

# **IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D- 803 of 2015**

Petitioner: Through Mr. Faizan Hussain Memon,  
Advocate.

Respondents: Through Mr. Shahriyar Mehar, Assistant  
Advocate General, Sindh a/w Ms.  
Shamin Imran & Mr. Khalilullah Jakhro,  
internees of the Advocate General office.

**Date of hearing: 28.11.2018**

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** Through the instant Petition, the Petitioner is seeking appointment as lecturer ( BPS-17) in Political Science, in Education and Literacy Department, Government of Sindh, on the basis that he qualified for the aforesaid post through the Sindh Public Service Commission(SPSC).

2. Brief facts of the case as per pleadings of the parties are that the Petitioner applied for the post of Lecturer in Political Science through Sindh Public Service Commission (SPSC) and succeeded in the competitive examination and was recommended for the aforesaid post vide Notification dated 24<sup>th</sup> September, 2010. Petitioner has submitted that before his appointment on the post of Lecturer, he was arrested in various criminal cases by the local police vide memo of arrest dated 18.09.2010, prepared in Crime No.325 of 2010. Petitioner has submitted that he was tried and convicted by the competent Court of law vide judgment dated 11.07.2012. Petitioner has submitted that his sentence was suspended by this Court vide order dated 29.11.2014 in Criminal

Appeal Nos.226, 227 & 228 of 2012, which are pending adjudication before this Court. At this stage, we queried from the learned counsel for the Petitioner as to how he is claiming his appointment against the post of Lecturer in Political Science, since he did not join the duty within 15 days from the date of receipt of the appointment letter dated 24<sup>th</sup> September, 2010. He in reply to the query has submitted that before the issuance of the Notification dated 24<sup>th</sup> September, 2010 he was arrested in the aforesaid crimes by the police on 18.09.2010; therefore, it was not possible for him to report for joining the duty in time. He next added that since he was recommended for the aforesaid post, therefore, the Respondent-Department was duty-bound to allow the Petitioner to join the duty after his release from the prison.

3. Mr. Faizan Hussain Memon, learned counsel for the Petitioner has contended that the Petitioner was acquitted in Criminal cases arising out of FIR No.497 of 2010 and FIR No.499 of 2010 by the learned IVth Additional Sessions Judge Karachi East vide judgment dated 11.7.2012. He further argued that so far as other 03 cases are concerned, appeals of the petitioner are pending before this Court and during the pendency of the aforesaid appeals, the sentence of the appellant was suspended. He next added that the Petitioner had falsely been involved and booked along with his family members and now he has earned his acquittal in two cases and three cases are still pending adjudication before this Court, therefore, till the final adjudication by the competent court of law on the aforesaid matters, the Petitioner is entitled to be allowed to join the duty as Lecturer in the Respondent-Department. Learned counsel then submitted that there was no mandate in the provisions of the Sindh Civil Servant Act that required that a convicted employee must be dismissed

from service. In support of his contention, he relied upon the cases of ***Uhammad Sabtain v. Government of the Punjab, Education Department through Secretary and 2 others (1999 PLC (C.S.) 1536)*** and argued that the condition contained in the appointment letter to join the post within 30 days of the issue of such letter and failure to report within time fixed in the letter is not fatal to the case of the petitioner on the premise that as and when he came out from the prison, he immediately moved an application to the competent authority to allow him to accept his joining report as he was already incarcerated in the jail and the aforesaid period can be condoned, as the circumstances were beyond his control to report for joining within the stipulated time. He next relied upon in the case of ***Iqbal Saeed Khan v. Chief Minister through Chief Secretary and 22 others (2003 PLC (C.S) 268)*** and argued that proper administration of justice is required to allow the Petitioner to join his duty under the law. He further relied upon in the case of ***Afifa Arshad v. D.E.O and others (2007 PLC (C.S) 640)*** and argued that the Petitioner is entitled to join his duty even after his conviction in the criminal cases.

4. Mr. Shahriyar Mehar, learned Assistant Advocate General, has submitted that the Petitioner was only offered appointment for the aforesaid post, subject to certain conditions mentioned in the appointment letter, which he has failed to fulfill in accordance with law. He next contended that the Petitioner was involved in criminal cases, which were investigated and final challan was submitted before the learned trial Court, which culminated in the conviction of the Petitioner in the aforesaid crimes. He next argued that the conviction entails adverse effect on the character of the Petitioner under the law; therefore, his appointment was restricted to a public office and he was precluded to be allowed to join his duty

under section 15 of the Sindh Civil Servants Act and the disciplinary rules framed thereunder. Per learned AAG, the Petitioner has admitted that his statutory appeals are pending before this Court on criminal side and it is only the sentence which has been suspended which does not mean that the Petitioner has been acquitted from the criminal charges leveled against him. He further contended that the Petitioner is not entitled for the appointment as per the terms and conditions of the appointment letter and all the actions that had been taken against him were in accordance with law. He further argued that, in the light of above, Petitioner is not entitled for appointment/posting or any other sort of benefit, as claimed by him from this Court. He lastly prayed for dismissal of the instant petition.

