

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-4942 of 2017

Muhammad Ayub Alvi Petitioner

Versus

Admin Incharge Pakistan Cotton
Standard Institute & others Respondents

Date of hearing: 02.03.2018, 13.03.2018

Mr. Muhammad Qutb-uzzaman Advocate for the Petitioner.
Shaikh Liaquat Hussain, Assistant Attorney General along with
Akhtar Hussain Incharge Admin PCSI.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through the instant Petition,
the Petitioner has prayed for the following relief(s).

- i) To pass an order for restoration of service because petitioner has passed total period of his service now his retirement is near to come in the month of August 2018, whenever LPR is near 12.08.2017 whenever petitioner has no charges*
- ii) To set aside the order of dismissal of service dated 07.02.2016 further be pleased to allow all back benefits as well as salary.*

2. Brief facts of the case as per averments of the parties are that in pursuance of the advertisement dated 08.08.1985, the Petitioner applied for the post of "Cotton Trainee" in the project for one year training in Cotton Export Corporation of Pakistan (CEC) and the said Corporation vide letter dated 26.12.1985 selected him for the aforesaid post in the project and after successful completion of the training, the Petitioner was offered a temporary post of "Cotton Field Officer" in BPS-16 in the Cotton Export Corporation w.e.f. 01.1.1987 vide their letter dated 11.06.1987 and he joined the said post. The CEC vide its letter/order dated 30.09.1987, among others, placed services of the Petitioner at the disposal of the Pakistan Cotton Standard Institution (PCSI) with the stipulation that he would sever all the connections with CEC and among others, the Petitioner reported for duty with PCSI on 01.10.1987 as acknowledged by them in their letter dated 08.10.1987. Pakistan Cotton Standard Institute in their Memorandum dated 18.10.1988 stated that consequent upon termination of his services from the CEC of Pakistan (Pvt.) Ltd. Vide their letter dated 30.9.1987, appointed the Petitioner as Cotton Field Officer (CFO) in PCSI Project with effect from 01.10.1987 as a special case on temporary basis and until further orders; that the said project was wound up in the year 1994 and thereafter the President of Pakistan promulgated "The Cotton Standardization Ordinance 1994" and the Respondent-Institute/ the Respondent No. 03 continued to operate under the said Ordinance of 1994 and pursuant whereof Pakistan Cotton Standard Institute Service Rules, 1995 were framed and notified.

The Petitioner performed his duty with the Respondent-Institute from 1987 to 2015. However, as per Respondent-Institution a letter dated 03.09.2015 was circulated with the endorsement that the Secretary Government of Pakistan Ministry of Textile Industry (MINTEX) desired to obtain requisite information of Cotton Field Officer (BPS-16) regarding their Graduation / Postgraduate Degree for verification from concerned Universities and the Respondent No.4 also sought verification of Degrees / Certificates of Federal Government Employees vide letter dated 25.01.2016. In pursuance of the order of the Respondent No.4, the Petitioner was asked to submit his B.A Degree for verification from the concerned University. The Petitioner contends that he did not conceal any material fact from the CEC in response to their advertisement for appointment as a Cotton Trainee and the appointment letter does not support the contention of the Respondent No.4. However, the Respondent-Institute initiated disciplinary proceedings against the Petitioner by issuing him show cause notice dated 15.10.2015, which was replied by the Petitioner who denied the allegations. The Respondent-Institute issued another show cause notice dated 28.01.2016 to the Petitioner alleging that he was directed to submit his Graduation Degree, but he failed to produce the same. The Petitioner replied to the said show cause notice and again denied the allegations. Final show cause notice was then issued to the Petitioner for submission of his Graduation Degree. However, finally the Respondent-Institute vide the impugned Office Order dated 09.02.2016 dismissed the Petitioner from service under Section 6, 4 (1) (b) (V) of Pakistan Cotton Standard Institute

Service Rules 1995. (hereinafter called as Service Rules 1995). The Petitioner has further submitted that he was never served with the impugned order dated 09.2.2016 regarding his dismissal from the service. As such, he being aggrieved by and dissatisfied with the dismissal order of the Respondent-Institute filed the Constitution Petition No. D-1830 of 2016 before this Court, which was disposed of with consent of the parties as under:-

After arguing at some length, the Petition was disposed of by consent the parties in the following terms:-

1. "That the Assistant Director Incharge Admin would hand over the termination letter to all the petitioners today in Court and get their signatures on the letter.

