

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-6549 of 2020

Dr. Habibur Rehman Soomro
Petitioner through : Mr. Abdul Ghaffar, advocate.

Respondents 1 & 2
through : Mr. Muhammad Nishat Warsi, DAG

Respondent No.03
through : Mr. Muhammad Fahad Prizada, advocate

Date of hearing
& order : **17.01.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner filed Civil Suit bearing No. 1153 of 2006 against Federation of Pakistan and others, for Declaration, Mandatory Injunction, Damages and Recovery of Salary / G.P Fund arrears and sought-following relief(s):

- a) Declare that Plaintiff not having applied for resignation in any manner whatsoever, he continues to be in the Defendants' service as Medical Officer in BPS-19.
- b) Consequent relief may be granted by issue of Mandatory Injunction directing the Defendants to reinstate the Plaintiff in the service as Medical officer in BPS-19 with payment of back benefits to Plaintiff with effect from March 2001 till date of decree including allowances etc. according to rules. The total salary and allowances according to last Pay-Slip dated 15.2.2001 comes to Rs.12507/- per month and total amount upto the month of August, 2006 comes to Rs.8,25,462/- (Rupees Eight Lacs Twenty Five Thousand Four Hundred & Sixty Two Only), which is subject to addition of incremental increase in Pay and allowances made by the Government from time to time.
- c) That in the alternate it may be declared that the Plaintiff is entitled for retirement on medical ground under Rule 3(1) of Pakistan Cantonment Servant Rules, 1954 read with Fundamental Rule 10-A(c)(iii) respectively with effect from the date of the Medical Report of the Commanding Officer PNS Shifa dated 28.06.2001 / 3.07.2001, and make payment of all the retirement benefits to the Plaintiff according to law.
- d) Direct the Defendants to make payment of a sum of Rs.30,00,000/- (Rupees Thirty Lacs) as damages to the plaintiff on account of mental torture and agony due to inaction on the part of Defendants and non-payment of salary causing financial stringency.

2. The learned Single Judge (Original Side) vide order dated 01.10.2019 has passed the following order:

"5. I have heard the learned Counsel for the parties on the aforesaid proposition and perused the material available on record.

6. To address whether this Court has power to convert and or convert one kind of proceeding into another is always existed and can be exercised by the High Court not only at an advance stage in order to prevent injustice. No fetters or bar could be placed on the powers of High Court to convert one kind of proceeding into another and to decide

the matter either itself in exercise of its jurisdiction or to order its transfer to another Court having jurisdiction or may remit it to Court/forum/authority having jurisdiction on merits. The High Court in number of cases converted appeals into revisions or vice versa or Constitution Petitions into appeals or revision and vice versa. Reference is made to the following case law:-In the case of Jane Margret William v. Abdul Hamid Mian (1994 SCMR 1555), Capital Development Authority v. Khuda Baksh and 5 others (1994 SCMR 771), Shams-ul-Haq and others v. Mst. Ghoti and 8 others. (1991) SCMR 1135), Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 Supreme Court 539), Province of Sindh and another v. Muhammad Ilyas and others (2016 SCMR 189) Engineer Musharaf Shah v. Government of Khyber Pakhtunkhwa through Chief Secretary and 2 others (2015 PLC (C.S) 215), The Thal Engineering Industries. Ltd. v. The Bank of Bahawalpur Ltd and another (1979 SCMR 32), Karamat Hussain and others v. Muhammad Zaman and others (PLD 1987 Supreme Court 139), and more particularly in the case of Mian Asghar Ali v. Government of Punjab and others (2017 SCMR 118).

7. *On the issue of statutory rules of the Defendant-Cantonment Board, it appears that section 280 of the Act 1924 empowers the Federal Government to make rules for carrying out the purposes and objects of the Cantonments Act. It appears that in exercise of the powers so conferred by clause (c) of subsection (2) of section 280 of Act, 1924, the Central Government in the year 1954 had made the rules of service for Cantonment servants known as "The Pakistan Cantonment Servants Rules, 1954, therefore, the service related issues of statutory body having statutory rules of service can be looked into by the court having jurisdiction as per law.*

8. *In view of above discussion, by consent of the parties present in Court, prima-facie, this matter needs to be heard and decided by a learned Division Bench of this Court in its Constitutional jurisdiction in the light of paragraph No.158 of the judgment rendered by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch supra. Therefore the office is directed to place this case before a Division Bench of this Court for an appropriate order including the maintainability and other ancillary issues. The plaintiff is directed to file another set of pleadings accordingly."*

3. The office of this Court, in compliance with the order passed by the learned Single Judge has assigned Constitution petition number D-6549/2020, and the matter was fixed before this Court for orders as to maintainability and hearing of the main case.

