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**IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)**

Constitution Petition No. 3992 of 2016

1. Amin Mohammad,
son of Mir Mohammad,
Muslim, Adult,
resident of House No.C-426A,
Liaquatabad, Mughri Khana Quidabad,
Landhi,
Karachi
2. Syed Waqar Hussain Shah,
son of Syed Alam Shah,
Muslim, Adult,
resident of House No.115,
G.O.R, Colony Unit No.1,
Latifabad,
Hyderabad
3. Sadam Hussain,
son of Khamiso Khan,
Muslim, Adult,
resident of House No. 169,
Zia Colony, Kachi Abadi,
Korangi No. 1,
Karachi
4. Muhammad Irfan,
son of Muhammad Ramzan,
Muslim, Adult,
resident of House No. 1257,
Nasir Colony, Korangi No. 1,
Karachi
5. Irum,
daughter of Mr. Shingara Masih
Christian, Adult,
resident of House No. 173,
Street No. 8, Sarfaraz Town,
Korangi No. 3 ½, Sector 43/A,
Karachi
6. Danish Hussain,
son of Syed Baqar Hussain,
Muslim, Adult,
resident of House No. 13,
Street No. 7, Sector 35/B,
"K" Area, Korangi,
Karachi

7. Attaullah,
son of Raza Mahmood,
Muslim, Adult,
resident of House No. 89,
Street No. 1, Korangi No. 1 ½,
Sector 48-A, Abdullah Shah Noorani Colony,
Karachi
8. Gul Ganwar,
son of Abbas,
Muslim, Adult,
resident of House No. 7,
Korangi 11/2, Abdullah Shah Noorani Colony,
Korangi Sector 48-A,
Karachi
9. Pathan Khan,
son of Ali Mardan,
Muslim, Adult,
resident of House No. L-762,
Korangi 2 ½, Sector 48,
Karachi
10. Muhammad Shahid Mehervi,
son of Islam Uddin,
Muslim, Adult,
resident of House No. 7/69,
Akaal Bongor Muslimabad,
City Court,
Karachi
11. Liaquat Ali,
son of Muhammad Ishaque,
Muslim, Adult,
resident of House No. 1,
Behind 96 Mess, JPMC,
Dhobi Ghat,
Karachi
12. Syed Nazar Hussain Shah,
son of Syed Muhammad Afsar Shah,
Muslim, Adult,
resident of House No. C-649,
Shah Faisal Colony,
Al-Fatah Natha Khan Goth,
Karachi
13. Rubina,
daughter of Saeed Ahmed,
Muslim, Adult,
resident of House No. B-348,
Noorani Basti,
Near Mohammidia Masjid,
Phuleli,
Hyderabad

14. Mohammad Haris,
son of Naseer Ahmed,
Muslim, Adult,
resident of House No. 214,
College Road, Unit No. 11,
Block No. E, Latifabad,
Hyderabad
15. Nasir Ahmed,
son of Bashir Ahmed Qureshi,
Muslim, Adult,
resident of House No. F/66-1153,
Gari Khata, Near Al-Mashriq General Store,
Hyderabad
16. Nazir Ahmed,
son of Ghulam Nabi Machi,
Muslim, Adult,
resident of P.O. Moro Taluka and District,
Near Sindh Colony,
Moro
17. Attaullah Ghorl,
son of Mohammad Saleem Khan Ghorl,
Muslim, Adult,
resident of House No. 2139,
Muhalla Gudus Naka,
Hyderabad
18. Yaseen Ali,
son of Atta Mohammad,
Muslim, Adult,
resident of Village Mahi,
Bux Kandhro Taluka, Nasirabad,
District Kamber,
Shahdadkot
19. Shabbir Ahmed,
son of Bashir Hussain,
Muslim, Adult,
resident of Goth Molvi Sultan Ahmed,
Tando Ghulam Ali Taluka Matli District,
Badin
20. Syed Ayaz Hussain Shah,
son of Juman Shah,
Muslim, Adult,
resident of House No. G/71,
Paro Jani, Shah Mohalla,
Talab No. 3,
Hyderabad

