

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -4534 of 2019

(Faisal Rasheed v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -4535 of 2019

(Muhammad Jamil v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -4536 of 2019

(Muhammad Naveed v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -4788 of 2019

(Syed Khawaja Najeeb Ullah v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -4789 of 2019

(Nudrat Buland Iqbal v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -5098 of 2019

(Muhammad Yusuf Sheikh v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -5099 of 2019

(Rahim v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -5135 of 2019

(Syed Hussain Ahmed Qadri v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -5632 of 2019

(Muhammad Mohsin Abbasi v. Province of Sindh and others)

Constitutional Petition No. D -6987 of 2019

(Aquil Khurram v. The Sindh Employees Social Security Institution and another)

Constitutional Petition No. D -7236 of 2019

(Syed Ali Hasnain Zaidi v. Province of Sindh and others)

Constitutional Petition No. D -7638 of 2019

(Waseem Ullah v. Sindh Employees Social Security Institution)

Constitutional Petition No. D 7725 of 2019

(Syed Ali Hasnain Zaidi v. Province of Sindh and 02 others)

Constitutional Petition No. D -332 of 2020

(Rehan Ali v. Sindh Employees Social Security Institution)

Constitutional Petition No. D -353 of 2020

(Syed Ali Hasnain Zaidi v. SESSI and another)

Constitutional Petition No. D -848 of 2020

(Syed Maria Khurram v. Sindh Employees Social Security Institution)

Mr. Muhammad Ali Lakhani, advocate alongwith Ms. Shaza Malik, advocate for the petitioners in CP Nos. D-4534/2019, 4535/2019, 4536/2019, 4788/2019, 4789/2019, 5098/2019, 5099/2019, 5135/2019, 6987/2019, 7236/2019, 353/2020

Mr. Muhammad Umar Lakhani, advocate alongwith Mr. Ali Hyder, advocate, and Syed Ali Ahmed Zaidi, advocate for the petitioner in CP No. D-6987/2019

Ms. Raana Khan, advocate for the petitioner in CP D-4789/2019

Mr. Muhammad Nishat Warsi, advocate for the petitioner in CP No. D-5632/2019

Mr. Sarfaraz Ali Metlo, advocate and Mr. Fayaz Ali Metlo, advocate for SESSI

Mr. Ali Safdar Depar, AAG

Mr. Muhammad Ali, advocate holding brief for Mr. Raj Ali Wahid Kunwar, advocate for the petitioner in CP No. D-332/2020

Mr. Shoaib Khatian, advocate for the petitioner in CP No. D-7638/2019

Syed Safdar Ali, advocate for the petitioner in CP No.D-848/2020

Date of hearing : 31.05.2022

Date of announcement : 03.06.2022

ORDER

Through the instant Petitions, the Petitioners have called in question the vires of the office order dated 02.07.2019 whereby their services with Sindh Employees' Social Security Institution (SESSI) have been dispensed with, on the accusation of lack of academic qualification for their respective posts held by them since their initial appointment, without fulfillment of codal formalities

i.e. publication in the newspaper, interview, test, etc. For convenience sake, an excerpt of one of the office orders dated 02.07.2019 is reproduced as under:

“WHEREAS, Final Notice No.SS-Admn/2019-1435 dated 25-3-2019 and Show Cause Notice No.SS-Admn/2019-1867 dated 27-5-2019 were issued to Mr. Faisal Rasheed, Director (BS-18), SESSI, Korangi Directorate for committing the acts of misconduct as detailed therein for providing copies of educational testimonials duly verified by the Higher Education Commission of Pakistan.

2. AND WHEREAS, Honorable Sindh High Court in its order dated 01-03-2019 directed to provide educational documents duly verified from the Higher Education Commission of Pakistan within a period of 45 days, but he failed to comply with the directions of the Honorable High Court, which tantamount contempt of Court.

3. AND WHEREAS, I, the Competent Authority, am of the opinion that the said Mr. Faisal Rasheed, Director, Korangi Directorate is guilty of the charges as mentioned in the above-referred letters issued to him.

4. NOW, THEREFORE, I, Commissioner, SESSI/Competent Authority, on proving the charge of misconduct in the exercise of the powers by sub-clause (iii) of clause (b) of sub section 1 Section 4 of the E&D Rules, 1973 hereby impose the major penalty of “removal from service” upon Mr. Faisal Rasheed, Director, Korangi Directorate and as such he is removed from service of the Sindh Employees’ Social Security Institution with immediate effect.”

