

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-3580 of 2014

Present

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Humair Altaf Petitioner

V E R S U S

Federation of Pakistan & 03 others Respondents

Date of hearing: 22.02.2017

Mr. Sanaullah Noor Ghori, Advocate for Petitioner.

Mr. Muhammad Aslam Butt, D.A.G for Respondent No.1.

Mr. Jawed Asghar Awan, Advocate for Respondents No.2 to 4.

JUDGMENT

ADNAN-UL-KARIM MEMON-J: Through this Constitutional
Petition, the Petitioner seeks following relief:-

- a. To set aside the impugned order of dismissal from service dated 10.12.2010 issued by the Respondent No.3&4 with all back benefits.
- b. To re-visit and recall the order dated 18.10.2012 and decide the petition of the Petitioner on merits or in the alternate remand back the case to the department for denovo departmental action as no proper inquiry ever was held against the Petitioner in view of directions issued by the Federal Government in RSO-2000 cases on 21.09.2001.
- c. To reinstate the Petitioner in service with all back benefits as the Petitioner is jobless since the day of his dismissal from service by the PSO.

- d. Costs of the petition.
- e. Any other relief as the Honourable Court may deem proper and fit under the circumstances of the case.

2. Briefly stated facts of the case are that the Petitioner joined Respondent No.2 Pakistan State Oil (hereinafter referred to as "PSO") on 15.3.2006 and was posted in Cards Division/Card Finance Affairs as a Sr. Engineer/ Security Services. The Petitioner while working was PSO was placed under suspension on 23.12.2009 on the allegation of misconduct. Subsequently, an inquiry was ordered and conducted against him on the charges of theft, cheating by impersonation and falsification of public record. The Petitioner's statement then was recorded by the Inquiry Officer. Thereafter, Charge Sheet was issued to the Petitioner on 26.01.2010, along with the statement of allegations by the Respondent No.4. As per the said Inquiry Report 61 (sixty one) cards were stated to have been issued against fake invoices/ advises, which were prepaid, and the amount of such cards was determined to the tune of Rs.7,33,4390/- allegedly embezzled by the Petitioner. On 27.01.2010 the Petitioner submitted his reply in respect of the said Charge Sheet to the Respondent No.4 and denied all the allegations leveled against him. Notice of inquiry was then issued by the Inquiry Officer for 10.5.2010. Subsequently, on 25.6.2010 another letter was issued by the Inquiry Officer to the Petitioner directing him to bring all relevant record in support of his defence. Thereafter the Respondent No.3 on 04.10.2010 issued

final Show Cause Notice to the Petitioner, stating that the reply to Charge Sheet dated 26.01.2010 submitted by the Petitioner on 27.1.2010 was found to be unsatisfactory and in the said Inquiry Report dated 01.6.2010, the Petitioner was found guilty of the charges leveled upon him. The Petitioner was further directed to submit his reply of the said final Show Cause Notice. The Petitioner then on 08.10.2010 submitted his reply to the said final Show Cause Notice and again denied all the charges leveled against him stating that no proper inquiry was held in his matter. The Respondent No.3 then on 01.11.2010 issued a letter of personal hearing to the Petitioner for 01.11.2010. Such personal hearing, however, did not take place on the request of the Petitioner, then, vide letter dated 08.11.2010 date of personal hearing was fixed for 15.11.2010. The Petitioner then appeared before the said authority/Respondent No.3 on 15.11.2010 and explained his position through his verbal assertion. Thereafter, finally on 14.12.2010 the Petitioner was dismissed from service by the Competent Authority. On 24.12.2010, the Petitioner filed a Constitutional Petition No.D-3599/2010 before this Court. The said Petition then was dismissed by this Court vide order dated 18.10.2012. Against that order, the Petitioner filed CPLA No.350-K/2012 before the Honourable Supreme Court, which too was dismissed vide order dated 04.2.2013. Thereafter, the Petitioner filed a Civil Suit bearing No.1146/2013 before the 2nd Senior Civil Judge, Karachi, South. The learned Court after hearing both the Parties vide order dated 26.05.2014 returned the Plaint to the

Petitioner under Order VII, Rule 10 Civil Procedure Code with directions to the Petitioner to approach the proper forum. In the meantime, the Petitioner had also filed a Civil Review Petition before the Hon'ble Supreme Court bearing No.CRP 29-K/2013, which was also dismissed by the Honourable Apex Court vide order dated 19.06.2014. It is only then that the instant Petition has been filed.

3. The Respondent No.2 did not file comments, however, filed CMA No.15190/2016 for dismissal of petition being barred by law.

