous, self-financed institution, making this petition misconceived and not maintainable. The petitioner must prove to the Court that the institution is involved in the affairs of the Federation and Province which he has failed to do; otherwise, the petition cannot stand as it also suffers from laches. As a matter of record, Respondent No. 3 has paid all dues to each employee at the time of their dismissal. Additionally, the petitioners themselves stated that they were invited to rejoin their duties but failed to do so. As a self-financed institution, the economic viability of S.M. Law College must be preserved. In light of this, the Board of Governors, in the interest of sustaining quality legal education, resolved on 12-01-2002 to place all non-teaching staff on contract, effective 01-07-2002. As a result, the petitioners' services were converted to a contractual basis. Petitioners No. 2 to 6 were among those dismissed by the Board of Governors for deserting their duties and are not entitled to pension or benefits. In accordance with the Board's direction, their dues were paid in 2004. Furthermore, Petitioner No. 7, the purported widow of Mr. Chaman Lal, whose retirement occurred on 28th February 2002, also received her husband's dues at the time of his retirement and as such the petition be dismissed.

5. Learned AAG adopted the arguments of learned counsel for the respondent No.3 and requested for dismissal of the instant petition.

6. We have heard learned counsel for the parties and perused the record with their able assistance.

7. It is doubtful that this petition is maintainable as it appears that the Respondent has non statutory rules of service and is not performing functions in connection with the Federation or Province. Even otherwise all the petitioners were appointed on contract basis in around 1987 as peons, security guards etc at SM Government Law College however on 10.04.2002 they chose to deliberately remain absence from their duties which is evidenced by an



advert in the *Daily Jang* news paper dated 16.04.2003 requesting them to resume their duties. However the petitioners failed to resume their duties.

8. The Board of Governors of SM Government Law College met on 24<sup>th</sup> April 2004 and reached the following decision as per their minutes of that date which is produced as under for ease of reference;

""MINUTES OF THE COMMITTEE CONSTITUTED VIDE  
RESOLUTION #2. OF BOARD OF GOVERNORS  
MEETING OF 25TH OCTOBER, 2003

*Committee constituted vide Board of Governors resolution No.2, of 25th October, 2003, for the resolution of issue, relating to the services of non-teaching staff who deserted from their duties, since 10th April 2003, was convened on January, 2004, at 1400 hrs, and attended by the following:-*

Prof Dr. Qazi Khalid Ali	Chairman
Lt. Gen (Retd.) Sardar F.S. Lodi	Member
Syed Hasan Shah Bukhari	Member
Sagheer Shaikh, Dy Secretary representative of Law Secretary	Member
Barrister Kluurshid A. Hashmi	
Principal, S.M.Law College	Member/Secretary

The meeting commenced with the recitation from "Holy Quraan.....

After foregoing amendments, the recommendations of the committee, shall read as under:

1. That the services of the entire non-teaching staff, who, on their own without any lawful justification whatsoever, deserted from their duties, since 10<sup>th</sup> April, 2003, shall stand terminated from the said date. The details of their names & designations etc., are enumerated hereinbelow:

S. No.	Name	Designation	Per Month Salary	Total Contribution	Leave Position Jun-01 to 30 <sup>th</sup> June, 2002	Leave position Jul-01 to 10 <sup>th</sup> April 2003
1.	Mr. Nadeem Ahmed Khan	P.A/Steno	17,621	53,760	96	--
2.	Sarfraz Badar	Asstt.	8,287	59,279	38	10
3.	Mr. Salahuddin Abro	Asstt.	7,814	26,370	51	23
4	Mr. Muhammad Shahid	Asstt.	7,005	17,682	65	67
5	Mr. Kamran Kazi	Asstt.	5,319	--	38	18
6	Mr. Muhammad Aslam	Clerk	5,914	11,292	27	6
7	Mr. Allah Wasaya	Peon	7,175	73,434	35	30