2. Petitioners being aggrieved by and dissatisfied with the office orders dated 02.07.2019, have filed the instant petitions with the assertion that the impugned orders passed by the Commissioner SESSI are illegal, unlawful; and, have been issued without lawful authority and/or jurisdiction; and, are contrary to the procedures as set out under the Sindh Employees’ Social Security Institution Service Regulations, 1976, the Sindh Employees’ Social Security Institution (Revised) Service Regulations, 2006; and, Efficiency & Discipline Rules, 1973; and are ultra-vires to the Articles 2-A,4,5,9 and 10A of the Constitution; that the impugned orders violate the basic spirit of the principles of natural justice; that no regular inquiry has been conducted to probe the allegations of lack of academic qualification of the petitioners for their respective jobs under the recruitment rules of the Sindh Employees’ Social Security Institution, thus the orders dated 02.07.2019 issued by the respondent-Commissioner SESSI are against the basic principles of law and liable to be set aside.

3. Mr. Muhammad Nishat Warsi, learned counsel for the petitioner in CP No. D-5632/2019, has submitted that on 07.09.1998 petitioner was temporarily appointed as Dresser; having basic qualification of Matric Science in 2nd Class and one year experience in the Sindh State Medical Faculty, however, in the year 2005, he was re-appointed as Accounts Assistant (BS-11) on adhoc basis.

We asked him whether the aforesaid post was advertised. He submitted that in adhoc appointment the condition of public notice was not required. He further submitted that on 03.02.2006, he was again re-appointed afresh to the post of Accounts/Audit Officer BS-16 on adhoc basis; and subsequently, his services were regularized on 07.04.2007 by the competent authority of respondent-sessi. He further submitted that the petitioner is facing medical issues and it is to be left open for the respondents to take into consideration the case of the petitioner on initial appointment as Dresser, if at all, they intend to dispense with the service of the petitioner on the higher post of Accounts/Audit Officer BS-16 however that is subject to all just exceptions as provided under the law. Learned counsel for the respondent-sessi has refuted the claim of the petitioner and submitted that his adhoc appointment on the higher post was/is illegal and without fulfillment of codal formalities and even he did not meet the eligibility criteria as set out in the recruitment rules, for the subject post and his services was erroneously regularized in 2007. He further submitted that the petitioner has failed to produce his verified testimonials /degree certificates, consequently, he was removed from service by order dated 11.07.2019.

4. Dr. Raana Khan, learned counsel for the petitioner in CP No. D-4789/2019 has contended that the petitioner, after due process of law and following all codal formalities was appointed by the competent authority of SESSI to the subject post and his educational degree certificates have been verified by the Higher Education Commission of Pakistan (`HEC`) vide letter dated 06.04.2021. Learned counsel next contended that the impugned order dated 11.07.2021 is liable to be set on the premise that he is going to reach the age of superannuation on 07th June 2022. Per learned counsel, dispensing the service of the petitioner is against the principle of natural justice and the principle of locus poenitentiae. She prayed for allowing the instant petition.

5. Mr. Muhammad Ali Lakhani, learned counsel for the petitioners in CP Nos. D-4534/2019, 4535/2019, 4536/2019, 4788/2019, 4789/2019, 5098/2019, 5099/2019, 5135/2019, 6987/2019, 7236/2019, 353/2020, has argued that the petitioners were appointed after due process of law against the vacant positions. He further argued that the show cause notices and impugned termination letters issued by respondent-sessi violate their fundamental rights. He added that there was/is no justification for the respondent-sessi to initiate

disciplinary proceedings against the petitioners by terminating their services on unfounded grounds thus, the entire proceedings undertaken by the respondents is a nullity in the eyes of law. He further argued that the petitioners have been enjoying their postings and after the lapse of considerable time the respondents have awakened from a deep slumber to say that the petitioners are lacking the academic qualification for the subject posts. He continued by stating that if there is maladministration in appointments, it is the responsibility of the respondents and not the petitioners. He further submitted that the Commissioner SESSI based on his findings on the ground that the petitioner failed to provide educational documents in compliance with the order dated 01.03.2019 passed by this Court in Suit proceedings and no independent findings have been given by him to substantiate the alleged allegation, thus without conducting the regular inquiry into the purported guilt of the petitioners, no final decision could be taken against the petitioners, therefore, the impugned orders are a nullity in the eyes of law and liable to be set aside. He prayed for allowing the instant Petitions by directing the respondent-SESSI to reinstate their service with all back benefits.

