

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P No.D-427 of 2019

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner(s) : Arsalan Khan through
Syed Sardar Hussain Shah, Advocate.

Respondents : Through Mr. Muhammad Arshad S.
No.2 to 6 & 8 Pathan, Advocate

: Mr. Ashfaque Nabi Qazi, Asst. Attorney
General for Pakistan

Date of Hearing : 21.10.2021
Date of Order : 21.10.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner has challenged his termination from service vide dated 15.11.2017 and letter dated 26.12.2018 regarding inquiry against his employment on the ground that the official respondents have acted without any lawful authority; and, against the violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

2. The case of the petitioner is that he was appointed as Line Superintendent-II vide office order dated 25.1.2017 against the quota reserved for Employees Children Quota under the Policy decision of respondent HESCO. Per petitioner at the time of his initial appointment, he submitted his testimonials, which were / are authentic documents; however, the respondents in utter shock and dismay of the petitioner sent some other documents / testimonials to the competent authority for verification, which later on, were declared forged, petitioner, therefore, protested with the respondents by showing his original credentials, however, they were reluctant to send them for verification and without providing an opportunity of hearing dispensed with his services vide impugned order dated 15.11.2017.

3. The main ground urged by Syed Sardar Hussain Shah, learned counsel for the petitioner, was that the impugned major penalty of termination from service could not be awarded to the petitioner without formal / regular inquiry and without allowing him the opportunity to cross-examine the prosecution witnesses; and, as no such inquiry was conducted, the entire impugned exercise undertaken by the respondent-HESCO and the impugned major penalty imposed by them are contrary to the law laid down by the Hon'ble Supreme Court in its various pronouncements; In addition to the above, it was further urged on behalf of the petitioner that the respondent-HESCO had no authority whatsoever to dispense with the inquiry against him in the facts and circumstances of the case ; the impugned major penalty could not be awarded merely on the basis of recommendation of inquiry Committee; proper opportunity of hearing was not afforded to the petitioner by the respondents in accordance with law before taking the impugned action against him; the petitioner was condemned unheard in violation of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973; and, the entire exercise undertaken by the respondents was arbitrary, malafide, discriminatory and illegal. He lastly emphasized that the competent authority of the concerned Board may be directed to look into the Academic Qualification Certificates of the petitioner; and, ascertain its genuineness or otherwise and submit report to this Court. He lastly prayed for allowing the instant petition. Be that as it may, the pivotal question before us is whether the services of the petitioner can be dispensed without holding regular inquiry; and, providing an opportunity of hearing?

4. To this Mr. Muhammad Arshad S Pathan, learned counsel representing HESCO, contended that it was an open and shut case against the petitioner because of the findings and recommendations of the Committee and as such inquiry was not required. It was further contended by him that in view of the above, the competent authority had the discretion and power to dispense with

the inquiry. It was also contended by him that the petitioner never objected when the Committee was constituted to inquire into the allegations made against him about submitting forged documents at the time of his initial appointment with the respondent-HESCO, and as such he is now stopped from questioning the findings and recommendations of the Committee and / or the action taken by the respondents in pursuance thereof. He asserted that this court cannot determine the veracity of the documents placed on record by the petitioner about his credentials, as these are the disputed questions of facts between the parties, which cannot be adjudicated by this Court while exercising Constitutional Jurisdiction under Article 199 of the Constitution. He prayed for dismissal of the instant petition.

5. We have heard learned counsel for the parties at length and have also examined the material available on record.

6. In our view, once the Competent Authority probed into the fake documents concerning the appointment of the petitioner in respondent-HESCO and in terms of the findings, action has been taken against the beneficiary / petitioner, this factual aspect cannot be looked into in constitutional jurisdiction under Article 199 of the Constitution. We are not inclined to accept the petitioner's request for conducting a further probe in writ jurisdiction when we have noticed that the educational certificate relied upon by the petitioner has admittedly been issued after his appointment in service.

7. Reverting to the claim of the petitioner that he was legally appointed and submitted genuine testimonials at the time of his initial appointment, therefore the respondents cannot dispense with his service without verification of his original credentials, suffice to say that the petitioner through the instant petition seeks declaration with regard

to his educational documents whether they are genuine or otherwise, prima-facie, the forum chosen by him by invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law.

8. This Court, on the issue of fake appointments in the department of the Government, is guided by the pronouncement of the Judgment of Honorable Supreme Court in the case of Government of Punjab through Chief Secretary and others v. Aamir Junaid and others 2015 SCMR 74, which provides guiding principle on the aforesaid issues.

9. Petitioner has thus failed to make out his case for indulgence of this Court under Article 199 of the Constitution at this stage, in the light of dicta laid down by the Hon'ble Supreme Court of Pakistan in the case discussed supra. Consequently, the instant Petition stands dismissed along with the listed applications. However, the Petitioner may avail the appropriate remedy as provided to him under the law.

JUDGE

JUDGE

Hafiz Fahad