

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –2647 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Dr. Muhammad Ayaz Mustafa

Versus

Federation of Pakistan and 03 others

Date of hearing & order : 15.12.2020

Mr. Asad Iftikhar, advocate for the petitioner along with petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Ghulam Murtaza Saryo, advocate holding brief for

Mr. Muhammad Humayun, advocate for respondent No.4.

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner is seeking the declaration to the effect that notice dated 19.05.2020 relieving him from the post of Director Anti-Quackery Sindh Health Care Commission (**SHCC**) was/is arbitrary, illegal, and without any cogent reason. He seeks further declaration to the effect that he has complied with the terms and conditions of service as articulated in his appointment letter dated 11.9.2018. He also seeks direction to respondent-SHCC to allow him to complete his contractual tenure of service as provided in the appointment letter as discussed supra.

2. The case of the petitioner as pleaded in the memo of the petition is that he was appointed on 11.9.2018 as Director Anti-Quackery in SHCC on contract basis for three (3) years. It is averred by him that on 19.05.2020 his contract was unilaterally rescinded by relieving him from the aforesaid post without show cause notice. The petitioner claims that he was not given an opportunity of personal hearing on the issue involved in the matter and the respondent-SHCC took the ex-parte decision against him by issuing relieving order dated 19.5.2020.

3. Learned counsel for the petitioner was asked as to how the instant petition is maintainable as admittedly the petitioner was appointed on contract for a limited period and was relieved from the subject post to report his parent department i.e. Pakistan Health Research Council (**PHRC**) vide relieving order dated 19.5.2020.

4. Mr. Asad Iftikhar, learned counsel for the petitioner, has contended that the relieving order dated 19.5.2020 issued by SHCC was/is in gross violation of law; that the Petitioner had illegally been relieved from the subject post without completing his tenure of contract ; that the Petitioner has been condemned unheard and erroneously relieved from service without holding proper inquiry into the allegations leveled against the Petitioner if any, which was/is unwarranted under the law; that the act of respondent- SHCC was/is based on malafide intention and personal ego; 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 citizens of this Country by the Government Functionaries; He emphasized that respondent-SHCC issued his relieving order on 19.5.2020 with immediate effect as this was/is neither removal from service nor his service was discontinued by the competent authority rather he was just relieved on cancellation of remaining extraordinary leave period by his parent department. It is further stated that his services are governed by the provisions of Sindh Health Care Commission Act, 2013, and rules and regulations made thereunder as such very action was taken against the petitioner was coram-non-judice. He asserted that he was required to be dealt with in accordance with the law. The petitioner's counsel further argued that on 19.05.2020 relieving order was issued by the incompetent functionary/Acting Chief Executive Officer (CEO) of SHCC thus the impugned order is a nullity in the eyes of law. He averred that the petitioner is not a civil/Government servant but an employee of an autonomous body, thus was not required to obtain NOC to join another organization on the premise that he obtained three years' extraordinary leave without pay from his parent department with permission to work during the leave period. We asked him whether his parent department accorded him permission to get another assignment in Sindh Government. He relied upon the cases of Shabbir Jan Sarhandi v. Province of Sindh through Chief Secretary and 3 others, **2006 PLC (C.S) 955**, Meraj Din Bhatti v. Chairman, Punjab Board of Technical Education, Lahore and 4 others, **2005 PLC (C.S) 551**, Federation of Pakistan through Secretary, Establishment Division, Islamabad and another v. Gohar Riaz, **2004 SCMR 1662**, Pakistan International Airlines Corporation (PIAC) through Chairman and others v. Nasir Jamal Malik and others, **2001 SCMR 934**, Muhammad Zahid Iqbal and others v. DEO Mardan and others, **2006 SCMR 285**, Muhammad Jameel and 45 others v. Taluka Nazim, Taluka Municipal Administration Khairpur and 5 others, **2014 PLC**

(C.S) 479, Anisa Rehman v. PIAC and another, 1994 SCMR 2232, Ashir Azeem v. Federation of Pakistan and 8 others, PLD 2017 Sindh 1, and Ali Hassan v. Federation of Pakistan and another, 2018 PLC (C.S) Note 104.

5. On the other hand, learned AAG has refuted the averments and allegations made by the petitioner and supported the impugned letter dated 19.05.2020. He argued that the instant petition is not maintainable against the respondent- SHCC under the law as the dispute between the parties relates to contract employment; the Honorable Supreme Court in its various pronouncements settled the law that a contract employee is debarred from approaching this Court in its constitutional jurisdiction; and, the only remedy available to a contract employee is to file a Suit for damages in case of breach of contract or failure thereof. He further argued that the impugned action of the respondent- SHCC is well-reasoned and based on settled principles of law. It was urged by him that the petition is liable to be dismissed with cost in view of the above legal position.

