

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

***Constt. Petition No.D-371 of 2024***

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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- 1. For orders on O/objection at flag-A.*
- 2. For orders on CMA No.1529/24*
- 3. For hearing of main case.*

**23.05.2024.**

Petitioner Tarique Hussain present, in person.  
Mr. Ghulam Abbas Kubar, Assistant Advocate General alongwith Dr. Abdul Qadir Bhutto, DHO Khairpur on behalf of Director Health Services Sindh, Hyderabad, Dr. Anwar Ali on behalf of District Health Officer, Sukkur, and Dr. Rehmatullah, Additional Director, Director Health Office, Larkana

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**ORDER.**

**Adnan-ul-Karim Memon, J.** Petitioner Tarique Hussain claims to be a Junior Clerk (BPS-11), at the District Health Office Khairpur, has filed the Constitutional Petition, praying therein to direct respondents No. 2 & 4 to implement the office order No. DHOK/ESTT: II)/20308/09 dated 27.07.2023, issued by Respondent No. 06, by restraining respondents No. 02 & 04 from committing illegal acts against the services of petitioner.

2. Petitioner, who is present in person has submitted that he was appointed as Junior Clerk (BS-11) in the Health Department, Government of Sindh and was posted at Account Section DHO Office Khairpur; besides he holds impeccable and unblemished career spanned over a considerable period; however, Respondent instead of appreciating his services, implicated him in a false, malafide, concocted and motivated disciplinary proceedings. He next submitted that upon vacant position of Account Assistant (BS-11), petitioner submitted an application to DHO Health requesting therein that he had vast experience in accounts matter, therefore, his post may be re-designated to the post of Account Assistant, which was duly forwarded by DHO Health Khairpur to Secretary, Health Department, Government of Sindh; that an application was

moved by anonymous person to Anti-Corruption Establishment, Khairpur, who enquired from DHO regarding allegations leveled against the Petitioner who vide letter dated 03.12.2020, negated the allegations as well as issued "No Enquiry Certificate" in favour of Petitioner; that on the application of the petitioner, the committee members also recommended that the petitioners post would be re-designated from the post of Junior Clerk to Account Assistant; that all of sudden, Respondents got annoyed with the petitioner due to personal grudge and issued a letter dated 06.04.2021 for issuance of fresh medical fitness certificate of Petitioner though the petitioner was appointed in the year 2011 after fulfillment of all codal formalities, hence there was no need of fresh medical fitness certificate but despite of that Respondents illegally issued letter in order to victimize the petitioner; that thereafter correspondence/reply was made regarding allegations leveled against petitioner with Respondents but all were went in vain and the services of the petitioner were placed under suspension vide letter dated 13.04.2021; that impugned suspension order was/is illegal as the same was issued without any statement of allegation, which was/is void and ab-initio and the same was challenged in Petition No. D-1227 of 2021 which was dismissed vide order dated 06.04.2022; that charges leveled against the petitioner are groundless, malafide, vague and without any substance, therefore, instant petition may be allowed as prayed.

3. Learned AAG submitted that the services of the petitioner were placed under suspension after full-fledge inquiry as his medical fitness certificate was sent to Medical Superintendent KMC for verification, who vide letter dated 26.08.2021, found his medical fitness certificate being bogus and fabricated; that as per the claim of the petitioner that he was appointed at District Health Office, Khairpur, in the year, 2011, a letter dated 29.03.2021 was issued to the concerned office for submission of his personal file and Service Book but the same was not available in the office record and on the reminder, he started misbehaving with the officials of the office of District Health Office, Khairpur and launched media campaign to blackmail the office staff of DHO, Khairpur; besides committee constituted to probe allegations leveled against the petitioner, recommended for disciplinary action against him. Lastly, learned AAG submitted that the instant petition is misconceived and is liable to be dismissed as the petitioner failed to defend himself regarding the allegations leveled against him including his fake appointment; besides he tried to avert the verification process of his appointment by using channels of blackmailing

through social, print and electronic media against the DHO and office staff posted at DHO office, Khairpur. He prayed for dismissal of the petition.

4. At this stage we confronted the parties about the allegations and counter allegations, after making brief submissions both the parties agreed to dispose of this petition in the terms that Chief Secretary Sindh shall hear the parties and decide about the fate of the case of the petitioner as to whether the appointment of the petitioner was/is genuine or otherwise. Be that as it may, we, based on contentions of the parties with the material produced before us, have concluded that we cannot determine the veracity of these documents, their claims, and counter-claims as these are disputed questions of facts between the parties, which cannot be adjudicated by this Court while exercising the Constitutional Jurisdiction as the earlier petition of the petitioner has already been dismissed by this Court vide order dated 06.04.2022.

5. In view of the foregoing, this Court cannot give sanctity to the documents produced by them and leave it for the Competent Authority of the respondents to determine the genuineness or otherwise of the documents, claims, and counter-claims, the issue of genuineness of appointment of the petitioner/salary and arrears if any be determined by head of the department, therefore, on the aforesaid plea the Constitutional Petition filed by the petitioner cannot be maintained.

6. On the subject issue, this Court seeks guidance from the pronouncement of the Judgment of the Supreme Court in the case of the *Government of Punjab through Chief Secretary and others vs. Aamir Junaid and others* [2015 SCMR 74], which provides guiding principle on the aforesaid issues. An excerpt of the same is reproduced as under:-

“Undoubtedly such order passed by the learned High Court is absolutely valid and it has been left to the department itself to scrutinize/examine the eligibility of the respondents those who pass the test would be retained as employees by applying the rule of locus penitential, notwithstanding that there was some irregularity in the process of selection, may be on account of one of the members, who is said to have acted as an appointing authority was not competent to sit in the same meeting, whereas those who are not eligible or qualified shall go. This is for the department now to act fairly in terms of the direction of the learned High Court and take further action.”

7 In the light of dicta laid down by the Supreme Court in the case of Government of the Punjab supra, we direct the Chief Secretary, Sindh to constitute a Committee headed by the administrative head of the concerned Department, conduct an inquiry into the allegations of the parties against each others if not earlier done, after providing ample opportunity of hearing to the Petitioner and fix responsibility in the matter and take action against the delinquent officials strictly under law and the observations made by the Supreme Court in the aforesaid case and submit a report to this Court through Additional Registrar of this Court, within three weeks, from the date of receipt of this order. However, if the administrative head of the department concerned who is Competent Authority shall also determine the genuineness or otherwise of the documents, claims, and counter-claims of the parties and if he finds appointment of the petitioner made without observing codal formalities, etc. in violation of rules and regulations, he shall conduct a separate inquiry in this respect if not earlier done and submit such comprehensive report before this Court through Additional Registrar. However, it is made clear that after submission of the compliance report, if the cause to the parties still subsists the aggrieved party may approach the legal forum for redressal of grievances which shall be decided on merits.

The petition stands disposed of in the above terms.

**J U D G E**

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