

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

**Civil Petitions No.903, 904, 905,
906 & 907 of 2023**

Against the judgment dated 28.11.2022 passed by
High Court of Sindh, Sukkar Bench in Const.P.
No.D-1813, D-2159, D-3442 & D-3716/2013 and
D-69/2014

Muhammad Yaseen and another	(in C.P. No.903/23)
Shabbir Ahmad Channa and others	(in C.P. No.904/23)
Inayatullah and others	(in C.P. No.905/23)
Amir Hussain	(in C.P. No.906/23)
Nizam ud Din and another	(in C.P. No.907/23)

...Petitioners

Versus

Province of Sindh through its Secretary Education and Literacy Department Govt. of Sindh at Karachi and others	(in C.P. Nos.903 & 905-907/23)
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District Education Officer Ghotki at Mir Pur Mathelo and others	(in C.P. No.904/23)
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...Respondents

For the Petitioners:	Malik Mumtaz Hussain Jai, ASC Petitioner No.14 in C.P.No.904/23 (Hamadullah Jatoi) in person
For the Respondents:	Mr. Suresh Kumar, Addl. AG Sindh Mr. Jawed Ali Khawaja, Dy. Secy. (Law), School Education and Literacy Dept., Govt. of Sindh

Date of Hearing:	03.08.2023
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Judgment

Muhammad Ali Mazhar, J. All the aforesaid Civil Petitions are brought to challenge the consolidated judgment passed by the learned High Court of Sindh in Constitution Petitions No.D-1813, D-2159, D-3442 and D-3716/2013, and D-69/2014, whereby the constitution petitions were dismissed mainly on the ground that the petitioners have failed to prove that their appointments were made through the competitive process and their documents were also not found to be genuine, therefore, the constitutional petitions were dismissed.

However, in paragraph No.8 of the impugned judgment, it was further held that the petitioners were employed on contractual basis, therefore the principle of master and servant applies and they have no right to approach the High Court under its constitutional jurisdiction.

2. The matter was fixed yesterday when we issued notice to the Additional Advocate General Sindh ("**Addl. AG**"), as well as the Secretary Education, Government of Sindh to depute a person well conversant with the facts of the case to assist this Court. Today, Mr. Jawed Ali Khawaja, Deputy Secretary (Law), School Education and Literacy Department, Government of Sindh is present.

3. The learned counsel for the petitioners argued that the findings rendered by the learned High Court in paragraph No.8 of the impugned judgment, that the petitioners were employed on contractual basis, is misconceived. He invited our attention to the appointment letters attached with one of the Civil Petitions (C.P. No.904/2023) to substantiate that the petitioners were wrongly considered to be contractual employees. He further argued that the appointment letters were issued after fulfilling all codal formalities according to the advertisement published as per the sanctioned posts. It was further avowed that the petitioners also appeared in the aptitude test conducted by the Education Department and, after qualifying the said test, they were issued appointment letters, pursuant to which the petitioners also submitted their joining reports and started to perform their duties as per the job description. According to the learned counsel, the process of recruitment was transparent which fact has been proven through attendance certificates, joining letters and muster rolls.

4. The learned Addl. AG argued that the appointment letters of all the petitioners were found forged in the inquiry. It was further argued that no record of the petitioners is available in the concerned office and the appointments were made without the approval of the District Recruitment Committee ("**DRC**"), rather the former District Education Officer ("**DEO**") managed illegal appointments and an inquiry was also conducted against him. It was further contended that the inquiry officer also submitted a report to the effect that the offer letters, service books and medical fitness certificates produced by the petitioners were bogus and manipulated.

5. Heard the arguments. At the very outset, we inquired from the Deputy Secretary (Law) that when there is no condition of contractual employment stipulated in the appointment letters then how could the petitioners be considered contract employees by the High Court? In response, the Deputy Secretary (Law) frankly conceded that the alleged appointment letters do not mention any such condition that the petitioners were employed on contract basis which fact we also verified from the appointment letters attached with the petitions and the advertisement inviting applications, hence the findings of the High Court are not tenable. We also asked the Deputy Secretary (Law) whether the petitioners had joined their duties; again the Deputy Secretary (Law) unequivocally admitted that the petitioners had joined service, however he added that the appointment letters were not issued by the competent authority, therefore, their appointments were subsequently withdrawn. He further admitted that the petitioners were never associated in any inquiry for the purpose of verifying the appointment letters or the appointment process, rather the inquiry was conducted against the former DEO who was allegedly responsible for managing the illegal appointments; but even with regard to him, there is no mention if any punitive action was taken against him for being involved in making the fake appointments whereby he fleeced and defrauded the department and petitioners both. Though in the impugned judgment, it is observed that the Scrutiny Committee was constituted, but nothing is spelled out about whether the petitioners were provided any right of audience before the alleged committee after the issuance of a show cause notice. The finding of the High Court, that in the advertisement the number of vacancies were not provided and therefore it was a sham advertisement, is also beyond our comprehension as it is not a mandatory condition that in all circumstances, the number of vacancies should be mentioned in the advertisement failing which it will be considered a nullity.

