

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-637 of 2024
(Muhammad Khalid & others Vs. Province of Sindh & others)

DATE ORDER WITH SIGNATURE OF JUDGE

M.A No.1321/2024 (Contempt)

Before:

Adnan-ul-Karim Memon, J.

Amjad Ali Bohio, J.

Date of hearing & Order 09.09.2024

Mr. Farhan Ali Bozdar Advocate for petitioners.

Mr. Muhammad Sharif Solangi, Assistant A.G.

Muhammad Sharif Sanjrani, Regional Director, Local Government
Shaheed Benazir Abad Division @ Nawab Shah, on behalf of
respondent No.01

Ameer Ali Zardari, respondent No.06

Abdul Hussain Ghanghro, respondent No.07

Ali Sher Bhand, respondent No.05

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ORDER

Adnan-ul-Karim Memon, J. The petitioners, employed in the Local Government Department, District Sanghar, filed the petition seeking regularization of their services. They argued that they were initially appointed regularly (Naib Qasid for petitioners 1-4 and Junior Clerk for petitioners 5-6), but despite their tenure, they had not received salaries or been formally regularized in their positions. This court vide order dated 21.05.2024 disposed of this petition in the following terms: -

"However, we were not properly assisted in verifying the through the documents of the petitioners. As such, the Official Respondents, specifically Respondent No.6, are to determine the genuineness or otherwise of the documents, claims, and counter-claims. Once their employment is ascertained, Respondent No.6 is strictly directed to pay the salary of the petitioners after observing all necessary formalities. Such compliance report shall be submitted to this Court through the AR concerned.

The captioned petition is disposed of in the above terms"

2. Thereafter, the petitioner moved a contempt application and the Secretary of Local Government, Sindh was directed to be in attendance with a compliance report.

3. Learned AAG has submitted a compliance report with the narration that the department has conducted a personal hearing with the concerned Chief Municipal Officers to review the appointment orders and service records of the petitioners and after obtaining the petitioners' records from

the relevant councils, the department had examined the records of the six (06) petitioners and upon reviewing the records, they determined that the appointment orders of petitioners, made between 2010 and 2013, were not found in the seizure memo provided by the National Accountability Bureau (NAB), Karachi. Consequently, these records were found fake and fabricated and were not issued by the department.

4. Learned Counsel for the applicants/Petitioners emphasized during the hearing that all the documents of the Petitioners regarding their employment with Sindh Local Government are genuine. However, said assertion has been refuted by the Respondents on the basis that the furnished documents of the Petitioners are false and forged.

5. We have heard the learned counsel for the parties at length on the listed application and have perused the compliance report.

6. This Court, on the issue of fake appointments in the department of the Government, seeks guidance from the latest pronouncement of the Judgment of the Honorable Supreme Court in the case of Government of the Punjab through Chief Secretary and others vs. Aamir Junaid and others (2015 SCMR 74), which is providing guiding principle on the aforesaid issue. 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 poenitentiae, 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. The statement from the Secretary indicates that the petitioners' appointment orders are fraudulent. While it's generally true that the petitioners cannot be solely blamed for the fraudulent appointments, it's important to take action against those responsible for issuing the fake documents. Before declaring the appointments illegal or taking drastic measures against the petitioners, disciplinary action should be taken against the individuals involved in the recruitment process who issued the fraudulent appointment letters. The department should have given the petitioners a chance to explain why they shouldn't be fired. The petitioners

could have argued that they were hired legally. They should have been allowed to defend themselves, which is a basic right. The idea of fair treatment requires that people be heard before any action is taken against them. This is a duty for all authorities.

8. The doctrine of locus poenitentiae allows for the withdrawal of an action before a decisive step is taken. However, this does not mean that an order once made becomes irrevocable. If an order is illegal, it cannot grant perpetual rights.

9. The contempt application is disposed of with the direction to the Sindh government to form an inquiry committee to investigate the appointment process of petitioners. The committee will examine the process, allow petitioners to present documents, and determine the authenticity of their appointment letters. The committee will complete its investigation within 90 days and communicate the results to the petitioners. If the petitioners are dissatisfied with the results, they can take legal action under the law. The committee will also examine whether the petitioners were paid salaries for the time they worked.

10. This Court directs the office to transmit a copy of the order to the Chief Secretary of Sindh and the Advocate General of Sindh for compliance.

JUDGE

JUDGE