

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH**  
**CIRCUIT COURT MIRPURKHAS**

Constitutional Petition No. D-835 of 2024  
(*Darhoon and others Vs P.o Sindh and others*)

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DATE	ORDER WITH SIGNATURE OF JUDGE (S)
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Before;  
Adnan-ul-Karim Memon, J  
Amjad Ali Bohio, J

Date of hearing and Order: 19.08.2024.

Mr. Kanji Mal Meghwar advocate for petitioners.  
Mr. Mir Ali Bakhsh Talpur advocate for intervener.  
Mr. Muhammad Sharif Solangi Assistant A.G., Sindh, a/w Mumtaz Ali Khahro respondent No.2, and Ali Khan Narejo Deputy DEO Education on behalf of respondent No.4.

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**ORDER**

Adnan-ul-Karim Memon, J. The petitioners have filed this petition under Article 199 of The Constitution of the Islamic Republic of Pakistan, 1973 seeking a declaration to the effect that the order dated: 07-06-2024 issued by Respondent No. 02 is illegal, unlawful, and malafide and without any legal authority; consequently, needs to be set-aside

2. The learned counsel for the petitioners has submitted that the petitioners were working in the Education Department Government of Sindh Mirpurkhas Region in Lower Staff from (BPS-01 to BPS-04 i-e Naib Qasid, Chowkidar and Lab- Attendant). As per learned counsel, the Petitioners were promoted from BPS-01 to 04 to BPS-11 for the post of Junior Clerk BPS-11 vide order dated: 10-02-2023, 23-02-2023, 24-02-2023, 26-02-2023, 02-03-2023, 22-08-2023 and 06-09-2023. However all of a sudden petitioners have been directed to be relieved from their respective posts vide impugned order dated 07-06-2024, which is a nullity in the eyes of the law as the same was issued without providing any opportunity of hearing to the Petitioners as guaranteed under Article 10-A of the Constitution of Pakistan, 1973. He further submitted that various petitions

have been filed at the principal seat and notice has been issued to the respondents. At this stage, we asked the learned counsel as to how the petitioners could be promoted to the post of Junior Clerk-cum-Typist in BPS-11 from the menial post i.e. Chowkidar, Naib Qasid, Lab Attendant, Peon, and RCS. He submit that under the recruitment rules the post of Junior Clerk can be filled 70% by initial appointment and 30% by promotion amongst the officials working in BPS-01 to 04 having at least 03 years service on seniority cum fitness basis and after proper scrutiny of service profile of the petitioners, the competent authority i.e. Departmental Promotional Committee considered the case of the petitioners and they were promoted to the post of Junior Clerk-cum-Typist BPS-11 on regular basis with immediate effect. He further submitted that the School Education and Literacy Department, Mirpurkhas recommended the petitioners to the subject posts on regular basis with effect from 21-02-2022 vide office Order dated 23-02-2022. As such, their relieving Order/Reversion to their original post through the impugned Order dated 07-06-2024 is illegal and the stoppage of their salary was/is uncalled for. He prayed for setting aside the office order dated 07-06-2024.

3. The learned AAG has raised the question of the maintainability of this petition on the premise that the promotion orders of the petitioners were obtained without the availability of vacant posts. He further submitted that after the cancellation of promotion orders, the colleague of the petitioner Nim Ali filed petition No.D-1986 of 2022 before this Court, and the posting orders were issued as per vacancies against the post. He added that petitioners got their promotion by fabricating the documents; therefore, petitioners are not entitled to retain their promotion. He prayed for the dismissal of this petition.

4. We have heard the learned Counsel for the parties and perused the material available on record on the aforesaid pleas.

5. The pivotal question before us is whether the promotion of the Petitioners can be recoiled without providing an opportunity for a hearing.

6. 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 learned AAG that Petitioners had got their promotion through the backdoor and, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to them.

7. 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 and leave it for the Competent Authority to determine the genuineness or otherwise of the documents, claims, and counter-claims, therefore, on the aforesaid plea no concrete findings could be given based on the aforesaid analogy, in terms of ratio of the judgment passed by the Supreme Court in the case of Government of the Punjab through Chief Secretary and others vs. Aamir Junaid and others [2015 SCMR 74], which provides guiding principle on the aforesaid issues.

8. 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 him and comprising of the Secretary concerned to conduct an inquiry of alleged fraud/forgery in the promotion of the petitioners/intervenors, if any and subsequent events, after providing ample opportunity of hearing to the Petitioners/intervenors, and fix responsibility in the matter and take action against the delinquent officials strictly by law and the observations made by the Supreme Court in the aforesaid case and submit report to this Court through Additional Registrar of this court, within 30 days, from the date of receipt of this order. However, if the promotion of the petitioners is within the parameters of law, the same shall not be disturbed.

9. This petition stands disposed of along with the pending application(s), if any, in the above terms.

JUDGE

JUDGE