

ORDER SHEET

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Suit No.2400 of 2017**

DATE

ORDER WITH SIGNATURE OF JUDGE

**Plaintiff:** **Dr. Nadeem Khalid Khan,  
Through Mr. Muhammad Ali Lakhani,  
Advocate.**

**Defendant:** **Sindh Employees Society Security  
Institution Through  
Mr. Ayan M. Memon, Advocate.**

For hearing of CMA No.15900/2017  
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**Dates of hearing:** **28.03.2018, 08.05.2018, 22.05.2018 &  
30.05.2018.**

**Date of Order:** **17.07.2018**

**ORDER**

**Muhammad Junaid Ghaffar J.** This is an application under Order 39 Rule 1 & 2 C.P.C filed along with instant Suit seeking suspension of Office Order dated 14.11.2017, whereby, the plaintiff has been suspended from service as being without lawful authority and jurisdiction.

2. Precisely, the facts as stated are that the Plaintiff is working with Defendant as Chief Medical Officer and has been suspended through impugned order, which has been challenged through this Suit for Declaration and Permanent Injunction. The Service Regulations of defendant are non-statutory, and there appears to be no dispute to that effect; whereas, the plaintiff is not a Civil Servant, hence, the Suit is the only remedy and is competent (subject to usual exceptions which are not relevant for the present purposes) in view of the dicta

laid down in the case reported as **Ghulam Hafeez v Government of Sindh** **[1991 PLC (C.S.) 530]**.

Learned Counsel for the Plaintiff has contended that Defendant is a statutory body constituted under Section 3 of the Employees Social Security Ordinance, 1965 (**1965 Ordinance**) and since its inception has continued to be a Federally Governed Institution; however, after passing of 18<sup>th</sup> Amendment and classification of labour as a provincial subject, the Province of Sindh has promulgated Sindh Employees Social Security Act 2016 (**2016 Act**) and according to the learned Counsel, till date no Regulations particularly those relating to the Services of its employees have been framed by the Defendant under the 2016 Act, and therefore, Plaintiff's service is to be governed by the Sindh Employees Social Security Institution (Revised) Service Regulations of 2006 (**2006 Regulations**) framed under the 1965 Ordinance, and according to the learned Counsel, 2006 Regulations do not provide or confer any powers on the competent authority to enforce any suspension of its employees. Per learned Counsel the powers, which have not been conferred specifically, cannot be exercised or drawn into effect and therefore, the order impugned is without lawful authority and jurisdiction. Learned Counsel has read out Sections 83 & 84 of the 2016 Act and has contended that the regulations in field do not confer any powers of suspension, hence the impugned order cannot be sustained. He has further contended that the Removal of Service (Special Powers) Sindh Ordinance, 2000, ("**RSO 2000**") stands repealed, and therefore, the powers so conferred under the said Ordinance cannot be exercised as well. According to the learned Counsel the stance of Defendant that presently the Plaintiff's service is to be governed by the Efficiency and Discipline Rules, 1973, as applicable to the Civil Servants is also misconceived, as firstly the

Plaintiff is not a Civil Servant; and secondly it is the 2006 Regulations, which will govern the relationship and the same does not confer powers of suspension. According to the learned Counsel, the Defendant is bent upon penalizing the Plaintiff for his honest and dedicated work and his refusal to obey the unlawful orders and the Show Cause Notice issued subsequently states that even the enquiry has been dispensed with; hence the action of the Defendant is tainted with malafides with a predetermined state of mind. In support he has relied upon the cases reported as ***Federation of Pakistan and another vs. Saeed Ahmed Khan and others (2015 CLC 1797)***, ***Ghulam Hafeez vs. Government of Sindh through Secretary, Labour, Sindh and another (1991 PLC (C.S.) 530.)***

