

ORDER SHEET
THE COURT OF SINDH BENCH AT SUKKUR

Present:

*Mr. Justice Ahmed Ali M. Sheikh &
Mr. Justice Salahuddin Panhwar.*

Const. Petition No. D- 245 of 2011.

For katcha peshi.

Muhammad Yameen.....Petitioner

VERSUS

Government of Sindh and others.Respondents

Mr. Hadi Bux Bhatt Advocate for the Petitioner.
Mr. Imtiaz Ali Soomro, Assistant Advocate General.

Date of hearing: 22nd May, 2013.

ORDER

Ahmed Ali M. Sheikh J., Through instant petition, petitioner has prayed for as under:

- a. "To declare that the impugned order dated 29.9.2008 issued by the respondent No.2 in termination of the service of petitioner and the relieving order are mala fide, colorable capricious, unjust, without any cogent reason and against the terms and conditions of the service of the petitioner who was appointed on contract basis for the period of three years and as such the same may kindly be set aside.
- b. To direct the respondents through Mandamus process to reinstate the service of the petitioner and thereby continue his service with back benefit of service as well as payment of his salaries which have not been paid to the petitioner till today.
- c. To grant any other equitable relief as deemed fit by this Honourable Court in circumstances of the court".

2. From the pleadings, it appears that the petitioner was appointed as Naib Qasid in BS-01 in Education Department vide order dated 3.11.2007 on contract basis for a period of three years. Later on, he was posted at Govt. Girls High School Islamia Ghat, district Sukkur, but though he was discharging his duties regularly, but vide impugned general order dated 29.4.2008, he was fired from his service.

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3. It is, inter alia, contended by learned counsel for the petitioner that the impugned order lacks reasonings and cannot be termed as speaking order in view of Section 24-A of General Clauses Act. Besides, before issuing impugned order, neither show-cause notice was issued to the petitioner nor he was provided an opportunity of hearing.

4. Learned Assistant Advocate General though contested the petition but could not controvert the contentions advanced at bar by learned counsel for the petitioner.

5. Since the petitioner is low-paid employee, was appointed as Naib Qasid in BS-01 and lone bread winner of his large family. Besides, before issuing termination order which lacks reasonings, he was condemned unheard in sheer violation of law of natural justice. It is settled law that all the authorities including the Courts are required to pass speaking orders and such view is supported by the judgment of Hon'ble Apex Court in case of *Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi* 1998 SCMR 2268, wherein their Lordships of the Apex Court has observed as under:

"The doctrine has further been recognized and augmented by the recent insertion of section 24-A in the General Clauses Act, 1897, which declares that where a statute confers a power to make any order or to give any direction to any Authority, office or person, such would be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment. What is more, the order or direction, so far as necessary or appropriate would reflect reasons for its making or issuance and, where the same is lacking, an affectee may demand the necessary reasons, which, in response, would be furnished".

6. Furthermore, if there was any irregularity in his appointment, the authority who exercised their powers wrongly could have been penalized instead of poor petitioner in view of dicta laid down in case of *Muhammad Akhtar Shirani v. Punjab Text Book Board* (2004 SCMR 1077), in which Hon'ble Supreme Court has been pleased to hold as under:

"It may be observed that for such reason beneficiary cannot be blamed alone because primarily the authority who had actually mis-exercised his powers, for the reasons known to it, is bound to be held responsible for the same, instead of penalizing the petty employees like Chowkidar, Naib-Qasid, junior clerks etc, who have to earn livelihood to support their families and if after having served for a long period they are removed from service discriminately, such action would not promote the cause of action and it

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would give rise to a number of problems to them. In this regard at a number of occasions, it has been held by this Court that instead of removing the employees from service, action should have been taken against the authority who had mis-exercised its powers".

7. For the foregoing reasons and dicta laid by Hon'ble Supreme Court in cases of *Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi* and *Muhammad Akhtar Shirani* (supra), we had allowed instant petition by a short order dated 22nd May, 2013. Consequently, impugned order dated 29.4.2008 is set aside to the extent of petitioner. Respondents are directed to regularize the service of the petitioner within a period of 30 days after receipt of this order and under compliance report to this court through Additional Registrar. Non-compliance of this order may expose the delinquent officers to contempt of court proceedings.

8. Let copy of this order be communicated to concerned quarter over fax for information and compliance.


JUDGE

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Ahmad