

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Present

Justice Mrs. Rashida Asad

Mr. Justice Khadim Hussain Soomro

Constitution Petition No. D-1127 of 2016, Along with C.P Nos. D-147 of 2018, 526 of 2019, 86, 203, 222, 342, 493, 529, 541, 568, 675, 604, 1454, 1519 of 2020, 302, 605, 171, 276, 987, 1026, 1319 of 2021, 42 of 2022, 55 , 442, 519, 560, 655, 656, 884,1383 of 2023

Date of Hearing: 27-09-2023

Date of Judgment:

Constt. Petition No. D-1127 of 2016.

Mr. Qurban Ali Malano, Advocate for petitioner.

Mr. Shahid Hussain Jogi, Advocate for respondent No.4.

Constt. Petition No. D-147 of 2018.

Mr. Alam Sher Bozdar, Advocate for petitioner.

Mr. Khan Muhammad Sangi, Advocate for respondent No.5.

Constt. Petition No. D-526 of 2019.

Mr. Sohail Ahmed Khoso, Advocate for petitioner.

Mr. Agha Imran Khan, Advocate for respondents.

Constt. Petition No. D-86 of 2020.

Mr. Ali Raza Baloch, Advocate for petitioner.

Mr. Khan Muhammad Sangi, Advocate for respondent No.3.

Constt. Petition No. D-203 of 2020.

Mr. Muhammad Qayyum Arain, Advocate for petitioner.

Mr. Abdul Ahad Buriro, Advocate for respondents No.3 & 4.

Constt. Petition No. D-222 of 2020.

Mr. Mansoor Hussain Maitlo, Advocate for petitioner.

Mr. Mohabbat Khan Baladi, Advocate for respondent No.4.

Constt. Petition No. D-342 of 2020.

Mr. Shoukat Ali Makwal, Advocate for petitioner.

Mr. Manzoor Hussain Halepoto, Advocate for respondent No.4.

Constt. Petition No. D-493 of 2020.

Mr. Shoukat Ali Makwal, Advocate for petitioners.

Mr. Manzoor Hussain Halepoto, Advocate for respondents No.6 & 7.

Constt. Petition No. D-529 of 2020.

Mr. Noor Muhammad Soomro, Advocate for petitioner.

Constt. Petition No. D-541 of 2020.
Mr. Muhammad Ali Napar, Advocate for petitioner.
Mr. Qurban Ali Malano, Advocate for respondents No.5 & 7.

Constt. Petition No. D-568 of 2020.
Mr. Ali Raza Baloch, Advocate for Petitioners.
Mr. Manzoor Hussain Halepoto, Advocate for respondent No.7.

Constt. Petition No. D-675 of 2020.
(Petitioner-in-person).

Constt. Petition No. D-604 of 2020.
Mr. Ali Raza Baloch, Advocate for petitioners.

Constt. Petition No. D-1454 of 2020.
Mr. Mir Nawaz Kalhoro, Advocate for petitioner.

Constt. Petition No. D-1519 of 2020.
Mr. Achar Khan Gabol, Advocate for petitioner.
Mr. Qurban Ali Malano, Advocate for respondents No.3 & 4.

Constt. Petition No. D-302 of 2021.
Mr. Abdul Waheed Bhanbhro, Advocate for petitioner.
Mr. Shahid Hussain Jogi, Advocate for respondent No.6.

Constt. Petition No. D-605 of 2021.
Mr. Muhammad Raza Soomro, Advocate for petitioner.
Mr. Manzoor Hussain Halepoto, Advocate for Town Committee
Kotdiji.

Constt. Petition No. D-171 of 2021.
Mr. Rehmatullah Mangnejo, Advocate for petitioner.
Mr. Qurban Ali Malano, Advocate for respondent No.4.

Constt. Petition No. D-276 of 2021.
Mr. Abdul Naeem Pirzada, Advocate for petitioners.

Constt. Petition No. D-883 of 2021.
Mr. Bakhshan Khan Mahar, Advocate for petitioner.

Constt. Petition No. D-987 of 2021.
Mr. Ali Raza Baloch, Advocate for petitioners.
Mr. Manzoor Hussain Halepoto, Advocate for respondents No.5
to 7.

Constt. Petition No. D-1026 of 2021.
Mr. Ghulam Mujtaba Jakhar, Advocate for petitioner.
Mr. Manzoor Hussain Halepoto, Advocate for respondents No.4
& 5.

Constt. Petition No. D-1319 of 2021.
Mr. Shabbir Ali Bozdar, Advocate for petitioner.

Constt. Petition No. D-42 of 2022.
Mr. Manzoor Ali Chohan, Advocate for petitioner.

Constt. Petition No. D-55 of 2023.

Mr. Shoukat Ali Makwal, Advocate for petitioner.

Constt. Petition No. D-442 of 2023.

Mr. Muhammad Raza Soomro, Advocate for petitioner.
Mr. Shahid Hussain Jogi, Advocate for respondent No.4.

Constt. Petition No. D-519 of 2023.

Mr. Muhammad Raza Soomro, Advocate for petitioner.
Mr. Nazeer Ahmed Sahito, Advocate for respondent No.6.

Constt. Petition No. D-560 of 2023.

Mr. Ihsan Ali Lund Balochi, Advocate for petitioner.
Mr. Shahid Husain Jogi, Advocate for respondent No.3.

Constt. Petition No. D-655 of 2023.

Mr. Muhammad Nasir Malik, Advocate for petitioner.
Mr. Akhtar Ahmed, Advocate for respondent No.5.
Mr. Nazeer Ahmed Sahito Advocate for respondent No.6.

Constt. Petition No. D-656 of 2023.

Mr. Muhammad Nasir Malik, Advocate for petitioner.
Mr. Nazeer Ahmed Sahito, Advocate for respondent No.6.