6. Mr. Muhammad Umar Lakhani, learned counsel for the petitioner in CP No. D-6987/2019, has submitted that the petitioner was working as Social Security Officer and was dismissed from service on the ground that he failed to provide copies of his educational documents after having the same duly verified from HEC which action is under challenge. Learned counsel has pointed out that the petitioner was never allowed to produce his verified credentials and he has submitted the verified documents in terms of a statement dated 27.11.2019, thus the impugned action ought not to have been taken against the petitioner. He prayed for setting aside the impugned order with directions to the respondent-sessi to reinstate the services of the petitioners with back benefits.

7. Syed Safdar Ali, advocate for the petitioner in CP No.D-848/2020, has submitted that the petitioner's husband was an employee of respondent-sessi and after receiving the impugned order, went into a coma and subsequently died on 30.03.2020. Per learned counsel, the petitioner's husband was rightly appointed as Social Security Officer in BPS-16 in SESSI on merit, and during his tenure of service, he earned promotion in BPS-17/18 in February 2018,

however, he received final show-cause notice in February 2019 for clearing his position, which was duly clarified vide letter dated 07.05.2019; that the degree certificates of petitioner's husband are genuine in terms of HEC letter dated 15.7.2015; however, petitioner was served with charge sheet dated 27.5.2019 on the ground of willful insubordination and conduct, prejudicial to the good order of service discipline. Per learned counsel, the petitioner assailed the disciplinary proceeding before the appellate forum vide letter dated 19.8.2019, however, nothing could be done; and, in the meanwhile petitioner's husband was hospitalized due to apathy of respondents and subsequently passed away from this temporary inn; thus the service benefits of her late husband ought not to be withheld. Learned counsel lastly submitted that the husband of the petitioner may be declared a retired employee so that family pension/ service benefits could be awarded to the petitioner-widow. He prayed for allowing the instant petition.

8. Mr. Shoaib Khatian, learned counsel for the petitioner in CP No. D-7638/2019, has submitted that the petitioner was initially appointed as Ward Boy (BS-5) in the Directorate of SESSI in the year 1997 and his services along with other employees of SESSI were regularized in the year 1998. By the passage of time, the petitioner was lastly promoted to the post of Audit/Accounts Officer (BS-16) vide order dated 05.06.2013, and his post was upgraded from BPS-16 to BPS-17 vide Memorandum dated 03.04.2010. The petitioner was served with show-cause notices dated 26.02.2019, and 29.10.2019. Learned counsel contended that after the report submitted with the learned Nazir of this Court, the allegations against the petitioner have no value as at no any stage the Nazir or the concerned Board have opined that the degrees of the petitioner were/are fake. Learned counsel further submitted that the impugned order is against the principle of natural justice and Article 10-A of the Constitution. In support of his contentions, he relied upon the cases of Mrs. Anisa Rehman v. PIAC and others, **1994 SCMR 2232**, Shakeel Ahmed v. Commandant 502 Central Workshop EME Rawalpindi, **1998 SCMR 1970**, Saad Salam Ansari v. Chief Justice of Sindh High Court, Karachi through Registrar, **2007 SCMR 1726**, Chief Election Commissioner of Pakistan and others v. Miss Nasreen Pervez, **2009 SCMR 329**, Muhammad Haleem and others v. General Manager (Operation) Pakistan Railways Headquarter, Lahore and others, **2009 SCMR 339**, Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed, **2013**

SCMR 1707, and *Muhammad Rafi and other v. Federation of Pakistan and others*, **2016 SCMR 2146**.

9. Petitioner in CP No. D-332/2020 has averred that the appointment letter of the petitioner as Dresser dated 07.09.1998 does not discuss any pre-requisite or educational requirements so the appointment letter as Accounts/Audit Assistant dated 23.04.2005 does not discuss the same. Learned counsel submitted that the ACR for the year 2011 shows that the petitioner is a very punctual and reliable, hardworking officer, and on the recommendation of the Departmental Promotion Committee, he was promoted from Cashier to Audit/Accounts Officer (BPS-16) in 2012. The educational record of the petitioner is already available with SESSI and the Director SESSI has already admitted vide letter dated 05.04.2019 that the petitioner has provided copies of his educational credentials i.e. Secondary School Certificate dated 11.01.1992, Higher Secondary Certificate dated 14.07.1997, Master of Arts in Sociology dated 16.05.2008, Master of Arts in International Relations dated 21.05.2011 and Bachelor of Arts dated 10.08.2006. Learned counsel next submitted that the allegations of non-compliance of orders passed in Suit No.353 of 2019 and other connected Suits, cannot be classified as misconduct for which he placed reliance on Rule 3 and 4A, 5, and 6 of Efficiency and Discipline Rules of 1973. He argued that show-cause notices dated 18.02.2019 and 28.03.2019 were replied to, and no personal hearing was granted before the passing of the impugned order which is contrary to Articles 2-A, 4, 5, 9 & 10A of the Constitution. Neither regular inquiry was conducted despite the petitioner having replied to show cause notices nor speaking order was passed without oral or documentary evidence and the petitioner is a permanent employee of SESSI and cannot be terminated without regular inquiry. He prayed for allowing the instant petition.

