

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 1102 of 2020

BEFORE :

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Petitioner: Mst. Beenish Naqvi through Mr. Sajjad Ahmed Chandio, Advocate.

Respondent-5: Principal Public School Hyderabad through Mr. Ali Abbas alias Nouman Ali, Advocate

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing & Decision : 02.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner has prayed as under:-

- a. Declare that the act of respondent No.5 stopping salaries of the petitioner without disclosing any reason at all or written order is illegal, unlawful and unconstitutional and direct the respondent No.5 to release the remaining salaries of the petitioner from the month of February 2020 to September 2020 and shall continue to pay salaries on due date.
- b. Declare that the impugned final show cause notice dated 31.01.2020 issued by respondent No.5 is illegal, unlawful, null, void ab-initio and against the relevant rules, by-laws and sheer violation of the fundamental rights.
- c. Declare that order dated 31.01.2020 wherein the petitioner has been stopped from entering into the school premises is illegal, unlawful, unconstitutional and sheer violence of all relevant rules, laws.
- d. Direct the respondent No.1 to 4 to conduct inquiry into the matter through an honest, competent, well-known professional official of Education Department and shall submit the same before this Honourable Court for perusal and further orders in accordance with law.
- e. Direct the respondent No.4 (Chairman Board of Governance Public School Hyderabad) to submit the order/notification regarding constitution of the Committee U/S 3 of the Protection Against Harassment of Women at the Work Place Act 2010, for addressing the complains related to the sexual harassment of women at workplace i.e. Public School Hyderabad and list of the cases handled by said committee

2. The petitioner in the memo of petition has narrated her ordeal that she is serving as Senior Teacher at Public School Hyderabad as she was appointed about 14 years back i.e. on 13.02.2006 and she is

performing her official duties in accordance with law; while respondent No.5 has recently been appointed as Principal, Public School Hyderabad; that due to political interference and evil eye upon the land of school, the Education System of Public School Hyderabad has been disturbed unnecessarily since the years and such disturbance provided an opportunity to all concerned political lords of the city to run the school system under different experiments; that as an experiment in the year 2019 the School Administration System of Public School was handed over to IBA, University Sukkur for five (05) years with the hope of betterment and in April 2019 respondent No.5 was appointed as Principal on contract basis for a period of one year, which was extended later on for another one year; that soon after his appointment respondent No.5 started causing more destruction to education system of the school by appointing his close relatives, friends without adopting proper procedure under the law, when admittedly the school administration was facing financial crisis and the faculty members were raising hue and cry for release of their salaries on time; that after appointment respondent No.5 stated misbehaving with lady teachers and attempted to cause sexual harassment to young female teachers and against his such illegal and unlawful acts the petitioner along with other lady teachers filed C.P No 2660 of 2019 before this Court; that the above-mentioned constitutional petition was filed in the month of December 2019 and the petitioner being victim of sexual harassment at workplace also preferred complaint before Provincial Ombudsman Sindh for protection against Harassment of Women and Chairman BOG/ Public School / Commissioner Hyderabad and waiting for justice but meanwhile respondent No.5 being powerful person, illegally stopped her salaries during the period of Covid-19; that respondent No.5 illegally, unlawfully while ignoring orders of provincial government and concerned authorities during the period of recent pandemic Covid-19 stopped salaries of the petitioner with intention to blackmail and force her to withdraw the complaints filed against him and on her refusal he further illegally and unlawfully vide impugned notification dated 31.01.2020 imposed ban on entry of the petitioner in the school premises and issued final show cause notice (SCN) on baseless allegations; the petitioner timely submitted reply through courier and so also sent copy of the same to Honourable Supreme Court of Pakistan and concerned authorities; that despite the fact that number of complaints and applications were sent to the

concerned authorities including officials of respondent 1 to 4 but due to political backup of respondent No.5 her all efforts went in vain hence the petitioner has filed the instant petition with the above prayer.

