

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

C. P. No. D-1608 of 2014.

**Present:**

Mr. Justice Salahuddin Panhwar.

Mr. Justice Fahim Ahmed Siddiqui.

Mehboob Ali.

.....Appellant.

**Versus**

Province of Sindh and others.

.....Respondent.

Mr. Sohbat Ali Lund, Advocate for the petitioner.

Mr. Allah Bachayo Soomro, Additional A.G.

Date of hearing: 24.08.2017.

Date of Judgment: .09.2017.

**J U D G M E N T**

**Fahim Ahmed Siddiqui, J-** It is the case of the petitioners that they were appointed as 'Sanitary Workers cum Beldars' in BPS-1 by the Taluka Municipal Administration, Dadu on temporary basis in the year 2011. The Taluka Municipal Administration appointed the petitioners against vacant posts. As per office order, communicated to the petitioners, the appointment was made with the approval of the competent authority conveyed to administrator through Section Officer-III, Local Government Department, Government of Sindh, Karachi under later No: SO-III (LG) /19-44/2011 dated 13<sup>th</sup> May 2011. The petitioners' services were subsequently terminated

through impugned order No: MCD/GB/-140 dated 18<sup>th</sup> March 2014 with effect from 1<sup>st</sup> February 2014 (FN).

2. It is the case of the petitioners that they have completed the probation period and their appointment was against the clear post, as such their services should be regularized on permanent basis. The respondents' stance is that the jobs of sanitary workers are meant for 'Minorities and pure Shaikhs', who are already engaged in the profession of sanitary workers or sweepers.

3. The learned counsel for the petitioners submits that the petitioners were working properly and performing their duties and they are ready to do the job of sanitary workers. He admits that the petitioners are Muslims and they do not belong to a family already engaged in menial job of sweepers and sanitary workers.

4. On the other hand, the learned AAG submits that the appointment of the petitioners was politically motivated and after appointment they were not ready to perform the duties of sanitary workers. He submits that after getting services, the Muslim sanitary workers used to make requests for change of cadre and now the government has decided under a policy to reserve the post of sanitary workers for the persons of minorities, who are already familiar and engaged with the same profession.

5. After hearing, the learned AAG was directed to supply the copy of said policy within three days. However, in lieu of a

prescribed policy, circulars issued to the Chairmen of different municipal authorities were supplied, which throws some light in this respect.

6. Needful to add here that as per order of this Court passed on 25-10-2016 in CP No. D-1930 of 2016, the municipal authorities are required to take action against illegal employees, non-willing workers and others, according to the Appointment Promotion and Transfer Rules of the Councils. A photocopy of the said order is also provided by the learned AAG. It was passed by a division bench of this Court; for the sake of brevity, the operating part of the order is reproduced as under:

*"Chairman Town Committee Madeji, Mr. Najaf Ali Khan has effected appearance and made a statement that he has tried his best to clear the city from garbage and sewerage water, however, there is acute shortage of staff for the reason that in the previous era the authority appointed people on political consideration, who claimed themselves on the other designations and 'white-collar' employees thus refuse to take jobs related to cleaning garbage collection and sewerage treatment for which they were appointed. Consequently we have summoned Secretary Local Government Mr. Mohammed Ramzan Awan, who has frankly conceded that certain appointments on political bases were made and now the government has decided to take action against them, as most of these persons were appointed on non-sanction position.*

*In the facts and circumstances, let necessary action be initiated against the persons, who have been appointed in violation of the rules, and the person suitable for the jobs be replaced accordingly. Secretary Local*

*Government says that he will commence the process and would submit a detailed report within four weeks. He has also assured that he will monitor that the problems faced by the residents of Madeji are taken care of."*

7. Wroth to add that with reference to said order, Government of Sindh, Local Government Department issued Notification No.SOA(LG)/4(38)/2016 Karachi 23<sup>rd</sup> November, 2016. The *first* para whereof reads as:-

*" I am directed to refer to the subject noted above and to state that the Hon'ble High Court of Sindh, Karachi has passed orders dated 25.10.2016 in Constitutional Petition No.D-1930 of 2016, filed by Dur Muhammad Shah, Advocate. The Hon'ble High Court has directed to take action against the employees who are appointed against non sanctioned post in violation of the Rules, including white collared Sanitary Workers who are not willing to work and did not perform their duties since appointment".*

8. A collective reading of the Order of this Court *supra* as well above *Notification* would make it quite obvious that appointment of *white-collared* against post of *Sanitary Worker* was not appreciated rather such *appointment* was considered to result into '**non-performance**' of duties for which such appointment is made.