4. Mr. Sanaullah Noor Ghori, learned counsel for the Petitioner submitted that the Petitioner was appointed as Trainee Engineer in the year 2006 and due to hegemony of the Respondent No. 2 the Petitioner was placed under suspension on 23.12.2009. Subsequently, Inquiry was conducted on the charges of theft, cheating and falsification of public record, which according to him could not be proved, however, the Petitioner was issued Charge Sheet and subsequently was dismissed on 14.12.2010. Per learned counsel, the whole action on the part of the Respondent's Company was tainted with malice and with ulterior motives in order to knock out the Petitioner from the service. The learned counsel next argued that the Petitioner approached this Court but, could not succeed and then he approached the Hon'ble Apex Court but did not press the same. Thereafter, he filed a Civil Suit, the plaint of which was returned and thereafter the Petitioner preferred Review Petition before the Hon'ble Supreme Court, which was also

dismissed. The learned counsel further argued that the Judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Lt. Col. Syed Jawaid Ahmed reported in 2013 SCMR 1707 (relevant paragraph 50 of the judgment) protects the case of the Petitioner, hence this petition is maintainable wherein the order of dismissal from service passed under the Removal from Service Ordinance, 2000 (RSO) has been challenged. The learned counsel next argued that the Petitioner has a good case for reinstatement in service because, there had been no complaint against him, no witness was examined and the Inquiry was conducted behind the back of the Petitioner without granting him opportunity of cross examination, which is violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Per learned counsel the whole exercise conducted against the Petitioner was illegal, unlawful and without lawful justification. He further argued that the respondent company has no documentary evidence to prove their case but due to some personal grudge the Petitioner was victimized by imposing major penalty of dismissal from service vide order dated 14.12.2010. Per learned counsel, the respondent company has not conducted regular Departmental Inquiry in defiance of law, settled procedures for recording the evidence of the witnesses as required under the Removal from Service Ordinance, 2000. Per learned counsel, the dismissal order is not a speaking order and that the Petitioner is innocent. Per learned counsel the Petitioner was non suited by this Court on account of non-statutory Rules of Service of the respondent company in the light of judgment of Hon'ble

Supreme Court passed in the case of PIA Vs Tanveer-ur-Rehman (PLD 2010 SC. 676) whereas, the case of the Petitioner is fully covered by the case of Col. Javed reported in 2013 SCMR 1707. Per learned counsel the Petitioner was not heard on merits of the case in the previous round of litigation and due to the above reasons this Court has now the jurisdiction to decide this matter afresh on merits rather than non-suiting the Petitioner on the ground of non-statutory rules of service of the respondent company. The learned counsel for the Petitioner in support of his above contentions has relied upon the cases of Muhammad Dawood and others versus Federation of Pakistan and others (SBLR 2007 Sindh 495), Muhammad Idrees Versus Agricultural Development Bank of Pakistan and others (PLD 2007 S.C. 681), M/s Pakistan Steel Mills Corporation Versus Nisar Ahmed Shar (2008 PLC 52), Raja Riaz Versus Chairman Pakistan Space and Upper Atmosphere Research Commission Karachi (2008 SCMR 402) and Pakistan Defence Officer Housing Authority and others Versus Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707).

5. On the other hand, Mr. Jawed Asghar Awan, the learned counsel for the Respondents No.2 to 4 has argued that firstly, the case of the Petitioner is fully covered by the principle of 'Res judicata' and secondly, this petition cannot be entertained by this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The learned counsel next argued that the respondent company is a private limited company and has no statutory rules of service therefore the instant writ petition is not

maintainable. The learned counsel further argued that the Petitioner could not succeed in earlier round of litigation up to the Hon'ble Apex Court even the Review Application preferred by the Petitioner was dismissed. The Petitioner also filed Civil Suit which was also returned under Order VII, Rule 10 Civil Procedure Code and he again has filed the instant petition which is not maintainable under the law and the same is liable to be dismissed with cost.

6. The learned DAG representing Respondent No.1 has adopted the arguments of learned counsel for the respondents No.2 to 4.

7. We have heard the learned counsel for the Petitioner, learned counsel for Respondent No.2 to 4 as well as learned DAG at length and so also perused the entire material available on record and the decisions relied upon by the learned counsel.

8. First and foremost, we would address the issue of maintainability of the instant Petition under Article 199 of the Constitution. Admittedly, the Petitioner was suspended from service vide letter dated 23.12.2009 on the charges of misconduct and ultimately dismissed from service on 14.12.2010. Admittedly, the Petitioner filed Constitutional Petition No.3599/2010, which was dismissed by this Court vide order dated 18.10.2012 being not maintainable, operative part of the said order is reproduced hereunder:-

“We have gone through the inquiry report that has been appended with the counter affidavit filed by the

Respondents. No doubt, the procedure adopted in conducting the inquiry was unusual nevertheless it was a domestic inquiry. Various searching questions were put to the Petitioner and at the end of the enquiry, the Enquiry Officer asked the Petitioner as to whether he would like to examine any witness or produce evidence in support of his case to which he replied in the negative and also replied that he is satisfied with the inquiry proceedings.

We are of the view that enough opportunity was given to the Petitioner. No specific ground has been taken in the Petition except that the inquiry proceedings may be set aside as the same were violative of the principle of natural justice. This is contrary to the record. There is nothing on the record to show that the Petitioner showed his intention to cross examine any witness of the complainant or that he wanted to adduce evidence in support of his case. Furthermore, in view of the decision of the Hon'ble Supreme Court in SBLR 2010 SC. 303 (supra) and judgment of this Court in C.P. No. D-496/2010 this Court is left with no alternative but to dismiss the Petition as not maintainable.”

