

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

C.P No. D- 4652 of 2013

Salman Sabir Petitioner
V.s
M/s. Pakistan Steel & others Respondents

Date of hearing: 09.11.2018

Petitioner present in person.
Mr. Sanaullah Noor Ghouri, Advocate
for the Respondents No.1 to 4.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through the captioned Constitution Petition, Petitioner is seeking enforcement of the order dated 26.02.2008 passed by this Court in C.P. No. D-1902 of 2007 with further request for setting aside the order dated 15.01.2009 passed by the Appellate Authority, Ministry of Industries and Production, whereby his major punishment of Removal from Service was converted into “Minor Punishment of censure along with recovery of 1/3rd of the short fall amount.”

2. Petitioner has submitted that he was serving with Pakistan Steel as junior officer for continuous period of 17 years where after he was served with the charge-sheet for Misconduct / Misappropriation of some amount. Petitioner has submitted that an inquiry was initiated against him, finally he was removed from service under Removal from Service (Special Powers) Ordinance, 2000, vide order dated 10th December, 2002 on the aforesaid charges. Petitioner being aggrieved by and dissatisfied with the aforesaid order, impugned the same before the learned Federal Service Tribunal, Karachi, his Service Appeal was abated vide

Judgment dated 30.06.2006 passed by the Hon'ble Supreme Court in the case of Mubeen-ul-Islam vs. Federation of Pakistan & others (PLD 2006 SC 602). The Petitioner has submitted that due to abetment of his service appeal before the learned FST, he filed C.P No.D-1902 of 2007 before this Court, which was allowed vide order dated 26.02.2008 and his service was restored with effect from 29.2.2008 vide letter dated 26.03.2008 instead of the date of dismissal from service i.e. 10.12.2002. Petitioner has submitted that the Respondent organization initiated afresh Disciplinary Proceedings against the Petitioner on the same set of allegations. Petitioner has submitted that he denied the allegations and charges leveled against him through his written statement dated 22.4.2008. Petitioner has added that later on he was found guilty on the aforesaid charges by the Inquiry officer and the Petitioner was served with a fresh Show Cause Notice dated 22.05.2008 by the Respondent No.3. Petitioner has submitted that he replied the show cause notice dated 30.05.2008, by pleading his innocence and requested for providing him personal hearing but the same was not afforded by the Respondents. Petitioner has submitted that he was again found guilty and Major penalty of Removal from Service vide letter dated 25.06.2008 was inflicted upon him. Petitioner being aggrieved by and dissatisfied with the Termination Order preferred Department Appeal to the Secretary, Ministry of Industries & Production on 25.7.2008, which was allowed and converted into Minor punishment of Censure along with recovery of 1/ 3rd of the short fall amount vide letter dated 15.1.2009. Petitioner has submitted that his service was restored by the order of the Appellate Authority on 22.01.2009 with Minor punishment and he claims that he is being aggrieved by and dissatisfied with the aforesaid Appellate order to the extent of Minor punishment and recovery, approached this Court on 08.11.2013.

3. Petitioner who is present in person has submitted that the Judgment dated 26.02.2008 passed by this Court was flouted by the Respondent No.1 by treating his intervening period from 10.12.2002 to 29.2.2008 as absent without leave, whereas this Court had already set aside the impugned order dated 10.12.2002 passed by the Respondent-organization.

4. At this stage, we posted a question to him as to why he had not filed any application in C.P. No. D-1902 of 2007 for redressal of his grievances, if he was at all aggrieved by purported action of the Respondent organization. In reply to that query he has submitted that his intervening period was treated as Extra Ordinary Leave without pay on flimsy grounds; that in the fresh inquiry proceedings, the Respondents did not follow the order of this Court, therefore he has approached this Court. He added that he was not treated in accordance with law; that the decision of the Appellate Authority for awarding Minor punishment of Censure and 1/3rd of the alleged shortage was against the cannons of justice and fair play; that the Petitioner has the right to claim regularization of his intervening period from 10.12.2002 to 28.2.2008 under the law; that the Petitioner was denied promotion to the post of Deputy Manager without assigning any reason. He lastly prayed for allowing the instant petition.

