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IN THE SUPREME COURT OF PAKISTAN
(Appellant Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Rahmat Hussain Jafferri
Mr. Justice Ghulam Rabbani

Civil Misc. Application No.481-K of 2009

And

Civil Appeal No.621 of 2006

(On appeal from the judgment dated
24.11.2005 passed by the High Court of
Sindh in Civil Petition No.D-98/2005)

Irshad Ali Solangi

....Petitioner

VERSUS

Sui Southern Gas Co. Ltd. & others

...Respondents

Appellant:

In person

For the respondent:

Mr. Faisal Kamal Aalam, ASC
Mr. Ghulam Qadir Jatoi, AOR
Mr. Irfan Ahmed Khan Manager (Legal)

Date of Hearing:

04.02.2010

ORDER

C.M.A.No.481-K/09

This C.M.A. has been filed for restoration of Civil Appeal No.621/06, a perusal whereof indicates that on 24th June, 2009 service of notice was not effected upon the appellant. Therefore, order dated 24.6.2009 is recalled and the appeal is restored to its original number.


Civil Appeal No.621/06

Respondent's counsel states that SSG Ltd. is ready to provide job to the appellant against disabled quota as "Service Attendant" on regular basis. A letter dated 26.4.2006 in this behalf has been placed on record to

show that appellant was offered a job on contract basis but when we inquired from learned counsel as to whether all the disabled persons serving in SSG Ltd. were permanent employees or on contract basis, he replied that as they were appointed on regular basis, the administration had decided to offer the job to the appellant as Service Attendant on regular basis as per his education i.e. matriculation, w.e.f the date when he will assume the duty. SC

2. The appellant has agreed to accept the job. The respondent's counsel is, therefore, directed to hand over copy of the letter of appointment to him in which the date of appointment has, now, been changed and the appellant has been offered regular appointment.

3. The appeal is disposed of accordingly leaving the parties to bear their own costs. Needless to observe that the appellant shall be deemed to be in service from the date of assuming the charge, in pursuance of letter of appointment handed over to him today.

 KARACHI, THE
4th February, 2010
Nisar/*

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26th DEC 2005 + BBS
Mr. Irshad Ali (P. J. Infusant)
[Signature]

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IN THE HON'BLE SUPREME COURT OF PAKISTAN

Petition No. ⁸⁵⁸ -K of 2005.

Irshad Ali s/o Abdul Khaliq, by caste Solangi,
Muslim, Adult, Age about 38 years, (handicapped)
R/o Mohalla Fish Market, Naduero, Taluka Ratodero,
District Larkana (Ph: 074-4087250)

SUPREME COURT OF PAKISTAN
Diary No. 2257
Date ... 26/12/05
KARACHI

----- Petitioner.

Versus.

1. Sui Southern Gas Company Limited,
through it's Managing Director,
St-4/B, Block-14, Sir Shah Suleman Road,
Gulshan-e-Iqbal, Karachi.
2. General Manager, Human Resources, Sui Southern Gas Co.
Ltd., St-4/B, Block-14, Sir Shah Suleman Road,
Gulshan-e-Iqbal, Karachi.
3. Farooque Ahmed Hashmi, Deputy General Manager (IR),
Sui Southern Gas Co Ltd.
St-4/B, Block-14, Sir Shah Suleman Road,
Gulshan-e-Iqbal, Karachi.
4. Federation of Pakistan through Secretary,
Ministry of Petroleum & Natural Resources,
Block-A, Pak Secretariat, ISLAMABAD.

----- Respondents.

PETITION UNDER ARTICLE 185(3)
OF THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973.

The Petitioner above named respectfully submits as under :-

1. That, the petitioner is a law-abiding, respectable and peace-loving citizen of Pakistan residing at the address mentioned above.

furnished by the Petitioner to the Respondent No.2 are submitted herewith).

7. That, thereafter the Respondent No.2 issued offer letter to the Petitioner dated 30.1.2003, whereby petitioner was allotted employee No.99990, and he was also referred for various medical tests (fitness test) to Agha Khan University Hospital, Karachi, wherefrom reports were issued declaring the petitioner to be fit for the job applied for. (Photocopies of the offer letter, and another letter showing the 'Employee number' of the petitioner issued by the Sui Gas authorities, and the various tests of the Petitioner by the Agha Khan University, Hospital, Karachi are submitted).

8. That, after that the Petitioner fulfilled the requisite formalities i.e, nomination of heirs in case of death etc in the office of Respondent No.3. After a week thereof, the Petitioner again went to the Respondent No.3, where he learnt that his appointment order has been placed before the Respondent No.3 for signatures. The Respondent No.3 asked the Petitioner to visit his office after a week for the purpose.

9. That, after a week the Petitioner met the Respondent No.3 (Mr. Farooque Ahmed Hashmi, Dy. General Manager I.R), who in his office demanded Rs.200,000/- (Rupees Two Lacs) from the Petitioner against his appointment, but the petitioner being a poor person could not meet his demands, therefore, the Respondent No.3 refused to issue the appointment order of the Petitioner.

