

Order Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

**Constitutional Petition No. D – 612 of 2022**

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Zafar Ahmed Rajput

- Petitioner : Kanya Lal,  
through Mr. Shah Nawaz Waseer Advocate.
- Respondent No.1 : Federation of Pakistan,  
through Mr. Muhammad Hamzo Buriro, Deputy  
Attorney General.
- Respondents 2 to 4 : Election Commission of Pakistan at Islamabad  
and others,  
through Mr. Zeeshan Haider Qureshi, Law  
Officer.
- Respondents 5 to 8 : District Returning Officer / Deputy Commissioner,  
Ghotki at Mirpur Mathelo and others,  
through Mr. Zulfiqar Ali Naich, Assistant Advocate  
General Sindh.
- Respondent No.9 : Sudamo alias Suddam Chand,  
through Mr. Sanaullah Mahar Advocate.  
  
State Life Insurance Corporation of Pakistan on  
Court notice, through Mr. Saeed Ahmed Baloch  
Advocate.
- Date of hearing : 08.06.2022.

**ORDER**

**NADEEM AKHTAR, J.** : The petitioner Kanya Lal, being a resident of Ward No.14, Municipal Committee Ghotki, Taluka and District Ghotki, submitted his nomination papers for the seat of Member of the above mentioned ward, which were accepted by the Returning Officer after scrutiny. Respondent No.9 Sudamo alias Suddam Chand, who has also filed his nomination papers for the seat of Member of the same ward, filed Election Appeal No.83 of 2022 before the Appellate Authority against the acceptance of the nomination papers of the petitioner. The said appeal filed by respondent No.9 was allowed and the nomination of the petitioner was rejected by the Appellate Authority vide order dated 26.05.2022, which has been impugned by the petitioner through this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. Perusal of the impugned order shows that the main ground on which the nomination papers of the petitioner were rejected by the Appellate Authority was that he did not disclose in his nomination papers the fact that he was working on commission basis with State Life Insurance Corporation of Pakistan (**'SLICP'**). It was held by the Appellate Authority that due to such concealment of a material fact, the petitioner stood disqualified under Section 36 of The Sindh Local Government Act, 2013 (**'the Act'**).

3. Learned counsel for the petitioner submits that the bar contained in Section 36(1)(e) of the Act was not applicable to the petitioner as he was/is not in the service of any statutory body or a body which is owned or controlled by the Government of Sindh, Federal Government or a Council, or in which any of such Government or Council has a controlling share or interest. He further submits that the petitioner was working merely as a commission agent of SLICP which does not attract the bar contained in the aforesaid section. In addition to this, it was contended by him that the impugned order was passed without hearing the petitioner.

4. Learned counsel for respondent No.9 concedes that the petitioner was not in the service of SLICP. He, however, submits that the petitioner was still obliged to disclose every material fact and since he did not disclose in his nomination papers the fact that he was working as a commission agent of SLICP, his nomination was rightly rejected by the Appellate Authority.

5. Learned counsel for SLICP has placed on record a copy of the State Life Employees (Service) Regulations, 1973, wherein "employee" has been defined in Regulation 2(c) as a full time employee of SLICP on monthly salary, but does not include salaried officials whose emoluments are dependent on procreation of the business except those who are classed as Area Managers by the competent authority. He has categorically stated that the petitioner does not fall within the definition of an employee of SLICP as per the above Regulations as he is merely a commission agent. He further states that in the normal course of its business, commission agents are appointed by SLICP all across the country for its business of life insurance, and such agents are not governed by any contract of employment or the above Regulations.

6. Learned DAG and learned AAG Sindh have adopted the submissions made by learned counsel for the petitioner and SLICP.

7. We have heard learned counsel for the parties, learned DAG, learned AAG Sindh and Mr. Zeeshan Haider Qureshi, Law Officer of the Election Commission of Pakistan. While passing the impugned order, the Appellate Authority has referred to a certificate issued by SLICP according to which the petitioner was working with SLICP purely on commission basis. It was held by the Appellate Authority that the petitioner was obliged to disclose even this fact in his nomination form, and by not

doing so, he stood disqualified under Section 36(1)(e) of the Act. Therefore, it is an admitted position that the nomination papers of the petitioner were not rejected by the Appellate Authority on the ground that he was in the service / employment of SLICP or in the service of any of the entities mentioned in Section 36(1)(e) *ibid*.

8. The certificate dated 25.05.2022 issued by SLICP, filed along with the petition, clearly states that the petitioner is working as the Sales Manager of SLICP since 01.01.2013 purely on commission basis. A statement dated 08.06.2022 has been filed today by learned counsel for the petitioner along with a certificate dated 02.06.2022 issued by SLICP, wherein it is specifically mentioned that the petitioner is not a permanent employee of SLICP and is working purely on commission basis. The fact that the petitioner is merely a commission agent of SLICP is not disputed by respondent No.9 as he has never claimed that the former was/is an employee of SLICP. His main objection is that even this fact ought to have been disclosed by the petitioner. In this context, it is important to note that the word “service” used in Section 36(1)(e) *ibid* is significant which clearly means that in order to attract the bar contained in the said section, the candidate must be in the service of any of the entities mentioned therein. Admittedly, the petitioner is not an employee of SLICP and is not governed by the Regulations of SLICP. The relationship between SLICP and the petitioner i.e engagement / contract of a commission agent is that of a principal and agent which does not, by any stretch of imagination, fall within the definition of any of the entities mentioned in Section 36(1)(e) *ibid*. As far as the bar contained in Clause (i) of Sub-Section (1) of Section 36 of the Act is concerned, the same is also not applicable to the petitioner as his contract of commission agency is admittedly not in relation to any council nor has he any direct pecuniary interest in the affairs of any council.

9. The above discussion leads us to the conclusion that the Appellate Authority erred in law by rejecting the petitioner’s nomination. As such, the impugned order cannot be allowed to remain in the field which is accordingly set aside and the acceptance of the nomination of the petitioner by the Returning Officer is hereby restored. Let the name of the petitioner be entered in the list of validly nominated candidates in terms of Rule 19 The Sindh Local Councils (Election) Rules, 2015, and this order be communicated forthwith to the Election Commission of Pakistan for compliance.

10. The petition stands **allowed** in the above terms with no order as to costs.

J U D G E

J U D G E

Abdul Basit