21. Shan Abdul Jabbar,
son of Abdul Jabbar,
Muslim, Adult,
resident of House No. 1774/HCB,
Mohalla Mumtaz Colony,
Gari Khata,
Hyderabad

22. Pakistan Institute of Labour
Education & Research,
Registered as an Association under Section 42,
Companies Ordinance, 1984,
Through its authorised person,
Having its registered office at PILER Centre,
ST-001, Sector X, Sub-Sector V,
Gulshan-e-Maymar,
Karachi-75340

23. Dar-ul-Sukun Welfare Society
Through its authorized person,
Registered under the Voluntary Social Welfare
Agencies (Registration & Control) Ordinance, 1961,
Having its registered office at
H-159, Block-3, Kashmir Road,
P.E.C.H.S.,
Karachi.....

Petitioners

Versus

1. Province of Sindh
through Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi
2. Province of Sindh,
through Secretary,
Social Welfare Department,
Government of Sindh,
Sindh Secretariat,
Karachi
3. Province of Sindh,
through Secretary,
Ministry of Health,
Government of Sindh,
Sindh Secretariat,
Karachi
4. Province of Sindh
Through the Secretary,
Ministry of Labour,

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Government of Sindh,
Sindh Secretariat,
Karachi

5. National Commission for Human Rights
Through its Chairperson,
A body corporate, established through
the National Commission for
Human Rights Act, 2012,
1st Floor, SLIC Building No.5,
Jinnah Avenue, Blue Area,
Islamabad

6. Federation of Pakistan,
Through the Secretary,
Ministry of Human Rights,
State Life Building No. 5, Blue Area,
Jinnah Avenue, China Chowk,
Islamabad.....

Respondents

**CONSTITUTION PETITION UNDER ARTICLE 199 OF THE CONSTITUTION
OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the Petitioners
abovenamed as under:

1. That the Petitioners No.1 to No.21 are Special Citizens of Pakistan (disabled/handicapped persons, hereinafter referred to as "Special Citizens"), on account of their respective physical and/or mental disabilities. The Petitioner No.22 is a known organisation which has undertaken dedicated efforts towards the betterment of the people of Pakistan through various measures on a voluntary basis. The Petitioner No.22 has made great efforts to fight for the rights of labourers and workers. The Petitioner No.23 is an organisation, inter-alia, that runs various homes for abandoned children with disabilities. The Petitioners, through this present Petition seek, inter-alia, the enforcement and the implementation of the Sindh Differently Able Persons (Employment, Rehabilitation and Welfare) Act, 2014 (hereinafter referred to as the "Act") in Sindh for their own benefit and on behalf of all the Special Citizens of Pakistan.

A copy of Sindh Differently Able Persons (Employment, Rehabilitation and Welfare) Act, 2014, copies of the C.N.I.C.s' of the Petitioners No.1 to No.21, their respective Disability Certificates and a copy of the Board Resolution

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passed by the Petitioner No. 22, registration certificate and Board Resolution of the Respondent No.23 along-with their Annual Report and profile are marked and annexed as Annex 'A' to 'A-26' respectively.

2. That on the 29th of December, the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 (hereinafter referred to as the "Ordinance"), was promulgated to provide for the employment, rehabilitation and welfare of disabled persons. On or about April, 2012, a Constitutional Petition i.e. CP 1461 of 2012, was filed in the Honourable Sindh High Court by the some of the Petitioners, seeking enforcement of the Ordinance. Inter-alia, through the Orders dated: 25-03-2014, 10-09-2014 and 25-09-2014, the Respondents were Ordered to enforce the Ordinance. However, as per the comments of the Sindh Government, it is submitted that despite the fact that the Ordinance was in force since 1981, it has never been enforced in Sindh. Furthermore, even after the Orders of enforcement were passed by the Honourable High Court of Sindh, no proper implementation or enforcement of the Ordinance was carried out and a Contempt Application is pending in this regard.

A copy of the Memo of the Constitution Petition No. 1461 of 2012 along-with its Order Sheets, a copy of the Contempt Application bearing CMA No. 20450 of 2014 and a copy of the Comments of the Government of Sindh's Social Welfare Department are marked and annexed as Annex 'B' to 'B-3'.