8.	Mr. Habib A. Qadir	Peon	6,889	64,606	47	19
9.	Mr. Muhammad Yamin	Peon	6,809	56,634	46	31
10.	Mr. Aziz ur Rehman	Peon	6,904	45,104	28	33
11.	Mr. Mohd. Nasir Khan	Peon	6,059	42,039	75	21
12.	Mr. Dost Muhammad	Peon	6,175	26,991	42	51
13.	Mr. Muhammad Saleem	Peon	4,945	1,846	64	3
14.	Mr. Muhammad Ayub	S.Guard	6,854	50,068	64	3
15.	Mr. Azmat Gul	S.Guard	6,138	50,068	52	36
16.	Mr. Zareef Khan	S.Guard	5,929	24,417	18	2
17.	Mr. Asalam Pervez	S.Guard	4,518	--	14	13
18.	Mr. Sohail Akhtar	S.Guard	4,466	--	19	23
19.	Mr. Shabbir Hussain	S.Guard	4,466	--	23	12
20.	Mr. Yaqoob Hussain	S.Guard	4,466	--	37	5
21.	Mr. Hashim Masih	Sweeper	5,743	20,047	21	9
22.	Mr. Khalid Masih	Sweeper	4,410	--	8	10
23.	Mr. Vijay	Sweeper	3,850	--	6	12
	<b>Total</b>		147,621	623,637		

2. That after termination of their service, this committee in due course of time, with the permission of Board of Governors, shall consider and evaluate the case of each former employee, for fresh appointment, on contract basis.
3. That a former employee, who subject to approval of Board of Governors, would be recommended for employment, shall furnish an undertaking not to indulge in any political or ethnic activity, directly or indirectly, covertly or overtly, detrimental and prejudicial to the interests of this institution. In the event of violation of the foregoing, the Principal, shall have the exclusive authority to terminate his service.

#### RESOLUTION #2.

*"All the members unanimously approved the aforesaid amended recommendations and the permission to the committee to evaluate the service record and performance of duties of each of them, while considering for afresh appointment on contract basis, subject to submission of application. The committee shall also determine the terms and conditions of their afresh service on contract basis. The Board of Governors also approved the request of Mr Hashmi, Principal, S. M Lav College that the abovenamed employees, besides their dues, be also paid two months salary, as ex-gratia"*



9. An advert was placed in the *daily Jang* once again informing the petitioners about their termination.

10. After this advert the petitioners who admittedly were all contract workers approached SM Government Law College. They did not however challenge their termination and instead can be deemed as admitting that they were fairly terminated on account of not performing their contractual duties by not turning up to work without any reason and by accepting payments from SM Government Law College on account of any outstanding dues including an additional two months worth of salary as ex gratia payment on account of their termination as is evidenced by one of the petitioner's receipts as is set out below for ease of reference;

**"ACKNOWLEDGEMENT RECEIPT.**

*I, Habib A. Qadir son of Habib Muhammad, pursuant to the Board of Governors Resolution # 2, dated 10th April, 2004, pertaining to my services with S.M. Law College and confirmed by the Board of Governors vide Resolution # 1, dated 15th May, 2004, do hereby acknowledge the receipt of Rs. 62,606/- (Rupees Sixty Two Thousand Six Hundred & Six only), as my service dues vide Cheque # 042621, dated 7-6-2004, drawn on M/s Allied Bank Limited, Saima Trade Centre Branch, 1.1.Chundrigar Road, Karachi.*

*I also, thankfully acknowledge the receipt of two months salary as an ex-gratia paid i.e., Rs.13,778/- (Rupees Thirteen Thousand Seven Hundred Seventy Eight only), pursuant to Board of Governors resolution # 2, dated 10 April, 2004, confirmed vide Resolution 1, dated 15th May, 2004, vide Cheque #0101556, dated 7-6-2004, drawn on M/s Allied Bank Limited, Saima Trade Centre Branch, 1.1. Chundrigar Road, Karachi.*

*1, hereby affirm, that after having received the above payments I have no claim whatsoever, of any nature, against S.M. Law College, Karachi." (bold added)*

*Signed Mr.Habib A Qadir*

*Countersigned by S.M.Irman Ali  
Superintendant S.M Law College*

11. Thereafter a few of the petitioners were given jobs as daily wage earners as set out in the comments of respondent No.3 which are reproduced below when even then their commitment to their work seems to have been limited at best.

