

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6911of 2017

Imtiaz Ahmed Barakzai Petitioner

Versus

Federal Tax Ombudsman and others Respondents

Date of hearing: 08.02.2018

Mr. Muhammad Junaid Farooqui Advocate for the Petitioner.

Mr. Asaf Fasihuddin Vardage, Advocate for Respondents No. 1 & 2.

Mr. Shaikh Liaquat Hussain, Asistant Attorney General.

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) Hold and observe that the petitioner's contractual employment as Advisor in the Regional Office, Karachi of the Respondent No.1 cannot be terminated verbally on telephonic message conveyed indirectly by an officer of Administration Branch, Islamabad of Respondent No.1.
- ii) That no allegation of inefficiency, poor performance, indiscipline, misconduct etc. have been made against the petitioner nor any thirty (30) days prior notice has ever been served till this point of time without prejudice to the fact that the discretion has to be exercised in judicious manner by the respondent. The petitioner is entitled to hold the post of Advisor in the Regional Office, Karachi in the Establishment of the Respondent No.1 and drive/receive all the perks and privileges including salary

in terms of the contractual employment letter dated June, 20th 2017 till 19th June, 2018.

- iii) Direct the respondent No.1 not to take any adverse action against the petitioner till completion of his term of contractual employment as on 19th June, 2018.

2. Brief facts of the case are that Petitioner was appointed Advisor in the Regional Office, Karachi of the Respondent No.1 on contract basis for one year in terms of the contractual employment letter dated 14th July 2014. The period of contract was extended year-wise and lastly it was extended vide letter dated 20.6.2017 for one year till 19th June, 2018. That the said period has not expired and the Respondents have terminated the contractual period of Petitioner verbally by invoking condition No. 14 of the appointment letter dated 20.06.2017. Petitioner has asserted that the period of contract of the Petitioner cannot be curtailed. Petitioner being aggrieved by and dissatisfied with the verbal termination order dated 24.9.2017 has filed the instant petition.

3. Upon notice, Respondent No. 1 & 2 filed para-wise comments and denied the allegations.

4. Mr. Junaid Farooqui, learned counsel for the Petitioner has contended that the verbal/telephonic communication dated 24.9.2017, regarding termination of contractual employment of the Petitioner with effect from 01.10.2017 is illegal and without lawful authority; that Petitioner has right to perform his duties as Advisor in the Establishment of Respondent No.1 up to 19.06.2018; that

Respondents have no discretionary powers to curtail the contractual period of the Petitioner; that the Respondents have violated the basic principle of law and justice; that all the orders of the Respondent No.1 are subject to law and no discretion is vested with him to hire and fire its employee without completing the codal formalities as provided under the law; that the Petitioner has been condemned unheard and removed from service without holding proper inquiry into the allegations if any, leveled against the Petitioner; that the act of Respondents is based on personal ego; that the Competent Authority of Respondents took ex-parte decision against him. Learned counsel for Petitioner in support of his contention, has placed reliance upon the cases of reported in (2005 SCMR 25) and (2013 SCMR 1159). He lastly prayed for allowing the captioned Petition.

4. Mr. Asaf Fasihuddin Vardage, learned counsel for the Respondents has raised question of maintainability of instant Petition and argued that the Federal Tax Ombudsman office is a statutory organization of the Government of Pakistan, which is controlled and regulated by Federal Tax Ombudsman Ordinance, 2000, with no statutory Rules of service, therefore captioned Petition cannot be entertained by this court; that the Federal Tax Ombudsman has not acted with malafide nor violated any provision of law in discharging its duties; that the Petitioner was appointed as Advisor on contract basis for a period for one year to advise the Federal Tax Ombudsman on certain legal issues for certain period; that Petitioner has no vested right to remain on

contractual post for indefinite period; that Petitioner was served with notice of termination of his services from contractual post in accordance with para 14 of his contract; that Federal Tax Ombudsman is competent to dispense with the service of any employee of the office of Federal Tax Ombudsman under section 20 of Federal Tax Ombudsman Ordinance, 2000. He lastly prays that Petition being not maintainable is liable to be dismissed.

5. Mr. Shaikh Liaquat Hussain, Assistant Attorney General, has supported the stance taken by the learned Counsel for the Respondents No.1 and 2.

6. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

7. We have noted that present proceedings pertain to curtailment of contractual period of service of Petitioner as Advisor in the office of Federal Tax Ombudsman.

8. We have perused the Appointment Order dated 20th June, 2017 of Petitioner, which is a contractual appointment for a period of one year. Record does reflect that the service of the Petitioner was contractual for a certain period of time or any extended period on the choice of appointing authority. The case of the Petitioner is governed by the principle of Master and Servant, therefore, the Petitioner does not have any vested right to seek reinstatement in service or ask for completing the remaining portion of contractual

service. It is well settled law that contract employee cannot claim any vested right, even for regularization of service.

9. Reverting to the question raised by the learned counsel for the petitioner, regarding discretion exercised by the Respondent No 1. As per Section 20 of the Federal Tax Ombudsman Ordinance, 2000, which reveals that the statute confers powers to Federal Tax Ombudsman to appoint Advisor for his assistance in the matters, in his discretion as such Petitioner cannot call in question the discretion exercised by Federal Tax Ombudsman.

10. Second plea of the Petitioner that he has been condemned unheard by the Respondent No.1 on the allegations if any. Record reflects that though the Petitioner was temporary employee of Respondents No. 1 and 2, however Petitioner was served with the notice of termination of his services from contractual post in accordance with para 14 of his contract. It is well settled law that the service of temporary employee can be terminated on 14 days' notice or pay in lieu thereof. Therefore this assertion of the petitioner is unsustainable.

11. In the present case, material placed before us does not show that the impugned termination Order has been wrongly issued by Respondent No.1.

12. The Petitioner has failed to establish that he has any fundamental/vested right to remain on the temporary /contractual post; therefore, the argument of the Petitioner that he was not

heard before issuance of impugned termination Order is not tenable in the eyes of law.

13. In view of the foregoing, the Constitutional Petition in hand is not maintainable, hence, is dismissed with no order as to cost.

Karachi
Dated:

JUDGE

JUDGE