3. That the Ordinance was originally in the Federal ambit, however, the subject on which the Ordinance was enacted devolved to the provinces by virtue of the 18th Amendment to the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "Constitution"), hence it was adopted, with amendments, for the province of Punjab by the Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012 (hereinafter referred to as the "Punjab Act"). On the 18th of March, 2015, the Respondent No.1 ('Province of Sindh') passed their own Act, namely, The Sindh Differently Able Persons (Employment, Rehabilitation and Welfare) Act, 2014, to provide for the employment, rehabilitation and welfare of differently able persons.

4. That under Section 3 of the Act, the Respondent No.1 ('Government of Sindh') is to constitute, by notification in the Official Gazette, a Council, which consists of a Chairman and more than eighteen members to be appointed by the Respondent No.1. Under Section 3 of the Act, the Members of the Council shall consist of (a) the Secretary, Social Welfare Department, who shall also be its Chairman; (b) the Secretary, Labour Department; (c) the Secretary, Special Education Department; (d) the Secretary, Rehabilitation Department; (e) one representative of the Planning and Development Department; (f) one representative of the Health Department; (g) one representative of Auqaf, Religious Affairs, Zakat and Ushr Department; (h) one representative of Women Development Department; (i) Managing Director, Sindh Technical Education and Vocational Training Authority (STEVTA); (j) Managing Director, Sindh Bait-ul-Mai; (k) one representative of the Chamber of Commerce and Industry; (l) one representative of the registered Trade Unions to be nominated by the Labour Department; (m) four persons nominated by the Government from amongst the persons engaged in the welfare work of differently able persons; (n) Secretary of the Council; and (o) Two members of the Provincial Assembly (One Lady Member and One Male Member) to be nominated by the Speaker of the Provincial Assembly, who shall also be the Secretary Members of the Council. It is further submitted that under Section 4 of the Act, various functions of the Council have been laid down which gives Council the powers to execute the policy made by Government for the employment, rehabilitation and welfare of differently able persons.

5. That under Section 8 of the Act, not less than two percent (2%) (Hereinafter referred to as the "Disability Quota") of the persons employed by an establishment shall be differently able persons (as defined by Section 2(d) of the Act). Establishment, as defined by Section 2(g) of the Act, includes a Government establishment, a Commercial establishment or an Industrial establishment, in which the number of workers employed at any time during a year is not less than one hundred. It is further submitted that as defined by

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Section 2(b) of the Act, "commercial establishment" and "industrial establishment" shall have the same meaning as in the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 which includes the business of advertising, a commercial agency, a clerical department of a factory or of any industrial commercial undertaking, an office of any commercial or industrial establishment, a unit of a joint stock company, an insurance company, a bank, a club, a hotel, a restaurant, a cinema or a theatre, factory (as defined in clause (j) of the Section 2 of the Factories Act, 1934) or a railway (as defined in clause (4) of Section 3 of the Railways Act, 1890).

A copy of the definitions of "commercial establishment" and "industrial establishment" stated in the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, a copy of the definition of "factory" as defined in clause (j) of the Section 2 of the Factories Act, 1934 and a copy of the definition of "railway" as defined in clause (4) of Section 3 of the Railways Act, 1890 are marked and annexed as Annex 'C' to 'C-2'.

6. That under Section 9 of the Act, an establishment which does not employ differently able persons as required by Section 8 of the abovementioned Act, shall pay into the funds each month the sum of money it would have paid as salary or wages to the differently able persons had he been employed. Furthermore, it is submitted that under Section 15 of the Act, the Differently able persons Rehabilitation Fund shall be established by the Government which shall comprise of all the sums paid the establishment under Section 9 of the abovementioned Act, all grants if made by the Federal Government, Provincial Government or local bodies, Donations, if any, made by private individuals. The Fund shall be administered by the Council and it shall be utilized for establishing the training centers for differently able persons (Section 11 of the Act covers the establishment of the Training Centers for the training and vocations of the differently able persons); for providing financial assistance to differently able persons who are not fit to undertake any employment; for providing stipends or scholarship to differently able persons receiving training or education and for providing artificial limbs, surgical therapy and medical treatment to differently able persons.

