

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

CP No. D- 1564 of 2021

BEFORE :

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

Date of hearing
& decision:

15.12.2021

Petitioner:

Ghulam Mujtaba Dayo through Mr. Ishrat Ali
Lohar, Advocate

Respondent-5:

Qadir Bux Rind through Mr. Zainul Abdin Dal,
Advocate

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

ORDER

ADNAN-UL-KARIM MEMON, J: - The petitioner through the instant petition has prayed as under:-

- i. To hold and declare that the impugned Notification dated 24.9.2021 is illegal, unlawful, unconstitutional, malafide, and in violation of orders passed by this Honorable Court and the Honorable Apex Court, consequently to set-aside the same.
- ii. To suspend the operation of the Impugned Notification Pending final adjudication of the captioned petition.
- iii. Pass any other order(s) which this Honorable Court deems fit and proper in the circumstances of the case.

2. The petitioner being aggrieved by the impugned notification dated 24th September 2021 whereby he has been transferred and directed to report to College Education Department and on his place respondent No.5 has been transferred and posted on deputation.

3. Mr. Ishrat Ali Lohar, learned counsel for the petitioner has submitted that because of the order passed this Court in CP No. D-4582 of 2016, respondent No.2 issued orders that the officers who entered into Plea Bargain (PB) and Voluntary Return (VR) with NAB may not be given posting, therefore, in compliance whereof a

notification dated 23.10.2017 was issued transferring respondent No.5 with direction to report to his parent department but he did not join his parent department and subsequently vide impugned notification dated 24.09.2021 he was posted as Director (BS-19), Inspection & Registration of Private Institution Shaheed Benazirabad in violation of the order passed by this court in above petition. He emphasized that he has brought this lis before this Court due to the alarming situation in the Province of Sindh, more particularly due to mismanagement, and corrupt practices by the Investigating Agencies throughout the country in their respective inquiries by allowing the Civil / Government servants to enter into a plea bargain and voluntarily return of the ill-gotten gains to NAB authorities under Section 25 of the National Accountability Ordinance, 1999 (‘NAO 1999’); that the Sindh Government has allowed promotions and postings to Civil / Government servants, who are beneficiaries of Section 25 of NAO, 1999. He asserted that the respondent-Sindh Government and its departments are indulged in gross violation of law by allowing corrupt officials to enjoy the postings despite their deeming conviction under the NAB law. Per learned counsel, the option of voluntarily return by a public servant and / or civil servant falls within the ambit of misconduct and needs to be departmentally proceeded against once he / she admits that he / she had earned money or acquired assets by corruption. He further argued that after admitting this fact he / she cannot hold any public office either in the Federal or Provincial Governments or in any state-owned organization. He prayed for allowing this petition.

4. Today Mr. Rafiq Ahmed Dahri learned Asstt: A.G has filed the notification dated 14.12.2021 whereby the posting of respondent No.5 has been canceled/withdrawn and prayed for disposal of this petition as the purpose of filing the same is served.

5. Learned counsel representing respondent No.5 has pointed out that the question of vires of Section 25(a) of National Accountability Ordinance, 1999 (NAO, 1999) as raised hereinabove is sub-judice before the Hon’ble Supreme Court in the aforesaid proceedings. Therefore, we do not find it appropriate to dilate upon the vires.

6. We have heard learned counsel for the parties at some length, examined the record of the case and the provisions of NAB Ordinance 1999.

7. It is not disputed that the respondent No.5 had entered into a VR with the NAB. On the subject issue, the Hon'ble Supreme Court in the case of The State through Chairman NAB V/S Hanif Hyder and another, **2016 SCMR 2031** held as under:

"2. During the hearing of these proceedings, we have noticed that the NAB in exercise of powers under section 9 of the NAB Ordinance has started taking cognizance of the petty matters and therefore, notice was issued to the D.G. NAB to submit report in regard to the enquiries and or investigations, which the NAB has undertaken in respect of the amounts involved less than 100 Million and References, if any, filed which involved amount less than 100 million. A list has been provided. It is evident from this list that prima facie the enquiries and investigations undertaken by the NAB are not of mega scandals and apparently petty matters have been enquired into on the complaints. This is not the wisdom behind legislation of NAB Ordinance. The NAB Ordinance was primarily legislated to counter mega scandals and book the persons who are involved in mega scandals of corruption and corrupt practices.

