

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
C. P. No.D-1675 of 2010.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
21.05.2015.	

PRESENT:

Mr. Justice Sadiq Hussain Bhatti,  
Mr. Justice Nazar Akbar,

For Katcha Peshi.

Messrs Ali Nawaz Ghanghro, Habibullah G. Ghouri and Ashfaque Hussain Abro, advocates for the petitioners.

Mr. Inayatullah G. Morio, advocate for respondents No.3 & 4.

Mr. Abdul Hamid Bhurgri, Addl. A.G.

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NAZAR AKBAR, J.- The petitioners claiming to be the employees of respondents have challenged the notification/letter dated 31<sup>st</sup> December, 2009, issued by respondent No.1, whereby all the illegal appointments in Taluka Minicipal Administration, Larkana, made without approval of the competent authority, were cancelled. The petitioners claimed that they were in service in accordance with law and by declaring them as illegal appointees under the cover of the impugned letter they have been unlawfully removed from the service and even their salaries have been stopped.

The respondents have filed their comments. They have taken the stand that the appointments of petitioners were illegal as after lifting of the ban on recruitment in Government service, the appointment of the petitioners was not in accordance with law and the rules governing their appointment in Local Government.

The learned Counsel for the petitioners has referred to Rule 4 of The Sindh Local Government (Taluka/Town Municipal Administration/Union Administration A.P.T.,) Rules, 2001, which is reproduced below :-

*“4. **Powers of TMO.** – Subject to overall control & supervision of the Nazim, TMO shall have the powers to :-*

- (a)
- (i) *Make appointments, transfer or promotion of, or grant leave to, or impose any penalty on, the officers and servants of the council except posts of TMO & TOs & posts of decentralized posts, SCUG posts and any other post so designated by the Govt. through notification.*
- (ii) *BPS-15 and below in Karachi Towns, Hyderabad, Latifabad, Qasimabad, Sukkur, Mirpurkhas and Larkana Talukas.*
- (iii) *BPS-1 to 10 in the case of all other TMAs.*
- (b) *Subject to over all control and supervision of the NAZIM and TMO the TOs shall exercise the following administrative powers:-*
- i) *Town Officer (Infrastructure)*
- (a) To make appointments, promotions, or grant leave to sanitation staff from BPS-1 to BPS-4.*
- ii) *Other Town Officers*
- (a) To grant leave to the staff working under their respective control.”*

He has taken us to the appointment letters and each one of the appointment letter of the petitioners is dated 30.12.2009 or 26.12.2009 issued just one day or at the most four days prior to the impugned letter/notification of cancellation of illegal appointments. According to the said appointments letters, the petitioners had been appointed by Taluka Nazim, whereas in terms of the Rule quoted above Taluka Nazim had no authority to appoint the petitioners and, therefore, within almost a day or week their appointment were cancelled through the impugned letter dated 31.12.2009 by the Secretary, Local Government Department having been made without approval of the competent authority. In the case in hand, it was not only a matter of appointment without approval rather it was a case of exercise of authority by Taluka Nazim which did not vest in him.

Learned Addl. Advocate General, in addition to the contentions of counsel for respondents No.3 & 4, has referred to the case of *Munawar*

*Khan V. Niaz Muhammad and 7 others, (1993 S C M R 1287)*, wherein the Hon'ble Supreme Court has held that the appointments are to be made after due publicity in the area in which recruitment had to take place except in case of short-term leave vacancies or the contingent employment. Admittedly, in the case in hand, the appointments of the petitioners were not made after due publicity prior to their recruitment and, therefore, in addition to the flagrant violation of law, the appointments of the petitioners were also contrary to the directions/ observations of the Hon'ble Supreme Court contained in the aforesaid judgment. The learned counsel for the petitioners have no answer to the legal lacuna in their appointments.

In view of the above factual and legal position, the petitioners have no case. The petition is dismissed with no order as to costs.

JUDGE

JUDGE

*Oazi Tahir*\*