

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-3337 of 2011

Present: Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Ghulam Murtaza.....Petitioner

Versus

Federation of Pakistan,
Through Secretary, Ministry of Commerce & others.....Respondents

Date of hearing 26.04.2017

Mr. Asif Ali Pirzada, Advocate for the Petitioner.
Mr. Furqan Ali, Advocate for Respondent No. 3.
Mr. Muhammad Aslam Butt, D.A.G.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Petitioner has impugned order/letter bearing No. 1(2)/2011/NICL-Ins dated 6.10.2011, whereby the Respondent No.1 revoked the posting/deputation of the Petitioner as General Manager in National Insurance Company Limited (NICL)/Respondent No.3 vide order dated 17.05.2011 on the ground that Petitioner has obtained said posting/deputation order from the Ministry of Commerce, Government of Pakistan through fraudulent and deceitful means by submitting fake and forged documents regarding his employment status in Alpha Insurance Company Limited (AICL) as confirmed employee. Besides, Petitioner also furnished a forged and tampered Letter of Appointment issued by said Alpha Insurance Company Limited.

2. Gist of the case is that Petitioner joined Alpha Insurance Company Limited (subsidiary of State Life Insurance Corporation of Pakistan) on 18.6.2008 as Marketing General Manager. Petitioner claims that he had been working in Alpha Insurance Company as confirmed employee. Thereafter, he was appointed as General Manager on deputation basis for 1 (one year) in Overseas Pakistani Foundation, Ministry of Islamabad on the requisition of competent authority vide letter dated 15.6.2010 addressed by Director (A&P) OPF to the Chairman, State Life Insurance Corporation, Karachi (SLIC). Petitioner has further added that on his appointment as General Manager, Overseas Pakistani Foundation he was relieved from Alpha Insurance Company. The Petitioner further asserted that Overseas Pakistani Foundation vide letter dated 22.4.2011 repatriated petitioner to his parent department that is Alpha Insurance Company with immediate effect. On 23.5.2011 the Respondent No.3, vide office Order No.96, which was issued in compliance to Ministry of Commerce Letter No. 1(2)/2011/NICL-Ins dated 17.05.2011, allowed the petitioner to be posted as General Manager (operations) on deputation basis. Finally, without any show cause notice and opportunity of hearing to the Petitioner the posting/deputation order dated 17.05.2011 was revoked by Respondent No. 1 vide Letter dated 6.10.2011 on the ground that Petitioner managed his posting/ deputation order through fraudulent/deceitful means by submitting forged and fake documents regarding his previous employment status by mentioning that he was a permanent/regular employee of Alpha Insurance Company Limited. Besides, Petitioner also furnished a forged and tampered letter of Appointment allegedly issued by Alpha Insurance Company Limited. Consequently, criminal case

bearing F. I. R. No. 01/2013 under Section 420, 468, 471/34 PPC was lodged against the Petitioner by Federal Investigation Agency (FIA). Petitioner has produced copy of judgment dated 9.7.2015 whereby he was acquitted by the learned Trial Court.

3. Upon notice, Comments were filed on behalf of Respondent No.3 (NICL) denying the allegations leveled by the Petitioner.

4. Mr. Asif Ali Pirzada, learned counsel for the Petitioner has contended that the impugned Letter dated 6.10.2011 is illegal because, the same was issued without holding formal enquiry and affording opportunity of hearing to the Petitioner. The learned counsel next contended that the allegations leveled in the impugned Letter dated 6.10.2011 are not sustainable in the eyes of law as the Petitioner has not been treated in accordance with Section 24-A of General Clauses Act. The learned counsel next contended that Alpha Insurance Company Limited is a subsidiary of State Life Insurance Corporation and Respondent No.1 sent Petitioner on deputation with NICL (Respondent No.3). Therefore, the said deputation of the Petitioner cannot be revoked unilaterally without granting him opportunity of hearing. The learned counsel further contended that Petitioner has been acquitted vide judgment dated 06.10.2011 passed by learned Trial Court in FIR lodged by FIA. Learned counsel concluded by praying that impugned Letter dated 6.10.2011 may be recalled.

