

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 1984 of 2017
(Nisar Ahmed vs. Province of Sindh & others)

Constitution Petition No. D-354 of 2018
(Majid Ali and others vs. Province of Sindh & others)

Constitution Petition No. D- 1571 of 2018
(Mahakmuddin vs. Province of Sindh & others)

Constitution Petition No. D- 2040 of 2018
(Abdul Hafeez vs. Province of Sindh & others)

Constitution Petition No. D- 69 of 2019
(Sajid Ali Phalia vs. Province of Sindh & others)

Constitution Petition No. D- 105 of 2019
(Imam Bux vs. Province of Sindh & others)

Constitution Petition No. D- 906 of 2019
(Riaz Hussain Mahar vs. Province of Sindh & others)

Constitution Petition No. D-937 of 2019
(Zain-ul-Abdin vs. Province of Sindh & others)

Constitution Petition No. D- 1361 of 2019
(Muhammad Rahib vs. Province of Sindh & others)

Constitution Petition No. D-1623 of 2019
(Tariq Ali vs. Province of Sindh & others)

Constitution Petition No. D- 1682 of 2019
(Zaheer Ahmed Maitlo vs. Province of Sindh & others)

Constitution Petition No. D- 1725 of 2019
(Imran Ali Shah and another vs. Province of Sindh & others)

Constitution Petition No. D-259 of 2020

(Hajan Bharo vs. Province of Sindh & others)

Constitution Petition No. D-312 of 2020

(Abdul Salam vs. Province of Sindh & others)

Constitution Petition No. D-240 of 2021

(Shafullah vs. Province of Sindh & others)

Constitution Petition No. D- 883 of 2021

(Mir Mumtaz Ali vs. Province of Sindh & others)

Constitution Petition No. D-938 of 2021

(Rashid Ali vs. Province of Sindh & others)

Constitution Petition No. D-1162 of 2021

(Azizullah Phulpoto vs. Province of Sindh & others)

Constitution Petition No. D-1592 of 2021

(Nooruddin vs. Province of Sindh & others)

Constitution Petition No. D-1671 of 2021

(Mumtaz Ali Jalbani vs. Province of Sindh & others)

Constitution Petition No. D- 885 of 2022

(Shakeel Ahme Soomro vs. Province of Sindh & others)

Constitution Petition No. D- 1192 of 2022

(Dil Murad Korai vs. Province of Sindh & others)

Constitution Petition No. D- 1527 of 2022

(Ghulam Shabbir Dreho vs. Province of Sindh & others)

Constitution Petition No. D-120 of 2023

(Aijaz Ali and another vs. Province of Sindh & others)

Constitution Petition No. D-254 of 2023

(Sajid Ali and another vs. Province of Sindh & others)

Constitution Petition No. D-298 of 2023
(Mst. Shabnam Parveen vs. Province of Sindh & others)

Constitution Petition No. D-456 of 2023
(Abdul Razzak and another vs. Province of Sindh & others)

Constitution Petition No. D-591 of 2023
(Dr. Ahmed Nadeem Siddique vs. Province of Sindh & others)

Constitution Petition No. D-674 of 2023
(Muzafar Ali and vs. Province of Sindh & others)

Constitution Petition No. D- 699 of 2023
(Meer Khan Mahar vs. Province of Sindh & others)

Constitution Petition No. D-1168 of 2023
(Abdul Rehman vs. Province of Sindh & others)

Constitution Petition No. D-1187 of 2023
(Meer Ahmed vs. Province of Sindh & others)

Constitution Petition No. D- 1380 of 2023
(Musthaque Hussain vs. Province of Sindh & others)

Constitution Petition No. D- 1382 of 2023
(Mureed Abbas vs. Province of Sindh & others)

Constitution Petition No. D- 1419 of 2023
(Riaz Hussain Soomro vs. Province of Sindh & others)

Constitution Petition No. D- 1420 of 2023
(Imran Ali Shah vs. Province of Sindh & others)

Constitution Petition No. D- 1421 of 2023
(Javed Maitlo vs. Province of Sindh & others)

Constitution Petition No. D- 1447 of 2023
 (Shafqat Ali Khaskheli vs. Province of Sindh & others)

Constitution Petition No. D- 1490 of 2023
 (Haque Nawaz Dahraj vs. Province of Sindh & others)

Constitution Petition No. D- 1494 of 2023
 (Piyaral Maitlo vs. Province of Sindh & others)

Constitution Petition No. D- 1495 of 2023
 (Akhtiar Ali Shaikh vs. Province of Sindh & others)

Constitution Petition No. D- 1596 of 2023
 (Zulfiqar Ali Qazi vs. Province of Sindh & others)

Constitution Petition No. D- 1597 of 2023
 (Syed Khan Muhammad vs. Province of Sindh & others)

Constitution Petition No. D- 1598 of 2023
 (Riaz Hussain vs. Province of Sindh & others)

Constitution Petition No. D-1716 of 2023
 (Sahib Ali & others vs. Province of Sindh & others)

