

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –4789 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Khizar Hayat

Versus

Province of Sindh and 02 others

Date of hearing & order : 25.11.2020

Mr. Khadim Hussain Thahim, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner is serving as Assistant Sub Inspector, Security-II, in Sindh Police and is aggrieved by show cause notice (SCN) dated 24.06.2020 issued to him by the competent authority on account of misconduct report dated 12.06.2020, whereby he has been placed under suspension vide office order dated 22.06.2020.

2. Brief facts of the case are that petitioner is serving as Assistant Sub Inspector in Sindh Police and was issued a show-cause notice on the allegations of misconduct i.e. he occupied private property i.e. plot No. A-80, Architect-Engineer Employees Housing Society, Gulistan-e-Johar, Karachi, such report was furnished to the competent authority who after going through the record and completing codal formalities placed him under suspension vide order dated 22.06.2020.

3. We queried from the learned counsel as to how the instant petition is maintainable against the issuance of show cause notice, calling upon the petitioner to submit his explanation against the penalty proposed to be imposed upon him. He in reply to the query has submitted that the impugned show cause notice was issued without jurisdiction and subsequent order of his suspension from service cannot be termed as the order passed within the terms and conditions of service of the petitioner, therefore, the 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. We do not agree with the submissions of the learned counsel for the Petitioner for the simple reason that the Sindh Police (Efficiency and Discipline) Rules 1988 speak of the issuance of a show cause notice only against the penalty proposed to be imposed. Such a show cause notice contains the accusations and the material which is the basis for such action. The aforesaid principle is well settled as the

disciplinary proceedings fall within the ambit of expression terms and condition of service of the civil servant, therefore, the jurisdiction of this court is barred by the provision of Sindh Service Tribunals Act, read with Article 212(2) of the Constitution. The aforesaid issue is settled 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 paragraph 146, has held that the Service Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters.

4. Adverting to the question of show cause notice, a bare perusal of impugned show cause notice shows that the Petitioner was charged with certain allegations of threats of dire consequences to the private individual and illegal trespass in the private property, such F.I.R of the incident was also lodged with police station Gulistan-e-Johar against him, consequently the competent authority placed his services under suspension vide office order dated 22.10.2020.

5. Before dilating upon the above, at the first instance we would like to consider whether the petitioner can challenge the show cause notice issued against him and his suspension order in a Constitution Petition?

6. 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 show cause notice and 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 the smooth functioning of the departmental authorities, more particularly in the Police Department which is a disciplined force.

7. In service jurisprudence, show cause notice is not a punishment, show cause notice is issued when a government official/civil servant is held prima facie responsible for misconduct. In the SCN the delinquent is required to be informed that he is responsible for such misconduct. He is then required to submit his reply to the disciplinary authority as to why the disciplinary proceedings should not be initiated against him within a stipulated period, prescribed in the SCN. In such an eventuality, no writ petition lies, until and unless it is shown that the show cause notice is patently illegal, malafide or without jurisdiction, which is not the case in hand as the petitioner is facing serious charges of misconduct under the Sindh Police (Efficiency and Discipline) Rules 1988.

8. Suspension is not defined in law as a punishment, but is an intervening arrangement, which is temporary and resorted to prevent the delinquent official from influencing the outcome of subsequent inquiry 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 an inquiry by them. Against the adverse result of the inquiry, 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. Moreover, if any adverse order is passed against him pursuant to the impugned show cause notice and suspension, the petitioner will be at liberty to challenge the same before the competent forum and to urge the grounds before such forum that have been urged before us.

9. In such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process of disciplinary proceedings initiated against him and set-aside show cause notice or 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.

10. The petitioner has not been able to show any material from the record as to how he is prejudiced by the issuance of show cause notice and his suspension order as he has been receiving his salary during the suspension period, besides the Petitioner has replied to the show cause notice and suspension order available at page 21 of memo of the petition, which is sufficient for the respondents to sift the chaff from the grain.

11. 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 and he has to overcome the clog of pendency of disciplinary proceedings against him, if not finalized earlier; the said proceedings shall be finalized within two months from the date of the decision of this Court.

12. In the light of the 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 competent authority of respondents for information and compliance.

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