10. Mr. Sarfaraz Ali Metlo, learned counsel for SESSI, has raised the question of the maintainability of these petitions because of the order dated 01.03.2021 passed by this Court. He submitted that the petitioners cannot seek to invoke extraordinary discretionary jurisdiction of this court to protect ill-gotten gain; that the petitioners obtained their appointments through backdoor chancel without codal formalities in flagrant violation of principles of appointment on public institutions i.e. specifically equal opportunity, fairness and competence and the Article 25 of the Constitution of the Islamic Republic of

Pakistan, 1973, *inter alia*, without advertisement meeting the eligibility criteria to be considered for the post, without any test, shortlisting or interview; that the petitioners did not even possess the minimum qualification for the post in absence of any vacant posts; that their initial appointment as per Para-1 of the appointments orders was purely temporary liable for termination at any time without assigning any reason. Learned counsel submitted that the appointments of the petitioners violate the decisions of the Hon'ble Supreme Court of Pakistan in the cases of re-Syed Mubashir Raza Jaffri v. Employees Old-Age Benefits Institution, **2014 SCMR 949**, re Deputy District Officer (Revenue) Kasur v. Muhammad Munir Sajid, **2013 SCMR 279** and re Khurram Iqbal v. Deputy Director Food, DG Khan, **2013 SCMR 55**. Learned counsel next urged that the petitioners even failed to submit requisite degrees with the Nazir of this Court for verification rather submitted irrelevant lower degrees such as matriculation, intermediate, and bachelors, therefore, after providing so many opportunities (more than eight chances since 2017) on the continuing failure of the petitioners to submit the requisite degree for verification, the respondent SESSI terminated the service of the petitioners. He lastly prayed for the dismissal of the instant petitions and directions to the NAB to investigate and prosecute officers involved in such illegal appointments.

11. We have heard the learned counsel for the parties on the subject issue and perused the material available on record.

12. In principle, all the learned counsel for the petitioners contended that much water has flown under the bridge since their appointments and as they have been aptly performing their duties to the satisfaction of the respondents, it would be most inexpedient to oust them from the job at this stage as, by now, they hold the requisite degree and experience for the post; according to the petitioners, they met the requirements of the job, thus they could not be non-suited on the purported plea of public notice and lack of academic qualifications. Primarily, if an employee is found not fit for the appointment and lacks the basic qualification for the post, cannot be placed on par with the other employees, and his / her case has to be treated differently. Besides, it is well-settled law that the eligibility of a candidate is to be determined in terms of recruitment rules governing appointments and the advertisement for the post, and such other ancillary instructions issued by the Government from time to

time. For this purpose, the age, qualifications, experience, and other credentials, etc., of the candidates existing on or up to the closing date fixed for such posts as advertised, shall be taken into account. No relaxation in this regard shall be allowed.

13. In the present case, the grievance of all the petitioners is similar and they have called in question the vires of the order dated 02.07.2019 whereby their services with SESSI have been dispensed with, inter-alia, on the ground that during their tenure of service they were served with disciplinary proceeding vide various show cause notices issued by SESSI leveling certain allegations of misconduct on account of lack of academic qualification for their initial appointment. Some of the petitioners assailed the findings before the learned Single Judge of this Court in various civil suits which were disposed of vide order dated 01.03.2019, an excerpt of the common order is as under:

“Mr. Jawad A. Sarwana has affected appearance on behalf of the Defendant and submits that impugned Show Cause Notices will be withdrawn and all these Suits can be disposed of if the Plaintiffs are directed to provide verified copies of their educational document from Higher Education Commission (HEC) as time and again they have been asked to do so, but such verified copies have not been provided. To this learned Counsel for the Plaintiff concedes. Such conduct on the part of the Defendant and their Counsel is appreciated.