7. That the Petitioners are informed that the Respondent No.1 has purportedly constituted a Council by appointing certain persons (i.e. Secretary to Government of Sindh, Social Welfare Department as its Chairman) to be members of the Council through a Notification dated: 13-6-2016 but as far as the Petitioners are informed, the Council has not been constituted in accordance with the abovementioned Section 3 of the Act. Furthermore, one of the Directors of the Respondent No.23 is a member of this Council but, to date, no meeting of this Council has been called. It is also submitted that, as far as the Petitioners are aware, no Training Centres, as elucidated under Section 11 of the Act, have been established. Furthermore, as stated under Section 15 of Act, the Differently Able Persons Rehabilitation Fund has also not been established.

A copy of the Notification dated: 13-6-2016 is annexed and marked as Annex 'D'.

8. That as the abovementioned facts clearly show the Ordinance of 1981 was not properly enforced, especially in Sindh, despite the lapse of over 34 years and despite the Orders of the Honourable Sindh High Court. The Sindh Act has now been enacted since 18th March, 2015 i.e. since well over 1 year. However, the Respondents have failed to enforce the Sindh Act.

A copy of the DAWN newspaper article covering the non-enforcement and non-implementation of the Act have been annexed and marked as Annex 'E'.

9. That the Petitioners No. 1 to 21 have been struggling to find gainful employment for years, and to such end, have been applying for a number of jobs/positions under the Disability Quota.
10. That it is most respectfully and most humbly submitted that being aggrieved by the abovementioned actions and inactions of the Respondents, the Petitioners have no alternative efficacious remedy except to invoke the Constitutional

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Jurisdiction of this Honourable High Court on the, inter-alia, facts and grounds stated herein.

GROUNDS

- A. That it is respectfully submitted that under Section 8 of the Act, not less than two percent (2%) of the persons employed by an establishment shall be differently able persons. It is submitted that the Special Citizens of Pakistan, including the Petitioners, are being denied this statutory right. It is further submitted that denial of these statutory rights is against the fundamental rights, as enshrined under Article 4 of the Constitution. Therefore, the failure of the Respondents to implement such law is unconstitutional and illegal.
- B. That it is respectfully submitted that Establishment, as defined by Section 2(f) of the Ordinance, includes Government, Commercial, and Industrial Establishments such as, the business of advertising, a commercial agency, a clerical department of a factory or of any industrial commercial undertaking, an office of any commercial or industrial establishment, a unit of a joint stock company, an insurance company, a bank, a club, a hotel, a restaurant, a cinema or a theatre, factory (as defined in clause (j) of the Section 2 of the Factories Act, 1934) or a railway (as defined in clause (4) of Section 3 of the Railways Act, 1890). The Disability Quota, therefore, extends not only to the Government Establishments, but also to Commercial and Industrial Establishments and, despite vacant positions available, the Petitioners, and other Special Citizens, are not being offered employment. It is submitted that it is a Constitutional and Statutory duty of the Respondents to enforce this right of the Special Citizens of Pakistan.
- C. That it is respectfully submitted that under Section 3 of the Act, the Respondent No.1 ('Government of Sindh') is to constitute, by notification in the Official

Gazette, a Council, which consists of a Chairman and more than eighteen members to be appointed by the Respondent No.1. Under Section 3 of the Act, the Members of the Council shall consist of (a) the Secretary, Social Welfare Department, who shall also be its Chairman; (b) the Secretary, Labour Department; (c) the Secretary, Special Education Department; (d) the Secretary, Rehabilitation Department; (e) one representative of the Planning and Development Department; (f) one representative of the Health Department; (g) one representative of Auqaf, Religious Affairs, Zakat and Ushr Department; (h) one representative of Women Development Department; (i) Managing Director, Sindh Technical Education and Vocational Training Authority (STEVTA); (j) Managing Director, Sindh Bait-ul-Mal; (k) one representative of the Chamber of Commerce and Industry; (l) one representative of the registered Trade Unions to be nominated by the Labour Department; (m) four persons nominated by the Government from amongst the persons engaged in the welfare work of differently able persons; (n) Secretary of the Council; and (o) Two members of the Provincial Assembly (One Lady Member and One Male Member) to be nominated by the Speaker of the Provincial Assembly, who shall also be the Secretary Members of the Council. The Petitioners are informed that the Respondent No.1 has purportedly constituted a Council by appointing certain persons (i.e. Secretary to Government of Sindh, Social Welfare Department as its Chairman) to be members of the Council through a Notification dated: 13-6-2016 but as far as the Petitioners are informed, the Council has not been constituted in accordance with the abovementioned Section 3 of the Act. Furthermore, one of the Directors of the Respondent No.23 is a member of this Council but, to date, no meeting of this Council has been called. Therefore, the abovementioned actions of the Respondents are illegal and of no legal effect.