9. Since, per Learned AAG, under a *policy*, the government has decided to reserve the post of sanitary workers for the persons of minorities though no such thing has been placed on

record, however, taking such *statement* of the learned AAG, we would proceed a little further to examine *legality* and *reasonableness* of reserving such *like* posts to minorities only.

10. The ordinary meanings of terms '*Sanitary work*' and '*Sweeper*' are :

"A person whose job is to empty people's dustbin and take away rubbish"

"A person or device that cleans a floor or road by sweeping"

From above meaning, it appears that such *job* always requires a *skill* of cleaning /removing garbage hence, it could be said that such *quality* (knowing cleaning) is an *implied* part of required qualification for post of the Sanitary worker / sweeper.

11. At this juncture, it would be relevant to refer the meaning of *qualification* which is:

1. a pass of an examination or an official completion of a course, especially one conferring status as a recognized practitioner of a profession or **activity**;
2. a condition that must be fulfilled before a right can be acquired; **an official requirement**

Since, per the *ordinary* meaning of term '**qualification**' a particular profession or *activity* requires one to pass a particular examination

/ course hence it would always be *reasonable* to reserve the posts of Sanitary worker / Sweeper to *minorities*, known to be engaged in such like *work*. In the case of *Government of Punjab v. Zafar Maqbool Khan* 2012 SCMR 686 the term *eligibility* was defined as:

“8. .... *The eligibility of a candidate had to be determined in accord with the advertisement for the post, service rules governing the appointments and any amendment or **instruction backed by law.***”

12. We would not hesitate that definition of *law* always includes *custom*. We would also add that no one can deny that qualification for an *appointment* shall always include *efficiency* which (efficiency), per Oxford Advanced Learner’s Dictionary means:

“*EFFICIENCY* :- the **quality of doing sth well** with no waste of time or money; improvements in efficiency”

Thus, a *post* of sanitary worker / sweeper would always include an *ability* to do cleaning without any hesitation in doing such job which includes jumping into *drain-pipe* even which *normally* is not expected from a *white-collared* person. It is so that per our *culture*, *normally* the term sanitary worker/sweeper brings a picture of a downtrodden ‘**non-muslim**’.

13. In past, we have also witnessed as observed in referred order of this court that *politically* appointed persons from *different* clans against such post (s) always proved themselves to be ‘**unwilling**’

for required task thereby not only frustrating the purpose of their *appointments* against such posts but also prejudicing the *rights* of such persons who *otherwise* are known for such *jobs*. Thus, instructions to appoint persons, engaged in such work with *expertise* were instructed which *even* was / is in line with required '*eligibility*' for such job.

14. Therefore, instructions time and again issued by this Court in this regard was always *reasonable* hence policy, if decided, to reserve such posts for such *like* persons only, appears to be proper as well in line with time and again issued instructions. Hence, in *future* same be followed. Needless to add that if such policy is not approved then same be framed in view of above.

15. Reverting to the merits of the case, we would say that one cannot claim any benefit of a *wrong* or *illegality* particularly when it is at the cost of right of others or in deviation to *rules* as well object thereof.

16. It is worth mentioning that all the petitioners are Muslims and in all 56 such employees were appointed by the Administrator and all of them are Muslims, who were / are alleged to have been *inefficient* / unwilling workers hence their services were terminated. Thus, case of the petitioners for permanent appointment through regularization was rightly turned down on such posts.

17. In view of given circumstances, instant petition being devoid of merits is dismissed.

JUDGE

JUDGE