2. That after receiving the termination letters the petitioners would be at liberty to challenge the same in accordance with law if so advised."

The Petitioner has further added that after receiving the dismissal order dated 09.02.2016, he filed the instant Petition on 22.07.2017.

3. Upon notice, the Respondent-Institute filed para-wise comments.

4. Mr. Muhammad Qutb-uzzaman, learned counsel for the Petitioner, has contended that the Petitioner was appointed as Cotton Trainee Officer and during interview he produced his qualification as under-graduate and informed the Selection Committee that he has failed in one paper in final graduation examination and produced Experience Certificate. Thereafter, he

was transferred to PCSI as confirmed Cotton Field Officer in BPS-16; that vide Office Memorandum dated 18.10.1988 he was appointed on the basis of the qualifications he possessed and he was terminated from the previous services of CEC and the Petitioner served in the Respondent-Institute for 30 years; that the proceedings, whatsoever, against the Petitioner were not sustainable after PCSI Service Rules, 1995 were framed and notified in the Gazette, which protects appointments made before framing and notifying the Service Rules of 1995; that there is no misconduct on the part of the Petitioner, who never produced any Graduation Certificate for his appointment. The Counsel further argued that it is an admitted position that the Petitioner filed C.P. No. D-1830 of 2016 before this Court and the Respondent-Institute consented that Assistant Director / Incharge Admin would hand over the termination letter to the Petitioner, which prima facie shows that he was not served with the termination order and he impugned the same when received. As such, the proceedings against him are not sustainable under Service Rules, 1995 and are nullity in the eyes of law. He continued that in terms of Article 4, 10-A and 25 of the Constitution of the Islamic Republic of Pakistan 1973, the Petitioner is entitled to fair trial and this Court has jurisdiction to interfere in the matters involving infringement of Citizens Fundamental Right by the State functionaries.

5. Shaikh Liaquat Hussain, learned Assistant Attorney General raised the question of maintainability of the instant

Petition; that the Authorities of the answering Respondents have neither acted malafidely nor violated any Provision of the law or prescribed the Rules in discharge of their duties; that copy of the Graduation Degree of the Petitioner was not found in the office record and the Petitioner was directed to provide the copy of his Graduation Degree for verifying it from relevant University but the Petitioner failed to comply with the above directives, therefore his salary was stopped and his service was put under suspension; that a proper show cause notice was issued to him and Enquiry Officer was appointed to probe in the matter as per Section 6.6 (1) of PCSI Service Rules 1995; that the enquiry report established misconduct on his part and recommended for imposition of the major penalty i.e. removal from service; that as per recommendation, contained in the enquiry report Major Penalty (Removal from Service) had been imposed. He lastly prayed that the instant Petition being not maintainable is liable to be dismissed.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. Firstly we would address the question of maintainability of the instant Petition under Article 199 of the Constitution. Admittedly, the Respondent-Institute is a Government owned and controlled Institution, as such, falls within the ambit of Article 199 (5) of the Constitution of the Islamic Republic of Pakistan, 1973 and this Court has jurisdiction to entertain the Constitution Petition.

8. Another important question involved in the present proceedings is whether Petitioner was qualified to hold the post of “Cotton Trainee” in the then Cotton Export Corporation of Pakistan (CEC) and thereafter as “Cotton Field Officer” in the Respondent-Institute?

9. Admittedly, the qualification for the post of Cotton Trainee was Second Class Graduation Degree, preferably in Agriculture and the Petitioner has admitted in his pleadings that at the time of his appointment he was not possessing Degree and the offer letter dated 20.12.1985 issued to the Petitioner explicitly shows that the post of Cotton Trainee was a contractual post in UNDP Project for a period of one year. Record reflects that the Petitioner was offered a job of Cotton Field Officer in Pakistan Cotton Standard Institute vide appointment letter dated 18.10.1988 with the following terms and conditions, meaning a fresh appointment after termination of his previous service in CEC:-

PAKISTAN COTTON STANDARDS INSTITUTE

No. CSI/Estt....3(50)/88-Admin 425

dated: Karachi the 18th Oct 1988.