*"Para 10. That since, six persons, namely Mr. Sarfraz Bader, mr. Sallaluddin Abro, Mr. Kamran Kazi, Mr. Habib A. Qadir, Mr. M. Nasir Khan and Mr. Hashim from amongst the dismissed employees repeatedly approached the*

members of Board of Governors for Law Colleges in Karachi, for re-employment. Consequently, **on compassionate grounds**, pursuant to Board of Governor's Resolution # 3 Dated 09<sup>th</sup> October, 2004, **they were reinstated on daily wages basis**. First three, namely Mr. Sarfraz Badar, Mr. Sallahuddin Abro and Mr. Kamran Kazi are still serving, **whereas, Mr. Habib A. Qadir (Petitioner No.1) and Mr. M. Nasir Khan, on their own, again deserted and even otherwise, after rejoining they had not been regular and punctual qua their duty. Mr. Hashim had not rejoined the service.** (bold added)

11. That Petitioners No.2 to 6 were amongst those, who were dismissed by Board of Governors, as they had deserted from their duties. They are not entitled to any pension or benefits. Pursuant to Board of Governors direction **their dues have already been paid to them, way back in 2004**. Whereas, the Petitioner No.7 is purportedly widow of Mr. Chaman Lal, who had retired on 28<sup>th</sup> February 2002 and his dues were also paid at the time of his retirement." (bold added)

12. Significantly for at least **11 years** the petitioners remained silent after their termination as they were satisfied with the payments which they has received and did not approach SM Government Law College in respect of the same as they had accepted such termination or in some cases had been appointed as daily wage earners and as such their petition is also hit by laches.

13. Instead it appears that about 11 years later after their termination and receipt of payment on account of their termination the petitioners came to know that some other litigants who also worked at SM Government Law College through CP.No.3212/2010 in the case of **Ahsan Ali and others V Federation of Pakistan and others (unreported)** had been awarded pensionery benefits vide order dated 24.09.2013 and hence they rushed to move this petition. The Order mentioned above which the petitioners rely upon is however distinguishable from their case as the petitioners in this case were terminated from service for being absent and received payment for their termination and thereafter had made **no complainant for over 11 years** whereas the petitioners in the CP D.3212/2010 had never been terminated but instead had reached superannuation before the resolution passed by SM Government Law College was passed and as such there case was on an entirely different footing. Furthermore, no evidence has come on record to show that the petitioners were any thing other than contractual workers and thus are not entitled to receive a pension even if they had put in the required length of service which is doubtful and has not been proven.



14. This 11 year delay in filing this petition also indicates that the petitioners did not come to this court with clean hands (which is a requirement in the equitable jurisdiction of this court) as why wait 11 years if you were genuinely entitled? No adequate explanation has been given for such delay. Instead once the petitioners heard of the above referred order they sprang into action otherwise they would have most probably continued to remain silent on the issue as they had for the last 11 years.

15. Prima facie the Petitioners were contract employees, they surrendered their services by accepting and settling full and final dues, thus cannot bring a cause against the Respondent College under the doctrine of Estoppels. The Petitioners slept over their rights and approached this Court after about more than 11 years of the impugned action without offering any reason or explanation thus are guilty of unexplained lethargy, inaction, laxity and gross negligence, therefore disentitled for grant of any relief under equitable writ jurisdiction of this Court. The reliance in this regard is placed on the judgment of Honorable Supreme Court in the case of **Col Mohammed Zahid Versus Federation of Pakistan through Ministry of Defence** (PLD 2024 SC 235).

16. As such based on the above discussion the petition is without merit and is dismissed.