

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-5481 of 2023

[Mahwish Aziz versus Federation of Pakistan and others]

Before:

Justice Muhammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

Mr. Talha Abbasi advocate for the petitioner
Ms. Wajiha Mehdi, Assistant Attorney General
Mr. Muhammad Iqbal, Assistant Director (Admn.) Department of Plant Protection, Ministry of NFS&R

Date of hearing & order: 17.9.2025

ORDER

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition with the following prayer(s): -

- 1) Declare that the impugned termination letter dated 16.10.2023 is illegal, mala fide, motivated, discriminatory, without jurisdiction, and in violation of principles of natural justice, equity, and fairness, and set aside the same forthwith.*
- 2) Direct the Respondent Nos 2 and 3 to pay the salary of the Petitioner from March to May, 2023, and July, 2023 to date.*
- 3) Suspend the Operation of the impugned termination letter dated 16.10.2023 and restrain the respondents from taking any adverse coercive action against the Petitioner without due process till final adjudication of the captioned petition.*

2. It is the case of the petitioner that she is working as an Entomologist (BS-17), and was initially hired on a contract basis on April 1, 2021, by the Department of Plant Protection due to a locust emergency in Pakistan. His contract was extended in March 2022 and again in June 2023 due to his satisfactory performance. In July 2023, respondent No. 2 recommended the extension of 103 contract positions, including the petitioner's, until June 30, 2024. The Finance Division approved this extension on September 5, 2023. Despite the approval, respondent No. 2 verbally instructed respondent No. 3 to terminate the petitioner's services. This led to an office order on October 16, 2023, terminating the petitioner's contract. The petitioner claims that this termination is illegal, malicious, and without jurisdiction. She submits that other authorized officers responsible for the defective treatment of mango shipments, which led to international issues, were not terminated because they were favorites of the blacklisted companies for which the petitioner played a vital role; however, she was punished at the behest of the heads of the blacklisted companies. The petitioner filed this petition to challenge her termination.

3. The petitioner's counsel argued that the termination letter is illegal and malicious. He raised the key points with the narration that Respondent No. 3, who issued the termination letter, did not have the authority to terminate a BS-17 Entomologist; only Respondent No. 2 could do so; that the termination was based on an illegal verbal order from Respondent No. 2, which is not a valid legal instruction. He argued that the petitioner was not given a show-cause notice before being terminated, so the termination was not based on misconduct. The lawyer also asserted that his termination without a formal inquiry violates judgments of the Supreme Court of Pakistan, which mandate a proper inquiry with full opportunity for defense in cases of major penalties like dismissal. He pointed out that the termination of the service violates Clauses 11 and 14 of the petitioner's appointment letter because she has not received pay for the notice period, nor has she been paid her outstanding salary for several months (March, April, May, and from July 2023 onwards). However, due to a court order, she is working in the respondent department. In support of his contentions, learned counsel for the petitioner has relied upon the case of Pakistan State Oil Company Ltd. v. M. Akram Khan & others (2004 PLC (C.S.) 992).

4. The Assistant Attorney General (AAG) argued for the dismissal of the petition, with the narration that the petitioner's termination was part of a necessary downsizing and restructuring because the locust emergency, which prompted the creation of the temporary positions, is over. The decision was a standard administrative one, based on budgetary and operational needs, rather than malice or reprisal. Respondent No. 3 (Director of Administration) was competent to issue the termination letter, as he had the delegated authority to do so for contract employees on behalf of Respondent No. 2. A verbal order from a superior followed by a formal written order is a valid chain of command. The office order dated October 16, 2023, is the official written proof of termination, refuting the claim that the termination was based on a verbal order alone. The delay in salary payments was due to a lack of an allocated budget, as contract extensions and fund releases are separate bureaucratic processes. The department's inability to disburse salaries for certain months was a circumstance beyond its control. The AAG assured that outstanding dues, including for the notice period, would be paid upon the finalization of accounts, but argued that this administrative delay does not invalidate the termination. The AAG dismissed the petitioner's claim of being unfairly targeted, stating there is no link between his termination and the investigation into the blacklisted companies. Any disciplinary actions against other officers are separate and irrelevant to this case. Learned AAG argued that the termination was a "termination simpliciter," meaning it was a simple termination of a temporary position and not a punishment for a specific offense; as such, the petitioner's claim about a lack of due process (e.g., a show-cause