10. That, the Petitioner on such conduct of Respondent No.3 then approached the Respondent No.4 and apprised of him the above

facts. The Respondent No.4 was informed by the Respondent No.1 that 'Disabled Quota' has been filled up under the orders of Supreme Court and High Courts. As such the Respondent No.4 asked the Petitioner to wait.

11. That, thereafter the Petitioner knocked the doors of highups including the President of Pakistan, the Prime Minister of Pakistan, the Chairman of the Senate against the high-handedness of Respondents No.1 to 3/Sui Gas Authorities. Despite correspondence by the President, Prime Minister, Senate Chairman, the Respondents No.1 to 3 did not issue appointment orders to the Petitioner. (Photocopies of such correspondence letters are submitted for kind perusal).

12. That, the petitioner also made a written complaint dated 24.9.2003 before Wafaqi Mohtasib against the high handedness on the part of the Respondents No.1 to 3. The Respondents were served. Consequently, the Wafaqi Mohtasib vide his order dated 27.12.2003 rejected the complaint of the Petitioner. (Copies of written complaint and order of Wafaqi Mohtasib dated 27.12.2004 are submitted herewith).

13. That, the Petitioner thereafter made a Representation/Mercy Petition, dated 16.3.2004 to the President of Pakistan. (copy is submitted). Vide letter dated 31st March, 2004 said representation was forwarded to the Law, Justice and Human Rights Division for processing further under Rules of Business, 1973. Subsequently, the Representation/Mercy Petition of the Petitioner was rejected by the President, under letter No.331/2004-Rep(WM)Law, dated 5.1.2005 issued by the Section Officer, Law, Justice & Human

Rights Division, Islamabad. (Copies are submitted herewith for kind perusal).

14. That, the Petitioner had also held a Press Conference in July, 2004 against the high-handedness of the Respondents No.1 to 3 and such Articles/Columns were also published in daily Sindhi/Urdu newspapers 'Kawish' Hyderabad, 'Sahafat', Islamabad, 'Khabroon', Islamabad, in their issue of 23rd July, 2004, daily 'Koshish'. (Copy of minutes of the Press Conference and photocopies of news clippings/column are submitted herewith).

15. That, the Petitioner had also approached the various M.N.As of the National Assembly and requested them in writing to speak in the assembly sessions about his right of job in SSGC against the 'Disabled Quota' and against the hooliganism of the Respondents No.1 to 3. (Copy of the application of the applicant to the MNAs of the National Assembly is submitted herewith).

16. That, due to the publication of articles in various newspapers, the Respondent No.3 (Mr. Norez Shakoor Khan, as he then was) strictly directed the Respondent No.1 to appoint the Petitioner. But all in vain.

17. That, the Petitioner has roamed from pillar to post continuously for more than 2 years for his legitimate right of job in the SSGC on the 'Disabled Quota' being a disabled person and despite knocking the doors of all the higher Government functionaries including the President, Prime Minister, Senate Chairman and Respondent No.4, but everywhere he has been either kept on false hopes or dis-appointed. (Copies of the correspondence made by the various highups to the

Respondents for issuance of appointment order in the name of the Petitioner, are submitted herewith for kind perusal).

18. That, one Jinsar Ali Qureshi had also filed a complaint before Wafaqi Mohtasib, Regional Office, at Sukkur against the Respondents for his appointment on regular basis in the SSGC against the disabled quota. The said complaint of Jinsar Ali was allowed and the appeal filed by the Respondents before the President was dismissed. Thereafter, the Respondents filed a Constitution Petition before the High Court of Sindh, which was dismissed by a Division Bench of the Honourable High Court of Sindh, Karachi. Consequently, Mr. Jinsar Ali was employed on regular basis in the SSGC under the implementation of order by the Wafaqi Mohtasib. (Photocopies are submitted herewith).

19. That, it would be relevant to mention here that despite the Respondent No.2 through his letter No.Ref:IR.HO/4.1/291, dated 12th May, 2003 addressed to Mr. M. Tariq Sher Khan, Section Officer (Gas), Ministry of Petroleum & Natural Resources, Govt. of Pakistan, Islamabad had shown inability to appoint the Petitioner on any seat on the pretext that they are already exceeding the quota of disabled persons, therefore, there is no vacancy in their organization, but it is surprising that one Deedar Hussain Markhiani, was appointed as Casual Meter Reader (Billing) at Khairpur District, by the Respondents vide letter dated 1.12.2003, on the recommendation of the Minister, Petroleum & Natural Resources, Govt. of Pakistan, Islamabad. Also three more persons, namely, 1. Mr. Muhammad, 2. Liaquat Ali, as regular Record Keepers and 3. Ahsan Ali (as Helper on disabled quota), were appointed by the Respondents, as the said persons were influential. But the

request of the Petitioner, who is a poor fellow, was turned down by the Respondents. (Photocopies the documents relating to appointments of above-referred persons are submitted herewith for kind perusal). The petitioner had also made an application dtd.13.4.2005 to the Minister for Petroleum, Govt. of Pakistan, but to no avail.