Constt. Petition No. D-884 of 2023.

Mr. Muhammad Nasir Malik, Advocate for petitioner.
Mr. Nazeer Ahmed Sahito, Advocate for respondent No.6.

Constt. Petition No. D-1383 of 2023.

Mr. Muhammad Raza Soomro, Advocate for petitioner.
Mr. Manzoor Hussain Halepoto, Advocate for respondent No.4.

Mr. Shafi Muhammad Chandio, Additional Advocate General,
Sindh.

Mr. Shehriyar Imdad Awan, Assistant Advocate General, Sindh.

JUDGMENT

Khadim Hussain Soomro, J. Through this consolidated judgment, we intend to decide the above captioned petitions filed by petitioners under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (**The Constitution**). The petitioners, who are employed by the various councils, assert that they have been denied their rightful remuneration, including salaries and overdue payments. Their primary and core grievance is the non-disbursement of salaries. Consequently, it is appropriate to consolidate these matters due to their substantial similarity.

2. The precise facts of the above captioned petitions are that the petitioners are employees of the Sindh Local Government Department and are posted in various Town Committees/Municipal Committees

within the territorial jurisdiction of this Court. Since their claims revolve around their salaries and the genuineness of their appointment in the Town Committee Town Office, the said petitions were ordered to be tagged together to decide by way of a single order. The submissions of the counsels as well as parties are given as under:-

C.P No. D-1519 of 2020

3. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed on 08.08.2013 as Junior Clerk, posted at Town Committee Nara (Choondko), District Khairpur. Per counsel, the post was later upgraded from BPS-7 to BPS-11. The petitioner alleges that the salaries are disbursed less than the actual salary amount. He further agitates that the salaries of the petitioner is either withheld or partly paid by the Chairman Town Committee (Choondko) without lawful justification. He lastly prays for the release of the petitioner's salaries.

4. Learned counsel for respondents No.03 and 04 submitted para-wise comments on 31.05.2023 stating therein that the salary of the petitioner is withheld due to his absence from the duties, and to that effect, explanation call is also issued vide dated 05.04.2023 and 21.04.2023. Learned counsel further asserts that final notice is also issued to the petitioner, directing him to submit his contract/appointment orders, medical fitness certificate, bank statement, and other documents. He finally argues that the administrator's order has stopped the salaries of the petitioner due to non-compliance regarding the submission of the aforementioned documents. Learned counsel for respondent No.2 (Director, Local Government, Sukkur) submits that the petitioner's medical fitness certificate was found bogus after verification. He further submitted that the Local Government Department had imposed a ban on the payment of all kinds of liabilities.

5. This Court vide Order dated 30.08.2023 directed respondents No.3 and 04 to submit the budget allocation and details of employees in the town committee, and the compliance report was submitted by the said respondents on 26.09.2023 stating therein that O.Z.T. (Octria Zila Tax) is the only source of income and the salaries of the petitioner

are stopped due their absence from duties. The learned counsel failed to indicate the law authorizing the respondents to stop the salaries of the petitioners on specific queries put forth. On the contrary, the perusal of the record brought before us shows that petitioner was disbursed various amount of salaries in his bank accounts in the months of September and October 2018.

C.P No. D-147 of 2018

6. Learned counsel for petitioner in the above cited petition submits that the petitioner is appointed Naib Qasid in the Local Government Department vide Order dated 30.05.2012 and posted at (Defunt) Daharki District Ghotki.

7. Learned counsel for respondent No.05 submits that the salaries are paid to the petitioner from 2021 to August 2023 and prays for the dismissal of the petition since the petitioner's grievance has been redressed.

C.P No. D-222 of 2020.

8. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as Recovery Clerk in respondent departments vide Order dated 15.9.1990. During his posting in U.C. Kahkot, he was regularly receiving monthly salaries. Still, from July 2012 to 05.9.2016, the petitioner's salary was stopped, and he was transferred to District Council, Naushehro Feroz. He prays for directions to respondents to release his outstanding salaries for the period, as mentioned earlier.

9. Learned counsel representing respondent No.3 (Chairman, Union Council Khakot/lalia) submitted that the petitioner was transferred to UC Khakot, but from July 2012 to 5 November 2016, the petitioner was not paid the salaries by the Ex-Chairman and the respondent assumed his service in the said U.C. on 05.09.2016. Per counsel for the respondent, he has advised the petitioner to contact the Secretary of the local government department to get directions for Respondent No. 3; thereafter, he would pay arrears of salaries.

10. We observe the apathetic approach of the Chairman, UC Khakot/lalia, by placing such a submission before this Court as

enunciated in the above para. Upon specific query put forth, whether the salary of the petitioner was stopped on the direction of the Secretary of the Local Government, on which no reasonable reply has been given.

C.P No. D-529 of 2020.

11. Learned counsel for petitioner in the above cited petition submits that the petitioner was posted as Assistant Executive Engineer in Town Committee Sobhodero vide Order dated 07.11.2018. Since then, he was paid his salary regularly, but from January 2020, the respondents stopped his salary without any fault on the part of the petitioner.

12. Learned counsel representing respondent No.5 (Chairman, Town Committee, Sobhodero) submitted his statement dated 26.09.2023 stating therein that he has not received the copy of the memo of the petition; contrarily, the material available on record shows that the respondents had been served notices prior to his statement, but his denial to the memo of the petition having been received is not credible, and the same reflects the non-serious attitude and an attempt to delay the matter. However, the counsel for Town Committee Sobhodero submits that there is no record of his appointment available in their office.

C.P No. D- 541 of 2020.