6. Mr. Ghulam Murtaza Saryo, learned counsel for respondent No.4, has raised a similar question of maintainability of the instant petition.

7. Learned DAG has referred to the para-wise comments filed on behalf of Pakistan Medical Research Council and argued that petitioner was not authorized to join another Government organization without prior approval/sanction of his parent department. He further argued that the extraordinary leave without pay was canceled by the competent authority and in the meanwhile, he was directed to join his parent department but to date, he has failed and neglected to join and remained absent from duty, however, the competent authority has initiated disciplinary proceedings against him under law.

8. We have heard learned counsel for the parties on the point of maintainability of this petition, and have also perused the material available on record.

9. Principally, this Court, in exercising power under Article 199 of the Constitution, cannot issue directions for the continuance of contractual service of the petitioner in SHCC for the reason that he is still holding a permanent post with Pakistan Health Research Council and the respondent- SHCC just relieved him to report to his parent department. In principle, petitioner could not legally hold two posts at the same time i.e. one in Federal Government and second in Sindh Government on the purported plea that he obtained extra-ordinary leave from his

parent department on 10.10.2018 to join Sindh Government, in the intervening period, which was later on canceled vide letter dated 28.4.2020 thereafter respondent-SHCC relieved him from the subject post on 19.5.2020 with immediate effect. Prima-facie this plea of the petitioner is misconceived, rather amounts to misconduct on his part under Rule 16 of the Government Servants (Conduct) Rules, 1964.

“16. Private trade, employment or work. - (1) No Government servant shall, except with the previous sanction of the Government, engage in any trade or undertake any employment or work, other than his official duties:
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10. In view of the above, the respondent- SHCC was well within its rights to relieve him from the post of Director Anti-Quackery under the law. Having discussed the legal aspect of the case, we have perused the appointment order dated 11.9.2018 of the petitioner, which was admittedly a contractual appointment for three years. The record indicates that the petitioner's service was on contract for a certain period on the choice of appointing authority. The case of the petitioner was/is subject to the principle of Master and Servant. It is well-established law that a contractual employee cannot claim a vested right to continue with his service or seek an extension of the contract.

11. In the present case, the petitioner has not established that he has a fundamental / acquired vested right to remain in the contractual post of Director Anti-Quackery in SHCC. The General Clauses Act, 1897, also empowers the competent authority to appoint or relieve/remove anyone appointed in the exercise of that power. It is also a settled law that Courts ordinarily refrain from interfering in the policy-making domain of the Executives unless it is proven that it has infringed the fundamental rights of the citizens of Pakistan, which is not the case at hand.

12. In the present case, no material whatsoever has been placed before us by which we can conclude that the impugned letter dated 19.05.2020 has been wrongly issued by the respondent- SHCC.

13. Reverting to the claim of the Petitioner that he has been condemned unheard by the respondent- SHCC by relieving from the post without assigning a reason, the record reflects that though the Petitioner was a contract employee and under the law, an opportunity of Show Cause can only be issued to the employee, who is holding a permanent post, therefore this plea is untenable under the law.

14. The views expressed by us in the preceding paragraphs are fortified by the authoritative pronouncement of the Hon'ble Supreme Court in the case of *Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others*, **2019 S C M R 648**.

15. In view of the above discussion, the petition is not maintainable either on facts or in law. However, before parting with this case, it may be observed that every person has a right to approach a Court of law for redressal of his grievance, whether such grievance is against a private party or a public functionary. Article 199 of the Constitution restricts such right only to an aggrieved person, as contemplated in the said Article, who is aggrieved by any action or order of a public functionary or department or the Provincial or Federal Government. A person coming to Court must be fully aware of his right i.e. whether he is entitled to such right or not. We are constrained to observe that despite the legal position established in view of the plethora of pronouncements by the Hon'ble Supreme Court as discussed above, the present petitioner filed this petition seeking a relief to which he was not entitled under the law. In other words, the petitioner wanted this Court to grant a declaration contrary to the law settled by the Hon'ble Supreme Court. Not only this, he obtained an ad-interim injunction order in these proceedings against the respondent- SHCC. Such conduct on his part is not acceptable as he has consumed and wasted valuable time of this Court which could have been utilized to decide genuine and urgent matters. Therefore, the petition is liable to be dismissed with costs.

16. In the light of the above facts and circumstances of the case, the instant petition is dismissed along with the listed application(s) with costs of Rs.25,000.00 (Rupees twenty five thousand only) to be deposited by the petitioner with the Nazir of this Court within thirty (30) day from today which amount shall be paid forthwith by the Nazir to Edhi Foundation.

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