

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 2898 of 2019

Dad Raheem and 07 others,
Petitioners through:

Mr. Sami Ahsan, Advocate

Date of hearing:
Date of order:

18.09.2019
18.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J. The basic grievance of the petitioners is against the termination of their services vide order dated 31.12.2018 issued by the Administration Department Fishermen's Cooperative Society.

2. At the very outset, in view of private status of employment of the petitioners with a private cooperative society, we asked the learned Counsel for the petitioners to satisfy this Court with regard to maintainability of the instant Petition.

3. Mr. Sami Ahsan, learned Counsel for the petitioners argued that the instant petition is maintainable on the premise that it relates to the issue of disciplinary proceedings initiated against the petitioners on basis of the NAB inquiry against the Ex-Chairman, Fishermen's Cooperative Society Ltd., whereby employment of the petitioners has treated illegal. In support of his contention the Counsel relied upon the Recruitment Rules of Fishermen's Cooperative Society Ltd., 1964 (available at page 309 of Memo of Petition) and further argued that though employees of the Fishermen's Cooperative Society are not Government Servants, but, are entitled for fair dispensation of justice; that there were certain allegations against the Respondent-Society, but services of the petitioners ought not to have been terminated without holding a full-fledge inquiry and grant of opportunity of hearing to them to submit their defense with regard to the allegations leveled against them; that right of fair trial and due process is a fundamental right of every person under Article 10-A of the Constitution; that the Respondent-Society has nullified the long standing service of the petitioners in one stroke of pen without any reason; that mere pendency of NAB proceedings against the Ex-Chairman /

Manager, Fishermen's Cooperative Society Ltd., is/was no ground to dispense with services of the petitioners without fulfilling the legal formalities as provided under the law; that the initial appointments of the petitioners in the society was in a transparent manner, therefore, the Respondent-Society had no justification to call in question their appointments and terminate their services vide common order dated 31.12.2018; that some of the colleagues of the petitioners being aggrieved by and dissatisfied with the aforesaid action of the Respondent-society approached the learned Sindh Labor Court No.5, Karachi and some of them also approached to the National Industrial Relation Commission Karachi for multiple relief(s) and ad-interim order against the appointments in place of petitioners sought by the petitioners has been granted by the learned NIRC Karachi vide order dated 15.4.2019 and the issue of jurisdiction is yet to be decided. Learned Counsel referred to the prayer clauses I to XXXIV of memo of petition and argued that petitioners are entitled for the relief as prayed.

4. We confronted the learned Counsel for the petitioners with a question about status of the petitioners, who are ex-employees of private Society and this Court lacks the jurisdiction under Article 199 of the Constitution, for which they have to approach the competent forum as provided under the law. Learned Counsel reiterated his submissions and emphasized that the present petitioners were performing duties of supervisory and administrative nature and were not covered by the definition of workman under section 2(i) of the Industrial & Commercial Employment (Standing Orders) Ordinance 1968, therefore, they cannot approach the learned Labor Court or learned NIRC, Karachi for redressal of their service grievances. We pointed out to the Counsel that designation is not a conclusive factor in determining the nature of work of a person and undue importance need not be accorded to designation, rather the work performed and the nature of duties and functions would determine whether the person falls under the purview of workman under section 2 (i) of the Standing Orders Ordinance, 1968 or under Section 2(xxx) of Industrial Relations Ordinance, 2002; therefore, this assertion of the petitioners is misplaced. However, the Counsel for the petitioners insisted for

entertaining the captioned petition under constitutional jurisdiction on the plea of principle of natural justice and equity.

5. We heard the learned Counsel for the petitioners on the question of maintainability of the instant petition and perused the material available on record.

6. In view of the above submissions made by the learned Counsel for the petitioner, we would like to confine ourselves to the issue of maintainability of the instant petition only and refrain ourselves to dilate upon the merits of the case.

7. The service of the petitioners, employees of the Fishermen's Cooperative Society Ltd., were terminated vide letter dated 31.12.2018 issued by the Administration Department of Fishermen's Cooperative Society. Prima-facie, the society is purely a private corporate body with no public duty; hence, a writ of mandamus would not lie against the Respondent-Society. The Respondent-Society is a co-operative society constituted under the agreement between members thereof, who are to abide by the provisions of the Co-operative Societies Act, and the rules and bye-laws framed thereunder by the Society. The society is undisputedly not a department of the State and is also not a creature of any statute but merely governed by a statute. We may observe here that this Court can only interfere in the matter, if it is established that a mandatory Provision of a statute has been violated. The dispute so noted by this Court essentially related to the claims and counter claims of the private parties relating to the service matter, which in our view is an internal matter between them and rights of the petitioners are purely of a private character, not open to be dealt with in a writ petition; therefore, writ of mandamus cannot be issued under the Article 199 of the Constitution, 1973 for petitioners' reinstatement in service.

8. We, on basis of contentions of the petitioners and the material produced before us, have reached the conclusion that we cannot determine the veracity of these documents placed on record by the petitioners as these are disputed questions of facts between the private parties, which cannot be adjudicated by this Court while exercising Constitutional Jurisdiction without recording evidences; therefore this Court cannot give sanctity to the allegations and counter allegations as demonstrated by the petitioners and leave it for the Competent Forum to determine

the genuineness or otherwise of the allegations/documents. Besides, no order of any Government functionary has been called in question. Therefore, for the aforesaid pleas, the Constitutional Petition is not maintainable. We cannot issue writ of mandamus. We seek guidance from the latest Judgment of the Hon'ble Supreme Court in the case of Muhammad Khalid v. National Accountability Bureau (2017 SCMR 1340), which provides a guiding principle in this regard.

9. In view of the above facts and circumstances of the case, the instant Petition is not maintainable, which is accordingly dismissed in limini along with the listed application(s), leaving the petitioners to avail an appropriate remedy in accordance with law.

JUDGE

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