

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-5048 of 2013

Muhammad Sabir Raza Petitioner

Versus

The Hon'ble High Court of Sindh Karachi
Through Registrar and another Respondents

Date of hearing: 18.04.2018

Mr. Syed Abrar Ahmed Bukhari, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON-J. Through the instant petition, the Petitioner has sought implementation of the Order dated 26.06.2008 passed by the learned Single Judge of this court on departmental Appeal, wherein the order dated 19.04.2004, whereby major penalty of compulsorily retirement from service awarded to the Petitioner by Respondent No.02 (learned District & Sessions Judge (East) Karachi) was set aside and the matter was referred to the Respondent No.02 with the directions to initiate fresh enquiry proceedings against the Petitioner under Removal from Service (Special Powers) Sindh Ordinance, 2000, by providing with an

opportunity of hearing to the Petitioner, within a period of two months.

2. Brief facts of the case as contained in the memo of Petition are that Petitioner was appointed as Junior Clerk in District and Sessions Court, Karachi East vide order dated 12.12.1977 and subsequently promoted to the post of COC/Reader. Petitioner has submitted that he enhanced his qualification and applied for the post of Civil Judge and Judicial Magistrate, through proper channel. Petitioner has submitted that he was appointed as Judicial Magistrate vide Notification dated 22.4.1992 and was relieved from the post of COC/Reader of his judicial service. Petitioner has submitted that during the tenure of his judicial service, he was removed from service by the order of the Hon'ble Chief Justice (Competent Authority) and such order was communicated to him on 03.07.1998. Thereafter he moved the learned District Judge praying that he may be allowed to join the post of Reader, against which his lien had been retained. The learned District Judge by letter dated 01.09.1998 sought guidance from this Court on the question but was informed vide letter dated 18.5.1999 that the Hon'ble Chief Justice had ordered that the District Judge was the appointing authority (in respect of Readers) and he should decide the matter himself according to rules. Thereafter petitioner was taken on duty vide Office Order dated 20.05.1999 passed by the learned District Judge. Petitioner has submitted that during his service as Reader/COC one person namely Syed Tarique Shah made complaint on 15.1.2004 and another complaint dated 16.1.2004 against him for demand of

illegal gratification of Rs.10,000/-. Petitioner has submitted that competent-authority ordered for initiating an inquiry against the petitioner but later on he was found innocent. Petitioner has submitted that the learned Sessions Judge, East was not convinced with the inquiry report and initiated fresh inquiry against the petitioner and later on petitioner was found guilty and the learned District & Sessions Judge Karachi East (Competent Authority) imposed major penalty of compulsorily retirement from service vide order dated 19.4.2004 which reads as under:-

“6. Keeping in view the nature of the charge I impose major penalty of compulsorily retirement from the service with immediate effect as provided under Section 4 (b) (ii) of the Sindh Civil Servants (Efficiency & Discipline) Rules 1973.”

Petitioner being aggrieved and dissatisfied with the impugned order dated 19.4.2004 filed Departmental Appeal before the learned Single Judge of this Court (Departmental Authority) and upon hearing the Petitioner, the impugned order dated 19.4.2004 was set-aside and the matter was remanded to the learned District & Sessions Judge, Karachi East for initiating fresh enquiry vide order dated 26.6.2008 passed by the learned Single Judge of this Court which reads as under:-

“In view of the foregoing reasons and the principle laid down in the above referred judgment by the apex court, the impugned order of compulsory retirement from service of appellant Muhammad Sabir is set aside. The matter is referred to the learned District & Sessions Judge, Karachi (East) to initiate fresh enquiry proceedings against the appellant under the Removal from Service (Special Powers) Sindh Ordinance (IX of 2000) with an opportunity to the appellant to plead his case and dispose of the same within a period of two months from the date of this order. Order be communicated to the appellant within a week time.”

Petitioner has submitted that the learned Single Judge of this Court (Departmental Authority) vide order dated 02.09.2009 passed the following order:-

“Hence in these circumstances I rectify my finding made on 26.6.2008 to initiate enquiry under Removal from Service (Special Powers) Sindh Ordinance IX of 2000. Learned Judge may initiate fresh enquiry against the Ex. COC Mr. Muhammad Sabir as per law prevailing at that particular time when complaint was made against him on 15.1.2004 with due notice to appellant and provide him an opportunity to plead the case because from the perusal of record it appears that certain irregularities have been committed while passing the order of compulsory retirement of Mr. Muhammad Sabir Ex. COC on 20.4.2004, which needs reconsideration.”

Petitioner has submitted that upon fresh enquiry, as per order dated 26.6.2008 he was found innocent by the enquiry officer vide report dated 26.5.2011 which is as follows:-

“I am of humble view when there was no direct evidence to show that Ex-COC had accepted any illegal gratification as alleged, the charge against the accused/Ex-COC was not proved, prima facie, the case of the complainant is of no evidence. Report is delayed due to rush of work and disposal of old matters in compliance of National Judicial Policy 2009. The same is hereby submitted for favour and further order.”

Petitioner has submitted that the competent-authority did not reinstate the petitioner till he reached at the age of sixty years (compulsorily retired). Petitioner being aggrieved and dissatisfied with non-implementation of the order dated 26.6.2008 passed by the learned Single Judge of this Court has approached this Court on 20.11.2013 for grant of aforementioned relief.

