

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.D-61 of 2025
(*Momin Ali Kori v. The P.O. Sindh & others*)

PRESENT:

MR. JUSTICE ZULFIQAR ALI SANGI
MR. JUSTICE RIAZAT ALI SAHAR

Petitioner : Momin Ali through Mr. Akhtar Hussain Malik, Advocate.

Respondents: Through Mr. Ali Raza Baloch, Additional A.G Sindh a/w Ziadullah Leghari, DFO, Sukkur.

Date of Hearing : 15.09.2025

Date of Decision : 15.09.2025

ORDER

RIAZAT ALI SAHAR J: - By means of instant Constitutional Petition, the petitioner has prayed for the following relief(s):-

- A. To, declare impugned verbal order dt: 31-12-2017 for terminating to petitioner from service, un-warranted & without lawful authority and of no lead effect and impugned order dt: 21-04-2022 of respondent No.03 & impugned order dt: 20-03-2023 of Sindh Service Tribunal Karachi are illegal, un-lawful and null & void.*
- B. To, direct the respondent No.02 & 03 to allow the petitioner their job as they were working before the passing of impugned order of terminating their service and also direct to pay the salary for the month of July 2010 to December-2017.*

2. The case of the petitioner is that pursuant to an advertisement dated 10.05.2008, published in Daily Kawish, Hyderabad, by respondent No.2 inviting applications for various

posts, he applied for the post of Forest Guard/Game Watcher. Having qualified both the written test and interview, he was appointed vide letter dated 08.08.2008 issued by respondent No.4, and his medical examination was conducted on 11.08.2008. He was initially posted at Sarhad Forest, Ghotki, and thereafter transferred vide order dated 28.02.2009 to Sehar Wah Canal Side Plantation, I.P Range. The petitioner further stated that in August, 2010, respondents No.4 & 5 stopped his salary but verbally directed him to continue his duties, assuring him of payment. Despite his continued service, in December, 2017 respondents No.3 & 4 refused to pay his salary for the period from July, 2010 to December, 2017 and verbally terminated his services without issuing any written order. The petitioner repeatedly approached respondents No.3 & 4 for either reinstatement or issuance of a formal termination order, but no action was taken. He further averred that the verbal termination is illegal, void, and without lawful authority. It is further stated that the petitioner filed C.P.No.D-1046 of 2018, which was dismissed on 10.03.2022 for want of jurisdiction. Petitioner has also made reference to C.P.No.D-1766 of 2010, filed by Qamaruddin & others, wherein respondents No.2 & 3 undertook to accommodate the petitioners therein as and when vacancies arose. The petitioner thereafter filed a departmental appeal before respondent No.3, which was rejected vide order dated

21.04.2022 as time-barred without hearing him. His subsequent appeal before the Service Tribunal was dismissed in *limine* on 20.03.2023. The petitioner also moved an application under Order I Rule 10 CPC in C.P. No.D-1766 of 2010 and on 31.10.2024 respondents No.2 & 3 filed a statement along with advertisements dated 27.10.2024 and 28.10.2024 and Notification dated 31.10.2024, wherein learned AAG Sindh undertook that petitioners in the said petition would be accommodated. The petitioner, along with others, submitted applications accordingly, but he did not receive any interview call. On 23.12.2024, a compliance report was filed in C.P.No.D-1766 of 2010 showing that seven petitioners therein had been issued offer orders, while the petitioner's application under Order I Rule 10 CPC was not pressed with liberty to file a fresh petition. Hence, the present petition.

3. Pursuant to notices, respondents No.2 to 4 filed their para-wise comments, wherein they have categorically stated that the petitioner was appointed not against a regular post but under a development project, namely, Establishment of Game Reserve at Sarhad Forest. The appointment order itself specifically provides that the employment was limited to the project period ending 30.06.2010 and that his services were likely to be terminated upon expiry of the project. It is further stated that on completion of the project, services of petitioner were terminated through

order dated 30.06.2010, and thereafter he neither performed duty nor is entitled to claim arrears of salary or reinstatement.

4. Learned counsel for the petitioner argued that the petitioner was duly appointed against the post of Forest Guard/Game Watcher through a transparent process in 2008, after test and interview, and that he continuously performed his duties even beyond the expiry of the project. He contended that his salary was unlawfully withheld from August 2010 onwards and that the subsequent oral termination, without any written order, was illegal and without lawful authority. He further argued that the petitioner cannot be deprived of his accrued rights merely on the pretext of project completion, particularly when the respondents continued to take work from him till 2017.