3. On the other hand, learned Counsel for the Defendant has contended that the impugned Order is within the mandate of the competent authority as presently after repeal of the 1965 Ordinance, the Defendant Organization is being governed under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 pursuant to Clarifications dated 11.10.2017 & 25.10.2017 issued by the Law Department, Government of Sindh, and therefore, the objection raised on behalf of the Plaintiff is misconceived. He has further contended that in terms of Section 11 of the 2006 Regulations, it has been provided that services of a confirmed employee shall be liable for termination in accordance with the provisions of **RSO 2000** or any other law as may be adopted by the Institution and after repealing of the Ordinance 2000 as per directives of Government of Sindh, the E & D Rules 1973 have been adopted and are applicable to the Plaintiff's case. In the alternative, learned Counsel has further contended that such powers of suspension are even conferred under Section 84 of the 2016 Act under Clauses (ix) & (x), and therefore,

no exception can be drawn to the impugned order. He has further contended that notwithstanding the above submissions in terms of Section 16 of the General Clauses Act 1897 (as well as Section 15 of the West Pakistan General Clauses Act 1956) an authority who has been conferred with the powers of appointment, also enjoys the Powers of suspension, and therefore, the impugned order has been passed within four corners of law and cannot be objected to. Per learned Counsel, the Plaintiff is involved in misconduct and has accordingly been issued as Show Cause Notice to which a reply is to be furnished whereafter the proceeding will culminate in accordance with law, hence, listed application be dismissed. In support he has relied upon the cases reported as ***Pakistan International Airlines Corporation through Chairman and others vs. Shahzad Farooq Malik and another*** (2004 SCMR 158), ***Muhammad Arshad Rafique vs. Government of Pakistan through Secretary and 4 others*** (2016 PLC (C.S.) 952), ***Mian Muhammad Hayat vs. Province of West Pakistan*** (PLD 1964 Supreme Court 321), ***Federation of Pakistan through Secretary Establishment Division vs. Shahid Hayat and another*** (2010 SCMR 169), ***Abdul Hameed vs. Province of K.P.K through Chief Secretary, Peshawar and 3 others*** (2016 PLC (C.S.) 424), ***Dr. Hassan Bux Rind and 11 others vs. Province of Sindh through Secretary Sindh Secretariat, Karachi and 3 others*** (2011 PLC (C.S.) 228), ***Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-177 Ex-DSR Muhammad Nazir*** (1998 SCMR 1081).

4. I have heard both the learned Counsel and perused the record. The facts have been briefly stated hereinabove and it appears that for the present purposes the only issue, which is to be decided

by this Court is to the effect that whether the competent authority can pass the impugned Order dated 14.11.2017, whereby, the Plaintiff has been suspended from service. As stated, the Defendant Organization was initially Federally Governed under the 1965 Ordinance, which now stands repealed after passing of the 18<sup>th</sup> Amendment and it is the 2016 Act, which governs the functioning of Defendant including the relationship with its employees. Section 86 of the 2016 Act provides that the provisions of 1965 Ordinance relating to the Province of Sindh are hereby repealed and Subsection (2) states that notwithstanding the repeal of the provisions under Subsection (1), the Rules and Regulations framed and notifications and orders issued under the repealed Ordinance shall continue to remain in force until altered, repealed or amended by the competent authority. It is not in dispute that under the repealed 1965 Ordinance, 2006 Regulations were issued and Section 11 relates to termination of services after confirmation and reads as under:-

“11. TERMINATION OF SERVICE AFTER CONFIRMATION:

The service of a confirmed employee shall be liable for termination in accordance with the provisions of the Removal from Service (Special Powers) Sindh Ordinance, 2000 or any other law as may be adopted by the Institution.”

5. Perusal of the aforesaid Regulation reflects that services of a confirmed employee shall be liable for termination in accordance with the provisions of **RSO 2000**, or any other law as may be adopted by the Institution. Again it is not in dispute that **RSO 2000** stands repealed through the Sindh Removal from Service (Special Powers) Repeal Act 2017 passed by the Provincial Assembly on 10.08.2017. Admittedly, the suspension of the Plaintiff took effect on 14.11.2017 i.e. after the repeal of **RSO 2000**, hence is not a case of any pending proceedings, which could still be governed by **RSO 2000**. In nutshell as provided under Regulation 11 termination of

service (in absence of **RSO, 2000**) is to be governed by any other law as may be adopted by the Institution. The precise argument of the learned Counsel for the Plaintiff is firstly to the effect that nowhere in 2006 Regulations as well as in the 2016 Act, any powers have been conferred upon the competent authority in respect of suspension; and secondly without prejudice, Regulation 11 could only come into force when an employee is being terminated; whereas, the present proceedings of suspension are not always relatable to termination; hence, the impugned order cannot be sustained.

