

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Constitutional Petition No. D –7103 of 2015**

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Shakeel Ahmed

*Versus*

Secretary Education Govt. of Sindh and 02 others

Date of hearing & order : 17.12.2020

Petitioner present in person.

Mr. Ali Safdar Debar, Asstt. AG along with Nawaz Ali Shah Jilani, Assistant Director (Admin.) Director Schools Education.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** The petitioner is seeking direction to the respondents to release his monthly salary, which has been stopped with effect from 09.01.2013 to date.

2. The case of the petitioner as it appears from the record is that he was appointed as a Peon in the office of Directorate of School Education Karachi Region, Karachi, Education & Literacy Department, Government of Sindh, vide appointment letter dated 1.1.2013 and after fulfilling all the codal formalities, he resumed his duties at his place of posting i.e. Assistant District Officer Education Korangi. Per petitioner, he has been working on his post till today, but his salary has not been paid to him up till now. He protested and approached the respondent-Education Department by moving various applications from time to time, who kept him on hollow hopes. He has further submitted that the respondents have given the reason not to entertain his request that his appointment was found fake. It is averred by him that the respondents had acted without lawful authority, thus have violated the basic provision of Article-25 of the Constitution of the Islamic Republic of Pakistan 1973. He, in support of his version, has relied upon various documents attached with the memo of petition i.e. appointment order, joining report, posting order, and muster roll. He being aggrieved by and dissatisfied with the aforesaid action of the respondents has filed the instant Petition on 9.11.2015.

3. Upon, query by this Court from the respondents as to why the salary of the petitioner has been stopped. Learned AAG stated that the captioned petition is not maintainable on the premise that his basic appointments made in the year

2013 was dubious and later on found fake by the inquiry committee constituted under the directives of Honorable Supreme Court in case of C.P No.46-K / 2018, HRC No.41962 of 2018, CMA No.1214-K, 1278-K, 1352-K and 1361-K to 1368-K in Constitution Petition No.46 / 2018 as well as order dated 08.04.2015 passed by the learned Sindh Service Tribunal in Appeal No.760 / 2015 ; that no codal formalities were adopted at the time of his alleged appointment, with the further assertion that the petitioner is not working in Education & Literacy Department, Government of Sindh since his purported appointment made in Jan 2013 by the then Director Education Karachi. As excerpt of the order dated 11.01.2019 passed by the committee is reproduced as under:-

“6. *The Commission has examined the record produced before it by non-teaching staff category of applicants / petitioners on the validity of appointment in School Education and Literacy Department and after considering anomalies pointed out above has come to conclusion that the process of appointment, if it had ever taken place, was heavily flawed and cannot be accepted as valid in the eyes of law specially because of the fact that no record is available in the Department. Thus the Commission does not accept claim of non-teaching staff appearing before the Commission as having been validly appointed in School Education & Literacy Department, Government of Sindh.*”

4. Looking at the above perspective and keeping in view the factual position of the case, we asked the petitioner who is present in person to satisfy this Court regarding the maintainability of the instant petition on the aforesaid pleas.

5. Petitioner, has submitted that since January 2013 respondents have stopped his salary without issuing any show-cause notice or seeking explanation in this regard. He submitted that his Appointment Order is genuine and has been verified. He next submitted that his Appointment Order is not fake and the contentions of the respondents are an afterthought and a heavy burden lies upon their shoulders to prove their contentions. He further submitted that the respondents are responsible for the alleged act of irregular appointments if any, and he cannot be deprived on account of the illegal acts of the respondents. It is further asserted that his salary cannot be stopped by the respondents without issuing show cause notice and completing other legal and codal formalities under the law, thus according to him, the entire proceedings undertaken by the respondents about the withholding of his salary is a nullity in the eyes of law. He asserted that he has been enjoying his posting since his initial appointment and after the lapse of considerable time the respondents have awakened from a deep slumber to say that his appointment is not genuine. He continued by stating that if there is maladministration in appointments, it is the responsibility of the respondents and not the petitioner. He prayed for allowing the instant Petition.

6. We have heard the petitioner who is present in person as well as learned AAG and perused the material available on record on the aforesaid pleas. We asked the petitioner as to whether the post of the petitioner was advertised or not. He was unable to show from the record that advertisement was published in the newspapers for the subject post, or Recruitment Committee was constituted or any test was conducted, or anything in this regard was done by the concerned Department at the time of his purported appointment on the aforesaid post.

7. The pivotal question before us is whether the salary of the petitioner can be withheld without providing an 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 learned AAG that the petitioner had got his appointment through the backdoor, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to him.

8. We, based on contentions of the parties with the material produced before us, have concluded that we cannot determine the veracity of these documents, their claims, and counter-claims as these are disputed questions of facts between the parties, which cannot be adjudicated by this Court while exercising the Constitutional Jurisdiction and since the Competent Authority has already determined the genuineness or otherwise of the documents, claims, and counter-claims on the issue of appointment of non-teaching staff in the Directorate of School Education (Elementary/ Secondary / Higher Secondary Karachi), vide order dated 11.01.2019 on the subject as discussed supra, therefore, on the aforesaid plea the present petition filed by the petitioner cannot be maintained. On the issue of fake appointments in the department of the Government, we are guided by the pronouncement of the Judgment of the Honorable Supreme Court in the case of Government of Punjab through Chief Secretary and others V/S Aamir Junaid and others 2015 SCMR 74.

9. In the light of dicta laid down by the Honorable Supreme Court in the case of Government of Punjab supra, we do not find any merit in this petition, which is accordingly dismissed along with the pending application(s) with no order as to costs.

---

J U D G E

---

J U D G E