

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-2631 of 2019

Date

Order with signature of Judge

1. For hearing of CMA No.11726/19 (Stay)
2. For hearing of main case.

11.11.2021

Syed Shoa-un-Nabi, Advocate for the petitioner.
Mr. Ali Safdar Debar, AAG for the respondent No.1
Mr. Waleed Khanzada, Advocate for the respondents No.2 &
3/KW&SB.

Through instant petition, the petitioner seeks that he may be reinstated in service from 28.02.2018.

Briefly stated, the facts of the case are that the petitioner was appointed as Law Officer in respondent No.2 department, vide order dated 16.02.2008. The respondent /department received a complaint that the petitioner is also an employee of Postal Department and is doing a dual job. Thereafter explanation dated 21.09.2016 was called from him against which the petitioner not only filed his reply but also filed an appeal before the Secretary Local Government. A writ petition bearing No.D-5102 of 2018 was also filed by the petitioner against the respondents, which petition was disposed of vide order dated 28.11.2018 by giving directions to the Secretary Local Government to decide the appeal filed by the petitioner within 60 days' time, after providing him opportunity of hearing. The said appeal was thereafter heard by the Secretary Local Government who dismissed the contentions raised by the petitioner and now the petitioner has filed the instant petition challenging that the order dated 28.02.2018 passed by the respondent /Secretary Local Government may be set aside and he may be reinstated in service from 28.02.2018.

Syed Shoa-un-Nabi, Advocate, has appeared on behalf of the petitioner and stated that the petitioner has incorrectly been removed from the service and he may be reinstated w.e.f. 28.02.2018. He stated that the officer, namely

Syed Hashim Raza Zaidi, who passed the order dated 28.02.2018 against the petitioner stood retired on 27.02.2018 hence the said officer legally could not pass an order of the petitioner's removal/retirement after his date of retirement and hence the order passed by the respondent No.1 is illegal. He next submitted that due to some misunderstanding on the part of the petitioner after joining the respondent department he sent his resignation letter to the General Post Office, Karachi, on 02.12.2018 which though was late but could not be considered to be malafide on the part of the petitioner. According to the learned counsel the petitioner is ready to surrender the salary/remuneration received from the Postal Department during the period February-2008 to December-2008. The learned counsel, finally submitted that in view of these facts the petitioner may be reinstated in the service.

Mr. Waleed Khanzada, Advocate, has appeared on behalf of the respondents No.2 and 3 and at the very outset stated that the petitioner has approached the Court with unclean hands. He stated that the petitioner at the time of his appointment in February-2008 concealed the fact that he was already in service in Post Office and thereafter continued service in both the departments i.e. KW&SB and Postal Department upto December 2008 and when these aspects came into the knowledge of the KW&SB that the petitioner is performing dual job, the petitioner then tendered his resignation to the Postal Department, meaning thereby that the petitioner at one time was getting salary from two government departments, which he legally cannot do. He, therefore, stated that due to this reason the petitioner was removed from the service under Removal from Service (Special Powers) Sindh Ordinance-2000.

Learned AAG adopted the arguments of the learned counsel appearing for the respondents No.2/KW&SB and stated that personal hearings were provided by the Secretary Local Government to the petitioner on 16.01.2019

and 21.01.2019 since the petitioner failed to produce any proof with regard to the resignation tendered by him to the Postal Department and its acceptance to the said Secretary and also failed to dislodge the allegation leveled against him, therefore, the representation of the petitioner was dismissed as neither any departmental permission from the Postal Department for applying in KW&SB was furnished nor the petitioner informed the Postal Department to stop his salary as he had joined KW&SB but continued to enjoy salary from both the departments from February-2008 to December-2008. He, therefore, submitted that in view of these uncontroverted facts this petition is liable to be dismissed with cost.

We have heard both the learned counsel as well as learned AAG at considerable length and have also perused the record.

There is no denial to the fact that while applying to the KW&SB the petitioner did not obtain any NOC or permission letter from the Postal Department. There is also no denial to the fact that after joining the service in KW&SB the petitioner continued to enjoy the salary from both the departments upto December-2008. There is also no denial to the fact that when the departmental proceedings were initiated against the petitioner, he conceded the fact that neither any NOC nor any permission was obtained from the Postal Department by him before joining the service in KW&SB and has not denied the fact that he enjoyed dual salary for quite some time from both the departments. Though the learned counsel for the petitioner has candidly stated that the petitioner is ready to surrender the dual salary obtained by him but in our view that would not absolve the petitioner from the fact that he concealed material facts from KW&SB and thereafter was removed from the service after conducting full-fledged enquiry against him and granting proper opportunity of hearings to him. It is also a matter of record that the petitioner did not furnish his resignation to the Postal Department after his appointment

in KW&SB rather he resigned when the matter was taken up by KW&SB in respect of a complaint made against him. The record also reveals that proper show cause notice was issued to him, his explanation was required, enquiry was conducted, his reply was considered and thereafter when the same were found to be without any merit and having no force then his contention was rejected. In the petition bearing No.D-5102 of 2018 the Secretary Local Government was categorically directed to decide the appeal after providing opportunity of hearing to the petitioner. The record reveals that the said exercise was duly made and complied with by the Secretary and the contentions of the petitioner on the aspect of dual service, resignation to the Postal Department etc. were duly considered.

So far as the contention raised by Syed Shoa-un-Nabi Advocate with regard to surrendering the dual salary by the petitioner is concerned the same appears to be an afterthought on the part of the petitioner as the said ground has been taken only when the petitioner was already found to be guilty of enjoying dual salary of the two Government Departments /subsidiaries. Hence no lease could be granted to the petitioner on this aspect.

We, therefore, under the circumstances do not find any merit in the instant petition and dismiss the same, as it is found that material facts were concealed by the petitioner from the respondent department, who after fulfilling all the legal and codal formalities, as narrated above, has rightly dispensed with the service of the petitioner in accordance with law.

Apropos the contention of Syed Shoa-un-Nabi Advocate that termination order was passed by a person who was not in service at the time when he passed the order is of little significance since the petitioner has been removed from the service after due issuance of show cause notice, obtaining his reply, giving him ample opportunities of hearing and thereafter finding his submissions to be not sustainable, as it is an admitted fact that the petitioner

enjoyed dual service and salary for a number of months and did not disclose the true facts in respect of his employment in the Postal Department to the KW&SB and therefore, as stated above, his termination from service is found to be legal and in accordance with law. The petition, therefore, as stated above, merits no consideration and stands dismissed alongwith the listed application.

JUDGE

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