notice) is irrelevant. She argued that the department simply exercised its right to end a temporary employment relationship. She further submitted that in the contractual nature of the employment dispute, this Court has consistently held that contract employees cannot invoke the High Court's constitutional jurisdiction. Their sole recourse is to file a suit for damages in case of breach of contract or failure to extend it. She added that the Supreme Court has established that a contract employee cannot seek reinstatement for the remaining contract period but can only claim damages for the unexpired term. She prayed for dismissal of the petition.

5. We have heard learned counsel for the parties and considered the record with their assistance and case law cited at the bar.

6. This court needs to determine if the petitioner's termination was simple or if it required a show-cause notice, a formal inquiry, and a hearing.

7. The main contentions of the learned AAG are that the termination was a simple termination of a temporary position ("termination simpliciter"), not a punishment, and under contractual law, the petitioner cannot use constitutional jurisdiction to seek reinstatement but can only sue for damages. There is no cavil to this proposition that a contractual employee has no vested right to seek reinstatement in service under Article 199 of the Constitution, but at the same time, if the termination of service is based on stigma, this Court can look into that aspect of the case, for the reason that the termination can be either "simpliciter" or "punitive." Simpliciter termination is a dismissal without a stated reason, often called "without cause," and is based on the terms of an employment contract. Punitive termination, however, is a dismissal based on an employee's misconduct and requires a formal inquiry, a show-cause notice, and a hearing to ensure due process. The "motive and foundation" test is used to distinguish between the two. If misconduct is merely the motive for the termination, meaning it was a preliminary suspicion without a full inquiry, the termination is considered simpliciter. If the misconduct is the foundation of the termination, meaning it was proven through a full disciplinary inquiry, the termination is punitive.

8. The Assistant Attorney General (AAG) argued that there was no need to hear the contract employee before termination, citing clauses in the appointment letter. This court disagreed with this position in terms of the discussion made in the preceding paragraphs. In such circumstances, this needs to look at the substance of the termination, not just the form of the order, to determine if it was truly simpliciter or if it was a punitive action disguised as a simple termination.

9. The petitioner submits that she, being part of the Department of Plant Protection, vide letter dated 30.8.2023, suspended the accreditation of M/s Hyder Shah for exporting untreated mangoes to Iran. This action was taken because Iran's Plant Protection Organization found fruit flies in a mango shipment. M/s Hyder Shah had previously been suspended for a similar violation in 2016 and is now facing legal action for submitting false treatment records. However, later on, she was terminated with stigma at the behest of M/s Hyder Shah and Quetta Chambers, others vide minutes of meeting dated 16.10.2023, against whom she took action.

10. Firing a contract employee for misconduct or other reasons that could harm their reputation is called a "stigmatic termination." In such cases, the law requires the employer to follow due process, including a fair inquiry, to give the employee a chance to defend themselves. This is a key protection against arbitrary dismissal, ensuring that all employees, not just permanent ones, have the right to a fair hearing when their termination is based on allegations of wrongdoing. Simple termination, without reference to misconduct, is still allowed under the contract's terms.

11. In the present case, the government of Pakistan's Finance Division vide letter dated 05.09.2023 approved the continuation of 103 contract positions, 71 Entomologists, and 32 Locust Assistants, for anti-locust operations until June 30, 2024. However, Petitioner was terminated with "stigma" after she took action against M/s Hyder Shah and Quetta Chambers. The official termination order, dated October 16, 2023, states her services were ended "as per clause 11 & 14" of her appointment letter, with immediate effect, but the minutes prima facie show something different.

12. In the aforesaid circumstances, the impugned order is set aside, and the case is being sent back to the competent authority, who must make a new decision on the matter within two months. The petitioner must be given a full opportunity to be heard.

13. This petition stands disposed of in the aforesaid terms.

JUDGE

HEAD OF CONST. BENCHES