5. The pivotal questions involved in the present proceedings are as under:-

**i) Whether the petitioner can be allowed to join duty as lecturer (BPS-17), in Education and Literacy Department, Government of Sindh?**

**ii) Whether convicted person can be appointed in public service after suspension of his sentence during pendency of his appeals?**

6. For convenience the contents of the notification/appointment letter dated 24.9.2010 is reproduced as follows:-

**GOVERNMENT OF SINDH  
EDUCATION & LITERACY DEPARTMENT  
Karachi dated the 24<sup>th</sup> September, 2010**

**NOTIFICATION**

No:SO(HE-I)Misc/SPSC/2010:- On the recommendation of Sindh Public Service Commission and acceptance of offer of appointment dated 19.7.2010, the Government of Sindh is pleased to appoint **MR.TUNZEEL-UR-REHMAN S/O NAEEM-UR-REHMAN** as Lecturer in **POLITICAL SCIENCE** in the Basic Pay Scale of Rs-9850-740-24650 (BS-17) against temporary post which is likely to be made permanent and posted at **GOVT DEGREE COLLEGE SHAMSPIR**, Karachi, against an existing vacancy.

2. The appointment is subject to terms and conditions mentioned in the offer letter and following:-

i. He/she will be required to undergo training/refresher his/her course as may be specified by the competent authority immediately after joining the post for a period of three months. Successful completion of training is mandatory for consideration/counting towards termination of the probation period.

ii. **TERMINATION OF SERVICE** The service will be liable to termination for want of vacancy or for reason of unsatisfactory performance or conduct, without notice during the probation and with notice after confirmation of the appointment.

iii. **RESIGNATION**. If the appointee wants to resign from service he/she will have to give a notice of 30 days. Even after such a notice he/she shall not leave charge of the post unless resignation formally is accepted and notified (Behaviour contrary to this instruction shall be considered as misconduct and treated accordingly under RSO, 2000).

iv. **APPLICATION OF RULES/INSTRUCTIONS**. The appointment will be governed by the all the existing Government Rules, Regulation, instructions and also amendment made from time to time.

v. **CANCELLATION OF APPOINTMENT**. Failure to join the duty within 15 days from the date of receipt of this notification will render the appointment order as canceled.

vi. No T.A/D.A is permissible for joining

**ALAM DIN BULLO  
SECRETARY TO GOVT. OF SINDH**

7. We have carefully gone through the aforesaid clauses of the appointment letter and examined the above arguments. In the appointment letter dated 24th September, 2010 there was a clear direction that if the petitioner does not report for duty within 15 days of the issuance of the letter of appointment the same shall be treated as cancelled. As per the record, the Petitioner did not join the Respondent-department within the stipulated time period and there is no provision in the Sindh Civil Servant Act, 1973 to condone such delay in joining the service. Therefore, we conclude that the Petitioner did not join the service within the time period of 15 days.

8. Having considered the arguments addressed on the second proposition and having gone through the pleadings, and the case law cited at the bar with regard to the aforesaid pleas taken by the learned counsel for the Petitioner, the same version cannot be

accepted for the simple reason that once an employee is convicted on a criminal charge, the competent authority has only to consider the conduct which led to such conviction and thereupon is to take a decision on the penalty to be imposed. On the 'non observance' of a formal enquiry to be held, or even an opportunity of hearing required to be given, the rationale given is that the employee has already had a complete opportunity of hearing and consideration of his case, before his conviction by the Court seized of the criminal proceedings. Hence, all that the disciplinary authority is required to see is the conduct of the employee and the appropriate penalty to be imposed upon him, as an employee of the organization, in view of the conduct leading to his conviction.

9. Since in the present proceedings the Petitioner did not join his duty within the stipulated period, as discussed supra, therefore he cannot be considered to be a civil servant as defined under section 2(b) of the Sindh Civil Servant Act, 1973 to take disciplinary action against him under Rule-8 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973. The only course lies with the Respondent-department was to cancel his appointment letter.