13. Learned counsel for petitioner in the above cited petition submits that the petitioner is a disabled person and he was appointed as a regular employee in Town Committee, Thari Mirwah as Recovery Clerk vide Order dated 24.10.2012, and he was drawing his salary regularly; however, on various occasions, some amount from his salary was deducted. Per learned counsel, the petitioner is entitled to receive a monthly salary at the rate of Rs.32000/-, but he is being offered a salary of Rs.5057/- only. The petitioner has prayed for directions to the respondents for the release of his outstanding salaries along with increments.

14. Learned counsel representing respondent No.6 (Town officer town committee, Thari Mirwah Khairpur) submitted that the

petitioner failed to establish the genuineness of his appointment, but on the other hand, he also admits that the petitioner has been paid salaries due to filing of this petition. Per counsel, the respondent has not availed the proper legal remedy before filing this petition.

C.P No. D-675 of 2020.

15. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as a Helper against disabled quota, and initially, he was getting his salary regularly; however, the respondent withheld his salary without any justification, assigning a compelling reason. The petitioner prayed for directions to respondents for the release of his salaries.

16. The counsel for respondents No.2 to 4 submits that the appointment of the petitioner is fake and bogus and there is no record of his appointment in their office.

C.P No. D-1127 of 2016

17. Learned counsel for petitioners in the above cited petition submits that the petitioners are employees of Town Committee, Thari Mirwah District Khairpur, in different pay scales, and they have been deprived of their salaries since August 2013; in support of their claim, the petitioners have placed inter alia appointment orders; hence, pray for salaries.

18. Learned counsel representing respondents submits that the petitioners are not entitled to salaries as they are not employees of the said Town Committee, and the appointment orders produced by the petitioners are fake and bogus.

C.P No. D-604 of 2020.

19. Learned counsel for petitioners in the above cited petition submits that petitioners were appointed as Junior Clerks and Naib Qasid, respectively, by the respondents. They have been rendering their services, but the respondents have withheld their salaries without any justification for the last three years; they seek directions to the respondents for the release of their outstanding salaries from the year 2017 till date. The petitioners have also submitted various

documents, including appointment orders, joining, service books and bank statements. Learned counsel for the petitioners has also attached a letter dated 19.11.2018 issued by respondent no.4 (Director Local government department Sukkur) wherein the respondent no.4 has given necessary instructions to the respondent no.5 and 6 (Chairman Town Committee Kotdiji & Town Officer Town Committee Kotdiji) regarding the release of salaries to the petitioners after verification of record.

20. Mr. Abdul Waheed, advocate for respondents No.5 to 6 along with A.A.G submits that the appointment of the petitioners is not genuine one.

C.P No. D- 1454 of 2020.

21. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as Junior Clerk vide Order dated 28.9.2012, and presently he is posted in Town Committee, Padidan. Learned counsel further argued that the petitioner was not paid his full salary for 2013 and 2014. Still, he was paid only half of his monthly salary for 14 months, and the remaining amount is outstanding to the respondent department. Per learned counsel, the petitioner has also not been awarded Adhoc relief of 15% for the year 2019 as well as an annual increment for the year 2019 and so also 10% Adhoc relief for the year 2020; as such, the petitioner has filed instant petition seeking directions to respondents for release of his outstanding amount in respect of his salaries and arrears.

22. The learned A.A.G submits that the petitioner has not been appointed by the respondents and his appointment order is fake and bogus one.

C.P No. D-302 of 2021.

23. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as a sanitary worker vide Order dated 03.02.2012, and he has been regularly paid monthly salaries since 2016. Per learned counsel, the petitioner's salary was deducted in 2017 without justification. Learned counsel further

contended that the actual salary of the petitioner from 2020 is Rs.24,500/-, but he is being paid only Rs.17000/- per month, and the rest of his amount is being deducted. As such, the petitioner has filed this petition seeking a declaration that the deduction of the amount from his salary is unlawful and seeks directions to the respondents to pay his actual pay regularly, including arrears.

24. Learned counsel for respondent No.6 (Town Officer Town Committee Thari Mirwah, District Khairpur) submitted that there is no sufficient amount available with the respondent council; therefore, he has moved a letter dated.19.07.2019 for enhancement of O.Z.T. share, and the same is pending for further decision. Moreover, Respondent No.6 has also annexed a letter dated 25.7.2023 issued by Respondent No. 3 (Regional Director Local Government Department Sukkur) advising therein not to pass any difference bill of salaries and pensions without verification from the office of Respondent No. 05.

C.P No. D-605 of 2021.

25. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as a Lineman in the Local Government Department on 16.2.2012 and posted in Taluka Municipal Administration Kotdiji. Per learned counsel, the respondents have not released the petitioner's proper salaries for the last four years. He prays for directions to respondents to pay arrears of salaries to the petitioner.

26. Learned counsel representing respondent No. 4 (Town Officer Town Committee Kotdiji) submits that the petitioner has been paid full salary and there is no outstanding amount of the petitioner and prays that since the grievance of the petitioner has been redressed, therefore, the petition may kindly be disposed of.

C.P No. D- 171 of 2021.

27. Learned counsel for petitioner in the above cited petition submits that that the petitioner was appointed as Junior Clerk vide Order dated 17.06.2012, and posted at U.C Mirpur Mathelo. Per learned counsel, the petitioner was appointed against a vacant post

after fulfilment of all the codal formalities, and he has been working as a regular employee and drawing salaries, but the respondents are bent upon disturbing him. Learned counsel submitted that the petitioner has filed this petition with prayer that the Act of respondents for stopping the petitioner's salary be declared null and void and directions to release his salary be issued.

28. Learned A.A.G along with Mr. Qurban Ali Malano advocate for respondent No.4 submits that the appointment order of the petitioner is fake and bogus.

C.P No. D-276 of 2021.

29. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as sanitary worker vide Order dated 31.5.2019 along with 214 other persons. Per learned counsel, the petitioner has not been released his salary by the respondents since the day of his joining without any justification. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents to release his salary and not to take any adverse action against him without due process of law.

