

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Aziz-ur-Rehman
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2230 of 2019

Agha Asghar Ali BabarPetitioner

Versus

Province of Sindh & othersRespondents

Petitioner: Through Mr. Abdul Salam Memon, advocate.

Date of hearing: **03.04.2018**

ORDER

ADNAN-UL-KARIM MEMON,J:- The Petitioner has called into question his suspension from service order dated 19.03.2019 issued by the Additional Inspector General of Sindh, Karachi Range.

2. Brief facts of the case, in nutshell, are that the Petitioner is working as Deputy Superintendent of Police in BPS-17, Sub-Division, District Malir, East Zone, Karachi. It may be stated that in view of urgency shown by Mr. Abdul Salam Memon, learned counsel for the Petitioner, he has argued the entire case on merit. He argued that during his tenure of service he never received any show cause / charge sheet; that before taking the action by the Additional IGP Sindh, he failed to provide personal hearing to the Petitioner as provided under Article 10-A of the Constitution; that impugned order is suffering from jurisdictional defect on the premise that the impugned suspension order dated 19.3.2019 is

passed by incompetent authority under Sindh Civil Servants Act, 1973 and rules framed thereunder as well as under the Police Rules, 1934, therefore, the impugned order is nullity in the eyes of law; that nothing adverse is available against the Petitioner, therefore, without issuing the charges he cannot be suspended; that this Court can take cognizance of the illegal orders made by the incompetent authority.

3. We queried from the learned counsel as to how the instant Petition is maintainable against the suspension order. He in reply to the query has submitted that the impugned order cannot be termed as order passed within the terms and conditions of service of the Petitioner, therefore, bar of Article 212(2) of the Constitution will not come in the way of the Petitioner, more particularly, the suspension order is based on malafide intention by the incompetent authority; that the petitioner is fully entitled to be treated in accordance with law. He lastly prayed for allowing the instant Petition. We do not agree with the statement of the learned counsel for the Petitioner for the simple reason that disciplinary proceedings falls within the ambit of expression terms and condition of service of civil servant, therefore, the jurisdiction of all other courts is barred by the provision of Sindh Service Tribunals Act, 1973 read with Article 212(2) of the Constitution. We are fortified with the decision rendered by the Hon'ble Supreme court in the case of Ali Azhar Khan Baloch vs. Province of Sindh [2015 SCMR 456]. The Hon'ble Supreme Court in paragraphs 146 to 150, has held as under:-

“146. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters. In other words, the jurisdiction

of all other Courts is barred by the provisions of the Sindh Service Tribunals Act, 1973, read with Article 212 of the Constitution.

147. Section 4 of the Service Tribunals Act provides Civil Servant with the right of filing an Appeal before the Tribunal, subject to the qualifications provided therein.

148. In this background, all the Civil Courts, including a Judge (in Chambers) of High Court of Sindh, exercising jurisdiction on the original side as a civil court under C.P.C. cannot entertain a civil suit of a civil Servant relating to the terms and conditions of his service. The exercise of jurisdiction by the High Courts is conferred under Article 175(2) which reads as under:--

"175(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."

149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals.

150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants."

4. A bare perusal of impugned order dated 19.3.2019 shows that the Petitioner was suspended without any charge. Before dilating upon the above, at the first instance we would like to consider whether the Petitioner can challenge his suspension order in a Constitution Petition?

5. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to compel the competent authority to set aside the suspension order passed against a Civil Servant against whom *prima facie* evidence showing his

involvement in the serious charges of misconduct was available, for the reason that any such direction would be disharmonious to the principle of good governance and canon of service discipline. Rather causing undue interference to hamper smooth functioning of the departmental authorities, more particular in Police Department which is a disciplined force.

6. To elaborate on the term "Suspension". In law 'suspension' is not defined as a punishment but it is an intervening arrangement, which is temporary in nature and resorted to prevent the delinquent official from influencing the outcome of subsequent enquiry on any of the charges against him. In view of such position, in our view the Petitioner cannot file a petition against his suspension from service, which is simply a temporary measure and has been taken to reduce the chances of tempering in the course of enquiry by them. Against the adverse result of enquiry, if any, the Petitioner will have the remedy of appeal and in presence of such adequate remedy; this Court at this juncture will not step in to declare the suspension of the Petitioner illegal or void. More so, the Petitioner's objection on his suspension is technical and procedural in nature, since it is not his case that the charges mentioned in the suspension order are the outcome of some malice or ulterior motives and/or against the principles of natural justice. In such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process of enquiry against him and set-aside his suspension order on any of the technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioner.

7. The Petitioner has not been able to show any material from the record as to how he is prejudiced by his suspension order as he has been receiving his salary during the suspension period and the inquiry officer has been appointed to probe into the allegations leveled against him, besides the Petitioner has replied to the suspension order vide letter dated 21.3.2019, which is sufficient for the Respondents to sift the chaff from the grain. We are clear in mind that pendency of the disciplinary proceedings, a final decision against the Petitioner has yet to be taken by the Respondent Police-Department.

8. To conclude the matter, we are of the considered view that the Petitioner has to overcome the clog of pendency of disciplinary proceedings against him, if not finalized earlier; the disciplinary proceedings shall be finalized within a period of three months from the date of decision of this Court.

9. In the light of above discussion the instant Petition merits no consideration and the same is accordingly dismissed in *limine* along-with the listed application(s). Let a copy of this order be communicated to the respondents for information and compliance.

JUDGE

JUDGE

Nadir/-