

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-7078 of 2022

(Akhtar Ali Meo v Province of Sindh & others)

Constitutional Petition No. D-7079 of 2022

(Shahid Mohsin v Province of Sindh & others)

Constitutional Petition No. D-7194 of 2022

(Hasnain Ayub Siddiqui v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 31.12.2024

Mr. Ahmed Masood along with Mr. Aadil Channa, advocate for the petitioners in C.P. No. D-7078/2022, 7079/2022 and C.P No.D-7194/2022

Mr. Muhammad Fahad, advocate holds brief for Mr. Ahmed Ali Ghumro advocate for respondents No.5 in C.P. No.D-7078/2022, 7079/2022 and C.P. No. D-7194/2022.

M/s Hakim Ali Shaikh and Sagheer Ahmed Abbasi, Additional Advocate General.

ORDER

Adnan-ul-Karim Memon, J: Petitioners request withdrawal of their repatriation order to Karachi Development Authority (KDA) vide Notifications dated 28.10.2022 and 1.11.2022 issued by Malir Development Authority (MDA).

2. Learned counsel for the petitioners submitted that the petitioners were appointed by the Karachi Development Authority (KDA) in the years 1988 to 1993. He emphasized that after the Malir Development Authority Act, of 1993, certain KDA schemes were transferred to the Malir Development Authority (MDA)/ respondent No.5. As per learned counsel the petitioners continued to work for MDA soon after their schemes were transferred to MDA and they received promotions there, however, following a Supreme Court's order in Criminal Original Petition No. 6-K of 2016, the Petitioner's services were repatriated to their parent department i.e KDA. In the intervening period, affected employees filed petitions before this Court in CP Nos. 69/2017 & 1017/2017, which were dismissed. Some employees approached the Supreme Court of Pakistan in C.P. No. 402-K/2017. The petitioners' counsel contends that in the Supreme Court learned Advocate General Sindh stated that one month's salary had been disbursed to employees repatriated on 21.09.2016 from MDA to KDA as MDA lacked funds, and requested the Government of Sindh for payment. However, the Supreme Court directed payment of salaries and dues to all employees by 28th December 2017 vide order dated 28.11.2017. Finally, a meeting was held by the Government of Sindh to address the employment of repatriated employees issue. The meeting resulted in the cancellation of repatriation orders and the

employees were re-adjusted to their previous positions in the MDA. He further submitted that the issue of repatriation of the petitioners has been set at naught as such these repatriation notifications issued by the MDA were/are illegal and violated fundamental rights of the petitioners under Articles 4, 9, 18, and 25 of the Constitution. He argues that respondent No.5 unlawfully repatriated them in violation of the Supreme Court's order in CP No.402-K/2017; and that this repatriation was based on personal animosity and disregarded the Sindh government's decision to reinstate MDA employees, therefore, he prays this court to allow their petitions as prayed.

3. Learned counsel for Respondent No.5 has filed comments with the narration that after the creation of the Malir Development Authority (MDA) in 1993, some schemes under the control of the Karachi Development Authority (KDA) were transferred to MDA according to Section 20 of the Act. The petitioners & respondent KDA failed to consider a Supreme Court judgment when deciding the fate of KDA employees transferred to MDA. While KDA still exists, the petitioner's post was abolished, allegedly violating the Supreme Court judgment. The respondent averred that the impugned orders to repatriate the petitioners to their parent department were lawful and within the ambit of law and judgment passed by the Supreme Court. They submitted that the petitioners' case is unique and not comparable to other employees, as decided by the Division Bench of this Court in a judgment dated November 11, 2016. Therefore, the respondent requests this court to dismiss the petitions on the premise that KDA still exists as such the post of the petitioners was erroneously shown as abolished by the KDA to favor the petitioners.

4. M/s. Hakim Ali Shaikah and Saghir Abbasi, Additional AG, have supported the stance of the Government of Sindh.

5. We have heard the learned counsel for the parties and have perused the record with their assistance.

6. The pivotal question before us is whether this Court can entertain the instant Constitution Petitions under Article 199 of the Constitution.