Accordingly by consent all these Suits, alongwith pending applications, are disposed of by directing the Plaintiffs to provide their educational documents duly verified from H.E.C within a period of 45 days from today and till then no adverse action be taken against the Plaintiffs. However, if such verified documents are not provided, Defendant may proceed in accordance with law.

All listed Suits are disposed of with pending applications in the above terms.”

14. Finally, the competent authority of SESSI vide order dated 02.07.2019 dispensed with the services of the petitioners.

15. To resolve the controversy between the parties, this Court on 01.03.2021 directed the Nazir of this Court to collect Original Qualification Degree Certificates from the petitioners, which they were holding at the time of their initial appointment in SESSI. He was also directed to immediately send the copies of the Original Qualification Degree Certificates of the petitioners to the Higher Education Commission of Pakistan/concerned authorities for their authenticity and verification. The petitioners were also directed to cooperate

with the Nazir of this Court and submit their Original Qualification Degree Certificates, which they were holding at the time of their initial appointment in SESSI, however, we made it very clear in the aforesaid order that in case of non-submission of their credentials with the Nazir of this Court, these petitions should be treated as dismissed. The Commissioner SESSI was also directed to constitute a Committee headed by him, to conduct an impartial inquiry of alleged appointments made in SESSI in violation of recruitment rules and, without codal formalities as discussed in the preceding paragraphs and subsequent events, after providing ample opportunity of hearing to the petitioners/beneficiaries and fix responsibility in the matter and take action against the delinquent officials strictly under the law and the observations made by the Honorable Supreme Court in the case of *Government of Punjab through Chief Secretary and others v. Aamir Junaid and others*, **2015 SCMR 74** and submit the report before this Court, however, till date, no report has been brought on record.

16. In compliance with the aforesaid order Nazir of this Court has submitted two reports dated 25.04.2022 and 17.05.2022, which are very crucial in determining the fate of the petitions. For convenience sake, an excerpt of both the reports is as under:

“Report dated 25.04.2022

With profound respect, I have the honor to submit that the Hon’ble Court has been pleased to pass an order on 24.03.2022 and such relevant para is reproduced as under:

“Nazir is directed to submit the final report well before the next date without fail. Adjourned to 26.04.2022.

2. It is respectfully submitted that in continuation of the Nazir Report dated 30.03.2022, notices were issued to the Director/Chairman, HEC, Board of Secondary Education, Karachi and Peshawar with direction to submit the verification in respect of SSC & HSC Certificate in respect of petitioners without fail and in this regard, a Letter dated 22.04.2022 along with attested copies of certificates as Annexed “A” received from the board has verified the S.S Certificates with attestation in favor of following petitioners.

- i. Mr. Muhammad Mohsin s/o. S.M.Qamar
- ii. Mr. Wasimullah s/o Nasirullah
- iii. Mr. Muhammad Jamil Khan S/o. Abdul Karim Khan
- iv. Mr. Syed Khawaja Najeebullah s/o Syed Khawaja Mujeebullah
- v. Syed Hussain Ahmed Qadri s/o S.Manawwar Ahmed Qadri
- vi. Mr. Muhammad Yousuf Shikh s/o Muhammad Ismail Sheikh
- vii. Mr. Muhammad Navaid s/o Zafar Ali Siddiqui

3. It is further respectfully submitted that a Letter dated 25.04.2022 alongwith attested copies of HSC as Annexed "B" was also received from the Board of Intermediate Education, Karachi, wherein the board has verified the H.S. Certificates with attestation in favour of the following petitioners.

- i. Mr. Muhammad Navaid S/o Zafar Ali Siddiqui
- ii. Mr. Faisal Rashid S/o Abdul Rashid
- iii. Mr. Muhammad Yousuf Sheikh S/o Muhammad Ismail Sheikh
- iv. Mr. Wasimullah S/o Nasirullah
- v. Mr. Rehan Ali S/o Rustam Ali
- vi. Mr. Syed Khawaja Najeebullah S/o Syed Khawaja Mujeebullah

4. It is respectfully submitted that verification of remaining petitioners i.e. Mr. Raheem S/o Piyar Ali, from Peshawar Board of HSC, Mr. Faisal Rashid from Hyderabad Board for SSC and Mr. Muhammad Jamil Khan from Intermediate Board, Karachi for HSC, Syed Ali Hasnain Zaidi from Secondary Board, Karachi for SSC, and Mr. Adnan Hussain, all certificates, are still pending, as a result, undersigned is unable to submit a final report before the Hon'ble Court. It is respectfully further submitted that petitioner Nudrat Buland Iqbal has not deposited any documents in this office while Syed Hussain Ahmed Qadir has also not deposited HSC Certificate, so far in this office, for the purpose of verification in compliance of the court's order so far.

