

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D-1562 of 2023

Date	Order with signature of Judge
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For hearing of main case

06-03-2024

Mr. Shabbir Ali Bozdar, Advocate for the Petitioner
Mr. Zulfiqar Ali Naich, Assistant Advocate General

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ORDER

Muhammad Iqbal Kalhoro,J:- Petitioner claims to be appointed on 02.06.2011 as a Junior Clerk (BPS-7) in District Education Office Naushahro Feroze. He has filed this petition for release of salaries since then on the ground that his appointment is genuine and admitted by the respondents. But District Accounts Officer has not released his salaries despite a requisite letter written by District Education Officer Naushah Feroze for such purpose to him.

2. Respondent No.4 District Education Officer Naushahro Feroze has filed comments stating that petitioner was appointed without codal formalities on extraneous grounds. There was no post of Junior Clerk provided in the budget and no process of advertisement etc. was pursued before appointing him. Furthermore, he did not have the required professional certificate of typing. After his appointment, he was duly informed about his appointment being in violation of recruitment rules and thereafter he had abandoned performing his duty.

3. We have heard the parties. The only ground to rebut the stance taken by respondent No.4, by the counsel for the petitioner is that if the appointment of the petitioner was not genuine, it should have been cancelled by the competent authority but it was not. However, we do not agree with him, as it is settled by the Superior Courts in a number of pronouncements that unless all the codal formalities are followed i.e advertisement etc. and the appointment is made against a budgeted post, it would be illegal and the employee appointed as such cannot claim any right to appointment. Since certain facts and circumstances put forward by respondents before the court indicate that the petitioner was not appointed in terms of some advertisement, nor the codal formalities were run, and there

was no post available against which he was appointed, he has no case on merit before us under Article 199 of the constitution which is essentially a discretionary relief and can be granted to the person whose right has been upheld by the competent authority. The appointment of the petitioner was made by District Education officer without pursuing due process. He was appointed as a Junior clerk which post was not even provided in the budget, therefore the same cannot be approved and direction issued to respondents to issue him salaries.

4. In view of the above, we find no merit in this petition and dismiss it accordingly.

JUDGE

JUDGE

Sulemen Khan/PA

