

ORDER SHEET  
HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

**C.P No. D- 2665 of 2016**

(Majid Ahmed and others versus Province of Sindh & Ors)

**Before:**

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Petitioners : Through Mr. Ahsan Gul Dahri, Advocate

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing & decision : 09.12.2021

**ORDER**

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**ADNAN-UL-KARIM MEMON, J.** - Through this petition, the petitioners have prayed as under:-

- a. Declare that the impugned letter/order dated 20.09.2016 (Annexure-“G”) is illegal, unlawful, unconstitutional, against the principles of natural justice, in sheer violation of fundamental rights, having no legal effect, null and void ab-initio, and further set aside the same.
- b. Suspend the operation of the impugned letter/order No. 2217 / ADC-II/Estt:/mat/2016 Matiari Dated 20.09.2016 (Annexure-“G”) issued by respondent No.2 and restrain the respondents from taking any coercive action against the petitioners till the final decision of the instant petition.
- c. Award any other relief which this Honourable Court deems fit, just and proper.

2. Brief facts of the case are that all the petitioners except petitioner No.9 were appointed on contingency basis / daily wages in the year 2006 in District Government Matiari, they worked continuously for three years but were not regularized, hence all the petitioners (except petitioner No.9) and other victims filed Constitutional Petition Nos. 66, 59, 181, 235, 146 & 1327 of 2010 before this Court. The said petitions were allowed directing the official respondents to issue appointment orders to the petitioners.

In compliance with said order initially offer letters were issued and then appointment orders to the petitioners were issued in 2010, except petitioner No.9 namely Dildar Hussain Khaskheli who was Junior Clerk BPS-5 in Sindh Arid Zone Development Authority (SAZDA) and after abolition SAZDA he reported to SGA&CD and was kept in surplus pool vide order dated 9.9.2003. On 30.10.2003 he was transferred from the surplus pool of SGA & CD and absorbed in Local Government Department and was posted at District Government, Hyderabad and after the establishment of district Matiari he was placed at District Government Matiari vide order dated 17.01.2009 hence he was an employee of Local Government Department, District Matiari; that after the revival of Commissionerate System, respondent No.2 vide impugned letter dated 20.9.2016 relieved the staff of the office of Defunct Executive District Officer (Finance & Planning) and (IT) Matiari. The said letter is reproduced below:-

“ It is submitted that (28) officials were appointed in the Office of defunct Executive District Officer (Finance and Planning) and (IT) Departments, Matiari in the year 2010 as shown in the attached list.

After the revival of the Commissionerate system in the year 2011, the staff of defunct EDO (F&P) and EDO (IT) Matiari was to be surrendered and also to be adjusted on the vacant posts in any other department by SGA&CD, but it was not done so, and they are continuously drawing their salaries from the head of Account (MQ4135/MY0001) of this Office. The monthly amount of Rs. 591392/- is an overburden on this office as there is no vacant post against which salary may be drawn from them.

It is further submitted that during the years 2011 & 12 large number of officials were appointed and allowed to join without verification/clarification of posts, with the result 26 officials are already in excess and drawing salaries over the sanctioned strength. At this stage, this Office is unable to pay salaries to (28) officials of other departments from the fixed budget of the sanctioned strength.

In view of the above circumstances, the officials as mentioned in the attached list are hereby relieved and directed to report to Services General Administration & Coordination Department for further posting. This step has been taken to avoid any financial crisis in this office.”

3. Mr. Ahsan Gul Dahri learned counsel for the petitioner has argued that the above letter issued by respondent No.2 is malafide and it has been issued to accommodate their blue eyed persons and to accommodate the candidates appointed through illegal means in the year 2011-12 without availability of posts which is admitted in para 3 of the impugned letter that excess appointments have been made in the year 2011-12 which has created problem in release of

salaries of employees; that petitioners are low paid employees and it is against the norms of justice to displace them with direction to serve at a place which is far away from their home district; that the posts against which the petitioners were appointed were purely for those candidates who were domiciled at district Matiari, hence they cannot be transferred / relieved out of district Matiari; that respondent No.2 is not competent to relieve the petitioners as his administrative jurisdiction is limited to district Matiari; that no any employee can be relieved without transfer order, hence the impugned letter is illegal having no legal effect; that petitioner No.9 Dildar is an employee of local government, as such he cannot be directed to report at the office of respondent No.3; that petitioner No.25 namely Liaquat Ali was infact appointed in Zila Council which is evident from his appointment order, as such, he cannot be directed to report to the office of respondent No.3. He lastly prayed for allowing the instant petition declaring the impugned letter as null and void.

