

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 1887 of 2013

Petitioners: Through Mr. Muneer Ahmed, Advocate.

Respondents: Through Mr. Abdul Jalil Zubedi,
Assistant Advocate General, Sindh.

Date of hearing: **30.10.2018**

ORDER

ADNAN-UL-KARIM MEMON, J:-. The Petitioners are seeking reinstatement of their service and declaration to the effect that the order/list dated 19.12.2012 issued by the Respondent No.3 is illegal, void ab-initio and having no legal effect.

2. The case of the Petitioners is that the Petitioners No.1 to 3 were appointed on the post of Dispenser in BPS-9, whereas Petitioners No.4 to 10 were appointed on the post of Junior Clerk in BPS-7. Petitioners No.11 and 12 were appointed on the post of Malhi in BPS-1 and Petitioners No.13 and 14 were appointed on the post of Naib Qasid in BPS-1 in the month ranging from April to September 2012 in the Local Government Department, Government of Sindh. After fulfilling all the codal formalities they resumed their duties at their respective places of posting and received their salaries for various months. Petitioners have submitted that to their utter shock and dismay, all of sudden the Respondent No.2/Section Officer vide letter dated 19th December, 2012 declared their appointment as fake, bogus and fabricated without lawful justification. Petitioners protested and approached the Respondents No.1 & 2, who kept them on hollow hopes.

Petitioners added that the Respondent No.3 vide letter dated 14.2.2013 reinstated the service of three colleagues of the Petitioners with the reason that their appointments were found to be genuine. Petitioners have averred that the Respondents No. 2 had acted without lawful authority thus has violated the basic provision of Article-25 of the Constitution of the Islamic Republic of Pakistan. Petitioners being aggrieved by and dissatisfied with the aforesaid action of the Respondents have filed the instant petition on 27.4.2013.

3. Mr. Muneer Ahmed, learned counsel for the Petitioner has mainly argued that it would be in the fitness of things if the Appointment orders of the Petitioners are sent for re-verification, in order to reach to the correct conclusion of the matter regarding their genuineness or otherwise. He next argued that Appointment orders of the Petitioners are not fake and the contention of the Respondents is an afterthought and a heavy burden lies upon their shoulders to prove their contention; that Respondents are responsible for the alleged act of irregular appointments, if any, and the Petitioners cannot be deprived on account of the illegal acts of the Respondents; that the services of the Petitioners cannot be terminated by single stroke of pen and be relieved them from their posts; that the appointment of the Petitioners cannot be terminated without issuing Show Cause Notices and completing other legal and codal formalities under the law, thus according to him, the entire proceedings undertaken by the Respondents are nullity in the eyes of law; that the Petitioners have enjoyed their postings and after lapse of considerable time the Respondents have awoken from deep slumber to say that the appointment of the Petitioners was not genuine. He continued by stating that if there is a maladministration in appointments, it is the responsibility of the Respondents and not the Petitioners; that discrimination has

been meted out with the Petitioners, while retaining the services of some of the colleagues of the Petitioners and the Petitioners have been deprived of their jobs on the plea that their names were borne out in the list dated 9.12.2012 provided by the Respondents and these assertions are against the basic spirit of law. Per learned Counsel, since the Petitioners were appointed in accordance with law and there was no illegality in their appointments, therefore, the comments filed by the Respondents cannot be considered as Gospel truth to deprive the Petitioners of their respective jobs on incorrect pleas; that depriving the Petitioners from their jobs amounts to depriving from their livelihood, therefore the instant Petition can be heard and decided on merits. Learned counsel for the Petitioners has lastly prayed for setting aside the impugned list dated 9.12.2012. He further argued that the Petitioners are innocent and victim of internal tug of war between the officials of the local Government department even otherwise the appointment orders of the Petitioners for the aforesaid posts are genuine and the Petitioners have nothing to do with the purported fake appointments in the local Government department and that they cannot be held responsible for that. He lastly prayed for allowing the instant Petition.