30. The learned A.A.G submits that the appointment order of the petitioner is bogus and fake.

C.P No. D-1319 of 2021.

31. Learned counsel for petitioner in the above cited petition submits that petitioner was appointed as Chowkidar vide Order dated 27.6.2009 by the respondents. Since then he has been performing his duties but his salary has been stopped by the respondents since last four years without any justification. On the contrary, the respondents are threatening the petitioner for his termination. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents to release his salary and not to take any adverse action against him without due process of law.

32. Learned counsel representing respondent No. 02 filed comments in which he stated that they have nothing to do with the matter.

Respondent No 4 filed their comments stating therein that the petitioner was appointed prior to his posting, and he had been relieved by the then Chairman U.C Beriri. In rebuttal, the petitioner filed a rejoinder affidavit stating that he had taken salaries in August 2017, denied the Order of reliving, and further submitted that the same was managed.

C.P No. D-42 of 2022.

33. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as Naib Qasid by the respondent department. He joined his duty on 02.4.2012 and was drawing his salaries; however, from September 2013 to 01.01.2017, the petitioner was not paid his salary. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents to release his salary for the period mentioned earlier.

34. Learned counsel representing respondent No. 3 stating that the claim is against the U.C 14, since the petitioner has been serving in U.C 19, he has been drawing his salaries, and the petitioner may claim his salaries from the U.C concerned.

C.P No. D-55 of 2023.

35. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed Pump Operator on 10.10.2013. Since then, he has been performing his duties but has not been paid his entire salary. The respondents are deducting the amount from his salary without any justification. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents to release his actual salary and his arrears.

36. Learned A.A.G along with Mr. Shahid Hussain Jogi counsel appearing on behalf of respondents No.5 to 7 instead of filing comments straightaway argued the matter. The counsel further submits that the appointment of petitioner is fake and bogus. Neither the petitioner has produced any record of his appointment nor the same is available at their office.

C.P No. D-442 of 2023.

37. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as Junior Clerk by the respondent department. Since then, he has been performing his duties, but the respondents have not paid his salary from July 2013 to September 2020. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents for the release of his outstanding salary arrears.

38. Learned counsel representing respondent No. 4 (Town Officer, Town Committee, Thari Mirwah) neither denied the appointment nor the salaries outstanding. Still, he has taken ground since the council has requested to enhance the O.Z.T. share from the local department, Government of Sindh, and as soon as they receive the share, they will pay the amount.

C.P No. D-519 of 2023.

39. Learned counsel for petitioner in the above cited petition submits that that the petitioner was appointed as Junior Clerk by the respondents, and he has been rendering his services to date. Still, the petitioner's salary for the period, i.e., December 2020, April 2020, August 2022, and February 2023, is withheld by the respondent department without any legal justification. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents to release his outstanding salaries as mentioned above.

40. The learned A.A.G a/w Mr. Nazar Ahmed Sahito appearing on behalf of Town Committee Hingorja denied the allegations levelled in the petition and submits that the petitioner has not come before this court with clean hands.

C.P No. D-560 of 2023.

41. Learned counsel for petitioners in the above cited petition submits that petitioners are the employees of respondents as sanitary workers, and they have been performing their duties regularly, but

the respondents have been deducting specific amounts from their monthly salaries, so also have withheld their salaries for certain periods without any justification. Learned counsel submitted that petitioners have filed this petition seeking directions to the respondents to release their actual salaries, including their salary arrears.

42. Learned counsel representing respondent No.3 (Administrator, Town Committee Thari Mirwah) neither denied the appointment nor the salaries outstanding, but he has taken ground since the council has made a request for the enhancement of the O.Z.T. share from the Government of Sindh as soon as they get the share, they would pay the amount.

C.P No. D-655 of 2023.

43. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as Chowkidar on 30.09.2010 by the respondents, and since then, he has been performing his duties; however, since January 2012, the petitioner has not been paid his actual salary, and his salary is being deducted by the respondent department without any lawful justification. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents for payment of his actual salary and payment of his salary arrears.

44. Learned counsel representing respondent No. 5 submitted that they are a Performa party and have been unnecessarily joined as a party in the proceedings. T.M.A. Sohho Dero filed comments wherein they denied their connection with the subject matter. Moreover, the counsel representing respondent No.06 (Town Officer Hingorja) filed a statement dated 26-09-2023 stating that if the petitioner is to be referred to the concerned town, they are ready to resolve his matter.

C.P No. D-656 of 2023.

45. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as Sanitary worker by the respondents vide Order dated 18.12.2017, and since then, he has

been performing his duties; however, since December 2019, he has not been released his complete salary, but a certain amount is being deducted from his salary by the respondents without any justification. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents for paying his actual salary and arrears of his outstanding salaries.

46. Learned counsel representing respondent No. 5 submits that they are merely a Performa party and have been unnecessarily joined as a party in the proceedings. T.M.A. Sohho Dero filed comments wherein they denied their connection with the subject matter. Respondent No. 6 (Town Officer Hingorja) filed a statement dated 26.09.2023 stating therein that in case the petitioner is to be referred to the concerned town, they are ready to resolve his matter.

C.P No. D-884 of 2023.

47. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as a Sanitary worker by the respondent department and had been performing his duties; however, from December 2013 to February 2023, he has not been released his complete salary, and a certain amount is being deducted from his salary by the respondents without any justification. Learned counsel submitted that petitioner has filed this petition seeking directions to the respondents for payment of his actual salary, so also payment of his salary arrears.