5. Since the matter is fixed on 26.04.2022 before the Hon'ble Court, therefore, the interim report is submitted for the favor of perusal and extension of time."

"Report dated 17.05.2022

With profound respect, I have the honor to submit that the Hon'ble Court has been pleased to pass an order on 24.03.2022 and such relevant and such relevant para is reproduced as under:

"Nazir is directed to submit the final report well before the next date without fail

2. It is respectfully submitted that in continuation of the Nazir Report dated 30.03.2022 and 25.04.2022, notices were issued to the Director/Chairman, HEC, Board of Secondary Education, Karachi, Hyderabad, and Peshawar with direction to submit the verification in respect of SSC & HSC Certificate in respect of petitioners without fail and in this regard, various Letters dated 25.04.2022, 10.05.2022, 28.04.2022 and 22.04.2022 as Annexed below, which relevant details are submitted as under:-

S.NO.	PETITIONERS	CERTIFICATES / PASSING YEAR	VERIFICATION REMARKS
1	Muhammad Jamil Khan S/o. Abdul Karim Khan	HSC/1992	Verified by Karachi Intermediate Board as per Letter as Annexed "A"
2	Raheem S/o. Piyar Ali	SSC/1990	Verified by Secondary Board of Karachi as Annexed "B"
3	Faisal Rashid Shaikh S/o. Abdul Rashid	SSC/1990	Not Verified by Secondary Board of Karachi as Annexed "C" with direction to candidate to provide copy of SGR

			authenticated by Head of Institution
4.	Raheem S/o. Piyar Ali	HSC/1993	Fake/Bogus as per Verification of Intermediate Board of Peshawar as Annexed "D"

4. It is respectfully submitted that verification of remaining petitioners as mentioned above has been completed while Adnan Hussain is not a petitioner in such CPS and his name has wrongly been mentioned due to bonafide mistake as petitioner is the title of CPD No.848 of 2020 and earlier Nazir Reports.

5. The report is submitted for the favor of kind perusal and orders."

17. The respondents have taken the stance that as per the recruitment rules of the Sindh Employees' Social Security Institution notified on 30.12.1976 the petitioners lack the basic qualification to hold the subject posts, even if they were appointed without advertisement for the posts. The factual aspect of the case of each petitioner has been brought on record by the respondents as under:-

Sr. No.	Petitioner in CP	Initial appointment of the petitioner	Date of appointment	Required qualification under the recruitment rules notified on 30.12.1976	Nazir Report
1	D-4534 of 2019 <i>Faisal Rasheed</i>	Social Security Officer	09.07.1998	M.A preferably within three years' experience	Not Verified by Secondary Board of Karachi with direction to candidate to provide a copy of SGR authenticated by Head of Institution
2	D -4535 of 2019 <i>Muhammad Jamil</i>	Social Security Officer	31.08.1998	M.A preferably within three years' experience	The board has verified his SSC Certificate and HSC/1992 Verified by Karachi Intermediate Board
3	D-4536 of 2019 <i>Muhammad Naveed</i>	Social Security Officer	09.07.1998	M.A preferably within three years' experience	The board has verified the H.S. Certificate
4	D-4788 of 2019	Social Security Officer	25.01.2005	M.A preferably within three years'	the board has verified the H.S.