4. Mr. Rafiq Ahmed Dahri learned AAG has briefed us on the issue involved in the matter and submitted that the Petitioners are employees of defunct Executive District office (Finance & Planning) and defunct Executive District Office (IT) except Petitioner No.9 (Dildar Hussain khaskheli) & No. 25 (Liaquat Ali Memon). They both are employees of Local Government Department, and were relieved and directed to report to respondent No.3 Secretary (Services) for further posting on any vacant post in any Department in District Matiari or any other District; that offer orders for appointment of Petitioners namely Majid Ahmed S/o Allah Bux Memon, Noor Muhammad S/o Haji Bilawal, Salman S/o Muhammad Aslam Memon, Ali Hyder Shah S/o Ali Asghar Shah, Shahzad Bashir S/o Bashir Ahmed, Imroze Habib S/o Hidayatullah Khan, Ali Abbas Shah S/o Syed Peeral Shah, Allah Wassayo S/o Nibho Khan Bhanbhro, Govinda S/o Basiro, Shoaib Ahmed S/o Shabir Ahmed Abro, Riaz Ahmed S/o Muhammad Ismail Umrani have been appointed in the compliance of orders of this court vide order dated 14.04.2010 in CP. No. D- 66 of 2010 & No. D- 181 of 2010; that from the verification of record, it reveals that the names of above petitioners have not mentioned in the above mentioned C.Ps, but the names of Petitioners Majid Ahmed, Salman Ali, Shahzad Bashir, Imroze Habib, Ali Abbas, Shoaib Ahmed & Riaz Ahmed are mentioned in C.P No.1327/2010; that the defunct EDO(F&P) Matiari has already

issued offer letters to the above named petitioner on 27.10.2010 on the basis of order dated 14.04.2010 passed by this Court in CP. No. 66/2010. However, the order dated 30.11.2010 in C.P No.1327/2010 shows that the petitioners have tried to commit fraud and suppressed the facts. The defunct District Coordination Officer Matiari engaged (15) employees on daily wages vide order No.812 / DDO (COORD)/2009 dated 08.09.2009 whereas, the defunct Executive District Officer (F&P), Matiari issued offer/appointment orders to the (28) candidates, which shows that the Petitioners as well as defunct Executive District Officer (F&P), Matiari have misused the order of this Court. It is proved from the above that (11) candidates have been illegally appointed based on the order of this court. He added that District Government has been abolished. The petitioners have stated/admitted in Para No.7 that offer letters and appointment orders were issued to all petitioners except Petitioner No.9 & 25 by and with the signature of the then EDO(F&P), Matiari. Petitioner No.9 Dildar Hussain Khaskheli is an employee of Local Government Department, Petitioner No.25 was firstly appointed at Zila Naib Nazim Secretariat Matiari and transferred to defunct EDO (IT) District Matiari. It reveals that all the petitioners are not employees of the office of respondent No.2 Deputy Commissioner Matiari (Revenue Department).

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

6. In principle the petitioners were appointed by the direction of this court in C.P No. 1327 of 2010 vide order dated 30.11.2010.

7. The question involved in the matter is whether the employees of defunct department of Government of Sindh, like the petitioners, can maintain a constitutional petition about their terms and conditions. And, what is the scope of interference, if any, in employment matters in the public sector.

8. All the petitioners in the present case were offered low-grade posts in the office of defunct Executive District office (Finance & Planning) and defunct Executive District Office (IT) except 2 Petitioners at S No. 9 & 25 were appointed in Local Government Department. All the petitioners accepted the offer and joined the said posts. Finally through impugned omnibus Order dated 20.09.2016

issued by Deputy Commissioner Matiari, whereby the petitioners were relieved and directed to report to the Services General Administration & Co-ordination Department for further posting on the analogy that the office of Deputy Commissioner Matiari is facing financial crisis.

9. Primarily, employment, especially in the public sector, cannot be dispensed with even on the aforesaid notion with a stroke of pen and without the public servant given the due process of law. The quality and form of “process” employed become doubly important when the right flows from a fundamental right.

10. In the present case Notice with reasons is the minimum requirement of “process” under articles 4, 9, 14, and 18 of the Constitution that should have been provided to the petitioners. It does not matter if the employment in the public sector is regular or contractual. Articles 4, 9, 14, and 18 encompass “person” and “citizen” and carry no distinction between a contractual and regular employee. Public Sector employees must provide due process when dealing with regular or contractual employees, the “process” might be different at times as long as the process, which is due, is provided. The threshold of the process takes a higher standard in the case where the right flows from a fundamental right as in this case. The impugned order miserably fails on this score. Duty is cast on the respondents to act reasonably, fairly, justly, and under the law. The impugned order is not only without notice it is also devoid of reasons and logic. Section 24-A of the General Clauses Act lays stress on a speaking order which means an order which lucidly lays out the reasons for the order.

11. During the arguments, we have proposed that the matter of petitioners, which is important, be sent to Secretary Services General Administration & Co-ordination Department Government of the Sindh just to scrutinize their candidature in the light of Rule 9 of the Sindh Civil Servant (Appointment, Promotion, and Transfer) Rules 1974, for further postings. At this juncture, learned counsel for the petitioner, however, argued that in the meanwhile they may not be disturbed from their present postings to which learned AAG agreed.

12. Thus, consensus arrived at between the parties, as discussed supra, therefore this petition is disposed of with direction to the

Secretary Services General Administration & Co-ordination Department Government of Sindh for scrutinizing the candidature of the petitioners and then appropriate posting order be issued in favor of petitioner as provided under Rule 9 of the Sindh Civil Servant (Appointment, Promotion, and Transfer) Rules 1974 by adjusting them in the concerned departments. In the meanwhile, petitioners may not be disturbed from their present postings. The aforesaid exercise shall be undertaken within three weeks from the order passed today.

13. This petition along with pending application(s) stands disposed of in the above terms, with no orders as to costs.

J U D G E

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Karar-Hussain/PS\*