5. Conversely, learned Assistant Attorney General supported the stance of respondents No.2 to 4, by contending that the petitioner's appointment was purely project-based under the development scheme Establishment of Game Reserve at Sarhad Forest and was explicitly limited to the project period, which ended on 30.06.2010. Upon expiry of the project, his services automatically stood terminated. It was further argued that the petitioner neither has any right of continuity nor of claiming arrears. He further pointed out that the petitioner has already exhausted his remedies before the departmental authority and

the Service Tribunal, both of which culminated against him, and that this petition is misconceived and not maintainable.

6. We have considered the arguments of learned counsel for the parties and examined the record available before us. The material on record makes it clear that the petitioner's appointment was purely temporary and scheme-based, directly linked with a specific development project. His appointment letter itself mentioned that the post was project-related and would come to an end with the expiry of the project on 30.06.2010. Once the project concluded, the petitioner's services automatically came to an end, and he could not claim any right of continuity or further salary thereafter.

7. The petitioner's plea that he continued in service until 2017 on verbal assurances is unsupported by any contemporaneous record. He has not placed on file any attendance sheets, duty registers, office orders, salary bills, or other official documents evidencing his alleged continuation for more than seven years without pay. Such a claim, standing alone on self-serving assertions, is neither convincing nor credible.

8. It is pertinent to observe that the petitioner has already availed the remedies provided under the law by first filing Constitution Petition No. D-1046 of 2018 before this Court, which was dismissed vide order dated 10.03.2022 on the ground of lack

of jurisdiction. Thereafter, he preferred a departmental appeal, which was dismissed as time-barred on 21.04.2022, and subsequently filed an appeal before the Service Tribunal, which too was dismissed in limine on 20.03.2023. Having thus exhausted the statutory remedies, the petitioner cannot now be permitted to re-agitate the same service dispute before this Court, particularly in the absence of any exceptional circumstances such as mala fides, lack of jurisdiction, or violation of fundamental rights. Therefore, the instant second petition, being based on the same cause of action, is clearly hit by the principle of *res judicata*. In the case of **Muhammad Sharif and others v. Settlement Commissioner, Bahawalpur and others (1981 SCMR 1048)**, the Hon'ble Supreme Court, while dilating upon the said principle, was pleased to observe as under:

“The petitioners challenged the cancellation of the Units through a Writ Petition No. 722-R of 1973 which was dismissed in limine on 28th November, 1973. A review was sought on the ground that the report about the entitle- merit of the petitioners was awaited but the High Court dismissed it. There- after, on the strength of the report dated 6th of February, 1974 of the Central Record Office, that it was willing to reverify their entitlement, the petitioner filed Writ Petition No. 751-R of 1974 to obtain a direction for the reverification of their entitlement which was dismissed by the High Court on the ground that on the same allegations the earlier writ petition and the review petition were dismissed and that it found no reason to entertain this writ petition for the same relief.

The learned counsel contends that the report constitutes a fresh ground to assail the order of the Additional Deputy Commissioner but we see no merit in it for the reasons given by the High Court. We would like to observe further that the second writ petition was hit by the rule of *resjudicata* and, therefore the conclusion of the High Court is unexceptionable”.

9. As to reliance on C.P. No.D-1766 of 2010, the petitioner was not a party to those proceedings and cannot seek to derive benefit from undertakings made therein. The undertakings and accommodations were limited to the petitioners of that case, as reflected in compliance reports. His belated application under Order I Rule 10 CPC was not pressed and thus cannot advance his claim in the present matter.

10. In view of the above, it is clear that the petitioner's appointment was temporary and tied to the project, which ended on 30.06.2010; his claim of continued service until 2017 is unsupported and unproven; he has already availed and exhausted statutory remedies which have culminated against him; no jurisdictional defect, mala fide, or violation of fundamental rights has been established.

11. For the foregoing reasons, the instant petition was **dismissed**, being devoid of merit, hit by the principle of *res judicata*, and not maintainable, by our short order. These are the reasons in support of the short order dated 15.09.2025.

JUDGE

JUDGE

Ahmad