

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present**

Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Syed Hasan Azhar Rizvi  
Mr. Justice Ageel Ahmed Abbasi

**Civil Petitions No. 933-K to 935-K of 2023**

(Against the judgement dated 21.03.2023 passed by the High Court of Sindh Circuit Court, Hyderabad in C.Ps. No. D-2799, D-3072/2016 and D-2090/2018)

Arab & another	<i>(in CPLA No. 933-K/2023)</i>
Abdul Qadir	<i>(in CPLA No. 934-K/2023)</i>
Moula Bux	<i>(in CPLA No. 935-K/2023)</i>

**...Petitioners**

**Versus**

Province of Sindh through Secretary Health Department and others  
*(in all cases)*

**... Respondents**

For the Petitioners:	Malik Naeem Iqbal, ASC Mrs. Abida Parveen Channar, AOR
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For the Respondents:	Mr. Sibtain Mehmood, Addl. AG, Sindh
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Date of Hearing:	04.06.2025
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**Judgment**

**Muhammad Ali Mazhar-J.** The aforesaid Civil Petitions are brought to challenge the consolidated judgment dated 21.03.2023, passed by the learned Division Bench of the High Court of Sindh, Circuit Court, Hyderabad, in C.Ps. No. D-2799, D-3072/2016 and D-2090/2018.

2. The whole story of the case is that the petitioners were appointed as Driver, Chowkidar, and Ward Boy within the Basic Pay Scale (BPS) 01 to 04 by the competent authority after completion of all codal formalities i.e., advertisement, interview, verification of antecedents, and physical fitness certificate. Subsequently, the petitioners joined their respective duties. The respondent No. 2, *vide* Letter dated 31.03.2016, forwarded a list of the appointed candidates to concerned banks for opening of salary accounts, including the names of the petitioners, but without any

lawful justification, the names of the petitioners were removed from the list by adding two new names i.e., respondent No.5 and 6 in the High Court. The petitioners were deprived of their salaries on false grounds. They could not be so deprived unless their appointment orders are withdrawn or cancelled in accordance with law. Since there is no dispute with regard to the appointment and performance of their duties, the findings of the High Court are erroneous and contrary to the settled principles of law.

3. The learned counsel for the petitioners argued that the learned High Court's finding that the matter contains disputed facts is erroneous in view of the respondents' admission that the petitioners were appointed by the competent authority and are performing duties since their appointment. It was further contended that the learned High Court wrongly reached the conclusion that the respondents scrutinized the petitioners' appointments, which revealed that their appointments were not recommended by the District Recruitment Committee ("**DRC**"); such findings are contrary to the admitted facts and are a result of misreading and non-reading of record. He further argued that upon issuance of appointment letters by the competent authority, and after the fulfilment of all codal formalities, a vested right was created in favour of the petitioners for payment of salary, and non-payment of salaries is violative of their fundamental rights guaranteed under Articles 3, 4, 9, 10-A, 14, 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"). He further argued that the petitioners' appointment letter could not be presumed to have been withdrawn without any show cause notice or regular inquiry.

4. The learned Additional Advocate General, Sindh, present in Court in some other cases, waived notice and argued that the petitioners' appointments should have been made on the recommendation of the competent authority. It was further averred that since the alleged appointment letters are already on record, therefore, the concerned department may be given an opportunity to verify and examine the appointment letters. If the appointment letters are issued after fulfilling codal formalities, then obviously the petitioners will be entitled to join service and their salaries

will be paid.

5. Heard the arguments. In fact, the claim of the petitioners is that they were appointed on the post of Driver, Chowkidar, and Ward Boy respectively *vide* appointment letter dated 02.07.2015, which was issued on the recommendations of the DRC for recruitment in the Health Department, District Tharparkar. Though they joined their duties, they were not paid their salaries, hence they approached the learned High Court for seeking directions against the respondent for the payment of their salaries but the Constitution Petitions were dismissed on the ground that the disputed questions could not be resolved in constitutional jurisdiction, with the further observation that in the final list of appointments issued by the DRC, the petitioners' name did not transpire, hence the same cannot be resolved in constitutional jurisdiction.

6. The gist of the impugned judgment expounds that the petitioners were non-suited by the learned High Court on the ground that the disputed facts could not be resolved in the writ jurisdiction. No doubt, it is a well-settled exposition of law that disputed questions of fact cannot be entertained and adjudicated in the writ jurisdiction, and in the constitutional jurisdiction, the High Court cannot go into miniature and diminutive details. The extraordinary jurisdiction granted under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a right and, therefore, the right of the concerned incumbent, which he seeks to enforce, must not only be clear and complete but there must also be an actual infringement of the right. While dismissing the writ petition on the ground that the disputed question of fact could not be resolved, it must also be considered that to effectively bar the jurisdiction of the High Court under this Article, the alternate remedy, if any available, is not only to be adequate but also equally efficacious under the law and commensurate to the same purpose which is sought to

be achieved through a Constitution Petition under Article 199.

7. The extraordinary jurisdiction is intended primarily for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. What we have observed is that the appointment letters were issued to the petitioners and there is nothing on record to show whether such appointment letters were issued provisionally or otherwise. Once the appointment letters were issued without any rider or condition, then there was no question of enlistment of the names of the petitioners in the provisional list, as apparently, all codal formalities were completed before issuance of the appointment letters, which is the standard practice and procedure in the recruitment process of government departments. Seemingly, the petitioners did not raise any factual controversy or disputed question of fact, but approached the learned High Court for releasing their salaries and relied on their appointment letters which were not denied or controverted in the comments filed by the Medical Superintendent and the District Health Officer. So what would be the best available solution or course of action? Even if it was subsequently pleaded by the Department that the appointment letters were issued to the petitioners without them satisfying or complying with the codal formalities, the learned High Court, rather than out rightly non-suited the petitioners, or without indulging in the realm or sphere of factual controversy, could have easily called upon the concerned Department on the basis of available documents, to make inquiries regarding the veracity and legitimacy of the appointment letters; how the appointment letters were issued; who issued the appointment letters and how these were recalled; whether the appointment letters can be recalled without any show cause notice or without providing any opportunity of being heard; and, last but not least, who was actually responsible of issuing the appointment letters (if the codal formalities were not fulfilled) and what departmental action was proposed or taken against the responsible persons who misled and defrauded the petitioners. It is often seen that the poor and innocent employees appointed in low-tier, basic pay scales are made the scapegoat and victim of severe departmental actions and

highhandedness while the actual wrongdoers and malefactors are always exonerated.

8. As a result of the above discussion, the aforesaid civil petitions are converted into appeals and allowed. As a consequence thereof, the impugned judgment of the learned High Court is set aside and we remand the matter to the Secretary Health, Government of Sindh, to provide a right of audience to the petitioners and verify their appointment letters and relevant record with an independent application of mind, and if the appointment letters are found to have been issued to the petitioners on the recommendation of the DRC/Selection Committee, then not only should the due salaries of the petitioners be released forthwith, but they should also be allowed to resume their duties. This exercise should be completed within two months from receiving the copy of this judgment.

**Judge**

**Judge**

**Judge**

Karachi,  
04.06.2025  
Tanveer Ahmed  
Approved for reporting