3. We have also noticed that the provisions of section 25(a) of the NAB Ordinance empowers the NAB to accept the offer of an accused person of Voluntary Return of the assets or gains acquired by him. Once an accused who alleges to have plundered colossal sums of money, deposits a portion of such amount determined by Chairman NAB voluntarily, that too, in installments, stands discharged from all his liability in respect of the matter or transaction in issue and goes back to join his job. This frequent exercise of powers of "Voluntary Return" by the Chairman NAB has in fact multiplied corruption on the one side and defeated the object of the NAB Ordinance on the other side. The NAB Ordinance was introduced to eliminate the corruption of large magnitude. Provisions of section 25(a) were not meant to allow corrupt "public servants" who mint money through corruption or corrupt practices to get a clean chit from the NAB authorities by paying portion of such alleged amount in terms of section 25(a) of the NAB Ordinance. What is more shocking for us is that no departmental proceedings are initiated against any of such accused, who entered into Voluntary Return. The option of Voluntary Return by a public servant and or a civil servant falls within the ambit of "misconduct" and needs to be departmentally proceeded against once he admits that he had earned money by corruption. After admitting this fact, he cannot hold any public office either in Federal or in Provincial Government or in any state owned organization.

4. This Court further needs to examine the vires of section 25(a) authorizing the Chairman NAB to accept the offer of Voluntary Return from a person of the amount illegally earned by him at the touchstone of the Constitution of Pakistan. This provision prima facie is in conflict with the provisions of the Constitution, where such power can only be exercised by a judicial forum as after payment of Voluntary Return, the person goes scot-free without any stigma on his career and can contest the elections and or can continue in public office, as the section does not provide any disqualification, as against the disqualification provided under section 25(b) of the NAB Ordinance. In addition to the aforesaid reasons there is no yardstick provided in NAB Ordinance and the rules framed thereunder determining the amount of Voluntary Return.

5. We, therefore, direct the office to place this order before the honorable Chief Justice of Pakistan, for passing appropriate orders to treat this matter as a Suo Motu petition under Article 184(3) of the Constitution, as prima facie, the aforesaid issues raise question of

public importance having far reaching effect and have direct bearing on the fundamental rights of citizens of Pakistan in order to lay down the principles regarding cognizance of NAB in corruption matters under section 9 of the NAB Ordinance and to further examine whether the NAB can extend its jurisdiction to take cognizance of the cases which fall within the domain of the Anti-Corruption Authorities and or the FIA. The office shall also obtain orders regarding its hearing at the Principal Seat. The NAB, Federal Government, Provincial Government and statutory authorities shall furnish the following details:

(i) The list of the cases in which NAB authorities are conducting enquiries and investigations and or references pending in the NAB Courts, involving an amount of less than Rs.100 Million;

(ii) The list of the persons, civil servants and or public servants, to be provided by relevant departments of the Governments and or State owned organizations, who entered into Voluntary Return.

(iii) The action which the Federal/Provincial Governments and or statutory organizations have taken against their employees after their offer of Voluntary Return was accepted by NAB in terms of section 25(a) of the NAB Ordinance.

6. If the Hon'ble Chief Justice of Pakistan approves the recommendations of the Bench, notices be issued to the Attorney General for Pakistan, the Advocate Generals and the Prosecutor Generals of all the Provinces, under section 27-A of the C.P.C. and to the Chairman NAB, DGs NAB and the Prosecutor-General NAB on the aforesaid issues. Order accordingly.”