48. Learned counsel representing respondent No. 5 stated that they are a Performa party and have been unnecessarily joined as a party in the proceedings. T.M.A. Sohho Dero filed comments wherein they denied connection with the subject matter. Respondent No. 6 (Town Officer Hingorja) filed a statement dated 26-09-2023 stating therein that they are ready to resolve his matter if the petitioner is to be referred to the concerned town.

C.P No. D-1383 of 2023.

49. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as Junior Clerk in Town

Committee Kotdiji; however, since August 2020, the petitioner has not been paid his salaries by the respondents without any lawful justification. Learned counsel submitted that the petitioner has filed this petition seeking directions to the respondents for the payment of his salary. The record reveals that the petitioner has placed his appointment order, service book, and bank statement showing his salaries from 2016 to July 2020, and since August 2020, the salaries have not been paid.

50. Learned A.A.G along with Mr. Manzoor Hussain Halepoto advocate for respondents No. 3 to 4 submits that no doubt the petitioner has submitted bank slips and service book which shows that his service was regularized on 25.08.2010, however, prior to this there is no service record of the petitioner available on the record available in their office.

C.P No. D-526 of 2019

51. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed as Junior Clerk on 27.01.2012 in T.M.A. (Defunct) Kotdiji and prays for his salary payment and arrears; learned counsel for the petitioner also alleges that the Chairman of the town committee has made appointments in excess, resultantly the regular employees of Town Committee have not been paid their salaries amount on regular basis.

52. Learned counsel for respondent No.03 denies the petitioner's claim on account of his absence from duties and submits that salaries are paid to the petitioner as due, and the salaries are stopped due to the absence of the petitioner from the duties.

C.P No. D-86 of 2020

53. Learned counsel for petitioners in the above cited petition submits that the petitioner was appointed on 04.11.2009 as a junior clerk by T.M.A. Tando Ghulam Hyder; after that, he was transferred to T.M.A. Daharki District Ghotki on 15.10.2012. He further submits that the petitioner was paid his salaries till January 2017. However, due to excessive appointments made in 2016 on a political basis, his

salaries were stopped due to political rivalries, and those who are politically appointed are paid their full salaries.

54. Learned counsel for respondent No.03 denies the petitioner's very claim to have such an appointment and refutes the petitioner as an employee of the T.M.A. Daharki. There is no personal profile/record exists in their office. Prays for dismissal of the petition having no locus standi.

C.P No. D-203 of 2020

55. Learned counsel for petitioner in the above cited petition submits that the petitioner is an employee of Union Council Patni, Taluka Rohri, District Sukkur, as a sanitary worker and was appointed on 21.01.2014. He was transferred from Patni to Roshanabad. He prays for the release of salary from 2013 to 2016 and payment of the deducted amount of Rs.321,451/.

56. Learned counsel for respondent No.04 submits that the petitioner's salary cannot be paid due to a shortage of funds, and funds received from the Finance Department are insufficient to pay the salaries.

C.P. No. D-342 OF 2020

57. Learned counsel for petitioners in the above cited petition submits that he was appointed on 18.02.2013 as Tax Clerk and Junior Clerk on 28.11.2012 by the local government and posted at Taluka Kotdiji, District Khairpur and argues that their salaries are not paid. Prays for the release of salaries from August 2018.

58. Learned counsel for respondent No.01 as well as learned A.A.G refute the claim as well as appointment of the petitioner and submits that the petitioner is paid his monthly salary regularly. Prays for dismissal of the petition.

C.P. No. D-568 of 2020

59. Learned counsel for petitioners in the above cited petitions submits that petitioners' claim to have been appointed in 2009 by annexing their appointment orders, showing therein that the petitioners were appointed on the orders of the Minister of Local Government during his visit. Pray for the release of salaries.

60. The learned counsel for respondents No. 6 and 7 (Town Officer and Account Officer) submits that the petitioners are not employees as claimed by them, and the documents they submitted are managed and forged; hence, payment of salaries cannot be made.

C.P No. D-493 OF 2020

61. Learned counsel for petitioners in the above cited petition submits that petitioner No.1 was appointed sweeper on 01.04.1991, and petitioner No.2 was appointed bailiff on 24.3.1991. He further submits that petitioners were transferred from UC Muhabat Wah to Town Committee Kot Diji on 1.9.2007, but since 2016, the salaries have not been released. Pray for the release of salaries.

62. Learned counsel for respondent No.5 (Chairman Town Committee Kotdiji) submits that the audit record is not available in Town Committee Kotdiji and submits that the record pertaining to the petitioners is not available at his office; he also submitted the list of employees.

C.P No. D-987 of 2021

63. Learned counsel for petitioners in the above cited petition submits that the petitioners are employees of the Town Committee Kotdiji, District Khairpur, and their appointments were made in 2012 in various grades from BPS-01 to BPS-07. Since then, they have been performing their duties in the said council. Counsel for petitioners contends that the respondents withhold the salaries of the petitioners due to political affiliation. In support of their claim, the petitioners have annexed copies of various documents, including appointment orders, bank statements, and service books. Through their counsel, the petitioners pray for the release of their salaries.

64. Learned counsel for respondents No. 05 to 07 submits that the appointment orders produced by the petitioners are fake and bogus, and there is no record available in the office of the respondent department regarding the appointment of the petitioners at Town Committee Kotdiji, District Khairpur. He further contends emphatically that salary cannot be paid to the petitioners under the circumstances, in the absence of their appointment record; however, the salaries are regularly paid to the regular employees of the town committee.

C.P No. D-1026 of 2021

65. Learned counsel for petitioner in the above cited petition submits that the petitioner was appointed Junior Clerk (BPS-07) in Town Municipal Administrator, Kotdiji, vide Order dated 31.12.2012. He further contends that the petitioner has performed duties with utmost dedication and was paid monthly salaries without any hindrance. He further argues that the petitioner is deprived of his salary due to a political grudge. In support of his arguments, some copies of the documents, including regularisation of his appointment order dated 31.12.2023, service book, and bank statement showing the salary head. Prays for the release of salary from the month of October 2018 till the date.