3. At the very outset, we inquired from learned counsel as to how the instant Petition is maintainable against SCN as well as disciplinary proceedings initiated against the petitioner, which relates to terms and conditions of her service and the outcome of disciplinary proceedings has yet to come, and after its conclusion, she has remedy under the law to assail the decision adversely affecting her, if any.

4. Mr. Sajjad Ahmed Chandio, learned counsel for the petitioner, has submitted that the impugned SCN, as well as disciplinary proceedings, cannot be termed as the order passed within the terms and conditions of service of the petitioner. Per learned counsel, the final SCN and further proceedings were / are based on malafide intention; that there was / is nothing adverse against the petitioner throughout her tenure of service, therefore, depriving her of joining the service and stoppage of her salary is against the basic spirit of law; that she was condemned unheard on the charges leveled against her; that the career of the petitioner is at stake at the hands of respondents who are bent upon to deprive her of her duty; that the petitioner is fully entitled to be treated under the law. In support of his contention, he heavily relied upon the documents attached with this petition; that this is a hardship case and this Court can hear and decide the matter on merit. He lastly prayed for allowing the petition.

5. Mr. Rafiq Ahmed Dahri, learned Asstt: A.G. has raised the question of maintainability of the instant petition on the ground that disciplinary proceedings of the respondent-Public School could not be entertained in constitutional petition as Public School has its own Rules/Bye-laws; that as Public School Hyderabad is not a Statutory/Corporate Body as such petitioner has no such vested right to claim enforcement of non statutory rules of service through this writ petition.

6. We have heard learned counsel for the parties and perused the material available on record.

7. In the first place, we would like to examine the issue of maintainability of the captioned Petition under Article 199 of the Constitution.

8. We are of the view that Hyderabad Public School is a Body Corporate performing functions in connection with the affairs of the Province and a non statutory body having non statutory service rules, as such, the High Court has jurisdiction to interfere in the affairs of Public School under its constitutional jurisdiction. On the subject, our view is supported by the decision of this Court rendered in the case of Professor Abdul Hameed Memon Vs. Province of Sindh and others 2016 YLR 940.

9. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to restrain the competent authority from taking disciplinary action under law against a public Servant against whom prima facie evidence showing his involvement in serious charges of misconduct was available, for the reason that any such direction would be disharmonious to the principle of good governance and canon of service discipline; rather causing undue interference to hamper the smooth functioning of the departmental authorities, more particularly in Hyderabad Public School.

10. In law show cause is not defined as a punishment. In our view, the Petitioner cannot file a petition against the issuance of SCN, which is simply an opportunity to explain the position in the course of inquiry. Against the adverse result of decision arising out of SCN, if any, the petitioner will have the remedy of appeal; and, in presence of such adequate remedy; this Court at this juncture will not step in to declare the SCN issued to the Petitioner illegal or void. More so, the Petitioner's objection on the issuance of SCN is technical and procedural, since we do not see malice or ulterior motives on the part of respondent-School and/or violation of the principles of natural justice. In such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process arising out of the SCN and set-aside SCN on any technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioner. Besides respondents have leveled serious allegations against the petitioner about her conduct, and subsequently, her absence from duty due to certain activities as discussed supra, which will certainly be considered by the competent

authority after finalizing the inquiry proceedings initiated against her on account of her alleged misconduct.

11. Keeping in view the above-mentioned facts and circumstances of the case, we do not see any infringement of right of the Petitioner which could be called in question by way of Writ Petition. It is well-settled principle of law that a public Servant has no vested right to call in question the disciplinary proceedings in Writ Petition, however, they are at liberty to conclude the disciplinary proceedings (if not earlier concluded) within a reasonable time under law after providing an opportunity of hearing to the petitioner; and, during the proceedings if she is found by the competent authority to be entitled to the salary of intervening period, the same may be disbursed to her within two weeks strictly in accordance with law.

12. In light of the above facts and circumstances of the case, we are of the view that this Court in its Constitutional jurisdiction cannot interfere in the disciplinary proceedings of Hyderabad Public School. Hence, the instant petition is found to be meritless and is accordingly dismissed along with the listed application(s).

JUDGE

JUDGE