**Mr. Muhammad Ayoub S/o Mehmood Hasan
C/o Itefaq Transport
Near Tariq Masjid
Tando Adam**

M E M O R A N D U M

Consequent upon termination of your services from the Cotton Export Corporation of Pakistan (Pvt) Ltd, vide their letter No. CEC/ESTT 9-2/87 dated 30.09.1987 you are appointed as Cotton Field Officer in PCSI Project with effect from 01.10.1987, as a special case, on temporary basis and until further orders.

ii) Your services will be governed by the PCCC (Staff Service) Rules, 1972, till the PCSI framed its own rules.

iii) You have been allowed, as a special case, as per decision of S.F.S.C of the PCCC dated 24.05.87, the scale of Rs. 1350-90-2270, with House Rent and Conveyance Allowance as in CEC from 01.10.87 to 31.08.88 on adhoc basis.

iv) As from 01.09.88, you have been allowed, as per decision of the S.F.S.C of 8.9.88, BPS-16 viz 1350-105-2925, with allowances as admissible under PCCC Rules, 1972, as may be modified from time to time.

v) Your pay has been fixed at Rs. 1560/- per month, after allowing one advance increment in grade BPS-16, with effect from 01.10.1987.

vi) No arrear/recovery in connection with payment of your salary, allowances, will be made prior to the period mentioned above, i.e 01.09.88.

vii) Your employment will be regulated, governed administered by and be subject to, among other things, the following further terms and conditions.

a) Your employment would be on probation of one year from 01.10.1987.

b) Upon completion of the above mentioned probationary period and provided your performance and conduct have been found satisfactory, you will be eligible for confirmation unless probationary, you will be eligible for confirmation unless probationary period is extended at the discretion of competent authority and in the even to confirmation of your employment, a three months' notice as pay for 3 months in lieu thereof will be payable by either side for termination of employment except that such a notice or pay will not be necessary if your services are terminated for misconduct.

After successful completion of probationary period and appointment on regular basis, you will be required to give an undertaking to serve the Institute at least for a period of 3 years from the date of appointment on regular basis.

d) Your functional responsibilities/ duties will be assigned to you by your superiors from time to time and you will carry out the same without reservation.

e) It is mutually agreed that during the course of employment you will abide by and follow all such terms and conditions of employment, rules and regulations of PCCC as will be made applicable to you from time to time in accordance with the decision of the competent authority.

f) It is the condition of your employment that any credential information that will come within your knowledge or possession by virtue of your being in the employment of the project, will be treated by you as restricted and confidential and shall not be divulged to any one without prior approval of the competent authority or unless you are generally or specifically allowed or authorized to do so.

g) Your employment will be subject to the continuation of the "Project" and your services may be terminated without any notice, if the "Project" is wound up or its Project activities are reduced, curtailed or terminated.

viii) During the course of your employment, you are liable to be posted/transferred to any Section/Department or to any place in Pakistan.

ix) If the above terms and conditions of employment are acceptable to you, you are requested to sign the duplicate copy of letter in token of your acceptance of the same.

Yours faithfully

(Manager F&A)

10. The Petitioner has placed on record the aforesaid Memorandum vide statement dated 19.09.2017 relating to his recruitment as Cotton Field Officer in Respondent-Institute Project. The subject post was offered to the Petitioner on termination of his service with Cotton Export Corporation of Pakistan (Pvt) Ltd. vide letter dated 30.09.1987, from which it is crystal clear that this is a fresh appointment of the Petitioner.

11. We are of the considered view that all appointments are to be made in a transparent manner, after inviting applications through a public notice, the eligibility criteria for the post is a prerequisite. But, in the present case, the qualification required for the post of Cotton Trainee was Second Class Graduate and at the relevant time of appointment of the Petitioner as Cotton Trainee, the Competent Authority has not cared to look into the qualification of the Petitioner and continued him in the job till the project was wound up and the service of the Petitioner was terminated and consequent upon his termination, he was offered a fresh appointment as Cotton Field Officer in the Respondent-Institute Project with effect from 01.10.1987 vide Office Memorandum dated 18.10.1988.