4. Mr. Abdul Jalil Zubedi, learned Assistant Advocate General has argued that the basic appointment of the Petitioners is fake. In support of his contention he relied upon the verification letter dated 19.12.2012 issued by the Local Government Department, as the same were not issued by the concerned department; that the Petitioners are not genuine employees, therefore there is no requirement of law to issue Show Cause Notices and hold inquiry into their culpability particularly with their alleged service issues; that since the Petitioners have not come with clean hands, as their appointments are fake; that the Petitioners are not owned by the

Sindh Local Government and District Council Nausharo-Feroze to be their employees; that after completing formalities action was taken against the Petitioners; that Department had initiated process of scrutiny regarding fake appointments in the Local Government; that there are sufficient documentary evidences that the appointment orders, upon which the Petitioners relying, are bogus and forged and even the Respondent No.2 had directed the Respondent No.3 to lodge the FIRs against those persons, who had produced fake orders as well as other delinquent officials involved in the scam. Learned AAG has further submitted that the persons shown at Sr. No.5 to 7 have neither been permitted to resume their duties nor they are drawing their salaries; that the posting orders have been proved to be fake/bogus and fabricated documents. He has further contended that the alleged postings orders of the Petitioners do not validate and legitimize their fake appointments. He lastly prayed for dismissal of the instant petition.

5. We have heard the learned counsel for the parties at length and have perused the entire material available on record.

6. Learned Counsel for the Petitioners emphasized during the course of hearing that all the documents of the Petitioners regarding their employment with Sindh Local Government are genuine and hence the termination of their services, without hearing by the Respondents on the basis of the said documents is illegal. However, said assertion has been refuted by the Respondents on the basis that the furnished documents of the Petitioners are false and forged.

7. The pivotal question before us is that whether service of the Petitioners can be terminated without providing opportunity of hearing. In our view he who seeks equity must do equity and

approach the Court with clean hands, ill-gotten gains cannot be protected. It is argued by the Respondents that Petitioners had got their appointments through backdoor, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to them.

8. We, on the basis of contentions of the parties with the material produced before us, have reached to the conclusion that we cannot determine the veracity of these documents as these are disputed questions of facts between the parties, which cannot be adjudicated by this Court, while exercising the Constitutional Jurisdiction.

9. In view of the foregoing, this Court cannot give sanctity to the appointment letters of the Petitioners and leave it for the Competent Authority to determine the genuineness or otherwise of the documents, therefore on the aforesaid plea the Constitutional Petition cannot be maintained.

10. This Court, on the issue of fake appointments in the department of the Government, seeks guidance from the latest pronouncement of the Judgment of the Honorable Supreme Court in the case of Government of the Punjab through Chief Secretary and others vs. Aamir Junaid and others (2015 SCMR 74), which is providing guiding principle on the aforesaid issue. An excerpt of the same is reproduced as under:-

***“Undoubtedly such order passed by the learned High Court is absolutely valid and it has been left to the department itself to scrutinize/examine the eligibility of the respondents those who pass the test would be retained as employees by applying the rule of locus poenitentiae, notwithstanding that there was some irregularity in the process of selection, may be on account of one of the members, who is said to have acted as an appointing authority was not competent to sit in the same meeting. Whereas those who are not eligible or qualified shall go. This is for the department now to act fairly in terms of the direction of the learned High Court and take further action.*”**

11. In the light of dicta laid down by the Honorable Supreme Court in the case of Government of the Punjab supra, we direct the Chief Secretary Sindh to constitute a Committee headed by him and comprising of Secretary Local Government Department and another appropriate member co-opted by him, conduct an inquiry of fraud / forgery, after providing ample opportunity of hearing to the Petitioners and fix responsibility in the matter and take action against the delinquent officials strictly in accordance with law and the observations made by the Honorable Supreme Court in the aforesaid case and submit report to this Court through Registrar of this Court within a period of 90 days from the date of receipt of this order.

JUDGE

JUDGE