

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

Before:

Justice Nadeem Akhtar
Justice Khadim Hussain Tunio

C.P. No. D-3026 of 2016

Petitioner: Muhammad Nadeem Arain through Mr. Abdul Sattar Sarki, advocate.

Respondents: Province of Sindh and others through Mr. Rafique Ahmed Dahri, Assistant Advocate General Sindh.

Date of hearing: 14.02.2023

Date of decision: 14.02.2023

O R D E R

KHADIM HUSSAIN TUNIO, J- The petitioner seeks the release of his salary stopped by the official respondents after it surfaced on the record that, allegedly, the appointment order issued to the petitioner was fabricated whereas the petitioner claims to have been appointed on the basis of deceased/son quota after the death of his father.

2. Learned counsel for petitioner has primarily contended that the father of petitioner Muhammad Nadeem was appointed as Recovery Clerk in Local Government Department posted at Town Committee Shahpur Jahania who expired during his service on 02.03.2015 and his son Muhammad Nadeem was appointed through son quota on 18.06.2015; that the petitioner, after his appointment, was performing his duty diligently; that the petitioner belongs to a poor family and due to non-receipt of his salary, he has been facing hardship; that the act of the official respondents is illegal and unconstitutional; that on demand of salary, the petitioner has been disallowed from signing on to the muster roll and has been restrained from performing his duties; that the petitioner had applied for the post through proper channel; that the petitioner is entitled for his salary being servant of the Government of Sindh.

3. On the contrary, learned Assistant Advocate General contended that respondent No. 5 has denied ever having issued appointment letter to the petitioner; that the copy of appointment letter filed by the petitioner is forged and fabricated; that the petitioner was not appointed under son quota and the only remedy available to him is to follow due course of law and apply again where their case will be forwarded to the relevant authority for consideration.

4. We have heard the learned counsel for the respective parties and perused the record available before us.

5. From the perusal of record, it is an admitted position that the father of the petitioner was employee of the Local Government Department (LGD). Petitioner Muhammad Nadeem's father namely Muhammad Ameen was posted as a Recovery Clerk in the LGD at Town Committee Shahpur Jahania. The petitioner allegedly claims to have been appointed as Recovery Clerks (BPS-05) following his application for appointment on deceased quota with respect to his father. Following this, he was allegedly issued appointment letter by the Town Officer (respondent No. 5). Parawise comments were filed by the respondent No. 5 Town Officer, Town Committee Shahpur Jahania and respondent No. 6 Accountant, Town Committee Shahpur Jahania jointly wherein they have categorically denied the employment of the petitioner while stating that no any appointment order was issued to the petitioner by the respondent No. 5 and that the copy of appointment order submitted by the petitioner is fake and fabricated. Respondent No. 2 Director, Local Government Shaheed Benazirabad Division and respondent No. 3 Assistant Director, Local Government Shaheed Benazirabad Division have also denied the employment of the petitioner and claimed that the copy of appointment order submitted by the petitioner is false and fabricated. The petitioner has failed to bring on record the application submitted by him for seeking employment on the basis of deceased/son quota nor has he been able to prove that

he was qualified for the same or whether he had underwent any requisite process of appointment.

6. That being said, it is the case of the petitioner that he was issued appointment order after duly qualifying for the post for which he was accepted after providing medical fitness certificate and educational certificates. It is an admitted fact now that none of these documents were in fact submitted, nor verified and were in fact forged. The allegations against the petitioner was of securing employment on the basis of forged documents which could not be disproved by him rather, in the statement of claim there was not even a whisper that the allegations of the respondents regarding securing employment on the basis of forged document was wrong. It is evident that the petitioner cheated the process and obtained the job fraudulently thereby failing to maintain integrity. Since the petitioner secured employment on the basis of forged documents, the appointment was void ab initio. No record was found of any application received by the respondents/local government department and that since the appointment letter was not issued to the petitioner, the order for joining duty by the petitioner is also fabricated. Even otherwise, the proposition of law is settled that fraud vitiates even the most solemn of proceedings and any superstructure built on a foundation of fraud must fall. In this respect, reliance is placed on the case reported as ***Al-Mezan Investment Management Company Limited and others v. WAPDA FIRST SUKKUR COMPANY LIMITED and 2 others (PLD 2017 SC 1)***.

7. The Hon'ble Apex Court, in the case of ***Mst. Kaniz Fatima v. Muhammad Saleem (2001 SCMR 1493)*** has been pleased to observe that:-

It is mandatory and obligatory for a party invoking Constitutional jurisdiction to establish a clear legal right which should be beyond any doubt and controversy. Disputed questions of fact could not be decided in Constitutional

Jurisdiction. This extraordinary jurisdiction is intended primarily, for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. It is mandatory and obligatory for a party invoking the Constitutional jurisdiction to establish a clear legal right which should be beyond any doubt and controversy. The Constitutional jurisdiction of High Court, would be declined where the petitioner has not exhausted all remedies available to him before filing of Constitutional petition.”

(emphasis supplied)

8. For what has been discussed above, the petitioner was unable to prove that his appointment was done properly after filing of application and that the documents he had provided were genuine, as such he could not claim any benefits enjoyed by a workman/civil servant. Resultantly, instant petition being meritless is dismissed.

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