

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 75 of 2022

Date Order with Signature(s) of Judge(s)

1. For order on Misc No.329 /2022
2. For order on office objection no.01 & 04
3. For order on Misc No.330 /2022
4. For order on Misc No.331 /2022
5. For hearing of main case

13.01.2022

Mr. Muhammad Haseeb Jamali, advocate for the petitioners.

1. Urgency granted.
2. To be complied with within 07 days.
3. Granted subject to all just exceptions.
- 4-5. Petitioners have challenged the vires of the orders dated 22.11.2021 passed by the Chief Secretary, Government of Sindh, whereby he rejected the representation of the petitioners on the premise that they failed to produce any substantial record which could prove that they had qualified the written test/interview for the post of Municipal Officer/Chief Officer/Town Officer in BPS-16/17 in Local Government Department, Government of Sindh, in the year 2012. It is contended, inter alia, on behalf of the petitioners that the impugned orders dated 22.11.2021 passed by the Chief Secretary, Government of Sindh, are illegal, malafide, arbitrary, unlawful, and in violation of the principle of natural justice. Per learned counsel that as per admitted record and in terms of recommendations of the Department Promotion Committees the petitioners are entitled to be reinstated in service on the subject with back benefits and seniority. He further argued that the Departmental Security Committee recommended their case vide minutes of meeting dated 24.9.2020, however, the Chief Secretary, Sindh declined their request on erroneous premises, as such the impugned orders dated 22.11.2021 passed by respondent No.1 are liable to be set aside. In the alternative, learned counsel also prayed for setting aside the letters/orders dated 10.10.2016 and letter dated 04.10.2017, whereby their services were terminated by the respondent department.

At this stage, we asked the learned counsel as to how this petition is maintainable against the direction issued by the Hon'ble Supreme Court of Pakistan vide orders dated 6.12.2017 and 29.1.2018 in Civil Petition No.3440/.2014 and 4780/2018 and other connected appeals, whereby the competent authority was directed to decide their departmental appeal and which has been done so and then what is the illegality in the impugned orders, learned counsel replied to the query by referring various documents

attached with the memo of the petition and submitted that common judgment dated 27.9.2017 passed by this Court in CPs No.D-5577/2016 and other connected petitions (re-Agha Fahad Ahmed Khand and others v. Province of Sindh through Chief Secretary Government of Sindh and others) was set aside by the Hon'ble Supreme Court of Pakistan vide order dated 06.12.2017 and treated the memo of petitions as appeals before the departmental authorities; and, sent them for being decided under law after hearing the petitioners. He next submitted that the petitioners have a good prima facie case, as their colleagues are already holding the post since 2012, and however after a couple of years and getting proper salary in the respective accounts they are deprived of posting and now reinstatement of their service.

Again, we also confronted the learned counsel that the common judgment dated 27.9.2017 passed by this Court in CP No.5626/2016, the aggrieved party i.e. Rizwan and others filed Civil Petition No.583-K to 587-K/2017 before the Hon'ble Supreme Court of Pakistan and the Hon'ble Supreme Court of Pakistan vide order dated 28.3.2019 held as under:

“5. It is not disputed by the learned ASC for the petitioners that in two lists of selected candidates, filed by the respondent in Constitution Petition Nos.D-293 and 1034 of 2013, the names of petitioners were not included meaning that the petitioners had not participated in the process of appointment rather when the process of appointment had come to an end, they managed to obtain their appointment letters, which apparently were fake and forged. Learned ASC for the petitioners has referred to the appointment letter at page 55 of the record. This letter is dated 30.11.2012, addressed to one Rizwan, the petitioner in C.P. No.583-K/2017, showing that he has been appointed in BS-17 of SCUG Services (Admin Branch.). This letter seems to be signed by the Secretary, Sindh Local Government Board. Learned Additional Advocate General Sindh has contended that secretary has no authority or power to make appointment as such appointment could have only been made by the Board and there is nothing on the record that board has made the appointment of petitioners. Confronted with this situation, learned ASC for the petitioners conceded that there is no order of the board on record showing that petitioners were selected by it for appointment.

6. As regards the submission of learned ASC that salaries have been paid to the petitioners, the petitioners in para xii of memo of petitions under the heading of facts have alleged as follows:

xii. That since the appointment and posting the petitioners are getting salary without any gap in the salary.

7. Annexure (I) which has been relied upon and called to be the salary bill is actually a letter dated 05.05.2014 purported to have been written by the Town Officer, Town Committee Khanpur to the Manager Sindh Bank Khanpur for opening salary account for Town Municipal Administration staff namely Mr. Rizwan. Besides this document, no other document has been filed by the petitioners either before the High Court or before this court to establish the fact that they did receive salary from the respondent. Neither salary bill nor payment slip nor the statement of bank account of petitioners showing deposit of salary in their accounts have been filed before the Court which could have given some strength to the arguments of learned ASC for the petitioners. Petitioners having not placed such documents on the record, its obvious inference would be that no salary was paid to the petitioners.

8. As regards the submission of learned ASC for the petitioners for constitution of high powered committee to scrutinize the process of appointment of the petitioners, we find no reason for undertaking this exercise for that the matter is dealt with by the High Court in the impugned judgment elaborately with all relevant material, which the petitioners have placed before the court and upon which they were non-suited. Before us

also nothing was shown from the record on the basis of which this Court can opine that matter of appointment of petitioners requires scrutiny by high powered committee. Having dealt with all the arguments as advanced by the learned counsel, we find no merit in these petitions, which are dismissed and leave refused.”

To this learned counsel seeks time to make further submissions on the subject points and also referred to order date d21.12.2021 passed by this Court in CP No.7410/2021 and prayed that the subject CP be tagged along with the instant petition. The office is directed to tag CP No.7410/2021 along with the instant petition.

In the light of the above facts and circumstances of the case, learned counsel for the petitioner is directed to satisfy this Court about the maintainability of this petition in the light of the ratio of the order dated 28.3.2019 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.583-K to 587-K/2017.

To come up on 27.01.2022 at 11:00 a.m.

JUDGE

JUDGE

Nadir/PA