	<i>Syed Khawaja Najeeb Ullah</i>			experience	Certificate
5	D -4789 of 2019 <i>Nudrat Buland Iqbal</i>	Assistant Accounts Assistant	08.01.1990	B.Com 2 nd Class preferably with two years' experience in accounts and audit work	Petitioner has not deposited any documents in this office
6	D -5098 of 2019 <i>Muhammad Yusuf Sheikh</i>	Social Security Officer	--	M.A preferably within three years' experience	The board has verified the H.S. Certificate
7	D -5099 of 2019 <i>Rahim</i>	Data Entry Operator	16.07.1998	Intermediate 2 nd Class and Diploma in Information Technology / Computer Science with one year of experience in the relevant field	SSC/1990 verified by Karachi Board and HSC Fake/Bogus as per Verification of Intermediate Board of Peshawar
8	D -5135 of 2019 <i>Syed Hussain Ahmed Qadri</i>	Assistant	26.02.1996	Graduate	The board has verified the Secondary School Certificate. He has also not deposited HSC Certificate
9	D -5632 of 2019 <i>Muhammad Mohsin Abbasi</i>	Accounts/ Audit Officer	10.01.2005/03.02.2006	B.Com 2 nd class preferably two years' experience of accounts and audit work	The board has verified his SSC Certificate
10	D -6987 of 2019 <i>Aquil Khurram</i>	Social Security Officer	24.10.2005	M.A preferably within three years' experience	--
11	D -7236 of 2019 <i>Syed Ali Hasnain Zaidi</i>	Accounts Assistant	18.05.1998	B.Com 2 nd class preferably two years' experience of accounts and audit work	Verification is pending
12	D -7638 of 2019 <i>Waseem Ullah</i>	Junior Clerk and promoted to Accounts / Audit Assistant	19.07.1997/06.10.2011	B.Com	The board has verified his SSC Certificate
13	D- 7725 of 2019 <i>Syed Ali Hasnain Zaidi</i>	Junior Clerk	15.10.1985	Matriculate knowing typing at a speed of 30 w.p.m preferably with two years' experience as Junior Clerk	Verification is pending
14	D -332 of 2020 <i>Rehan Ali</i>	Accounts Assistant	23.04.2004	Graduate	The board has verified the H.S. Certificate
15	D -353 of	Junior Clerk	15.10.1985	Matriculate	--

	2020 <i>Syed Ali Hasnain Zaidi</i>			knowing typing at a speed of 30 w.p.m preferably with two years' experience as Junior Clerk	
16	D-848 of 2020 <i>Syed Maria Khurram</i>	The husband of the petitioner was Social Security Officer	08.03.2004	M.A preferably within three years' experience	--

18. Looking at the above perspective, learned counsel for the respondents contended that the entire exercise was carried out for extraneous purposes to accommodate the petitioners who were not even qualified for the post on the relevant date; that the entire process of appointment smacked favoritism and as such was/is liable to be struck off. If this is the factual position of the case, in such circumstances, the Honorable Supreme Court in its various pronouncements has emphasized that such a course of action would be tantamount to making one right out of two wrongs which is not permissible in the law.

19. Primarily, this Court under Article 199 of the Constitution has to interpret the law and apply it in letter and spirit and cannot go beyond what the law is, and what interpretation permits. In such a situation this Court lacks the jurisdiction to provide relief under Article 199 of the Constitution. The Honorable Supreme Court has held in its various pronouncement that adherence to the statutory rules and procedures for the selection of public jobs is the only surest method to objectively select the best out of the best from a competing lot; it is rooted in the fundamentals of equal opportunity, equal treatment, and equal protection; any deviation therefrom would rock the bottom of the Republic, resting upon equiponderance. State authority in every sphere of life is a sacred trust to be exercised fairly and justly by the functionaries to accomplish the purposes assigned to them by law; it is their bounden duty to do right to all manner of people, without any distinction. It is most important that the right people are selected for official positions to serve the Republic as it is imperative to survive and sustain in today's competitive world.

20. It is well settled now that a post in the public sector cannot be allowed to be filled without public notice by issuing a proclamation in daily newspapers and disseminating information regarding the same. In principle, the appointment in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as a trustee with complete transparency as per the requirement of law so that no person who is eligible to hold such posts, is excluded from the process of selection and is deprived of his right of appointment in service. It is well settled that the High Court will not exercise equitable jurisdiction in favor of a party where equitable considerations weigh against him or where his conduct is inequitable.

21. The Honorable Supreme Court has held in its various pronouncements that the Constitutional requirement, inter alia, enshrined in Article 18 of the Constitution which enjoins that "Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business" includes the right of a citizen to compete and participate for appointment to a post in any Federal or a Provincial Government department or an attached department or autonomous bodies/corporations, etc. based on open competition, which right he cannot exercise unless the process of appointment is transparent, fair, just and free from any complaint as to its transparency and fairness. The above objective enshrined in our Constitution cannot be achieved unless due publicity is made through a public notice for inviting applications with the aid of the leading newspapers having wide circulation. The appointments to various posts by the Federal Government, Provincial Governments, Statutory Bodies, and other Public Authorities, either initial or ad hoc or regular, without inviting applications from the public through the press, are violative of Article 18 of the Constitution. The above objective cannot be achieved unless every citizen equally placed or situated is treated alike and is provided equal opportunity to compete inter alia for the posts in aforesaid Government set-ups/institutions. In the case of Munawar Khan v. Niaz Muhammad, **1993 SCMR 1287**, the Full Bench of the Hon'ble Supreme Court voiced an expectation that "in future, all appointments shall be made after due publicity in the area from which the recruitments had to take place.