8. The second important point raised in the present proceedings is whether a civil servant / Government servant, who after entering into VR under Section 25(a) of NAO, 1999, amounts to an admission of his guilt and his action falls within the ambit of misconduct as defined under The Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 (Rules, 1973) and Sindh Civil Servants (Conduct) Rules, 2008. On the scope of VR under section 25(a) the Hon'ble Supreme Court in the case of National Accountability Bureau through Chairman V/S Shabbir Ahmed Malik and others, **PLD 2020 SC 193** held as under;

“Scope of VR under section 25(a). VR is an option available to person under inquiry or even before inquiry but prior to authorization of investigation against him, to come forward to discharge his liability by making a voluntary return of the amount due against him. A VR settlement, as a concept is structured around and dependent upon the volition of the person who wishes to settle. VR, therefore, constitutes; (i) an offer of a holder of public office or any other person to make a voluntary return of the assets acquired or gains made by him in the course, or as a consequence, of any offence under the Ordinance; (ii) acceptance of that offer by the Chairman NAB; (iii) determination of the amount due from such person by the Chairman NAB; and (iv) deposit by such person with the NAB, of the amount so determined. Anything short of this does not constitute a valid VR settlement. VR is, therefore, a one off voluntary return facility linked with the liability of the accused as determined by the Chairman NAB. Being a voluntary

payment, any failure thereof, simple puts an end to the facility of VR. Any short payment or partial payment does not constitute a valid VR settlement and thus does not discharge the person from his liability in respect of the matter or transaction in issue and the proceeding initiated under the Ordinance continues unabated. VR under the law is a one-time facility of depositing the determined amount and not a long-term repayment arrangement. In case the NAB grants time to a person to arrange for money so as to discharge his liability under the VR settlement, any such concession extended to the accused has no bearing on the essential constituent of VR, i.e., the deposit of the determined amount. Facility of VR becomes effective once the entire determined amount is paid or else the facility of VR comes to an end. Even if the accused is allowed to pay the amount in installments, VR will only be effective once the determined amount is deposited in full. Voluntary return envisages a voluntary deposit against the liability and there is no concept of any outstanding amount. "Outstanding amount" or "any sum due" imply that a person is otherwise bound to pay and hasn't paid. Under VR, there is either a deposit of the determined amount voluntarily or there is no VR. Therefore, the question of the recovery of the outstanding amount under VR does not arise in order to attract section 33E of the Ordinance. However, any partial payment under VR will be available for adjustment even after VR stands vitiated and can be adjusted against Plea Bargain ("PB") or the liability determined by the court, as the case may be."

9. Prima-facie, in view of 2016 SCMR 2031, the option of voluntary return exercised by a public servant and/or civil servant falls within the ambit of misconduct as defined under Section 2(4) of The Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 and The Sindh Civil Servants (Conduct) Rules, 2008 which reads as under :

"(4) "misconduct" means conduct prejudicial to good order of service discipline or contrary to West Pakistan Government Servants (Conduct) Rules, 1966 or unbecoming of an officer and a gentleman and includes any act on the part of a civil servant to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a civil servant; and"

10. The law on the subject is clear in its terms that the civil / government servant, who opted for VR / plea bargain with the NAB Authorities need to be departmentally proceeded forthwith, once he/she admits that he/she had earned money or acquired assets by corruption; and, after admitting this fact he/she cannot hold any public office either in the Federal or Provincial Governments or in any state-owned organization as held by the Hon'ble Supreme Court in the case of Hanif Hyder supra. However, it is made clear that if any of the civil / government servants is proceeded under Rules, 1973, the punishment as provided under the law should also commensurate to the offense committed under the NAB law. Merely penalizing the

delinquent official for minor penalty does not serve the very purpose of law and once it has come into the knowledge of the competent authority about the guilt of the delinquent official, he shall be placed under suspension under Rules, 1973 till the conclusion of disciplinary proceedings.

11. In view of the foregoing legal position of the case, at the outset, we deem it appropriate to direct the Government of Sindh to take immediate disciplinary action under Rule 5 of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, against respondent No.5, who entered into a Voluntary Return (VR) under the NAB law and dicta laid down by the Hon'ble Supreme Court in the case of Hanif Hyder supra. It is made clear that during the intervening period, he shall not be given administrative assignment/posting and conduct fair disciplinary proceedings against him, if not earlier done so.

12. This petition stands disposed of in the above terms with no order as to costs.

JUDGE

JUDGE