7. To address this question, we seek guidance from the Supreme Court's order dated 1.08.2016 in CMA No.243/2016 in C.P. No.108-K of 2014. This order repatriated 98 officers/officials working in MDA to their parent department, KDA. We will refer to Paragraph 11 of this order for guidance, which shows that the Secretary of Local Government Sindh stated that the former DG MDA, was appointed unlawfully. Based on Supreme Court judgments in Contempt proceedings against the Chief

Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), and other officials in MDA must return to their parent departments. They retain seniority with their batch mates. Failure to comply will result in contempt proceedings against the DG MDA, the Secretary, and the officials remaining in MDA.

8. Rule 9-A of (APT Rules), 1974, allows surplus government employees (due to post-abolition or government takeover of an autonomous body) to be appointed to other government positions, subject to these conditions no post could be abolished. The Supreme Court case of Ali Azhar Khan Baloch (supra) defines "abolition of post" in the context of Rule 9-A of the APT Rules 1974. However, in the present case, nothing has been brought on record to show that the petitioners' posts were abolished and they were declared surplus employees to be adjusted in another autonomous authority working under the Sindh Local Government.

9. The Petitioners claim that they were absorbed into the MDA on January 27, 2000, due to the abolition of their positions. The notification absorbs staff from KDA's Scheme No.25-A and Scheme No.45 into MDA due to the transfer of the schemes. However, the notification does not mention applying Rule 9-A of the APT Rules 1974 when the Petitioner's positions were allegedly abolished as discussed supra.

10. Rule 9-A only applies when an employee becomes surplus due to position abolition within a Government entity or autonomous body. The notification only indicates the transfer of two KDA schemes (Shah Latif Town and Taiser Town) to the MDA, along with staff members. This transfer does not necessarily fall under the scope of Rule 9-A, as defined by the Supreme Court in Cr. Org. Petition 89/2011. The Supreme Court judgment clarifies that Government employees can only be declared surplus and absorbed into another department with the concurrence of the Services and General Administration Department (S&GAD) which factum is lacking in the present case. We are of the view that in the absence of such Notification of the Government of Sindh declaring the Petitioners to be surplus employees, the Petitioners cannot be said to be surplus employees to claim absorption in another autonomous body without the order of the competent authority, as the Administration of KDA was not taken over by the Government of Sindh, which still exists as in autonomous body. Further, there is no such Notification on record that may show that the Petitioner's posts were abolished and they were declared surplus employees before their absorption in MDA. The Supreme Court's judgment in Crl. Original Petition No.89/2011, specifically Paragraph 126, sets binding principles that cannot be ignored at all. The

Petitioners have failed to meet the established criteria and test as set forth. Once the Supreme Court ordered officials on deputation or absorbed in the MDA to return to their parent departments, this Court cannot give its view in the presence of the judgment of the Supreme Court. This Court is bound to follow the Supreme Court's order/judgment under Article 189 of the Constitution, which enunciated the principle of law as the judgment as in rem.

11. The Petitioner's claim based on the 01.11.2016 letter was refuted by Respondent No.5 on the premise that their initial transfer to the MDA was illegal. They were never declared surplus by the KDA. 137 employees, including petitioners, were repatriated based on Supreme Court orders.

12. In such a situation the issuance of a writ of mandamus under Article 199 of the Constitution is limited to compelling public officials to fulfill specific legal duties they' have neglected.

13. Since compliance with the Supreme Court's direction has already been ensured, this Court can only direct them to act lawfully and fulfill their public obligations which is not the issue here. However, this court can compel public officials to perform their legal duties, including implementing the Supreme Court's judgment which enunciates the principle of law, once the Supreme Court directs the parties to comply with such directions as discussed in the preceding paragraphs, this Court cannot take the contrary view.

14. In such a situation, no case for interference of this court under Article 199 of the Constitution is involved as the petitioners' sole recourse lies with the Apex Court via a Review Petition, if such direction has not been complied with as stated. Consequently, all Constitution Petitions along with the pending application(s) are dismissed with no order as to costs.

JUDGE

JUDGE