

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

CP No. D- 2371 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
18.03.2020	

Mr. Abdul Hameed Jamali, Advocate for Petitioner

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Today an Application for restoration of this Petition (MA No. 161 of 2020) is fixed. Reason for not attending the Court hearing on 23.12.2019, when the matter was dismissed for non-prosecution, is stated. To give a fair opportunity of hearing, this Application is granted and Petition is restored to its original position.

2. Learned counsel has argued that since father of Petitioner donated a Plot of land admeasuring 12-00 acres out of Survey No. 370/2,3, 394/4, falling in Deh Jari Taluka Qazi Ahmed district Shaheed Benazirabad, therefore in lieu thereof, family members of the Petitioner may be appointed in different vacant posts in the government. This very issue of getting employment in lieu of donation of plot has been settled by the Honourable Supreme Court of Pakistan, which was followed by this Court in various cases.

3. The decision of the Apex Court handed down in number of Appeals-Civil Appeal Nos. 19-K to 50-K of 2015 is of relevance and is to be followed. It would be advantageous to reproduce hereunder the relevant portion of the said decision\_

**“ 4. This aspect of the case has been elaborately discussed by the apex Court in the case of *Hameedullah and 9 others vs. Headmistress, Government Girls School, Chokara, District Karak and 5 others* (1997 SCMR 855). Relevant observations therefrom read as under:-**

“3. The learned counsel for the appellant contended that as the agreement was conditional and was current in N.-W.F.P. duly approved by the Government specific performance thereof should have been granted and the appellant should have been appointed as a peon against a vacant post, which was.....”

“4. ... .. From the aforesaid observations it is clear that the agreement between the Government and the appellant was in the nature of sale of a public office, consideration being the transfer of land. Sale of public office cannot be a legal transaction. It is completely illegal and against public policy. Therefore, such an agreement is hit by section 23 of the Contract Act, which makes it void. As the agreement amounting to sale of public office is void and illegal, specific performance thereof cannot be granted.

5. Another ground which has been pressed in that such agreement cannot be specifically performed. Section 21 of the Specific Relief Act specifies the contracts which cannot be specifically enforced. Section 21 (g) provides as follows:

*S.21. The following contracts cannot be specifically enforced:*

... ..

(g) A contract, the performance of which involves the performance of the continuous duty extending over a period longer than three years from its date.

*The principle involved in this Section is that where under a contract the obligation is cast upon a person to perform continuously a particular duty for a period longer than three years from the date of the agreement, the same cannot be specifically enforced. In the present case the agreement seems to be in perpetuity for all times to come, generation after generation. It casts an obligation on respondent Nos.1 to 4 to appoint the appellant or his nominee against a class IV post and this process shall continue till such time the school is in existence. Such an agreement which has cast a duty of performance for a period longer than three years cannot, therefore, specifically be enforced.*

6. *The learned counsel while referring to Munawar Khan (supra) contended that the appellant is entitled to a margin of preference as it is available for those who make such grant. Such observation has been made in the said judgment, but it is restricted with the condition that amongst all the candidates' eligibility, suitability and fitness are equal. It is only on this condition that the donor or his nominee as compared to other candidates if equally eligible, suitable and fit for the post, may be given preference. In such circumstances, the appointing authority may use the discretion in favour of the donor, but such preference will not be in performance of the agreement. There is nothing in evidence on record to show that the appellant was equally eligible, suitable and fit for the post as compared to respondent No.5. The appointment is to be based on merits and if on merits the donor or his nominee is at par with other candidates, only then preference can be given to him. By the observation referred hereinabove, the donor or his nominee is not vested with any right to claim the post.”*

**(Underline to add emphasis)**

4. In the above reported decision identical issue was involved that the appellant (of the reported case) wanted himself or his nominee to be appointed as a peon against a vacant post, which was disallowed by the Honourable

Supreme Court. The principle that has been expounded and is to be followed is, that a public office even that of naib qasid, a peon or a sanitary worker cannot be a consideration in lieu of any plot donation or any other transaction. Usually in such cases the persons / Petitioner(s) rely upon representations of the government department to the effect that if a land is donated for construction of school, then family member(s) of a plot donor could be considered for job. This has been held by the Hon'ble Supreme Court of Pakistan in the afore-referred decision, as illegal. A public office cannot be offered / bartered or given in consideration of some donation, but a vacancy in respect of a public office is to be filled up strictly in accordance with law and the recruitment rules so that merit is not compromised and nepotism is curbed.

5. Before parting with this order, it is necessary to observe that job opportunity to the petitioner will not be refused simply on account of this decision, but his case can be assessed and examined by the government officials in accordance with the present rules and recruitment policy as well as on merits and keeping in view the guideline mentioned in the decision of the Honourable Supreme Court (supra), if at all, Petitioner applies for a job.

6. Similarly, as already held in various decisions of this Court pronounced by the learned Division Bench, one of which being Constitutional Petition No. D- 552 of 2015, that for a claim of compensation or mesne profits, the petitioner can avail the remedy provided under the law and if a jurisdiction of competent forum / authority or Court is invoked, then the cases of such persons / petitioners would be decided accordingly and strictly within the parameters of law.

7. The upshot of the above is that the subject constitutional petition is devoid of merits and is accordingly dismissed, with no order as to costs.

JUDGE

JUDGE