

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D – 2195 of 2015

Const. Petition No. D – 1708 of 2019

Date	Order with signature of Judge
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Before :

1. Mr. Justice Nadeem Akhtar
2. Mr. Justice M. A. Khan

11.08.2020 : Chaudhry Muhammad Ashraf, advocate for the petitioners in both petitions.

Syed Danish Ghazi, advocate for respondent No.1 in C.P. No.2195/2015.

Mr. Sikandar Khan, advocate for respondent No.1 in C.P. No.D-1708/2019.

Mr. Muhammad Nishat Warsi, DAG.

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NADEEM AKHTAR, J. – Through these petitions, the petitioners have impugned enquiry reports dated 01.07.2014 issued by the enquiry officer of respondent No.1 whereby recommendation contained in the previous enquiry reports that they were guilty of the charges alleged therein and as such were liable to punishment, was maintained. The allegation against the petitioners, who were elected office bearers of the employees' union of respondent No.1 at the relevant time, was that they had forcefully entered along with a mob into the offices of the Secretary and Chairman of respondent No.1 and had abused and threatened them in order to compel the management of respondent No.1 to accept the demands of the workers.

In view of the above, a criminal case was registered by the management of respondent No.1 against the petitioners and they were also charge-sheeted whereafter an enquiry was initiated against them. However, they were acquitted by the Judicial Magistrate vide order dated 02.05.2000 and the charge sheet against them was quashed by this Court vide order dated 17.12.1999 passed in Cr. Misc. Application No.506/1999. According to the petitioners, they were exonerated in the first enquiry proceedings, but respondent No.1 restarted the enquiry proceedings on the pretext that statement of the main complainant was not recorded in the first enquiry. Due to this reason, the petitioners filed C.P. Nos.D-3526/2011 and D-246/2012 before this Court wherein respondent No.1 was directed to submit the report and record of the first enquiry, which were not submitted by respondent No.1 by claiming that the same had been destroyed in a fire and were not available. Accordingly, vide common order dated 30.04.2014 passed in the above petitions, it was held by this Court that proper opportunity of hearing was not given to the petitioners in the first enquiry and

the Chairman and security guard of respondent No.1 were not called by the enquiry officer in the second enquiry ; and, respondent No.1 was directed to hold a fresh enquiry by appointing a senior officer, by providing adequate opportunity of hearing to the petitioners and after recording statements of all witnesses with right of cross-examination to the other side.

The grievance of the petitioners is that the aforesaid order passed by this Court has not been complied with by respondent No.1 and the enquiry reports impugned in the present petitions have been issued in violation of the said order. Perusal of the impugned enquiry reports shows that the complainants viz. ex-Chairman and ex-Secretary of respondent No.1, who were allegedly abused and threatened by the petitioners, did not attend the enquiry proceedings as the former had passed away and the latter was unwell. After recording the above reason of their absence in the enquiry proceedings, the enquiry officer concluded that the recommendation in the last enquiry and the decision of respondent No.1 for awarding punishment to the petitioners should be maintained.

We agree with the learned counsel for the petitioners that the aforesaid order passed by this Court on 30.04.2014 was not complied with by respondent No.1 as the fresh enquiry ordered by this Court was not conducted and or concluded in terms of the aforesaid order as evidence was not recorded in terms thereof. It may be noted that the first / previous enquiry proceedings, enquiry report whereof was not produced by respondent No.1 despite direction of this Court, was rejected by this Court vide aforesaid order dated 30.04.2014, whereafter respondent No.1 was directed to hold a fresh enquiry in terms of the said order. Due to this reason, there was no report in the field in respect of the first enquiry. Therefore, the enquiry officer was not justified in relying upon the alleged report of the first enquiry which was never produced despite direction of this Court, or to maintain the recommendation and decision of punishment contained therein.

In view of the above, the impugned enquiry reports dated 01.07.2014, being not sustainable either in law or on facts, are hereby set aside, and the instant petitions are allowed with no order as to costs.

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