

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D – 6027 of 2020

Date	Order with Signature of Judge
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Priority :

1. For orders on CMA No.25921/2020 (Exemption) :
2. For hearing of CMA No.25922/2020 (Stay) :
3. For hearing of main case :

21.12.2020 :

Mr. Salman Mujahid Baloch, advocate for the petitioner.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Ali Safdar Depar, Assistant A.G.

Ghulam Ali Brahmani, Additional Secretary (Services-1),
Services, General Administration and Coordination Department
Government of Sindh.

Nisar Hussain Mangi, Director-II, Sindh Local Government.

Dr. Liaquat Ali Abro and Nadeem A. Qureshi, Law Officers,
Law Department, Government of Sindh.

On 10.12.2020, the Chief Secretary Sindh was directed to submit complete details of all such Civil / Government servants who entered into plea bargain and/or opted for voluntary return (VR) under the NAB law.

A compliance report dated 21.12.2020 has been filed by the Chief Secretary Sindh in partial compliance of the above order as the above details in respect of the School Education & Literacy Department, Local Government Department and Health Department have not been submitted. Along with the above report, two separate lists have been filed disclosing the names, designations and present postings of the Civil / Government servants who voluntarily entered into plea bargain or opted for VR, as well as the gist of allegations against them and the amount of plea bargain / VR paid by them under the NAB law. In addition to the above, the Director-II, Sindh Local Government Board has submitted a separate list showing details of the Civil / Government servants who are facing disciplinary proceedings.

As per the above report, prima facie, all the Civil / Government servants mentioned therein are still serving in the Government of Sindh despite the fact that they have admittedly entered into plea bargain or opted for VR, which clearly amounts to admission on their part of having committed corruption /

corrupt practices. Prima facie, all such Civil / Government servants were/are barred from holding any public office in the Federal or Provincial Governments or in any state-owned organization as held by the Hon'ble Supreme Court in The State through Chairman NAB V/S Hanif Hyder and another, 2016 SCMR 2031. Moreover, the Government of Sindh was duty-bound under the law to have initiated disciplinary proceedings against all such Civil / Government servants. Merely imposing a minor penalty upon them as an eyewash does not serve the purpose of the law, and once the above fact came to the knowledge of the competent authority, such Civil / Government servants ought to have been placed under suspension under the Rules of 1973 till the conclusion of the disciplinary proceedings.

Our above view is fortified by The State through Chairman NAB supra, wherein the Hon'ble Supreme Court was pleased to hold, inter alia, held as under :

“2. During the hearing of these proceedings, we have noticed that the NAB in exercise of powers under section 9 of the NAB Ordinance has started taking cognizance of the petty matters and therefore, notice was issued to the D.G. NAB to submit report in regard to the enquiries and or investigations, which the NAB has undertaken in respect of the amounts involved less than 100 Million and References, if any, filed which involved amount less than 100 million. A list has been provided. It is evident from this list that prima facie the enquiries and investigations undertaken by the NAB are not of mega scandals and apparently petty matters have been enquired into on the complaints. This is not the wisdom behind legislation of NAB Ordinance. The NAB Ordinance was primarily legislated to counter mega scandals and book the persons who are involved in mega scandals of corruption and corrupt practices.

*3. We have also noticed that the provisions of section 25(a) of the NAB Ordinance empowers the NAB to accept the offer of an accused person of Voluntary Return of the assets or gains acquired by him. Once an accused who alleges to have plundered colossal sums of money, deposits a portion of such amount determined by Chairman NAB voluntarily, that too, in installments, stands discharged from all his liability in respect of the matter or transaction in issue and goes back to join his job. **This frequent exercise of powers of "Voluntary Return" by the Chairman NAB has in fact multiplied corruption on the one side and defeated the object of the NAB Ordinance on the other side.** The NAB Ordinance was introduced to eliminate the corruption of large magnitude. Provisions of section 25(a) were not meant to allow corrupt "public servants" who mint money through corruption or corrupt practices to get a clean chit from the NAB authorities by paying portion of such alleged amount in terms of section 25(a) of the NAB Ordinance. **What is more shocking for us is that no departmental proceedings are initiated against any of such accused, who entered into Voluntary Return. The option of Voluntary Return by a public servant and or a civil servant falls within the ambit of "misconduct" and needs to be departmentally proceeded against once he admits that he had earned money by corruption. After admitting this fact, he cannot***

hold any public office either in Federal or in Provincial Government or in any state owned organization.” (Emphasis added)

In view of the above, the Chief Secretary Sindh is directed to ensure that all such Civil / Government servants who have entered into plea bargain or opted for VR are placed under suspension with immediate effect and disciplinary proceedings should be initiated against them forthwith under Rule 5 of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 ; and, instead of imposing a minor penalty upon them as an eyewash, penalty / punishment should be awarded to them commensurate to the charge / offence against them. The Chief Secretary Sindh is further directed to submit a written explanation on the next date of hearing as to why such Civil / Government servants were promoted and/or allowed to continue with their postings and duties in violation of the law laid down by the Hon’ble Supreme Court. Let notice be issued to the Chief Secretary Sindh to submit compliance report to this Court on the next date of hearing strictly in terms of this order.

Learned counsel for the petitioner states that the report / list filed today is incomplete as the Government of Sindh has suppressed / concealed from this Court the names and details of several hundred Government / Civil servants who have entered into plea bargain or opted for VR. Let notice be issued to respondent No.2 / Chairman NAB and learned Special Prosecutor NAB to submit a complete list of all the Government / Civil servants of the Government of Sindh who have entered into plea bargain or opted for VR.

To be listed on **14.01.2021 at 11:00 a.m.**

JUDGE

JUDGE