5. Mr. Sanaullah Noor Ghouri, representing the Respondents No. 1 to 4 has argued that Petitioner has no locus standi, as the petition filed by the Petitioner is hit by laches as last order was conveyed to the Petitioner on 22.01.2009, whereas the instant petition had been filed by the Petitioner in the month of November 2013; that the cases of the Pakistan Steel Mills cannot be entertained by this Court in view of the Judgments rendered by the Hon'ble Supreme Court in the case of **Tanveer-Ur-Rehman**

(PLD 2010 SC 676), Shoua Junejo & others v. PIA & others (2012 SCMR 1681) and 2013 SCMR 1383, 2013 SLJ 303 and 2010 SCMR 1484; that the Respondent-organization has no statutory regulations, therefore the instant petition is not maintainable; that the order dated 26.02.2008 passed by this Court in CP No.D-1902/2007, has already been implemented in its letter and spirit; that the Petitioner was reinstated in service and proper opportunity of hearing was given to the Petitioner later on he was found guilty of the charges leveled against him and after completing all the codal formalities, he was removed from service on 25.6.2008; that the order passed by this Court for suspending the operation of the Memorandum dated 29.11.2013 was received by the Respondent-Department on 16.12.2013 and was implemented on 17.12.2013; that the intervening period was decided in accordance with law as the charges were proved against the Petitioner in denovo inquiry and the Petitioner did not work in PSM, hence his period was rightly decided as extra ordinary leave without pay. He lastly prayed for dismissal of the instant petition.

6. We have heard the parties and have perused the entire material available on record.

7. Perusal of the order dated 26.02.2008 passed by this Court in C.P. No. D-1902 of 2007, explicitly show that the penalty of removal from service inflicted upon the Petitioner was set-aside with direction to the Respondent organization to reinstate the Petitioner in service, leaving them at the liberty to initiate afresh inquiry proceedings against him.

8. Record reflects that Respondent organization reinstated the services of the Petitioner vide office memorandum dated 26.03.2008 in compliance of the Judgment passed by this Court. Respondent organization initiated afresh inquiry proceedings

against the Petitioner and served upon him the statement of allegations and charges leveled against him vide letter dated 21.04.2008, Petitioner replied to the charges and denied the aforesaid allegations. The Inquiry officer vide report dated 16.05.2008 found him guilty and recommended as under:-

“Conclusion

Keeping in view the above findings, observation, it is concluded that the charges leveled against Mr. Salman Sabir the Petitioner JO. P. No. 349275 PERS (Elect) in the statement of allegations & charges No. salary, Admin (JO) Enq 2008 dated 21.01.2008 are “Proved”

Recommendations

Based on the charges, it is recommended that one annual increment to be forfeited without accumulative effect for a period of two years and one third amount of short fall may be recovered from him.”

9. Record reflects that the Respondent organization did not agree with the findings of the Inquiry officer to the extent of punishment recommended by him, however they passed order dated 25.06.2008 by inflicting punishment upon the Petitioner for removal from service, thereafter he being aggrieved by the aforesaid order preferred departmental appeal which was decided by the Appellate Authority vide letter dated 15.01.2009. An excerpt of the same is reproduced:-

“ I am directed to refer Pakistan Steel’s letter No. A&P/PA/Ex-JO/PERS-Elect/2008/A22709 dated 10th October, 2008 on the subject noted above and to state that Secretary being the appellant authority has been pleased to approve the recommendations of Pakistan Steel for converting the punishment of removal from service of Mr. Salman Sabir, ex-Junior Officer to minor punishment of censure along with recovery of 1/3rd of the short fall amount.”

10. The important question in the present proceedings is whether the instant petition is suffering from laches or otherwise. It is evident from the record that the Petitioner after termination of his service assailed the order before the Appellate Authority which was decided on 15.01.2009, which is available on record at page No. 105 of the memo of petition. Petitioner for the unknown reason waited for 4 years to file the instant petition; Besides above, we do

not concur with this assertion of the Petitioner with his explanation of laches and we are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of November 2013, whereas the alleged cause of action accrued to him in the month of January 2009, i.e. approximately 4 years prior to the filing of the instant Petition. We therefore, hold that this petition suffers from laches.

11. Reverting to the plea taken by the Petitioner that the order dated 26.02.2008 passed by this Court in C.P. No. D-1902 of 2007 was not complied with by the Respondent organization. Record does not reflect that the Petitioner moved any application in the aforesaid matter for calling in-question the action of the Respondent organization within stipulated time and filed the instant petition in the month of November 2013 without availing the remedy available to him at the relevant time. Prima facie the explanation offered by the Respondent organization that substantial compliance of the order dated 26.02.2008 passed by this Court had been made, is tenable in the eyes of law, therefore at this stage, we are not inclined to proceed against the Respondent on the aforesaid plea taken by the Petitioner.

12. In view of the aforementioned facts and circumstances as well as the law referred to above, the instant petition stands dismissed along with the listed application(s).

JUDGE

JUDGE