

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Adnan-ul-Karim Memon** and **Agha Faisal, JJ.**

Constitution Petition D-2001 of 2018

Abdul Ghaffar

vs.

The Province of Sindh and Others

For the Appellant                      Mr. Abrar Ahmed Bukhari, Advocate

For the Respondents                      Mr. Shahryar Mahar  
Assistant Advocate General

Date of hearing                              09.08.2018

## **JUDGMENT**

**Agha Faisal, J:** Through this present petition the Petitioner, being a retired employee of the Excise Taxation & Narcotics Control Department, Government of Sindh, has sought a direction for the issuance of a corrigendum to his retirement order, stipulating that the retirement granted thereto on the basis of superannuation may be juxtaposed with a retirement predicated upon having become invalid / medically unfit.

2. Briefly stated, the facts of the case are that the Petitioner attained the age of superannuation on 04.02.2018 and stood retired from service vide order dated 26.10.2017 ("**Impugned Order**") issued by the Respondents. Five months after the issuance of the Impugned Order, the present petition was instituted stipulating inter alia that the retirement granted to the Petitioner should not have been on the grounds of superannuation and that the same was required to have been issued on the basis of medical incapacitation.

3. Mr. S. Abrar Ahmed Bukhari, learned counsel for the Petitioner demonstrated from the record that certificates corroborating the

medical exigencies were filed before the Court including an invalidation certificate dated 04.01.2018, issued by the Services Hospital Government of Sindh, Karachi. It was thus submitted that the Impugned Order was manifestly discrepant and unjust and hence petition may be allowed in terms prayed therein.

4. Mr. Shahryar Mahar, learned Assistant Attorney General, stated that the contents of the petition were in prima facie contradiction to the facts. It was demonstrated from the record that the Petitioner submitted an application for retirement dated 09.02.2017, in which the retirement was sought on the basis of superannuation. It was further submitted that the neither the application nor the documentation submitted along with the said application contained any mention of any medical condition or infirmity. It was further submitted that no application for a medical examination of the Petitioner was ever received by the Respondents and hence the purported document, annexed in respect thereof by the Petitioner dated 24.10.2017, was categorically denied. It was next contended that the Petitioner never applied for retirement on medical grounds and also that the Petitioner never approached the Medical Superintendent, Services Hospital, Karachi through department. It was demonstrated from the record that department has notified the retirement of the Petitioner in due consonance with the applicable procedure and post retirement there was no provision in law for the same to be modified or juxtaposed in the manner being sought by the Petitioner.

5. It was further added that the Respondents apprehended that the petition was motivated by mala fide as it appeared to be a belated and unlawful attempt by the Petitioner to unfairly manifest the grounds for

obtaining employment for his progeny, on the basis of Rule 11-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974.

6. We have heard the respective learned counsel and have had the benefit of appraisal of the record demonstrated before us. The primary question to determine is whether in the present facts and circumstances it was just and proper for the Court to exercise its constitutional jurisdiction in the manner sought by the Petitioner.

7. The application of the Petitioner seeking retirement from Government service, dated 09.02.2017, makes no mention of any medical infirmity. On the contrary it specifically states that the retirement is being sought on the ground of superannuation with effect from 04.02.2018. The documentation attached by the Petitioner along with aforementioned application appear to have been designed to corroborate the fact that the retirement was being sought on the ground of superannuation and no other.

8. It is also borne from the record that the Impugned Order is dated 26.10.2017 whereas the purported invalidation certificate is dated much thereafter, 04.01.2018. The Respondents have categorically denied having received a request for seeking examination of unfitness on medical grounds from the Petitioner at any time whatsoever and have also categorically stated that no application for medical examination of the Petitioner was ever sanctioned by the Respondents. Notwithstanding the foregoing, it is apparent that the purported invalidation certificate is dated almost three (03) months after the issuance of the Impugned Order.

9. In view of the factual controversy regarding the veracity of the documentation relied upon by the Petitioner, any determination in

respect thereof would have to be predicted upon a factual inquiry, which in itself would discourage the exercise of jurisdiction by this Court. Reliance is placed in such regard upon the judgments of the honorable Supreme Court in the case of *Ahmed Developers vs. Muhammad Saleh* reported as 2010 SCMR 1057 and *Arshad & Company vs. Capital development Authority Islamabad* reported as 2000 SCMR 1557.

10. It is noted that the present petition was instituted after almost five (05) months of the issuance of the Impugned Order and no justification for the said delay has been advanced by the Petitioner.

11. The Respondent has demonstrated before us in clear chronological order that the retirement of the Petitioner was processed upon an express requisition in such regard and in due consonance with the provisions of the law in general and section 13 of the Sindh Civil Servant Act, 1973 in particular. On the other hand, the Petitioner has been unable to point out any infirmity in the Impugned Order and has failed to demonstrate any grievance occasioned by virtue of the Impugned Order.

12. In view of the reasoning and rational delineated herein, it is considered view of this Court that the present petition is devoid of merit hence the same is dismissed, along with listed application, with no order as to costs.

JUDGE

JUDGE

Karachi,  
Dated: 15<sup>th</sup> August 2018.