It further appears that after the repeal of RSO 2000, the Government of Sindh through its Law Department has issued two letters to all concerned dated 11.10.2017 & 25.10.2017 and for the present purposes, the Letter dated 25.10.2017 is relevant and reads as under:

“NO.S.LEGIS:2(18)/2010/380  
GOVERNMENT OF SINDH  
LAW DEPARTMENT  
Karachi dated the 25<sup>th</sup> October, 2017

To,

The Administrative Secretaries (AII), Govt. of Sindh.

SUBJECT:- REMOVAL FROM SERVICE (SPECIAL Powers) REPEAL ACT, 2017.

I am directed to refer to this Department's letter No.S.Legis:2(18)/2010/359 dated 11<sup>th</sup> October, 2017 on the subject noted above and to state that there is an inadvertent error in the advice in the concluding Para of the letter referred above, which is rectified and may now be read as under:-

“In view of the above, all proceeding under the repealed Ordinance pending immediately before the commencement of the Repeal Act of 2017 shall continue under the repealed Ordinance. However, the fresh proceedings of civil servants shall now be initiated under the Sindh Civil Servants Act and Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 **and the persons in corporation service shall be govern under the law applicable to them and rules and bye-laws made thereunder:-.**”

Sd/- 25.10.2017  
(SHAFQUAT ALI LARIK)  
SECTION OFFICER (LEGISLATION)  
FOR SECRETARY TO GOVT. OF SINDH  
LAW DEPARTMENT

6. Perusal of the aforesaid letter reflects that insofar as fresh proceedings of Civil Servant are concerned they shall now be initiated under the Sindh Civil Servants Act (E & D) Rules 1973 and the persons in corporation service, shall be governed under the law applicable to them and Rules and Bye-Laws made thereunder. The learned Counsel for the Defendant has though contended vehemently that for the present purposes E & D Rules 1973 have been adopted and are to be applied to the employees of the Defendant; however, no documents to support such contention has been placed on record, and therefore, it is only 2006 Regulations, which are to be considered by this Court for the present purposes. Regulation 4 of the said Regulations deals with the appointing authority and reads as under:-

“4. APPOINTING AUTHORITY:

Appointment to the Service shall be made by the authority mentioned in column 6 of Appendix- 'A' in respect of each post. In case such authority is the Governing Body, it may delegate powers to the Commissioner and in case such authority is the Commissioner, he may delegate his powers to an officer not below the rank of BS-18.”

7. Perusal of the aforesaid regulation reflects that all appointments are to be made by the competent authority, and where the appointing authority is the governing body, it may delegate powers to the Commissioner, and wherein the authority is the Commissioner, he is authorized to delegate the powers to Officer not below the rank of BS-18. As reflected further on a combined reading of Regulations 4 and 11, that insofar as the power of suspension is concerned, it has not been provided or conferred specifically upon the appointing authority. And in fact this is the entire case of the plaintiff for the purposes of listed application. Now whether such non-conferment of powers of suspension would make the impugned

order a nullity in the eyes of law? In my view No. And in this regard per settled law, Section 16 of the General Clauses Act 1897 (analogous to Section 15 of the West Pakistan General Clauses Act 1956) can be invoked which reads as under:-

**“16. Power to appoint to include power to suspend or dismiss.-** Where, by any (Central Act) or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having (for the time being) power to make the appointment shall also have power to suspend or dismiss any person appointed (whether by itself or any other authority) in exercise of that power.”

