

ORDER SHEET

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Present:

*Mr. Justice Ahmed Ali M. Sheikh &
Mr. Justice Salahuddin Panhwar.*

Const. Petition No. D- 3240 of 2012.

1. For katcha peshi.
2. For hearing of CMA 10077-12.

Ahsan Ali and others.....Petitioners

VERSUS

Province of Sindh and others.....Respondents

Mr. Achar Khan Gabole, Advocate for Petitioners.
Mr. Liaquat Ali Shar, Additional A.G.

Date of hearing: 28th February, 2013.

ORDER.

Ahmed Ali M. Sheikh J., From the pleadings, it appears that the petitioners are low-paid employees as they were appointed as Cooly, Helper, Beldar, Daroga and Tube-well Chowkidar during 15.11.2011 to 08.12.2011 and since then they are discharging their duties with devotion and there is no compliant against them from any quarter. Their grievance is that since the date of their appointment, they have not been paid even a single penny and being sole bread winners of their respective families, they are facing hardships as they are not in a position to arrange butter and bread for their families.

2. Comments have been furnished by the respondents No.1 to 6, whereby they have not disputed the appointment of the petitioners, but took a plea that since the vacancies were not existing at the time of their appointment, even then petitioners were appointed by the predecessor of respondent No.2. As far as posting orders of the petitioners are concerned, same fact is also not disputed by the respondents and they asserted that since the appointment of the petitioners was made without taking into consideration that no vacancy was existed, hence their appointment was considered as illegal. They lastly averred that since the very appointment of

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the petitioners was illegal, besides above they did not perform any duty, therefore claim for release of their salaries could not be entertained.

3. It is inter alia contended by learned counsel for the petitioners that petitioners are low-paid employees and they were appointed after observing required formalities. However, due to transfer of former Executive Engineer, Tube-well, Division Ghotki, petitioners were not allowed to continue their services. Besides above, if the respondents were of the view that the petitioners' appointment was illegal or made against the rules and regulations, even then they were under statutory obligation to issue show-cause notice to the petitioners and after providing them an opportunity of being heard could pass any order.

4. Conversely, learned AAG argued that the very appointment of the petitioners is illegal, hence they are not entitled for any relief.

5. We have heard the learned counsel for the parties and have gone through the material available on record.

6. No doubt, the very appointment of the petitioners is not disputed by the petitioners in their comments, however, their main thrust is that the petitioners were appointed against non-existing posts; as such they were not allowed to remain in service. During course of arguments, when learned AAG was asked as to whether any termination order in respect of petitioners' services has been issued by the respondents, on which he very frankly conceded that till date respondents have not issued any termination order. Since the petitioners are low-paid employees which pertains to BPS-2 and 5 respectively and are lone bread earners of their respective families. Hence, instead of holding them responsible for issuing appointment orders, severe action should have been taken against them, but record is silent and even learned AAG is not in a position to make statement that whether any action has been taken against then then Executive Engineer. Even in case of **Muhammad Akhtar Shirani v. Punjab Text Book Board (2004 SCMR 1077)**, the Hon'ble Supreme Court has been pleased to hold as under:

"It may be observed that for such reason beneficiary cannot be blamed alone because primarily the

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authority who had actually mis-exercised his powers, for the reasons known to it, is bound to be held responsible for the same, instead of penalizing the petty employees like Chowkidar, Naib-Qasid, junior clerks etc, who have to earn livelihood to support their families and if after having served for a long period they are removed from service discriminately, such action would not promote the cause of action and it would give rise to a number of problems to them. In this regard at a number of occasions, it has been held by this Court that instead of removing the employees from service, action should have been taken against the authority who had mis-exercised its powers".

7. For the foregoing reasons and dictum laid down by Their Lordships in case of Muhammad Akhtar Shirani (supra), it is suffice to say that, plea of respondents regarding termination of service of petitioners is devoid of merits, when it is not disputed that no show-cause notice was issued to the petitioners and they were condemned un-heard, hence petition was allowed by short order dated 28.2.2013. However, respondents will decide the fate of previous salaries of the petitioners after verifying the muster rolls etc. and after verification if they reach to a conclusion that the petitioners were not discharging their duties, their salaries will be started from the date when they will report at their respective posting places.


JUDGE


JUDGE

Ahmad