6. In our considered view, before declaring the appointments illegal or taking any drastic action against the petitioners, a drastic action should have been taken against the responsible person who committed illegality, if any, at the departmental level. The beneficiaries of the appointments cannot be blamed alone because primarily the authority who had issued appointment letters in the recruitment process is bound to be punished first rather than the petitioners who had commenced their duties in view of the appointment letters. Keeping in mind all the attending circumstances, the department was bound to

issue notice to the petitioners to show cause as to why their services should not be terminated and, in response, the petitioners might have appeared with the defence that the appointments were not illegal but issued after due process. The petitioners should have been afforded an opportunity of hearing, which is a fundamental right enshrined under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. The doctrine of natural justice is grounded on the astuteness and clear-sightedness of affording a right of audience before any prejudicial action is taken, therefore it is an inescapable obligation of all judicial, quasi-judicial and administrative authorities to ensure justice according to the sagacity of the law.

7. By and large, a vested right is a right that is unqualifiedly secured and is not conditional on any particular event or set of circumstances. In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law. The doctrine of *locus poenitentiae* sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order, however, in this case, nothing was articulated to the effect that the petitioners managed their appointments letters due to any fraud or misrepresentation.

8. The learned Addl. AG, as well as the Deputy Secretary (Law), submit that an inquiry committee may be constituted to consider/examine the appointment process of the present petitioners and to verify their credentials/antecedents to determine whether they were rightly appointed or appointed on the basis of fake appointment letters. In unison, the learned counsel for the petitioners also agreed to this proposal.

9. In view of the above, these petitions are converted into appeals and allowed in the following terms:

- i) The impugned judgment of the Sindh High Court is set aside;
- ii) The Chief Secretary, Government of Sindh shall constitute an Inquiry Committee comprising the Additional Secretary Education, Govt. of Sindh; Additional Secretary, SGA&CD, Govt. of Sindh; and Deputy Secretary (Law), School Education and Literacy Department, Govt. of Sindh within ten days from the date of receipt of this judgment;

- iii) The Inquiry Committee shall issue notice to the fifty-six petitioners of the above Civil Petitions and also to the departmental representatives for joining the inquiry proceedings;
- iv) The Committee shall examine the entire appointment process of the fifty-six petitioners and shall also allow them to produce relevant documents with ample opportunity of being heard, so that it may be verified whether the petitioners joined the appointment process in terms of the advertisement and after appearing and qualifying the aptitude test on merits, the appointment letters were issued to them after complying with codal formalities, and if the appointment letters were found to be fake after due satisfaction, then what punitive action was taken against the person who was responsible for the fake recruitment process and how the petitioners who joined recruitment process in response to the advertisement are responsible;
- v) The Committee may also call for the entire record of recruitment process questioned in the present proceedings to examine the authenticity of appointment letters issued to the petitioners;
- vi) The Committee shall complete the inquiry within a period of 90 days from the date of constituting the inquiry Committee and the result of such inquiry shall be communicated to the petitioners in writing. The petitioners may avail appropriate legal remedy in accordance with the law if found to be aggrieved and dissatisfied with the result of inquiry;
- vii) At this juncture, the learned counsel for the petitioners argued that after joining service, no salary was paid to the petitioners for the period they actually performed their duties. This aspect shall also be examined by the Inquiry Committee and, if any salary is found due during the period the petitioners actually served, the same shall be paid after fulfillment of requisite codal formalities within 30 days of conclusion of the inquiry;
- viii) Office is directed to transmit a copy of this Judgment to the Chief Secretary Sindh, Govt. of Sindh, and the Advocate General Sindh for compliance.

Judge

Judge

Judge