8. Perusal of the aforesaid clause reflects that where by any Act, or regulation, a power to make an appointment is conferred, then, unless a different intention appears, the authority having power to make appointment shall also have power to suspend or dismiss any person appointed, whether by itself or any other authority in exercise of that power. It is not in dispute that the 2006 Regulations do not provide for any power of suspension and hence no different intention appears therein, therefore, this clause can be invoked and permits an authority to suspend an employee.

9. The Proposition that a competent authority to make an appointment is also competent to pass an order of suspension even where such powers to suspend have not been specially provided in the governing rules was considered by the Hon'ble Supreme Court in the case of ***Pakistan International Airlines Corporation (supra)*** while dealing with the provisions of Section 16 of the General Clauses Act 1897 and reads as under:-

“Section 16 of the General Clauses Act, 1897 provides that the authority having power to make the appointment has also the power to suspend or dismiss any person appointed in exercise of that power. There is no cavil with the proposition that the authority has the power to undo the act done by it but such provision would be subject to the relevant laws and the Rules and would, be applicable only in those cases where under the relevant law or the Rules a different intention does not appear.”

10. In the case reported as **East-End Exports, Karachi v The Chief Controller of Imports and Exports (PLD 1965 SC 605)**, the Hon'ble Supreme Court, though while dealing with suspension of an import / export registration, has dilated upon the aspect of suspension of an employee in the following manner;

“Suspension may be a punitive suspension or one in aid of an enquiry. An order in the nature of punishment is always required to be preceded by a properly constituted enquiry. The other kind of suspension is designed to facilitate the due prosecution of the enquiry. Such a temporary suspension is deemed to be an implied term in every contract of service. Section 16 of the General Clauses Act also lays down that an authority who has got power to appoint has also the power to suspend. It has therefore been held that if an authority when holding an enquiry, is satisfied that the charge against the public servant is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude, he can suspend him pending the enquiry. On this principle it may be said that the Chief Controller can also exercise this power summarily pending an enquiry. It must however, be remembered that the Government servant, by reason of his suspension, does not lose his office or suffer degradation. His rank remains the same. He merely ceases to discharge the duties of his office during pendency of the departmental enquiry against him. He also draws a subsistence allowance during the period of suspension. In the event of his honorable acquittal he is allowed to draw full salary for the period of suspension.....”

11. Similarly a learned Division Bench of this Court in the case reported as ***Zafar Iqbal vs. Federal Urdu University of Arts, Sciences and Technology, Karachi through Registrar and 2 others 2017 PLC (C.S.) 1376***, has also dealt with Section 16 of the General Clauses Act (ibid) in the following manner:-

“22. We are also of the view that the petitioners have not been penalized by the impugned decisions. They had in fact been given an opportunity, like all other members of Senate, to attend the 26th meeting and present their point of view. They absented themselves willfully and knowingly, for the reasons best known to them. They now cannot claim to have been condemned unheard. The Senate, being governing body of the University, passed the impugned decisions, which are not penal in nature as during the leave period and suspension the petitioners will continue to draw their salaries and enjoy all perks and privileges allowed to them under the law, as held in the case of Ghaffar Ali and others (supra). We are similarly not prompted by the contentions of the learned counsel for the petitioners regarding passing the impugned decisions, which according to him neither provided in the Statutes nor does the Senate has the jurisdiction to impose on the petitioners. In this regard, section 16 of the General Clauses Act, 1897, provides as under:

16. Power to appoint to include power to suspend or dismiss.-- Where, by any (Central Act) or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having (for the time being) power to make the appointment shall also have power to suspend or dismiss any person appointed (whether by itself or any other authority) in exercise of that power.

It may be observed that section 16 *ibid* lays down that an authority who has got power to appoint has also the power to suspend. It is not necessary to put such words relating to suspension or dismissal as provisions relating to the power to appoint have to be read as if such words existed therein and a reference to power of suspension and dismissal is needed only when the intension is to take away or limit the power. Therefore, in such case a temporary suspension is deemed to be an implied terms in every contract of service.”