10. On merits of the case, perusal of the Notification dated 24<sup>th</sup> September, 2010 explicitly show that he was required to join the duty within 15 days from the date of receipt of the Notification. Per Petitioner, he was precluded from joining the duty, before issuance of his appointment letter on 18<sup>th</sup> September, 2010 by the concerned police; therefore, it was beyond his control to join his duty. We are not convinced with the assertion of the learned counsel for the petitioner, in our view, when the Court of law convicted the Petitioner in a heinous offence, it pre-supposes that he was guilty of the grave misconduct and his retention in service

would not be in the larger public interest. In this regard, we refer to Section-15 of the Sindh Civil Servants Act, 1973 which provides that no person convicted for an offence involving moral turpitude be appointed to a civil service or post. For convenience, the same is reproduced herein below:-

**“15. No person convicted for an offence involving moral turpitude shall, unless Government otherwise direct, be appointed to a Civil Service or post.”**

11. To elaborate and appreciate on the aforesaid issue, in our view when the Court convicts a proposed civil servant and if his sentence is suspended in appeal, then there is clear bar under Section-15 of the Sindh Civil Servants Act, 1973 to retain him in service. In this regard, we refer to Rule-8 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 which articulates that upon conviction by a court and sentenced to imprisonment or fine on charge(s) involving moral turpitude, in such case the competent authority shall dismiss the person from service if he is on duty.

12. Admittedly, the aforesaid criminal cases were proceeded and tried by the learned trial Court and culminated in conviction of the petitioner, which were for offences involving moral turpitude under Criminal Procedure Code and by virtue of the judgments of the learned trial Court the Petitioner's status got changed into a convicted person in terms of the provisions of Cr.PC and according to the Sindh Civil Servants Act and rules framed thereunder which provides mechanism in this regard.

13. A closer view on the judgment dated 11.07.2012 and the suspension order passed by this Court dated 19.11.2014 clearly show that the Petitioner is still under conviction. Since the conviction of the Petitioner is still in field, the same falls within the

definition of “moral turpitude”. The expression ‘moral turpitude’ has been explained in Words and Phrases. Permanent Edition 27-A, which is as follows:-

**“In determining whether crime is one involving “moral turpitude”, the test is whether the act denounced by the statute offends the generally accepted moral code of mankind.”**

-----  
-----

**“Moral turpitude” is a vague term, and its meaning depends to some extent on the state of public morals; it is anything that is done contrary to justice, honesty, principle or good morals; and act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man; it implied something immoral in itself, regardless of fact whether it is punishable by law.”**

14. So far as the suspension of the sentence is concerned, it is not acquittal but merely a bail granted to the petitioner during pendency of his appeals, prima-facie impugned judgments have not been suspended, only sentence was suspended so virtually when he was not acquitted from the criminal charges, therefore, we cannot declare him as innocent which is to be made by the competent court of law on the aforesaid criminal cases.

15. For the above reasons, we are of the view that the Petitioner has not been deprived of his fundamental rights as alleged by the learned counsel for the Petitioner to maintain the Constitution Petition under Article 199 of the Constitution. From the forgoing facts and the law referred, in our view, the act of the Petitioner falls within the ambit of “Moral Turpitude”

16. Perusal of the meaning of above expression clearly indicates that anything which is done contrary to the good principles of morality is within the four corners of the above expression. In fact, any act which runs contrary to justice, honesty, good moral values, established judicial norms of a society, falls within the scope of the above expression. Keeping in view the above, it is noted that



Petitioner was tried and convicted for the offences mentioned earlier. The line of demarcation drawn by the learned counsel for the Petitioner to test as to which offence falls within the ambit of above expression seems to be incorrect. Narrow interpretation to the extent as propounded by the learned counsel for the Petitioner, would not only be unrealistic but also contrary to law. In our view, the Respondent-department correctly reached to the conclusion that the Petitioner was not entitled to the appointment against the aforesaid post.

17. Besides above, we also do not concur with this assertion of the learned counsel for the Petitioner regarding incarceration in prison, therefore, he could not join the duty within the stipulated period for the simple reason he could have intimated the Respondent-department through the jail Superintendent but he has failed to do so and waited for a long time to move an application to the department and in the meanwhile the post was filled by the department which could not be kept vacant for a long time.

18. We are thus of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner has filed the instant Petition in the month of February, 2015 whereas the alleged cause of action accrued to him in the month of September, 2010, i.e. approximately 5 years prior to the filing of the instant Petition.

19. We are also of the considered view that in the light of Section 15 of the Sindh Civil Servants Act, 1973 and Rule-8 of Efficiency & Discipline Rules, 1973, the Petitioner is not entitled for the appointment against the post of Lecturer in BPS-17 as he is/was not qualified to be considered for appointment in public office due to his conviction in the criminal cases.

20. In the light of above facts and circumstances of the case as well as law referred to above, the instant petition is found to be devoid of merits and is accordingly dismissed along with the listed application.

**JUDGE**

**JUDGE**

Karachi

Dated: 03.12.2018

**Nadir/PA.**