

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

C.P No.D-2799 of 2016

C.P No.D-3072 of 2016

C.P No.D-2090 of 2018

BEFORE

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Adnan-ul-Karim Memon

Petitioner(s) : Arab & others through Barrister Faizan Hussain Memon, Advocate

Respondent(s) : Through Mr. Rafique Ahmed Dahri, Asst. A.G Sindh along with Mohan Lal (Health Education Officer District Tharparkar.

Date of hearing : 21.03.2023

Date of Judgment : 21.03.2023

JUDGMENT

Muhammad Junaid Ghaffar, J:- Through these petitions, the petitioner(s) have sought the following prayers:

C.P No.D-2799 of 2016

- a. *That the impugned merit list with the vide letter dated 30.09.2016 no. E & A (HD) 9-339/2016 wherein, the names of the petitioners are missing is illegal, unlawful, unconstitutional, discriminatory and is arbitrary, hence liable be set-aside forthwith.*
- b. *To direct the respondent No.1 & 2 to enlist the names of petitioners in the merit list.*
- c. *To direct the respondent to release their salary along with back benefit.*
- d. *To direct the respondents No.1 & 2 not to take any coercion action against the petitioners till the final disposal of instant petition.*
- e. *Any other relief(s), which this Honourable Court deems, fit, just and proper in favour of the petitioner.*

C.P No.D-3072 of 2016

- a. *To declare that the name of the petitioner entered in the list duly prepared by the respondent No.2 for genuineness of employees up to 555 where the name of petitioner entered at the serial No.203.*

- b. *To declare that the name of petitioner missing from the another list prepared by the respondent No.2 where the number of employees become same as 555 such act of the respondent No.2 is malafide ulterior motive and against the statute.*
- c. *That direct the respondent No.2 to prepare fresh list as earlier prepared by him and get approval from the office of the respondent No.1 with regard to the salary of the petitioner as the petitioner was rightly appointed working where he is posted.*
- d. *Cost is borne.*
- e. *Any other relief(s), which this Honourable Court deems, fit, just and proper in favour of the petitioner.*

C.P No.D-2090 of 2018

- a. *That this Honourable Court may be pleased to declare the act of the respondent No.2 for not giving / mentioned the name of the petitioner in newly prepared list is illegal, void abinitio.*
- b. *That this Honourable Court may be pleased to direct the respondents to release the salary of the petitioner from his joining of his duty.*
- c. *That this Honourable Court may be pleased to grant any other relief which may be deemed fit and proper in favour of the petitioner.*

2. At the very outset, learned counsel for the petitioner(s) submits that these petitions are not pressed to the extent of relief, if any, against private respondents in all listed petitions. Ordered accordingly. On merits, he has contended that the petitioner(s) were appointed as Driver, Chowkidar and Ward Boy, respectively, through order(s) dated 02.07.2015 and since then, despite joining, the respondents they have not been paid their salaries. He further submits that as to the appointment order is concerned, the same has not been disputed; however, some scrutiny was carried out in respect of various appointments and pursuant to that a list was prepared wherein the petitioners have been left out on the ground that their appointments were not confirmed by the competent person. He submits that the petitioners are not at fault, whereas, their appointment orders are still intact. In support he has relied upon the cases of *Muhammad Akhtar Shirani & others v. Punjab Text Book Board & others (2004 SCMR 1077)*, *Government of Punjab through Secretary Education Civil Secretariat Lahore & others v. Sameena Parveen & others (2009 SCMR 1)*, *Fuad Asadullah Khan v. Federation of Pakistan through Secretary establishment & others (2009 SCMR 412)*, *Executive District Officer (EDU), Rawalpindi & others v. Mst. Rizwana Kausar & 4 others (2011 SCMR 1581)* and *Government of the Punjab through Chief Secretary & others v. Aamir Junaid & others (2015 SCMR 74)*.

2. On the other hand, learned A.A.G has opposed these petitions on the ground that very appointments of the petitioners were found to be illegal

inasmuch as the competent authority of the concerned respondents had not recommended such appointments and on post scrutiny the said appointments orders were not found proper and legal, and therefore, no case is made out by the petitioners.

3. We have heard the learned counsel for the petitioner(s) and learned A.A.G. Record perused.

4. At the very outset, we have confronted the learned counsel for the petitioner(s) as to maintainability of these petitions as disputed facts being involved in these matters inasmuch as on post scrutiny, it has come on record that in the final list of appointments issued by the District Recruitment Committee the petitioners' names do not transpire; hence, the same cannot be resolved in our Constitutional jurisdiction. However, learned counsel for the petitioner(s) has relied upon the cited judgments and submits that the appointment orders in question have not been withdrawn. To that we may observe that once it has been found that the petitioners were never appointed by the competent authority, whereas, on post scrutiny, District Recruitment Committee has found that the petitioners were never appointed, therefore, there was no need to withdraw any such appointments which according to the respondents was not valid. Moreover, we have also confronted the petitioners' counsel as to whether after being appointed as claimed, any salaries were paid to the petitioners and he has responded in negative.

5. In view of the above position, we are not inclined to exercise any discretion under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as the matter involves disputed facts; hence these petitions being not maintainable are hereby dismissed.

JUDGE

JUDGE

Hafiz Fahad