

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

CP No. D- 907 of 2009

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing
& decision: 02.11.2021

Petitioner: Roshan Alli and others through Mr. Nasir Abro,
Advocate.

Mr. Allah Bachayo Soomro, Addl.A.G.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the
petitioner has prayed as under:-

- a. That the order/letter dated 23.11.2009 issued by respondents No. 5 and 6 is illegal, malafide, improper, unjust, void, and ultra virus and politically motivated and liable to be quashed.
- b. That the letter dated 23.10.2009 issued by respondent No.3 is legal, valid, proper, and be maintained.
- c. That permanent injunction be issued against the respondents No. 5 and 6 restraining and prohibiting them to implement the order dated 23.11.2009 by themselves, associates, friends, subordinates, or through any other agency in any manner whatsoever.

2. The case of the petitioners is that they were appointed work charged employees on daily wages basis by Taluka Municipal Administration Samaro i.e. respondent No.1 in different categories/grades and till today are performing their duties; on 6.1.2009 a resolution was passed by Taluka Council Samaro in favour of petitioners along with others for regularization of their services subject to approval from government and consequently their services were regularized; that under the Act, Rules, Bylaws, Notification of Sindh Local Government Ordinance, 2001, Taluka Municipal Administration is empowered to regularize the employees working in Sindh Local Taluka Administration; however, the approval was sought for regularization of the petitioners from respondent No. 6 which was approved and the services of the petitioners were

confirmed vide letter dated 24.1.2009; and letter dated 23.10.2009 was issued regularizing the services of the petitioners by respondent No.6 through respondent No.3; that all of sudden through letter dated 23.11.2009 respondent No.5 addressed to respondent No.1 that the earlier letter dated 23.10.2009 regularizing the services of the petitioners is fake / bogus; therefore the same may be treated as cancelled / withdrawn; that the petitioners were not served with any notice before issuing the impugned letter dated 23.11.2009, hence the same may be declared null and void; the letter of respondent No.3 regularizing the services of the petitioners is correct, valid and genuine document because a Section Officer cannot issue such important letter on his own accord without permission or approval of the competent authority. Moreover, if the said letter was bogus/fake an inquiry would have been conducted and the official concerned i.e. Section Officer would have been suspended, but no action was taken against the Section Officer to show that the letter was fake/bogus; that respondents 5 and 6 are victimizing the petitioners for political reasons and wanted to appoint their favorite persons, therefore, to deprive the petitioners of their legal and legitimate rights, they have filed the instant petition.

3. Learned counsel for the petitioners has argued that the letter dated 23.11.2009 issued by respondent No.5 on behalf of respondent No.6 is illegal, malafide, void, unlawful, ultra virus, and liable to be quashed and the letter dated 23.10.2009 be maintained and declared legal and valid document; that the petitioners are in service and their services were regularized after due process of law i.e. resolution was passed by Council for confirmation and regularization of the services of the petitioners subject to approval by the competent authority and the same was approved; that the petitioners were victimized and deprived of their legal and legitimate right at the hands of respondents 5 and 6; that the petitioners are condemned unheard as they are not served with any notice before issuance of the impugned letter dated 23.11.2009; he lastly prayed for allowing the instant petition.

4. At the outset Town Officer present in court states that out of ten petitioners seven were regularized in compliance with the order dated 24.12.2010, one Muslim petitioner viz. Akhtar Ali was not regularized because of reservation expressed by this court in the aforesaid order on the premise normally Muslim do not perform the

duty of sweeper, and two petitioners namely Muhammad Raheem, Coolie, and Abdul Rehman Driver could not be regularized due to overage. At this stage learned counsel for rest of the petitioners raised his voice of concern that they have served the respondents for a considerable time and now the respondents are reluctant to regularize their service without any reason thus they are duty-bound under the law to treat them at par with other colleagues.

5. We have heard learned counsel for the petitioners and officer present in court at some considerable length and perused the record.

6. A perusal of record shows that this constitutional petition was filed in the year 2009 and disposed of vide order dated 24.12.2010.

7. Since the purpose of the petitioners has been served as their service stood regularized by the competent authority; therefore no further action is required on our part. However, we may observe that the petitioner Akhtar Ali has served for a considerable period he may be adjusted on any other post. Whereas the petitioners Muhammad Raheem, (coolie), and Abdul Rehman (Driver) have also served with effect from 24.1.2009 without breaks but the fact of the matter is that they have a long service of more than 13 years at their credit, therefore, it is not justified at the end of the department after sucking the youth of petitioner and kicked them out on the pretext of overage. Since the Petitioners are above 55 years old and some years remaining to attain the age of superannuation, therefore, their services be continued till their date of superannuation. The salary issue of the Petitioner for the intervening period may be decided under the law within one month from the date of receipt of this order.

8. Contempt application stands disposed of in the above terms.

JUDGE

JUDGE