Constitution Petition No. D- 63 of 2024
 (Mushtaque Ali vs. Province of Sindh & others)

M/s Shabbir Ali Bozdar, Advocate for petitioner in CP No.D-1571/2018, CP No.D-699/2023, C.P. No.D-1592 of 2021, Mr. Ubedullah Kalwar, Advocate for petitioner in CP No.D-2040/2018, Mr. Abdul Sattar Mahesar, Advocate for petitioner in CP No.D-1682/2019, Mr. Achar Khan Gabol, Advocate for petitioners in CP No.D-69/2019, CP No.D- 1192/2022, CP No.D-1168/2023, Mr. Ghulam Muhammad, Advocate for petitioner in CPD No. 1527/2022, Mr. Rehmat Ali @ Raza Ali Shaikh, Advocate, Muhammad Raza Soomro, Advocate for petitioners in CPD No. 1380/2023, CP No.D- 1382/2023, C.P No.D-1419/2023, C.P No. D-1420/2023, C.P No.D-1421/2023, C.P No.D-1446/2023, C.P No. D-1447/2023, C.P No.D-1494/2023, C.P No.D-1495/2024, C.P No. D-

1505/2023, C.P No.D-1506/2023, C.P No.D-1507/2023, C.P No.D-1596/2023, C.P No.D-1597/2023, C.P No.D-1598/2023, C.P No.D-63/2024, Mr. Danish Ali Bhatti, Advocate for petitioner in C.P No.D-1490/2023, Mr. Khan Muhammad Sangi, Advocate for petitioner in C.P No.D-354/2018, Mr. Ubedullah Malano, Advocate for petitioner in C.P No.D-259/2020, Mr. Alam Sher Bozdar, Advocate for petitioner in C.P. No.D-674/2023. Mr. Abdul Sallam Shaikh, Advocate for petitioners in C. P. No.D-937/2019, CP No.D-124/2022, CP No.D-120/2023, Mr. Ghulam Murtaza Korai, Advocate for petitioner in C.P No.D-938 of 2021, Mr. Niazuddin Memon, Advocate for petitioners in C.P No.D-1514 of 2019, Mr. Riaz Ali Shaikh, Advocate for petitioner in C. No.D-1187 of 2023, CP No.D-1716 of 2023, Mr. Abdul Naeem Pirzada, Advocate for petitioner No.D-1162/21.

None present in CPD No. 105/2019, CPD No. 1361/2019, CPD No. 1725/2019, CPD No. 906/2019, CPD No. 883/2021, C.P No.D-254/2023, C.P. No.D-312/2020, CP No.D-1671/2021, CP No.D-240/2021, CP No.D-1699/2023, CP No.D-298/2023, CP No.D-456/2023, CP No.D-1278/2019, C.P. No.D-1623/2019. CP.No.D-591 of 2023.

Date of hearing and order:- 16.05.2024

ORDER

Adnan-ul-Karim Memon J:- In all the above referred Constitutional Petitions common questions of law and facts are involved therein. The Petitioners are seeking direction to the Respondents to release their monthly salary/arrears, which has been stopped without reason. Since the matters about 2017 and onward are pending, need to be resolved by the heads of the department concerned. But due to their reluctance, cases of such like nature are piling up before this Court. Chief Secretary Sindh shall take stock of this factum and resolve the issue at his end.

2. Upon, query by this Court from the learned AAG and Respondents as to why the salaries of the Petitioners have been stopped. All the learned Counsel representing the Respondents have stated in their one voice that the captioned Petitions are not maintainable on various grounds. Be that as it may, we are only concerned with the resolution of the matter between the parties

under the law by their administrative heads of the department in the first instances.

3. The pivotal question before us is whether the salaries/arrears of the Petitioners can be withheld without providing an opportunity of hearing to them.

4. In our view, he who seeks equity must do equity and approach the Court with clean hands, ill-gotten gains cannot be protected. It is argued by the Respondents that Petitioners had got their appointments through the backdoor and, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to them.

5. 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.

6. 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 salary and arrears if any be determined by their respective heads of the departments, therefore, on the aforesaid plea the Constitutional Petitions filed by the petitioners cannot be maintained. 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 heads of the concerned Departments, conduct an inquiry into the extent as to why the salary of the petitioners/ arrears if any, have been withheld, after providing ample opportunity of hearing to the Petitioners 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 appointment of the petitioners is found genuine their salary must be released forthwith after proper proceedings. It is made clear that 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 appointments of the petitioners made without observing codal formalities, etc. in violation of rules and regulations, he shall conduct a separate inquiry in this respect and submit such comprehensive report before this Court through Additional Registrar. However, it is made clear that after submission of the compliance report, if their cause still subsists the aggrieved party may approach this court for redressal of his/her grievances separately by filling proper application which shall be decided on merits. In the intervening period, Additional Advocate General Sindh Sukkur shall provide complete information

to the competent authority about the issue of salary/arrears of the petitioners, after consultation with administrative heads of the departments concerned. He shall also submit his report accordingly.

8. All the petitions stand disposed of in the above terms.

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Nasim/P.A