12. Again a learned Division Bench of the Peshawar High Court in the case reported as ***Abdul Hameed (supra)*** has held as under:-

“As per Section 16 of the General Clauses Act, an authority having power to appoint, has also the power to suspend. So if an authority when holding an enquiry is satisfied that the charge against the public servant is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude, he can suspend him pending the inquiry. Besides, suspension is not a punishment and suspension of a government servant during the course of his service simply means that no work is to be taken from him during the period of suspension. Suspension is only a temporary measure, wherein the petitioner is entitled to receive his full emoluments in view of the judgment of Hon'ble Supreme Court in case titled, "Government of N.W.F.P. v. I.A. Sherwani (PLD 1994 SC 72). If any penalty is imposed against the petitioner, then he has got a right of appeal before the competent authority. He was also entitled to file appeal against his suspension order before the concerned authority but he did not file the same.”

13. A learned Division Bench in the case reported as ***Lt. Col. Aziz K.M. Khan vs. A.B.A Haleem, Vice Chancellor, University of Karachi and another, PLD 1957 (W.P.) Karachi 496*** by a decision of two against one has also reiterated the same principle as under:-

“So far as the authority of the Vice-Chancellor to remove the petitioner is concerned, although there is no express provision in the Karachi University Act, there is, in accordance with section 16 of the General Clauses Act, always a power to remove when there is a power to appoint, unless there be a provision to the contrary. There is nothing in the University Act to the contrary. There are, it is true, no words in section 22 relating to removal of the Dean, but on account of the existence of section 16 of the General Clauses Act, it is not considered necessary to put in such words, and provisions relating to the power to appoint, have to be so read as if such words existed therein and a reference to power of

removal is needed only when the intention is to take away or limit the power. Nor would it be reasonable to hold that there is no power to remove.”

“There is nothing in the Act itself which indicates that a Dean cannot carry out the duties of Dean unless he continues to be a Head of Department. The Legislature by subsection (5) of section 22 read with section 18 has given to the Senate the power of determining the tenure of a Dean and has not qualified this power by any express condition. If the Senate in the exercise of the discretion granted to it by the Act has said that a Dean shall hold office for three years, then prima facie he is entitled to hold office for this period unless the Senate provides otherwise by Statute. It is argued, however, that the qualification for election must necessarily be intended by the Legislature as a qualification for continuance in office, if so, the State must be subject to this necessary intendment of the Legislature.”

14. Similar view has been taken by a learned Division Bench of Peshawar in the case reported as ***Khalid Aziz v. Federation of Pakistan through Secretary, Establishment Division, Pakistan Secretariat and 3 others*** 1997 PLC (C.S.) 783 as under:-

“10. In view of the law on the subject and interpretations of the word suspension of a Government servant, we are of the firm view that, in the circumstances, the order of suspension is neither a penalty nor a loss of office with strict reference to section 9 of the C.P.C. and hence the extraordinary jurisdiction of this Court under Article 199 of the Constitution cannot be invoked.”

15. After having perused the 2006 Regulations (s.11) and so also the argument of the plaintiff’s Counsel that there is no specific power of suspension conferred under the said Regulations on the competent authority, and when examined the same in the light of Section 16 *ibid*, read with the case law on the subject; I am of the view that in given facts and circumstances of the case the plaintiff has failed to make out any prima facie case, nor balance of convenience lies in his favor; nor any irreparable loss would be cause if the injunctive relief is refused. Accordingly, it is held that the competent authority has the power of suspending an employee pending inquiry / departmental proceedings, and therefore, no exception can be drawn to such powers, and accordingly it is observed that the impugned order of suspension is within the four corners of law; hence must not be interfered with at this stage of the

proceedings. However, it is clarified that any observation hereinabove, shall not have any effect on the merits of the case as well as pending departmental proceedings initiated thereafter, pursuant to issuance of show cause notice, and for which certain applications are also pending before this Court.

16. Listed application bearing CMA No.15900/2017 is hereby dismissed.

Dated: 17.07.2018

Judge

Ayaz P.S.