

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-6739 of 2021

(Qadeer Hussain and others v/s Province of Sindh and others)

PRESENT:

MR. JUSTICE MUHAMMAD FAISAL KAMAL ALAM

MR. JUSTICE NISAR AHMED BHANBHRO

Petitioners : Through Mr. Faizan Hussain Memon,
Advocate
Respondents : Through Mr. K.A. Vaswani, AAG.
Date of hearing : 14.02.2025
Date of Announcement : 24.02.2025

ORDER

Nisar Ahmed Bhanbhro, J. The Petitioners who claimed to serve as Constables in Sindh Police have assailed the Order dated 13.09.2018 issued by Senior Superintendent of Police Thatta through which their monthly salary was stopped.

2. A Review of Memo of Petition reveals that Petitioners claim regular appointment as Police Constables in District Police Thatta on different dates of year 2012. That Appointments were made in accordance with law after following all Codal formalities and since the date of appointment they were regular and punctual in their duties. Department initiated an inquiry in year 2018 to scrutinize the appointments in District Thatta and placed 311 Constables under suspension by stopping their salaries. The Petitioners were called for inquiry in which they participated but Department has not communicated final result of said inquiry, leading to filing of this Constitution Petition seeking indulgence of this Court to set aside the Order dated 13-09-2018, and release of salaries to the Petitioners.

3. On Notices, the Inspector General of Police Sindh, Additional Inspector General of Police Sindh Karachi, Deputy Inspector General of Police Hyderabad and Senior Superintendent of Police Thatta (Respondents No 2 to 5) filed their Replies controverting the claim of Petitioners by specifically denying their appointments in District Police Thatta as during an initial inquiry conducted by Respondent No 5, it transpired that about 112 constables were receiving salaries on the strength of District Police Thatta but no record regarding their appointments was available. The matter was reported by SSP Thatta to Deputy Inspector General of Police Hyderabad Range who was pleased to constitute a Departmental Inquiry Committee headed by Senior Superintendent of Police Thatta and Senior Superintendent of Police Tando Mohammed Khan, Assistant Superintendent of Police Cantonment Hyderabad and Enquiry Officer Hyderabad Range as Members. The Department based upon the findings of the Inquiry Committee came to a conclusion that the Petitioners were not the employees of Sindh Police and were receiving salaries without any appointment Orders on record. The names of 111 fake Police Constables including Petitioners were removed from pays scroll of District Police Thatta vide Order dated SSC/199-215 dated 03.01.2019.

4. At the very outset, Learned Counsel for the Petitioners was asked to satisfy this Court regarding maintainability of instant Constitution Petition in terms of the bar contained under Article 212 of the Constitution and Laches as the instant Petition has been preferred after three years of the impugned action for which no reasonable cause has been assigned.

5. Mr. Faizana Hussain Memon, Learned Counsel for the Petitioners argued that Department has not taken final action; Petitioners have challenged the impugned actions of suspension and stoppage of salaries. If Department has taken final action in terms of Dismissal or termination of Petitioners, the same

has not been communicated to them. There is no remedy available to the Petitioners under Section 4 of The Sindh Services Tribunal Act 1973 to challenge an interim Order passed by authority excepting to file instant Constitution Petition. He contended that Salary being right of an employee does not come within terms and conditions of Service; an employee cannot be placed under suspension for an indefinite period and Salary cannot be stopped during the said period. The Petition is not hit by Laches as there is recurring cause of action, he prayed for setting aside of impugned Order as according to him the same is illegal, arbitrary and taken in violation of laws. He placed reliance on the case of **(Syed Mohammed Abass Rizvi and others Versus Federation of Pakistan and others) reported in 2014 PLC (CS)1363.**

6. Conversely Learned Assistant Advocate General Sindh has strongly opposed this Petition, contending that the Petitioners were not the part of Police Department, they were fake appointees getting salaries in connivance with Clerical Staff of office of Senior Superintendent of Police Thatta. The issue of fake appointments surfaced in the year 2018 when it was noticed that about 311 employees were absent from duties and getting salaries on the work strength of District Police. The matter was reported to Deputy Inspector General of Police Hyderabad who constituted a Departmental Inquiry Committee headed by Senior Superintendent of Police Thatta, with Senior Superintendent of Police Tando Mohammed Khan, Assistant Superintendent of Police Cantt Hyderabad and Inspector Enquiries Hyderabad as Members. The Enquiry Committee probed into the matter and reached a conclusive finding that 111 constables including Petitioners were getting salaries without any appointment orders as no record with regard to their appointments was available in the office. The Committee fixed responsibility of financial Scam on Senior Clerk Shahid Iqbal Rajput, Sheet Clerk Abdul Sattar Solangi, Mohammed Azam Gopang Ex – HC Police Lines, Adnan Shaikh Pay Bill Clerk and others for their involvement into embezzlement

of Public Exchequer for illegally withdrawing salaries against fake appointments. All of above delinquent employees involved in the scam were dismissed from services and names of Petitioners were struck off from monthly pays scroll with effect from 03.01.2019. He argued that final action against Petitioners was taken much prior to the filing of instant Petition. The Petitioners have filed this Petition with unclean hands, which merits dismissal with costs.

7. We have heard Learned Counsel for Petitioners, Learned Assistant Advocate General and examined the record.

8. Case of the Petitioners involves a controversy regarding their appointments in Police Department. Appointments under civil service are made through a well settled mechanism set forth under Appointment Rules, which starts from inviting applications through advertisement, competitive written process, preparation of merit list, interview and final list of successful candidates eligible for appointment. The Petitioners have failed to submit any document lending support to their claim of appointment as Constables in District Police Thatta, conversely the Respondents have placed on record the Inquiry Report and relevant documents showing that Petitioners were receiving salaries without any valid appointments. The Inquiry Committee fixed responsibility upon delinquent clerical staff involved in the scam and recommended for action against them which was accordingly taken by the Department by dismissing them from services. The Petitioners have not challenged the outcome of the Inquiry which has attained finality.

9. The Petitioners have filed instant Constitution Petition on 03.11.2021 against an interim action purportedly taken on 13.09.2019 of suspension and stoppage of salaries, suppressing the fact that final action in the shape of removal of their names from pays scroll of District Police was taken on 03.01.2019. The Petition thus badly suffered from laches as no explanation was offered of

remaining silent for such long period of time. The Petitioners received salaries deceitfully, therefore superstructure built upon such foundation collapsed automatically and cannot be compensated on any of the grounds of leniency or sympathy or on account of their length of service, but to be weighed within the parameters of law. The Petitioners acted deceitfully and unethically thus not entitled for any relief under the well settled principle of law popular in legal terminology as “Doctrine of Unclean Hands”. Such principle when applied to job related issues would assert that a position secured through illegal means must be set at naught, in particular when such job relates to a sensitive services like police. the case law relied upon by the learned counsel for the Petitioners is not attracted due regards distinguishable to the facts.

10. The Courts of law are saddled with a balancing responsibility to ensure that public sector Institutions operate within the bounds of law and actions on their part safeguard public interest and do not infringe rights of individuals. The Courts have always respected Institutional Autonomy of Public Sector Institutions and have avoided to indulge into matters leading to uncalled for interference into their affairs. The Police Department in the case of Petitioners have acted within the bounds of law and no transgress of powers has surfaced on record, therefore, actions taken cannot be bulldozed on the basis of any hypothetical grounds as narrated in the instant Petition.

11. The Petitioners have failed to point out any illegality in the actions taken by the Respondents warranting interference by this Court. This Petition therefore fails being not maintainable and meritless, accordingly dismissed with listed applications.

Judge

Judge