66. Learned counsel representing respondents No. 04 and 05 submits that documents produced by the petitioner are fake and bogus, and there is no record available in the office of the respondents showing the appointments of the petitioner or his regularization nor his service record; therefore the claim of the petitioner for release of salaries is out of the question in the absence of a record. He concluded his submission by praying that the petition is not maintainable and the petitioner is not entitled to the relief he claimed.

67. We have heard the learned counsels for the parties and perused the material available on record. The essence of contentions by the parties in all the connected Constitution Petitions, as agitated, are concentrated over the non-payment of salaries for specific periods, non-payment of arrears, and in some matters, the petitioners agitate

that they have not been paid salaries since the day of their appointment, yet purportedly, they are performing their duties to the satisfaction of the authority of their respective councils. Perusal of the contentions of the contesting respondents, in connected matters, inter alia, transpire that either the petitioners have not been appointed and the appointment orders produced by them are not traceable to the extent of such orders being fake/bogus, or the salaries are withheld, in certain cases, due to absence of the petitioners, or salaries are not paid due to insufficient budget.

68. Tour d'horizon of the constitutional mandate regulating the establishment of local government is essential in order to appreciate the third tier of the government, the local government, at the gross root level for expeditious disposal of the public and for good governance. The supreme law of the land provides the basic information about the local government. The relevant Articles are mentioned as under:-

"Art. 7. In this Part, unless the context otherwise requires, "the State" means the Federal Government, [Majlis-e-Shoora (Parliament)], a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess".

"Art. 32. The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women".

"Art. 37. The State shall— (i) decentralize the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.

"Art. 140-A. (1) Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

Upon a bare perusal of Article 140-A of the Constitution, it is conspicuous that the local government stands at the tertiary level of government in Pakistan, after Federal and Provincial Governments. The local government in Pakistan is categorized into three administrative units, District Government Administrations, Town Municipal Administrations, and Union Council Administrations.

69. The devolution of power at the grassroots level through a democratic process is not alien to both the global and sub-continental contexts. Before the advent of British colonization in the Indian subcontinent, a robust system of local governance was already deeply ingrained, particularly in rural India, manifesting through traditional local structures known as the Panchayat, which held paramount significance. 'Panchayat' corresponds to the Greek term 'Pente,' signifying the number five. Members of the Panchayat were entrusted with a diverse array of responsibilities, encompassing administrative, developmental, and judicial functions. The village headman, the then-called 'Muqaddam', was another pivotal form of the local administration of public affairs and ostensibly represented the local populace in the era of the Mughal Empire.

70. Reverting to the constitutional framework to establish the local government and pursuant to Article 140A of the Constitution, the Sindh Local Government Act, 2013 (**The Act, 2013**) was enacted, aligned with the essence of Article 140A of the Constitution, to rationalize and reorganize the local government system in the Province of Sindh, the preamble of which is reproduced as under:

***Preamble.** WHEREAS it is expedient to establish an elected local government system to devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments; to promote good governance, effective delivery of services and transparent decision making through institutionalized participation of the people at local level; and, to deal with ancillary matters."*

71. The preamble of the Act, 2013 is reproduced to highlight that the local government is established to encompass political, administrative, and financial authority of the elected representatives. We observe, in these connected petitions, the entropic oscillation of the provincial government and local government authorities of various councils regarding administrative and financial matters, giving rise to litigations, agitating therein non-payment of salaries, on the part of the petitioners, and appointment being fake/bogus, inter alia, absence from duties on the part of respondents.

72. We note that in compliance with this Court order (C.P. No.D-173 of 2022) dated 19.01.2023, the Sindh government was directed to constitute a committee to digitize the records of all sanctioned posts and employees across local councils of Sindh Province. Consequently, the office of the Chief Secretary of Sindh constituted a committee on 22.02.2023, comprising the Additional Secretary of the Local Government Department as Chairman, the Regional Director of Local Government Karachi, and the Director of Local Fund Audit Karachi as members. The committee's mandate included data collection of all council employees, gathering approved recruitment rules/establishment schedules from all local councils and developing a mechanism to maintain a digital record of sanctioned posts and employees across all local councils on the website of the local government, for which the office of Chief Secretary set 15-day timeframe to achieve this task.

73. Bizzarely, what astonishes us to the dismay that council official respondents did not rebut the production of bank statements by the petitioners, showing transactions of salaries into petitioners' bank accounts on the one hand, and the other hand, outright refusal of councils' respondents to have an official record of such appointment in their offices insofar as the petitioners' appointment orders are fake/bogus.

74. Primarily, as delineated under Article 199 of the Constitution, this Court has to examine the facts and the law meticulously without exceeding the boundaries as set by the Constitution. The objective of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is to foster justice, preserve rights, and correct the wrong. In light of the prevailing circumstances, it is imperative to emphasize that this Court lacks the prerogative to provide redress under Article 199 of the Constitution. The Supreme Court, in its various pronouncements, has underscored the significance of adherence to statutory regulations and procedures in the selection of candidates for public posts. This approach is deemed the most reliable means of objectively identifying the most qualified candidate from a competitive pool in accordance with the principles of equal opportunity, equal treatment, and equal protection. Any departure from these fundamental principles would jeopardize the

bedrock of the Republic, founded on notions of equity and balance. The solemn duty of exercising state authority in all facets of life is entrusted to officials, who are duty-bound to discharge their responsibilities with scrupulous Fairness and justice, fulfilling their legal obligations. It is not only a legal but also a moral obligation to treat all individuals impartially, eschewing any form of discrimination. The selection of competent individuals for public positions holds paramount significance in serving the Republic, ensuring its viability and sustainability in the contemporary fiercely competitive global arena.

