

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4849 of 2018

Kausar Iqbal Malik Petitioner

Versus

Federation of Pakistan & 02 others Respondents

Date of hearing: 11.09.2018

Mr. Meraj-u-ddin, Advocate for Petitioner.

ORDER

ADNAN-UL-KARIM MEMON,J: Through the instant petition,

the petitioner has sought the following relief(s):-

- i. Declare the impugned order dated 05-03-2018 of the Respondent No.3 as null and void and not in compliance with the order of this Hon'ble Court dated 06-02-2018 passed in C.P D No.6300/2017.**
- ii. Declare that the respondent No.3 has no authority to undo his own decision arbitrarily when he had himself recommended for renewal of the contract of the petitioner for 2 years and 9 months to the BOD on 26.11.2015 and BOD had approved the recommendation on 30.11.2015 to extend employment contract for the period of 2 years, 9 months and 18 days up to the age of 60 years. Further it may be declared that the curtailing contract of the petitioner for the period of one year from the above period, only by the respondent No.3, being without authority is void and illegal.**
- iii. Direct the respondents to revise the employment contract expiry dated of the Petitioner which was allegedly terminated on 22.09.2017 and accommodate the petitioner with respect to the time period consumed in the process of litigation after 22.09.2017.**

iv. Direct the respondents to release all pending withheld benefits of the petitioner which are withheld by the respondents.

2. Brief facts of the case in nutshell are that Respondent-Bank vide Resolution dated 20.11.2015 authorized the President of the National Bank of Pakistan ('NBP') for renewal of the contract of the Petitioner for one year and nine months. Petitioner has submitted that in pursuance of the Order of the President of NBP, Petitioner stood retired from service on 22.09.2017. Petitioner has submitted that he being aggrieved by and dissatisfied with the Order dated 22.9.2017, whereby his employment contract was expired, filed CP No.D-6300/2017 which was disposed of vide Order dated 06.2.2018 with the following observations:-

1. We are of the view that the President, National Bank of Pakistan ('NBP') while fixing the period of the employment of the petitioner for 1 year and 9 months has not been assigned any reasons for curtailing the period from 2 years, 9 months and 11 days, as recommended by the Board. The order of the President ('NBP') thus appears to be not in accordance with law, as no cogent reasons have been assigned for curtailing the period from the one recommended by the Board. We, therefore, without indulging into other aspects of the petition, agitated by both the learned counsel, send this matter to the President ('NBP') to pass an appropriate and fresh order after hearing the petitioner preferably within a period of one month from the date of receipt of this order.

2. The President ('NBP') while agreeing or disagreeing with the recommendation of the Board would give valid and cogent reasons for the same through a speaking/well-reasoned order.

3. The petitioner, if aggrieved with any adverse order passed by the President ('NBP') against the petitioner, would be at liberty to agitate the same, if so advised, before appropriate forum.

With these observations the instant petition stands disposed of along with all the listed applications.

Petitioner has submitted that the President of NBP vide order dated 05.03.2018 rejected the claim of the Petitioner without assigning cogent reasons. Petitioner being aggrieved by and dissatisfied with the Impugned Order dated 05.3.2018 has filed the instant petition on 23.06.2018.

3. Mr. Meraj-u-ddin, learned Counsel for the Petitioner has argued that this Court vide Order dated 06.2.2018 disposed of the petition bearing No. CP No.D-6300/2017 filed by the Petitioner with directions to the Respondent-Bank to pass an appropriate and fresh order after hearing the Petitioner; that the Respondent-Bank has passed the order dated 05.03.2018 without assigning any valid reason; that the President, NBP changed its own earlier recommendations of 25.11.2015 & 26.11.2015 which were approved by the full Board of Directors of NBP on 30.11.2015, however, the President NBP on 29.12.2015 reduced the contract period of the Petitioner from 2 years, 9 months and 18 days to 1 year 9 months without assigning any reason thereto; that the curtailment of the period of contract is erroneous; that the Petitioner though appointed on contract basis is entitled to a fair opportunity to clear his position in terms of Article 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of the citizens of the Country by the State Functionaries. He lastly prayed for allowing the instant Petition.

4. Upon query by this Court as to how the instant Petition is maintainable with regard to the contractual appointment of the Petitioner in the Respondent-Bank, the Petitioner reiterated his arguments and argued that since the Respondent-Bank, through Board Resolution extended the contractual service of the Petitioner till his age of superannuation which period cannot be curtailed by another Resolution or without approval of the Competent Authority i.e. Board of Directors.

5. We have considered the contention of the learned counsel for the Petitioner and perused the material available on record.

6. Foremost, we would address the question of maintainability of instant Petition under Article 199 of the Constitution.

7. We have perused the Impugned Order dated 05.3.2018 passed by the President, NBP. The reasons assigned in the order are as follows:-

- “a. That SBP had intimated that Mr. Malik does not pass the Fit and Proper Test (FPT).**
- b. Mr. Malik had minimal utility at NBP as Senior Executive. Vice President which is only below to the rank of President. Hence, the decision of the President as well as the Board was reasonable, whereby, his service contract was extended to certain timeframe with clear resolution and categorical understanding that in case Privatization Commission was willing to keep his service beyond 22.09.2017, they may do so at their own cost by making payments of his salary from 23.09.2017 onwards.**
- c. That the Board not taken the decision of renewal of service contract of Mr. Malik but had authorized the President to take such decision which had been taken in the best interest of NBP.**

d. That Mr. Malik had accepted the extension of 1 year and 9 months without any reservation or objection at that time.

8. As per record, the Petitioner's contractual employment was expired on 22nd September, 2017. A question arises in the present proceedings as to whether the Petitioner can ask for extension in his contractual service on the premise that the Respondent-Bank has not continued his contractual service till his superannuation i.e. 11.10.2018.

9. Perusal of record does not reflect that the service of the Petitioner was regularized by the Respondent-Bank. We are of the view that such appointment would be terminated on the expiry of contract period or any extended period on the choice of Employer or 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 extension in his contractual service. It is a well settled law that contract employee cannot claim any vested right, even for regularization of service.

10. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondent-Bank before issuing the impugned order dated 05.3.2018. Record reflects that though the Petitioner was a contractual employee of Respondent-Bank, however he was heard by the Respondent-Bank as per the directions given by this Court vide Order dated 06.2.2018 in CP No.D-6300/2017.

11. In the present case, there is no material placed before us by which we can conclude that Impugned Order has been wrongly issued by the Respondent-Bank. The Petitioner has failed to establish that he has any fundamental/ vested right to remain on the contractual post. Therefore, the argument of the Petitioner that he was not heard before issuance of Impugned Order dated 05.03.2018 is not tenable in the eyes of law. We thus are of the view that the instant Petition is not maintainable on the premise that the Court cannot substitute its findings as of the findings of the President, NBP for the simple reason that he has given valid reasons declining the request of the Petitioner in the Order dated 05.3.2018, which does not require any interference on our part.

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

JUDGE

JUDGE

Karachi
Dated:- 11.09.2018

Nadir / P.A