

ORDER SHEET  
HIGH COURT OF SINDH, KARACHI

**CP D 7200 of 2021**

-----  
Date:                      Order with signature(s) of Judge(s)  
-----

1. For order on Misc. No.31514/2021 (Urgent/App)
2. For order on office objection No.18.
3. For order on Misc. No.31515/2021 (Exemption/App)
4. For hearing of main case.

**16.12.2021**

Mr. Ali Raza Hashmi, Advocate for the Petitioners

1. Granted.
2. Deferred.
3. Granted subject to all exceptions.

4. Per learned counsel, the petitioners were show caused with regard to unlawful appointments in the Karachi Port Trust, primarily on account of having obtained the appointments predicated upon bogus / fraudulent educational certification. In pursuance thereof they were charge sheeted and subjected to an extensive enquiry. The enquiry report found the allegations to be substantiated. On the basis of the enquiry report show cause notices were issued and ample opportunity of personal hearing was also afforded and utilised. Upon conclusion of the proceedings the petitioners were adjudged liable and removed from service. The petitioners' appeal was also considered by the competent authority and dismissed. The petitioners also invoked the jurisdiction of the learned Labour Court and the Federal Services Tribunal, however, without success. Upon culmination of the aforementioned the present petition has been preferred.

At the very onset the counsel was confronted with respect to maintainability, however, he remained unable to assist. It was the crux of the petitioners' case that the evidence had not been properly appreciated in the disciplinary proceedings, hence, this court may evaluate the same and render its own findings.

The entire premise of the petitioners is based upon disputed questions of fact, already subjected to detailed inquiry, which the petitioners require to be adjudged afresh. It is settled law that the adjudication of disputed questions of fact, requiring evidence etc., is not amenable in the exercise of writ jurisdiction<sup>1</sup>.

The record demonstrates that the allegations against the petitioners were subjected to the anvil of a detailed inquiry and repeated opportunities were provided to the petitioners to dispel the charge/s there against. In addition to the

---

<sup>1</sup> 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415;

successive written submissions of the petitioners an opportunity of personal hearing was also availed. Per the admitted documentation filed, the preponderance of the incriminating record against the petitioners could not be controverted, hence, the penalty. While eschewing a voluminous repetition<sup>2</sup> of the incriminating record, it would suffice to observe that the petitioners' counsel been unable to demonstrate that the decision taken could not have been predicated upon the record under consideration.

In summation it is observed that the principles of *audi alteram partem* appear to have been observed in the proceedings under scrutiny; no cavil has been articulated by the petitioners' counsel in so far as the procedural aspect of the proceedings is concerned; the decision appears to have been taken rested upon the preponderance of record, upon concluding that the same was commensurate punishment considering the gravity of the offence concerned. It is in this context that it is observed that the learned counsel has been unable to demonstrate any infirmity with respect to the proceedings impugned.

It is trite law<sup>3</sup> that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

Article 199 of the Constitution contemplates the discretionary<sup>4</sup> writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy, however, the same was duly availed / exhausted and no case has been set forth before us for invocation of the writ jurisdiction.

In view hereof, we are constrained to observe that no case has been set forth for the invocation of the discretionary writ jurisdiction of this Court, hence, this petition is hereby dismissed *in limine*.

JUDGE

JUDGE

---

<sup>2</sup> Per *Mansoor Ali Shah J.* in the yet unreported judgment dated 18.08.2020 in *Farooq Hussain vs. Shaikh Aftab Ahmed (CRP 104-L of 2019 & connected matters)*.

<sup>3</sup> Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

<sup>4</sup> Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as *2021 SCMR 425*; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as *2010 SCMR 105*.