20. That, the act of the Respondents for not issuing the appointment order in the name of the Petitioner, particularly the Respondent No.3 (Farooq Ahmed Hashmi, Dy. General Manager (IR) SSGC) with malafide intention and ulterior motives, only to extort money (Rs.200,000/- Rupees Two Lacs) from the Petitioner being illegal, the Petitioner invoked the extra ordinary Constitutional jurisdiction of Honourable High Court by way of filing Constitutional Petition, as stated hereinabove, with a prayer that the Respondent No.3 be strictly directed to issue appointment order in the name of Petitioner against some suitable post as per his qualifications.

21. That, the above petition of the Petitioner was heard by a Division Bench of the Hon'ble High Court of Sindh, Circuit Court, at Larkana. The Respondents on service of notices upon them caused their attendance through their pleader and filed written objections etc.

22. That, Vide order dated 24.11.2005 the Petition of the Petitioner was finally heard and on the said date it was dismissed holding that the proper remedy for the petitioner was to approach the National Council established under "Disabled Persons {Employment And Rehabilitation} Ordinance, 1981. But it is also relevant to point out that in the said order it has also been admitted that "*it is not clear as to*

whether the above Committee has been constituted and is functional or not." (Certified true copy of the impugned order dated 24.11.2005 passed by the Hon'ble High Court of Sindh, Larkana Circuit is filed).

23. That, the petitioner has tried his best to locate any "National Council", as mentioned in the impugned order dated 24.11.2005 of the Hon'ble High Court of Sindh, Larkana Circuit, but could not find any clue even about the existence of such Council/Committee.

24. That, in the above facts and circumstances, the Petitioner being aggrieved and dis-satisfied with the findings recorded by the High Court of Sindh in impugned order dated 24.11.2005, finding no other efficacious and alternate remedy available to him invokes the jurisdiction of this Hon'ble Court through this petition and pray that this Hon'ble Court be pleased to set aside the impugned order dated 24.11.2005 passed by the High Court and direct the Respondents to issue appointment order in favour of the Petitioner against any suitable post, on consideration of the, inter alia, following grounds.

GROUND S .

1. That, the impugned order passed by the High Court suffers from illegality and irregularity.
2. That, the impugned order has been passed without properly hearing the Petitioner, as the Petitioner during the course of his hearing had submitted that there is 2 per cent reserved quota of disabled persons in the S.S.G.C out of the total employees numbering 3394, and not 1 per cent, but the impugned order reveals that it has been mentioned as 1 per cent of the total.
3. That, in the impugned order, the contention of the Petitioner was also not recorded that the purported list of 'Disabled

Employees' furnished by the Respondents shows sixty-eight (68) disabled persons employed against such quota, but on careful perusal of such list, the nature of dis-ability shown against each of the so-called disabled employees, on the face of it revealed that out of them so many persons did not fall under the category of 'Disabled Quota'. Hence, the finding recorded by the High Court that 'the petitioner has no case on merits' is erroneous and is liable to be set aside.

4. That, so far the finding recorded by the Hon'ble High Court of Sindh that the 'petition has been filed without exhausting the remedy available to the petitioner' and that the proper course for the Petitioner is to approach the National Council as envisaged by Section 3 of the (Disabled Persons {Employment And Rehabilitation} Ordinance, 1981), it may be mentioned that in the end of the same paragraph of the impugned order it has been mentioned that it is not clear as to whether the said Council/Committee has been constituted and is functional or not", and the Petitioner despite frantic efforts has not been able to find out existence of any National Council, therefore, such a finding also has no value in the eye of law. Which is liable to be set aside.

5. That, it is also relevant to point out that the impugned order dated 24.11.2005 is signed by a Single Judge of the High Court, whereas the matter was heard by a Division Bench.

5. That, in fact the High Court has failed to consider the case of the petitioner properly on factual side. After fulfillment of the requisite formalities the Respondents with malafide intention and ulterior motives had refused to appoint the petitioner for want of illegal gratification.


6. That, in case the Respondents were exceeding the employment, if any, made under 'Disabled Quota', then what was the necessity to require the Petitioner to fulfil the requisites of the job and how and from where the Petitioner was allotted the 'Employee Number as 99990'. All this indicates of malafides on the part of the Respondents.

7. That, in the light of above, it is respectfully prayed that the instant petition of the Petitioner may kindly be accepted and the Respondents be strictly directed to issue appointment order in the name of the Petitioner in pursuance to offer letter dated 30.1.2003 issued by them in favour of the Petitioner.

8. That, prior to this, no such petition has been filed by the Petitioner before this Hon'ble Court.

9. That, the petition is in time. That, petition is properly stamped.

10. That, further grounds will be submitted at the time of hearing with kind permission of this Hon'ble Court.



PETITIONER.

Dated 24-12-2005.