9. The Petitioner challenged the said order before the Hon'ble Apex Court in Civil Petition No.350-K of 2012, but the same was dismissed as not pressed vide order dated 04.02.2013. Thereafter, the Petitioner filed Review Petition No.29-K of 2013 and the same was also dismissed vide order dated 19.06.2014 being barred by time with directions to approach the competent Court of law if such legal remedy is available to the Petitioner. The Petitioner also filed a Civil Suit No.1146/2013 before the Court of learned 2nd Senior Civil Judge, Karachi, South which was returned to him under Order VII Rule 10 CPC vide order dated 26.05.2014. Ultimately, the Petitioner filed the instant petition challenging the main order of dismissal from service dated 14.12.2010 and order dated 18.10.2012 passed by this Court in Constitutional Petition No. D-3599/2010.

10. We are of the view that the earlier Petition filed by the Petitioner before this Court was dismissed on merits vide order dated 18.10.2012 and the said order was challenged before the Hon'ble Apex Court which was not pressed by the Petitioner. Therefore, the order of this Court had attained finality in the earlier round of litigation. The law precludes the Petitioner to institute a fresh Petition in respect of the same subject matter on the same cause of action.

11. We fully agree with the contention of the learned counsel for the Respondent No. 2 to 4 that the principle of 'Res judicata' squarely applies to the case of the Petitioner and the instant petition on the same cause of action is not maintainable.

12. So far as the next plea raised by the learned counsel for the Petitioner that the Petitioner sought directions from the Hon'ble Apex Court to approach any Court of law, as to whether any such legal remedy is available to him vide order dated 19.06.2014 is concerned, we are of the view that this plea of the Petitioner is not tenable in the eyes of law on the ground that the earlier petition of the Petitioner had already been dismissed on merits and as such, the Petitioner cannot approach this Court asserting the same cause of action, as the cause of action which the learned counsel for the Petitioner has shown in the instant Petition is identical with the prayer sought in Constitutional Petition No.D-3599/2010.

13. Secondly, we do not agree with the contention of the learned counsel for the Petitioner that the petition is maintainable in view of the Paragraph-50 of the judgment given in the case of Defence Housing Authority (supra). The relevant Paragraph-50 is reproduced hereunder:-

“50. The principles of law which can be deduced from the foregoing survey of the precedent case law can be summarized as under:-

- (i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.
- (ii) Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statutes but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of ‘Master and Servant’.
- (iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.
- (iv) Where the section of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.
- (v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.”

14. Reverting to the plea of the Petitioner that he was non-suited in the earlier round of litigation, for the reasons that the

Respondent No.2 having no statutory regulations, in this respect, it is noted that the Petitioner on 24.12.2010 filed the previous Constitutional Petition bearing No.D-3599 of 2010 before this Court and the same was not only dismissed on merits, but also on the issue of maintainability vide order dated 18.10.2012 so the question of non-suiting the Petitioner on mere ground of non-statutory regulations/maintainability is not tenable, thus the ground taken with respect to the Removal from Service Ordinance 2000 is of no help to the Petitioner in the present case, as this Court, in the earlier round of litigation, assumed the jurisdiction and decided the matter on both the issues referred to hereinabove.

15. We also note that the learned counsel for the Petitioner was fully aware of the case of Muhammad Dawood (supra) decided on 12.03.2007 by the Full Bench of this Court, relevant portion of which is reproduced hereunder:-

“29. From the above somewhat detailed discussion, we have arrived at the following conclusions:-

- (i) Irrespective of an employee of a State controlled corporation not being a civil servant the corporation themselves continue to remain amenable to the jurisdiction of this Court under Article 199 of the Constitution.
- (ii) The rule of master and servant is inapplicable to cases where there is violation of statutory provisions or of any other law.
- (iii) The expression “violation of law” would not be confined merely to violation of any specific provision of a statute but the expression “law”, as observed by Hamoodur Rahman, J (as his Lordship then was) in Government of West Pakistan v. Begum Agha Abdul Karim Sorish Kashmiri PLD 1969 SC. 14 at page-31 and

ought to be considered in its generic sense as connoting all that is treated as law in this country including even the judicial principles laid down from time to time by Superior Courts. It means according to the accepted norms of legal process and postulates strict performance of all the functions and duties laid down by law. It may, instance, includes the principles of natural justice, the public duty to act fairly and honestly and absence of malafides in fact and law. In all such cases the Court would be competent to grant relief of reinstatement.”

As mentioned in Paragraph-14, the initial Constitutional Petition was filed on 24.12.2010, at which instant the above case of Muhammad Dawood (supra), was already in the field whereupon the Constitutional Court assumed its jurisdiction and that was the best opportunity for the Petitioner to claim any benefit (if at all) available to him from the said judgment, claiming through the instant Petition any benefits from an earlier judgment is not possible as the earlier round of litigation exhausted its lis at that juncture which could not be re-agitated even if any new rulings have been passed afterword, we, therefore, do not find this contention tenable either.

16. In the light of above facts and circumstances of the case, the instant petition is dismissed with no order as to costs being not maintainable.

JUDGE

JUDGE