22. Basically, the object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. Regular appointments are made as per rules. Normally the appointments are made in a prescribed manner, but exigencies of work may sometimes call for making appointments on ad-hoc or temporary basis. The concept of ad-hoc appointments means appointments for special and particular to last for a particular period. An Adhoc appointment made and continued from time to time does not get automatically regularized. There are judgments of the Hon'ble Supreme Court on the subject that if an ad-hoc or temporary employee is continued for a fairly long spell, the authorities must consider his/her case for regularization provided he/she is eligible and qualified according to the rules and his/her service record is satisfactory and his/her appointment does not run counter to the policy of the Government.

23. The appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules, without any discrimination, and in a transparent manner. Thus, all appointments in the public institutions must be based on a process that is substantially and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws, i.e. advertisement, written test, and interview by the recruitment/selection committee. However, if the candidate has applied based on such an admissible quota under the law he can be accommodated subject to his qualification for the post under the recruitment rules. If approved offer letter is required to be issued to the successful candidate to accept the offer within 15 days, if accepted the candidate is required to undergo a medical fitness process if he crosses that process, the department is required to issue him the appointment order, subject to completion of one year, and/or two years probationary period; and if the appointee completes the probation period, the department is required to issue a confirmation of service certificate, then his seniority shall be prepared from the date of his regular appointment in the department. In the appointment process, prima-facie, all the appointments were made incompetently by the respondents which did not have the power to appoint a person in BPS-16 and even BPS-11 on a contract basis unilaterally. Prima facie, this act on the part of the respondents established favoritism to the candidates despite the fact such posts were not sanctioned posts.

24. The recruitment rules for the subject post unambiguously show that the respondents failed and neglected to look into the basic qualification of the petitioners at the time of their initial appointment and that they lacked the eligibility criteria for the subject posts, and after a considerable period, they raised their voice of concern and dispensed with the services of the petitioners, without conducting a proper inquiry into the guilt of the petitioners as required under the law. However at the same time, we are cognizant of the fact that eligibility cannot be relaxed under the law, thus we leave it for the competent authority of respondent SESSI to look into the matter in its true perspective, and ascertain whether the whole recruitment process initiated by the respondent SESSI was flawed under the law; tainted with malice to accommodate the blue-eyed or otherwise, and if the allegations are proved then fix responsibility on the delinquent officials under the law.

25. In such circumstances, by looking into the contentions of the parties with the material produced before us and case-law cited at the bar, have concluded that we cannot entertain claims, and counter-claims of the parties as these are disputed questions of facts, which cannot be adjudicated by this Court while exercising the Constitutional Jurisdiction, therefore, on the aforesaid plea, the present petitions filed by the petitioners cannot be adjudicated under Article 199 of the Constitution. However, at the same time, we are equally conscious of the fact that the respondent-SESSI did not realize their own mistake in time by recruiting the petitioners in the year 1998 and onwards without advertisement, disclosing academic pre-requisites, and they continued to avail their services; and, after a considerable period, they perceived that their basic appointments were not under the Service Regulations of SESSI.

26. In view of the foregoing, we deem it appropriate to leave the matter entirely upon the competent authority of respondent SESSI to scrutinize/examine the eligibility of the petitioners in terms of reports of Nazir submitted before this Court as discussed in the preceding paragraphs; and, those petitioners whose academic degrees, which they were holding at the time of initial appointment, have been verified, would be retained as employees of SESSI by strictly applying the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Government of Punjab through Chief Secretary and others v. Aamir Junaid and others, **2015 SCMR 74**. Whereas those

who are not eligible and/or qualified for the subject posts, shall go and at the same time, the respondent SESSI may also look into the candidature of those petitioners, if their initial appointment on a lower grade does not impede the recruitment rules.

27. The aforesaid arrangement so made, is subject to providing the petitioners a meaningful hearing and a fair chance to defend their case, thereafter a speaking order shall be passed. The entire exercise shall be undertaken within one month as no further time shall be granted for the reason that much time has already elapsed. However, it is made clear that in the meanwhile, the impugned dismissal from service orders of the petitioners shall remain in abeyance.

28. These petitions stand disposed of in the above terms along with pending application{s}

Let a copy of this order be communicated to the competent authority of respondents for compliance in time.

J U D G E

J U D G E

Nadir*