ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 2831 of 2020
Ilyas Masih Vs MCI etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15.06.2022	M/s Ms. Zareen Kanwal and Yasir Mehmood Chaudhry Advocates for petitioner in all the connected petitions, M/s Ms. Kashifa Niaz and Saqib Ali Advocates for respondents CDA & MIC, Syed Nazar Hussain Shah learned AA-G.

The captioned writ petition as well as writ petitions (*WP 828 & 4176 of 2021 and 404 of 2022*) entail common question of law and facts, therefore, being decided through this single order.

2- The petitioners in all the petitions except WP No.828/2021, are sanitary workers, hailing from Christian Community, working as contingent-paid with contractor, third-party. WP No.828 of 2021 was brought by Mr. J Salik, as public interest litigation highlighting discrimination with sanitary works and non-payment of their salaries.

3- Ilyas Masih, a sanitary work, whose petition is prior in time, had prayed for a direction to the respondents to ensure disbursement of monthly salary of Rs. 17500/- to all sanitary workers till 15th of each month and to treat them at par with other citizens and also to submit complete record of the sanitary workers, their appointment structure, working hours etc.

4- Mr. J. Salik came up with the prayer to direct the respondent CDA to restrain from outsourcing the job of sanitary workers relating to Christian Community and to refrain from taking any action detrimental to the rights of the minorities.

5- The petitioners, eight in number, in Writ Petition No. 4176 of 2021, restricted their prayer to direct the respondents to disburse their wages in due course while petitioners, 34 in number, in Writ Petition No. 404 of 2022, pray for regularization of their services besides direction to the respondents to refrain from terminating their services.

6- It is significant to note that upon the orders of this Court, the Director General (Human Rights) had also given personal hearing to one of the petitioners namely Ilyas Masih and other sanitary workers and observed that the sanitary workers are employed without any written service agreement and that the concerns/demands of the sanitary workers may be shared with MCI and CDA authorities for necessary action as per law in order to redress their grievances.

7- The response of the CDA, in black & white, had been to the effect that services of the petitioners were hired by the contractors independently who are responsible for payment of their salaries and that the CDA has no role whatsoever in the recruitment of the petitioners as there is no direct service contract between the petitioners and the CDA.

8- In-addition, it is stated that pursuant to direction passed by this Court in WP No. 828 of 2021, the CDA Board has accorded approval for direct recruitment of eligible candidates against 971 vacant posts of sanitary workers, process of advertisement had already been initiated through publication in the daily newspaper and that petitioners may also participate in the said process and will be dealt in accordance with law.

9- Learned counsel for the petitioners expressed satisfaction over the proceedings conducted so far, however, learned counsel Ms Zareen Kanwal Advocate stressed for issuance of a direction to the respondents to regularize services of the petitioners. In this respect, referred various orders of this Court passed in Crl Org 48-W-2016, WP 3926/2015, WP 2820/2016, WP 1061/2020 and WP 3095 of 2013.

10- Suffice it to observe that none of the referred orders entail identical proposition i.e. regularization of employees of third-party contractor, therefore, extend no help to the petitioners.

11- As mentioned above, the grievance highlighted by Mr. J Salik in WP 828 of 2021 regarding outsourcing the positions of sanitary workers, has since been redressed as regular appointments are going to be made by the respondent CDA after due approval by the Board.

12- The concerns/demands of the petitioners highlighted by the Director General (Human Rights), available with the report filed by the Ministry of Human Rights in WP 2831 of 2020, as Flag-A, shall be sent to the respondents CDA & MCI for necessary action as per law in order to redress grievances of the petitioners, sanitary workers hailing from Christian Community.

13- The claim of the petitioners regarding regularization of their services is required to be seen in the light of their service status. It is an admitted position that the petitioners were not directly employed either by the MCI or by the CDA rather they were engaged by a contractor. The respondents could neither hire nor fire them and they were/are to be supervised by their employer/contractor. In such arms' length transactions, any employee recruited by the contractor does not under any circumstances either directly or by implication become an employee of the respondents. Guidance is taken from the law laid

down by the Hon'ble Apex Court in the case of ***Government of KPK v. Jawad Ali etc. (CA 248 of 2020***).

14- In view of above, no further proceedings in the petitions are warranted. The same are accordingly disposed of. Copy of this order be sent to respondents-CDA & MCI for compliance of direction contained in Para-12 ibid.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on ___.07.2022

JUDGE

//*Kamran*//