5. Mr. Muhammad Aslam Butt, learned D.A.G. representing Respondent No.1 has contended that Petitioner was posted on deputation basis in NICL vide Order dated 17.5.2011 issued by the

Respondent No. 1. Per learned DAG said order of posting was obtained by the Petitioner through deceitful means by submitting fabricated documents. Learned DAG further contended that the basic appointment of Petitioner in Alpha Insurance Company Limited is doubtful. Therefore, the competent authority took serious notice of fraud, mischief and forgery committed by the Petitioner and rightly cancelled the Posting Order of the Petitioner by revoking Letter dated 17.5.2011 issued by the Ministry of Commerce, Government of Pakistan. Learned DAG further contended that Petitioner does not deserve leniency as he has approached this Court with unclean hands. Learned DAG further contended that culmination of criminal proceedings into acquittal of the Petitioner has no bearing on the present case. Learned DAG concluded by arguing that Alpha Insurance Company Limited is a public limited company and has not been made party in the instant Petition deliberately because, Petitioner does not want the true facts to come on record.

6. Mr. Furqan Ali, learned counsel for Respondent No. 3 has adopted the arguments of learned DAG and further argued that the Petitioner was posted on deputation which has been cancelled by Respondent No.1 vide Order dated 6.10.2011 on the ground that Petitioner by misrepresenting the facts has committed fraud and forgery, therefore, he has no right to call in question the letter of Revocation dated 17.5.2011 issued by Respondent No.1. Per learned counsel it is the prerogative of the Respondent No.1 to cancel the deputation of Petitioner under the law. Learned counsel further argued that even otherwise Petitioner has no vested right to remain posted on deputation with NICL (Respondent No. 3).

7. In exercising right of rebuttal, Mr. Asif Ali Pirzada, learned counsel for the Petitioner has referred to letter dated 15.6.2010 issued by State Life Corporation of Pakistan (available at page 25 of the file) and argued that the service of Petitioner was requisitioned by Overseas Pakistani Foundation on deputation which was duly approved by the Respondent No.1. He further contended that Alpha Insurance Company informed Overseas Pakistani Foundation regarding status of the Petitioner vide letter dated 27.10.2010 therefore, allegations leveled by the Respondent No.1 in the impugned Letter dated 6.10.2011 are baseless.

8. We have considered the submissions put forth by learned counsel of the parties and perused material available on record.

9. The perusal of record clearly depicts that Respondent No.1 has revoked the posting order of the Petitioner as General Manager in NICL/Respondent No. 3 vide Letter dated 17.5.2011 on the basis of allegations that Petitioner managed to get posting order from the Respondent No.1 through fraudulent and deceitful means by submitting fake and forged documents regarding employment status.

10. We are of the view that even otherwise Petitioner has failed to make out his case on merits as the documents submitted by the Petitioner with the memo of petition are denied by the Respondents with the contention that Petitioner has managed posting in Respondent No.3 by fraudulent and deceitful means. In our view, the Petitioner has no vested right to claim particular post at particular place because, requisition of services of a government employee on deputation is the prerogative of competent authority.

Reliance is placed on the case of Shafiq-ur-Rehman Afridi vs. CDA (2010 SCMR 378). The proposition of law is settled that fraud vitiates the most solemn of proceedings and a superstructure built on a foundation of fraud must fall. Guidance is also sought from the case of Al-Mezan Investment Management Company Limited and others vs. WAPDA FIRST SUKUK COMPANY LIMITED and 2 others (PLD 2017 SC 1).

11. Learned Counsel for the petitioner emphasized during course of hearing that all the documents of the petitioner regarding his employment with Alpha Insurance Company Limited are genuine and hence the cancellation of his deputation by Respondent No.1 is illegal. However said assertion has been refuted by Respondent No.1 on the ground that the furnished documents of the petitioner are false and forged. We cannot determine the veracity of these documents.

12. Admittedly as it involves the disputed questions of facts which cannot be adjudicated by this Court while exercising constitutional jurisdiction. The issue raised in the instant Petition is of deputation period. In this regard it is well settled law that an employee posted on deputation basis has no vested right to remain there for any particular period and he can be repatriated to his parent department at any time. Reliance is placed upon the case of contempt proceedings against Chief Secretary and others (2013 SCMR 1752) wherein the Hon'ble Supreme Court has held that a deputationist does not have any vested right to remain on the post for ever or for a stipulated period. He can be repatriated to the parent department at any time.

13. In view of above discussion no case for interference of this court is made out hence, the instant petition is dismissed.

14. Foregoing are the reasons for our short Order dated 26.4.2017 dismissing the instant petition along with listed application(s).

JUDGE

JUDGE