12. We are cognizant of the facts that the Respondent Institute in exercise of the powers conferred by Section 28 of the Cotton Standardization Ordinance, 1994 the Board framed and notified the Pakistan Cotton Standard Institute Service Rules, 1995. We have perused the rules, Section 3.38 provides as under:-

“3.38. Appointment of existing employees deemed to have been made under these rules. (1) All regular employees in service of the institute and holding different basis immediately before commencement of these rules shall be deemed to have been appointed to such posts under these rules.

Explanation: - In this sub-rule the terms “regular employees” means employees, other than employees on contract basis, holding posts in the institute for indefinite period or whose services were not likely to be terminated except on reduction or abolition of posts.”

13. From the perusal of aforesaid Rule, which explicitly show that the service of the Petitioner as Cotton Field Officer is protected under the Pakistan Cotton Standard Institute Service Rules, 1995.

14. The next question that remains to be answered is whether once the Petitioner lacked the qualification for the post of Cotton Field Officer, can he continue to remain in service?

15. We have perused the appointment letter of the Petitioner which ex-facie shows that the Respondent-Institute had not verified the credentials of the Petitioner at the relevant time. The Service Rules, 1995 Section B Method of Appointment, Qualification, Experience and other conditions relating to posts for the cadre i.e., the post of Cotton Field Officer BS-16, the maximum age is 25 years and minimum qualification is graduate in Agriculture, a postgraduate Degree in Agriculture however would be given preference.

16. Undeniably, the Respondent-Institute initiated disciplinary proceedings against the Petitioner on 15.10.2015 i.e. after a lapse

of more than 29 years of service, on the premise that he failed to submit the Degree of his Graduation for verification from the University, which as per Rule 2.1(n) of Service Rules of 1995, constitute misconduct on the part of the Petitioner, therefore his services were terminated vide office order dated 09.02.2016. It is worth to note that the above action has been taken by the Respondent-Institute against the Petitioner when he was at the verge of his retirement from the service i.e. before six months of the date of his superannuation. The primordial question arises whether at the time of appointment of the Petitioner in the year 1988 there was any requirement of Graduation for the post of Cotton Field Officer? The official of the Respondent-Institute, present in Court, made a categorical statement that there were no Rules and Regulations governing the appointment of Cotton Field Officer at the time of appointment of the Petitioner in the year 1988. However, he stated that in the year 1995 the Service Rules were framed by the Board of Respondent-Institute. He also admitted that they could not verify the testimonials/credentials of the Petitioner when he was initially appointed as Cotton Trainee and thereafter Cotton Field Officer. He admitted that the then Cotton Export Corporation advertised the post of Cotton Trainee and second class Graduation Degree was required for the said post and the Petitioner did not meet the criteria for the said post; but he was continued to remain on the post till 2015, when they initiated action against him.

17. In view of above statement of the Respondent-Institute, the question arises whether this is a case of fake Degree or of no Degree. Prima facie the present case revolves around having no Degree prescribed for the post of CFO. But, again it is a question of public importance that the Petitioner has served the Respondent-Institute for almost 31 years only he was at the verge of retirement i.e. in the month of August, 2018. The question of no degree was raised.

18. Much emphasis has been laid by the learned counsel for the Respondent-Institution that Petitioner has committed misconduct within the meaning of Rule 2.1(n) of Service Regulation 1995, an excerpt of the said rule is reproduced herein below:-

Misconduct

“2.1(n) Misconduct means conduct prejudicial to good order or service discipline or contrary to the provisions of these rules relating to conduct or unbecoming of an officer or a gentleman and includes any act on the part of an employee to bring or attempt to bring political or other outside influence directly or indirectly to bear on the institute in respect of any matter relating to the appointment, promotion, transfer, punishment or any other condition of service of an employee.”

19. We are of the view that the Respondent-Institution cannot blow hot and cold in the same breath to hide their negligence in appointment of the Petitioner without checking his testimonial/credentials and had allowed him to continue on his job even after framing the Service Rules in the year 1995; no doubt the Petitioner was appointed after going through a transparent procedure particularly when during his entire service nothing

adverse in terms of character and/or inefficiency in the subject field was observed by the Competent Authority of the Respondent-Institute. The Petitioner served the Respondent-Institute for almost 31 years which is more than sufficient time. Therefore the action of the Respondent-Institute is unjustified and against principles of natural justice and equity, however we may observe here that this all has happened due to gross negligence of the Respondent-Institute for which Petitioner cannot be blamed to be sole responsible for his appointment on the subject post without qualification, which is against the law.