- D. That it is respectfully submitted that the Council has not been constituted in accordance with Section 3 of the Act, no Training Centres, as elucidated under Section 11 of the Act, have been established, and the Fund, as envisaged under

Section 15 of the Act, has not yet been established. Therefore, the abovementioned failures and inactions of the Respondents are in clear violation of the fundamental rights as enshrined in Article 4 of the Constitution.

- E. That it is respectfully submitted that the Petitioners, seek disclosure/information from the Respondents No.1 ('Province of Sindh'), regarding the implementation and enforcement of the abovementioned Sections 2, 3, 4, 8, 9, 11 and 15 of the Act. Such disclosure is now a legal and Constitutional right of the Petitioners under Article 19A of the Constitution.
- F. That it is most respectfully and most humbly submitted that the Petitioner seeks the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

PRAYER

It is therefore, most respectfully and most humbly prayed that this Honourable High Court may graciously pass Judgement and Orders in the following terms:

- a) Declare that the lack of effective implementation of the Sindh Differently Able Persons (Employment, Rehabilitation and Welfare) Act, 2014, by the Respondents No.1 to No.4 ('Sindh Government'), is unconstitutional and illegal;
- b) Direct the Respondents, to fully and effectively implement all the provisions of, and to establish all the bodies/institutions/entities/funds under, the Sindh Differently Able Persons (Employment, Rehabilitation and Welfare) Act, 2014, throughout the province of Sindh, within a specified period of time, as determined by this Honourable Court;

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- c) Direct the Respondents No.1 to No.4 ('Sindh Government') to fully and effectively implement Section 8, of the Sindh Differently Able Persons (Employment, Rehabilitation and Welfare) Act, 2014, within Government Establishments, Commercial Establishments and Industrial Establishments, within a specified period of time, as determined by this Honourable Court;
 - d) Direct the Respondents to establish a Commission, composed of well reputed members of Civil Society and Government Officials to monitor the effective implementation of the Sindh Differently Able Persons (Employment, Rehabilitation and Welfare) Act, 2014, throughout the province of Sindh;
 - e) Direct the Respondents to publish a detailed program of measures to be taken to fully and effectively implement the Sindh Differently Able Persons (Employment, Rehabilitation and Welfare) Act, 2014, throughout the province of Sindh;
 - f) Grant such, additional or alternative relief, as this Honourable Court may deem fit and proper,

PETITIONER NO.1

PETITIONER NO.2

PETITIONER NO.3

PETITIONER NO.4

PETITIONER NO.5

PETITIONER NO.6

PETITIONER NO.7

PETITIONER NO.8

PETITIONER NO.9

PETITIONER NO.10

PETITIONER NO.11

PETITIONER NO.12

PETITIONER NO.13

PETITIONER NO.14

PETITIONER NO.15

PETITIONER NO.16

PETITIONER NO.17

PETITIONER NO.18

PETITIONER NO.19

PETITIONER NO.20

PETITIONER NO.21

PETITIONER NO.22

PETITIONER NO.23

ADVOCATE FOR THE PETITIONERS

KARACHI

DATED: 12-07-2016

DOCUMENTS FILED:

As annexed with the Petition and other relevant documents

DOCUMENTS RELIED UPON:

The above.

ADDRESS OF THE PETITIONERS:

As per in the title of the Petition

ADDRESS OF THE PETITIONERS' COUNSEL:

Mohamed Vawda
Advocate (HC 1400/HC/KHI)
F-66/3, Park Lane,
Block 5, Clifton
Karachi

DRAWN BY ME

ADVOCATE