3. At the very outset, we asked from the learned counsel for the Petitioner regarding maintainability of instant petition on the premise that this Court is not executing Court of the Departmental Authority of lower judiciary as well as pendency of his departmental Appeal, if any, before Sindh Subordinate Judicial Service Tribunal on the issue. In reply to the query raised by this Court Syed Abrar Ahmed Bukhari, learned counsel for the Petitioner, has contended that the Respondent-Authority has failed to implement reinstatement order dated 26.2.2008 passed by the learned Single Judge of this Court on departmental appeal, which is not being implemented yet for no fault on the part of petitioner; that this is a hardship case since the petitioner had reached the age of 60 years and till date no relief has been given to him due to the lethargic attitude of the Respondents; that the petitioner has been made a victim of the circumstances and departmental proceedings have been initiated for no fault on his part; that this Court has jurisdiction to direct the learned Tribunal or the competent authority/Respondents to decide the matter of the petitioner in accordance with the law within one month or in absence of that this Court may pass an appropriate order for implementation of the order dated 26.2.2008 passed by the learned Single Judge of this Court.

4. We have heard the learned counsel for the Petitioner and perused the material available on record.

5. The primordial question before this Court is whether this Court has the jurisdiction to entertain Constitutional Petition of the

Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

6. We have noticed that the petitioner was selected for appointment as Judicial Magistrate, which is a regular appointment as it is agitated by the Respondents in the comments that upon confirmation of the post the lien of a civil servant is terminated, however the petitioner was retained in service of Sub-ordinate Judiciary as Reader by the order dated 20.5.1999 passed by the learned District Judge Karachi East and petitioner continued to serve in the said district till he was compulsorily retired from his service vide order dated 19.4.2004 passed by the learned District & Sessions Judge, Karachi East.

7. Perusal of the record reveals that the Respondents have taken the specific plea through their comments that the service of the Petitioner should have been discontinued w.e.f. 29.5.2002 but the Petitioner continued discharging his duties as Reader till 19.4.2004 when he was compulsorily retired. Be that as it may, during the course of the arguments we were informed that Petitioner has already filed a Service Appeal No.15 of 1998 (Muhammad Sabir vs. High Court of Sindh & another) before the learned Sindh Judiciary Service Tribunal, High Court of Sindh at Karachi against the order dated 03.7.1998 whereby his service as Judicial Magistrate was dispensed with. Learned counsel for the Petitioner has conceded the position that the matter is still pending before the aforesaid Tribunal but no further hearing has taken place.

8. We have perused the order passed by the Hon'ble Mr. Justice Sabihuddin Ahmed (Appellate Authority/Senior Pusine Judge as he then was) which reads as under:-

“7. Nevertheless, I am of the view that notwithstanding the terms of the letter dated 28.8.1998 from the then Additional Registrar (Administration) addressed to the District Judge East, the question whether Mr. Sabir actually retained his lien against the post of reader on the date of his removal from service needs to be examined afresh. In the above context a distinction between the provisions of the Sindh Judicial Services Rules quoted above and the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules 1975 may be kept in view. Rule 3 of the Civil Servants Rules appears to be similar to Rule 9 of the Judicial Services Rules in the sense that the initial probationary period of one year is automatically extended (in the absence of a specific order) for another one year. Thereafter however, the appointment is deemed to continue until further orders and the civil servant can no longer be treated as a probationer. Under these Rules however, such a civil servant is not deemed to have been automatically confirmed as confirmation is dealt with by Rules 4 to 8 and can only be made against a permanent post on which no other civil servant hold the lien. The concept of automatic confirmation therefore, does not exist in the Civil Servant Rules. On the other hand the explanation 2 to Rule 9 of the Judicial Services Rules expressly stipulates that after completion of four years' service a judicial officer is deemed to have been confirmed. It might therefore, be possible to argue that Mr. Sabir was confirmed as a Judicial Magistrate in

1996 and therefore did not retain a lien against the post of the reader in the District Court.”

9. We are cognizant of the fact the learned Single Judge of this Court upon departmental appeal of the Petitioner has set aside the order dated 19.4.2004 passed by the learned District & Sessions Judge, Karachi East and the matter was remanded to the learned District & Sessions Judge, Karachi East to initiate fresh proceedings against the petitioner under Removal from Service (Special Powers) Sindh Ordinance, 2000. Petitioner's Service Appeal No.15 of 1998 (Muhammad Sabir vs. High Court of Sindh & another) is subjudice before the learned Sindh Judiciary Service Tribunal, High Court of Sindh at Karachi against the order dated 03.7.1998, therefore, we refrain ourselves to dilate upon the merits of the case.

10. In view of the above legal position, so far as the implementation of the orders passed by the learned Single Judge (Departmental Authority) are concerned, the competent forum is available under the law for redressal of the grievance of the Petitioner.

11. In light of the above facts and circumstances of the case, we are not inclined to issue writ under Article-199 of the Constitution of the Islamic Republic of Pakistan, 1973.

12. The Petitioner may avail his remedy for implementation of the order dated 26.2.2008 passed by learned Single Judge of this Court (Departmental Authority) before the competent forum as provided under the law.

13. Foregoing are the reasons for our short order dated 18.4.2018, whereby we have dismissed the instant petition.

Karachi
Dated:

JUDGE

JUDGE

Nadir P/A