

ORDER SHEET  
**IN THE HIGH COURT OF SINDH  
BENCH AT SUKKUR**

Const. Petition No.D-1822 of 2018

**Present:**

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Khadim Hussain Tunio

Petitioners: 1. Saeed Ahmed  
2. Ahmed Khan  
3. Aijaz Ahmed  
Through Mr. Hamayun Shaikh, Advocate

Respondents 2 to 5: Chief Officer, Town Municipal  
Administration Sukkur and others through  
Mr. Khuda Bux Chohan, Advocate

Respondent No.1: Province of Sindh, through Mr. Zulfiqar Ali  
Naich, AAG

Date of hearing: 03.11.2022  
Date of decision: 03.11.2022  
Date of reasons: 02.01.2023

**ORDER**

**KHADIM HUSSAIN TUNIO, J-** Through captioned petition, the petitioners seek directions to the respondents No.2 to 5/ Municipal Authorities Sukkur to release the salaries of the petitioner No.1 Saeed Ahmed and No. 2 Ahmed Khan from the month of June 2018 and the salary of petitioner No.3 Aijaz Ahmed from the month of September 2018 and to continue the same in the future.

2. The facts of the instant petition are that the petitioner No.1 & 2 were appointed as Clerks (BPS-5) while petitioner No.3 was appointed as Naib Qasid (BPS-2) by the respondent No. 2 Chief Officer, TMA Sukkur. After joining their duties, the petitioners were regularly attending the same and drawing salaries, however the respondents suddenly stopped the salaries of petitioner No.1 and 2 from the month of June 2018 while salary of petitioner No.3 from the month of September 2018 without any justification, hence petitioners filed instant petition.

3. Learned counsel for the petitioners contended that the petitioners were regular/permanent employees of the municipal corporation Sukkur; that the account statements produced by the respondents pertain to older salaries of the respondents for the year 2014 and 2016; that the petitioners were never given any notice, nor afforded an opportunity of hearing before their termination; that the petitioners were made to open new accounts with Sindh Bank Ltd. wherein they were receiving their salaries up until the termination of their service. As such he prayed that the instant petition be allowed and the respondent Nos. 2 to 5 be directed to release the salaries of the petitioners and continue the same.

4. On the contrary, learned counsel for respondent Nos. 2 to 5 assisted by the learned AAG contended that the petitioners had already filed C.P. No.D-3500/2012 and C.P. No.D-323/2013 whereby they sought regularization, but the same was dismissed vide order dated 06.02.2018 which were also dismissed by the Hon'ble Supreme Court vide order dated 23.07.2019; that the petitioners were daily wage/contractual employees and could not seek regularization; that the petitioners had been paid salaries on daily wage basis up until 29.08.2018 which is when all daily wage / contractual staff were fired including the three petitioners; that the petitioners have not been able to produce any documents whereby they were hired as permanent/regular employees of the Municipal Corporation, as such they prayed for the dismissal of the instant petition.

5. We have heard the learned counsel for the respective parties and perused the record available before us which shows that the petitioners were appointed as daily wage employees and carried the same status when performing their duties under various branches of Town Municipal Authority Sukkur. Two petitions were filed by the present petitioners along with other employees of TMA Sukkur, seeking regularization, bearing No. D-3500/2012 and D-323/2013, both of which were dismissed vide order dated 06.02.2018. The order was challenged before the Hon'ble Apex Court, but was also dismissed vide order dated

23.07.2019. In the earlier petition, all the petitioners claimed to be contractual employees and sought regularization, but the prayer was declined. Now, the petitioners claim to have already been appointed on regular basis, a claim that is debunked by the facts and circumstances available before us. The regularization orders so relied pertain to the year 2012 whereas the order of this Court in the earlier petitions dates to the year 2018 at which point the petitioners had themselves claimed to be contractual employees, but were held to be daily wage employees. Their plea, in itself, is contradictory to their earlier stance. The appointment orders along with service books have been denied by the respondent No. 3 to 4 in their parawise comments while claiming that the same were fabricated in collusion with a Bill Clerk of Tax Branch namely Zahid Hussain. It has also been brought on the record that the said Bill Clerk has been suspended and is undergoing further disciplinary actions. The respondents produced Office Order No. SMC/GB/Estt:-1043 of Sukkur Municipal Corporation dated 25.08.2017 which has a list of employees including the names of the three present petitions whereby they were accorded an 88 day extension and their work was left at the disposal of head of branches they were employed in. Then, vide office order No.SMC/GB/Estt:/-12285 Sukkur dated 29/08/2018, all daily wage/contractual staff were fired on the instructions of the Chairman Water Commission. Moreover, it is also a matter of record that the salaries of the petitioners were withheld starting from April to July of 2018 pursuant to their employment status being doubtful.

6. Considering the above circumstances, the petitioners have again indirectly sought regularization of their employment by seeking directions to the respondent Nos. 2 to 5 for their future salaries. At this junction, it is observed that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service or be regularized. As held by this Court, the petitioners cannot be said to be holders of a post, since, a regular appointment could be made only by

making appointments consistent with the requirements of Sindh Civil Servants (Appointment, promotion and transfer) Rules 1974 which provides that initial appointment to posts in Basic Scales 3 to 10 shall be made on the recommendations of the Department Selection Committee after the vacancies in these Basic Scales have been advertised in newspapers. The right to be treated equally with the other employees employed on daily wages cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals since they never went through the competitive process of selection on merit. Not only this, the legislature has specifically excluded the employees appointed on daily wages basis and work-charged basis from being regularized or being absorbed. Even if the petitioners were considered contractual employees, Regularization of Ad-hoc or contract employees under Act of 2013 is not open for all those contractual and ad-hoc employees for whom the codal formalities have not been fulfilled, thus a competition should have been made available amongst all those who were interested in the appointments on subject posts. Such a process could not be approved of as it would deprive eligible and entitled candidates of a fair competition.

7. On a legal plane, High Court, in exercising power under Article 199 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts and more so for the reason that it cannot do so. In this respect, reliance is placed on the case of *Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock and Cooperative Department Peshawar and others v. Saeed-ul-Hassan and others*, 2022 P L C (C.S.) 164.

8. As far as the plea of being fired without prior notice is concerned, not only were all three petitioners called for their personal appearance and given an opportunity to present their case after producing relevant documents, they have not appeared before this

Court with clean hands. In the case of *Muhammad Ali v. Province of KPK (2012 SCMR 673)*, the Hon'ble Apex Court has been pleased to observe that:-

“5. Having noted the relevant facts divulged from the case record, as above, which have not been disputed by the learned Advocate Supreme Court for the petitioners, we do not find any substance in the arguments of learned Advocate Supreme Court regarding denial of opportunity of hearing to the petitioners for the simple reason that one who seeks equity must do equity and approach the Court with clean hands, as opposed to protection of some ill-gotten gains. The petitioners, who admittedly got their appointments from the backdoor without advertisement of vacancies, inviting of applications and completion of codal formalities, in the given facts and circumstances of the case, cannot challenge the principles of good governance adopted at the highest level, mandating each and every appointment in the government service to be made on merits as per relevant rules and completion of codal formalities or lawfully agitate any grievance on the pretext of lack of due opportunity of hearing.”

9. For what has been discussed above, the petitioners were unable to prove that their appointments were done after a competitive process and that the documents they had provided were genuine, as such they could not claim any benefits enjoyed by a civil servant appointed through a proper competitive process. For these reasons, captioned constitutional petition was dismissed vide short order dated 03.11.2022 and these are the reasons for the same.

**J U D G E**

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