75. The Supreme Court of Pakistan, in various pronouncements, has pronounced that the Constitutional requirement, as enshrined in Article 18, mandates that "Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business." This encompasses the right of every citizen to compete for appointment to a position within Federal or Provincial Government departments, attached departments, autonomous bodies/corporations, etc., through open competition. However, this right can only be effectively exercised if the appointment process is transparent, fair, just, and devoid of any illegality or irregularity regarding its transparency and fairness. To accomplish this constitutional objective, it is imperative to ensure due publicity of the vacant posts through public notices published in leading newspapers with extensive circulation. Appointments made by the Federal Government, Provincial Governments, Statutory Bodies, and other Public Authorities, whether initial, ad hoc or regular, without the publication of applications through press circulation, contravene the provisions of Article 18 of the Constitution. The aforementioned objective necessitates the equal treatment of every citizen and affording them an equitable opportunity to compete, particularly for positions within the aforementioned governmental setups and institutions. In the case of *Munawar Khan v. Niaz Muhammad*, (**1993 SCMR 1287**), the Full Bench of the Hon'ble Supreme Court held that in future, all appointments shall be made after due publicity in the area from which the recruitments had to take place".

76. The appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules, without any discrimination, and in a transparent manner. Thus, all appointments in the public sector must be based on a substantially and tangibly fair process within the parameters of its applicable rules, regulations, and bylaws, i.e., advertisement, written test, and interview by the recruitment/selection committee.

77. In such circumstances, by looking into the contentions of the parties with the material produced before us and case laws cited at the bar, we have concluded that we cannot entertain claims and counter-claims of the parties as these are disputed questions of facts, which cannot be adjudicated by this Court while exercising the Constitutional Jurisdiction, therefore, on the aforesaid plea, the present petitions filed by the petitioners cannot be adjudicated under Article 199 of the Constitution. However, at the same time, we are equally conscious of the fact that the respondents did not realize their own mistake in time by recruiting the petitioners without advertisement; they continued to avail their services when admitted by the parties and, after a considerable period, they perceived that the appointments are made in excess, against the sanction posts, and out of budget provision. We have also observed in the above-captioned petitions that the appointments were made without adopting the coral and procedural formalities as provided by the law.

78. We are also prudent of the fact that Local government is a third tier of government provided under Article 140-A of the Constitution; it is a government at the grassroots level that has a direct impact on the lives of citizens. The record by the parties put before us reveals that, on the one hand, the petitioners have submitted bank statements showing the disbursement of their salaries by the respondent department, and on the other hand, respondents have refuted the appointments being made to the extent of being bogus and fake. We have observed in C.P No. D-302 of 2021 and C.P No. D-560 of 2023 and C.P No. D-302 of 2020, the respondents admitted the petitioner's appointment, but they have taken the specific plea that they cannot pay the salaries due to the non-availability of funds. This question can only be determined after auditing the council,s accounts. Therefore, we direct the provincial government to conduct an audit of

the accounts of councils as this is a sacred trust to the use of public exchequer as prescribed by the rules. In this context, reliance is placed on the case of Hamid Mir and others v. Federation of Pakistan and others (2013 SCMR 1880), which reads as follows:-

"10. The answer to this question is given with reasonable clarity by the express words of Sub-Article (2) of Article 170 of the Constitution. It states that "the audit of the accounts of the Federal and the Provincial Governments and the accounts of any authority or body established by, or under the control of the Federal or a Provincial Government shall be conducted by the Auditor-General, who shall determine the extent and nature of such audit. "The broad scope and wide significance of this Article has been noted in our Order dated 07-05-2013. "The Constitution does not recognize any exception to the provisions of Article 170(2)...In this view of the matter, the Consolidated Fund and Public Accounts cannot remain unaudited" (para 11). Even before the introduction of Article 170(2) in 2010, the Auditor General's (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001, made it "abundantly clear that where the amount is charged on the Consolidated Fund or relates to the Public Accounts of the Federation or the Provinces, the same must be audited by the Auditor-General without exception" (Order dated 7-5-2013, para 11). Also in our Order of 7-5-2013, (para 13), we noted that: "sub-Article (2) of Article 170 of the Constitution was added by the 18th Amendment which amply empowers and directs the Auditor General to fulfill his constitutional obligations as watchdog of the people of Pakistan. It is only through audit that it can be ensured that the had earned income of citizens of this country is being spent for lawful purposes. Without the audit specified by the Constitution and the two statutes, referred to hereinabove, there can be little or no room for any transparency. Absence of audit by the Auditor General, apart from being violative of the Constitution and law, is a sure and certain invitation to corruption and lack of accountability."

Another case of Sindh Rural Support Organization (SRSO) v. Federation of Pakistan and others, reported in 2018 SCMR 407, which reads as follows:-

"The Auditor General of Pakistan, in exercise of its authority per mandate of constitution may conducting such studies and analysis and audit of such "substantially financed authority or body" from time to time as may be required by the Federal, Provincial or District government (section 10 ibid) and to carry out scrutiny of the accounts by which the sanctioning authority satisfies itself as to the fulfillment of the conditions on which such grant or loan was given to any such substantially funded body and or authority (section 11 ibid). Thus it could be seen that the purpose and object of audit as mandated under the constitutional dispensation serves entirely different purpose than the statutory annual audit of a company including one licensed under section 42 of the Companies Ordinance, 1984 (per sections 252 to 260 of the Ordinance, 1984), which essentially relates to statutory compliance and to keep a vigil and eye on financial health, misfeasance of the company by the, directors, shareholders and the regulatory authority i.e. Securities and Exchange Commission of Pakistan, non-compliance thereof is visited by penal consequences. Role of Auditor General of Pakistan is constitutional and as noted above, is much wider than statutory auditors under the Ordinance, 1984 ibid. It is an Auditor General who has to determine as to how the accounts in respect of funds and or loan received by the substantially funded bodies and or authorities' are to be kept, in what form and manner, in accordance with such principles or the methods as may be determined in accordance with rules and regulations as may be framed there-under"