20. Looking through the above perspective and keeping in view the factual position of the case, we hereby infer that the Petitioner ought to have been removed from service by the Respondent-Institute in time but he was allowed to continue on his job till he reaches the age of superannuation which is 8.8.2018, in Service Rules, 1995 "Misconduct" is defined. Rule 6.4 contemplates minor and major penalties. Rule 6.2 empowers authorized officer to direct enquiry against the Respondent-Institute through an enquiry officer or enquiry committee or if he is satisfied, may order that there would be no enquiry in the interest of security of the country. If it is decided that there should be enquiry either by enquiry officer or enquiry committee then procedure laid down in Rule 6.6 is to be followed and the requirement enumerated therein are that charge shall be framed and the employee proceeded against would be allowed to reply to the charge after which evidence is to be recorded by examining

witnesses in support of the charge allowing opportunity to the affected employee to cross examine the witness he can also produce witnesses in his defence. In the present case no inquiry into the allegations leveled by the Respondent-Institution against the Petitioner was conducted as provided under the law and the required procedure, which includes charge sheet, was also not followed, so as, to ensure transparency in arriving at a decision of imposing major penalty of removal from service upon the Petitioner. Hence, the action is not sustainable under the law. The Honorable Supreme Court judgment in the case of Saad Salam Ansari Vs. Chief Justice High Court of Sindh through Registrar reported in (2007 SCMR 1726) and Muhammad Naeem Akhtar Vs. Managing Director Water & sanitation Authority, LDA, Lahore reported in (2017 SCMR 357) support our view.

21. The issue raised in the present proceedings by the learned DAG is that the Petitioner was under-graduate at the time of appointment; therefore, he relies on the Rule 6.6 of Service Rules, 1995 for removal of the Petitioner from service, which contention is not sustainable in law as discussed in preceding paragraph. We have noticed that on the basis of some admitted/undisputed facts of the case, a party is bound by its pleadings and conduct. Hence, at any later stage, it could not turn around to wriggle out from the consequence of such admission. We are of the considered view that if the department is directly affected by wrongful act of an employee, fails to challenge the said act for considerable length of time and thereafter to claim locus standi of the act of an employee, such negligent action of the department falls within the ambit of

principle of estoppel. Our view is supported by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Combined Investment Pvt. Ltd Vs. Wali Bhai and others (PLD 2016 SC 730) and Ghulam Abbas & others Vs. Muhammad Shafi & others (2016 SCMR 1403)

22. Reverting to the second plea taken by the learned DAG that Petitioner has admitted the fact that he was not a Graduate is hardly a ground to dispense with legal and procedural requirements to be considered by the Competent Authority. Record reflects that the Petitioner has denied the contents in para No.2 of the rejoinder to that effect, whereas Respondent-Institute has emphasized that Petitioner did not qualify for the post of Cotton Field Officer.

23. In the given circumstances of the case, we cannot determine the veracity of these claims, while exercising Constitutional Jurisdiction, leaving it for the competent forum to probe into the claim and counterclaim of the parties. Condemning the Petitioner, alone without providing him an opportunity to be heard in the manner as provided under the law and such an approach of the Respondent-Institute would promote miscarriage of justice.

24. In view of the above facts and circumstances of the case discussed above, the instant Constitution Petition is allowed, the impugned order dated 9.2.2016 is set aside, the Competent Authority of Pakistan Cotton Standard Institute is directed to

reinstate the Petitioner in service forthwith to his original position, and conduct an impartial inquiry into the allegations leveled against the Petitioner, including the delinquent officials of the Respondent-Institute, by giving them an opportunity of hearing as per law. Such inquiry must be completed within a period of one month from the date of this judgment. Back benefits would depend upon results of fresh notice/proceedings.

25. The instant Constitution Petition stands disposed of in the above terms along with the listed application(s).

Karachi
Dated:

JUDGE

JUDGE