79. At this juncture, we deem it imperative to highlight that the mechanism for making appointments under the Sindh Local Government Act, 2013, and the rules framed thereunder have never been followed, especially since 2012. Upon careful examination of the connected petitions, a disconcerting pattern emerges, revealing a systematic failure in the appointment procedures adopted by the local government entities involved. We observe that the local government has failed to adhere to established laws governing the appointment rules, thereby giving rise to an environment characterized by excessive and potentially unauthorized appointments. It is noted with concern that the local government entities under scrutiny have not

adhered to the fundamental practice of advertising vacant positions. The absence of a transparent recruitment process, including public advertisements, raises questions about the fairness and openness of the appointment procedures. A notable revelation is the absence of sanctioned posts for numerous positions within the local government. This absence indicates a significant deviation from the standard procedure of determining the organizational structure's needs and budgeting accordingly. The lack of sanctioned posts suggests a potential source of ambiguity and arbitrariness in appointment decisions. Perhaps most troubling is the apparent absence of a robust mechanism to verify the status of appointed employees. The lack of a verification process leaves ample room for the appointment of individuals without the necessary qualifications or even those claiming employment status without legitimate grounds.

80. Perusal of the record available before us in these connected petitions and contentions of the parties suggest potential illegitimacy surrounding a significant number of appointments, raising concerns about the legality and validity of these employments. The absence of a systematic mechanism not only jeopardizes the integrity of the appointment process but also exposes the local government to the risk of mismanagement, favoritism, nepotism, misuse of public resources, and compromised efficiency in service delivery.

81. The controversy in the present connected petitions substantially revolves around the same subject vis-à-vis non-payment of salaries and arrears and in view of the submissions made by the contesting respondents regarding appointments of the petitioners being fake inter alia absence from duties. These matters also involve the use of public funds and good governance edging towards precipice the essence of mandatory constitutional framework and principles of policy; thus, we dispose of these connected matters in the following terms:-

- i. The Sindh Government is responsible for ensuring that all local governments within the province receive their rightful budgetary share. It is also incumbent upon the provincial government to prevent the accumulation of arrears. If any arrears exist, they must be promptly

disbursed to all concerned U.Cs, Town Committees, Municipal Committees and Corporations of the province.

ii. The Government of Sindh is also directed to conduct an audit of accounts of all councils for the last 10 years strictly in accordance with law and if any discrepancy or illegality is observed after such audit of accounts, then the responsibility be fixed against the delinquent officials of the councils, followed by the disciplinary action in accordance with law/rules, within the period of three (03) months.

iii. The Chief Secretary Sindh is directed to constitute a committee not below the rank of Additional Secretaries of the Government to scrutinize the genuineness of all the appointment orders issued by the Local Government Department of the Government of Sindh, Municipal Corporation, Municipal Committees, Town Committees, Union Councils of Sindh including petitioners to assess whether the appointments are made in accordance with the law from the year of 2010, within the period of three (03) months; and if the appointments are found authentic and as per law, the salaries along with arrears be immediately paid to the employees, without fail.

iv. The appointment of the petitioners in C.P No. D-1127 of 2016, C.P No. D-86 of 2020, C.P No. D-342 of 2020, C.P No. D-568 of 2020, C.P No. D-493 of 2020, C.P No. D-529 of 2020, C.P No. D-541 of 2020, C.P No. D-675 of 2020, C.P No. D-604 of 2020, C.P No. D-1454 of 2020, C.P No. D-171 of 2021, C.P No. D-276 of 2021, C.P No. D-987 of 2021, C.P No. D-1026 of 2021, C.P No. D-1319 of 2021, C.P No. D-42 of 2022, C.P No. D-55 of 2023, C.P No. D-519 of 2023 and C.P No.D-1383 of 2023 have been disputed by the respondents. Therefore, the petitioners may approach the committee as cited above if their appointments are found authentic and, as per law, the salaries along with arrears be immediately paid to the employees, without fail.

v. The respondents in C.P No. D-302 of 2021, C.P No. 560 of 2023, C.P No. D-203 of 2020 and C.P No.D-222, C.P No. D-442 of 2023 of 2020 are hereby directed to release the admitted salaries of the petitioners in the above-cited petitions within the period of two (02) months after receipt of this order, with the compliance report through the Additional Registrar of this Court.

vi. The respondents in C.P No.D-1519 of 2020 and C.P No. D-526 of 2019 are hereby directed to pay the salaries of the petitioners within the period of two (02) months after receipt of this order, with the compliance report through the Additional Registrar of this Court. In case the petitioners are found absent from their duties, then the respondents shall be at liberty to take disciplinary action against the petitioners in accordance with the law.

vii. The respondents in C.P No. D-655 of 2023, C.P No. D-656 of 2023 and C.P No. D-884 of 2023 are directed to resolve the petitioners' salaries issue within two (02) months after receipt of this order, with the compliance report through the Additional Registrar of this Court.

viii. The claims of the petitioners have been satisfied in C.P No. D-147 of 2018, C.P No. D-605 of 2021, however, the respondents are hereby directed to ensure the proper payment of monthly salaries to the petitioners in future.

82. In view of the above, captioned petitions, along with CMAs, stand disposed of.

83. Let a copy of this order be communicated to the Chief Secretary Government of Sindh, Secretaries, Provincial Assembly, Sindh, Local Government Department and Government of Sindh, as well as a copy be provided to the learned Additional Advocate General for correspondence and compliance.

Judge

Judge