4. Mr. Abdul Ghaffar, learned counsel for the petitioner, has narrated the facts of the case, briefly and argued that the petitioner was appointed as Medical Officer in BPS-17 on regular basis in the year 1982, his post was upgraded to BPS-18 in the year 1982 and subsequently was granted move-over to BPS-19 on 09.9.2000, with effect from 01.12.1997. Learned counsel has submitted that during his tenure of service, he suffered sciatica pain and was referred to PNS Shifa Karachi. Per learned counsel, he was medically examined by the Medical Board, where the petitioner's physical disability on account of sciatica was proved in March 2001. Per learned counsel, on 08.4.2002, for the reasons best known to the respondents his pay was stopped without assigning reason, compelling him to apply for his early retirement on medical ground, however, his representation for early retirement on the medical ground was rejected by the competent authority in the year 2006. Learned counsel further pointed out that in his utter surprise, shock and dismay, he received officer Order No.279 dated 14.4.2006 regarding the acceptance of his purported resignation by the competent authority, though he did not resign. Learned counsel further submitted that petitioner being aggrieved by and dissatisfied with the official letter dated 14.4.2006 preferred Revision Application before the Federation of Pakistan, through Secretary Ministry of Defence, Rawalpindi, which too was rejected vide order dated 30.06.2006 in a slipshod order, without assigning reasons. He further argued that the impugned decisions dated 18.02.2006 and order No.479 dated 14.4.2006 and 30.06.2006 are illegal, malafide, and contradictory; that the respondents have failed to exercise the jurisdiction conferred by law viz: rule 3(1) of Pakistan Cantonment Servants

Rules, 1954 read with Fundamental Rule 10-A(c)(iii); that the petitioner's representation to retire on medical ground, having been rejected, he continues to be in service; that the petitioner not having been treated according to law, the respondents have violated Article 4 of the Constitution as the petitioner has lawful right to retire on medical ground, receive pay, arrears, and pension, etc.; that there is no provision either in Pakistan Cantonment Servants Rule, 1954 and/or in the Fundamental Rules applicable to the petitioner's case for constitution of second Medical Board for his examination. On the point of maintainability of the instant petition, It was submitted by, learned counsel that this Court has the territorial jurisdiction to entertain the instant petition with further assertion that respondents 1 and 2, being Federal Authorities, are deemed to function all across the country, including Karachi; it is well-settled that if the decisions and actions taken by the Federal Government and/or its Authorities take effect all across the country, they are deemed to be functioning all across the country ; it is also well-settled that in determining the cause of action and the facts that have to be proved by the petitioner in order to succeed, the averments made in the memo/plaint are to be accepted as true ; the term "cause of action" has not been defined in CPC, but it is well-settled that it is said to arise at a place from where the bundle of facts that are necessary to prove the Suit emanate from ; the main relief sought by the petitioner/plaintiffs is for a declaration that the impugned letters dated 14.4.2006 and 30.06.2006 by respondents 1 and 2 is unreasonable, arbitrary and of no legal effect ; the question of unreasonableness and arbitrariness of the impugned letters and its effect thereof on the petitioner all across Pakistan, including Karachi; as the impugned decision has affected the plaintiff's right and all across the country, the cause of action has accrued to the petitioner/plaintiff No.1 within the territorial jurisdiction of civil Courts all across the country, including Karachi, and as such all such Courts, including this Court, have concurrent jurisdiction to entertain this petition/Suit ; there is no bar under the law that disentitles or prohibits the petitioner/plaintiffs from invoking the jurisdiction of this Court, particularly when the cause of action has accrued to him at Karachi and where the impact of the impugned decision has been felt the most ; under the "take-effect test" and "take-effect" doctrine, the jurisdiction of this Court stands expanded under Section 120 CPC and also as the constitutional/original civil jurisdiction of this Court is distinct from the ordinary civil jurisdiction of civil Courts in general ; the objections raised by the respondents with regard to the jurisdiction of this Court by relying upon Section 20 CPC are liable to be rejected as the provisions of the said Section are inapplicable to this Court in view of Section 120 CPC ; without prejudice to the above submission with regard to Section 120 CPC, the requirement of Section 20(c) CPC stands fully satisfied in the instant case ; and, this Court has entertained and adjudicated a large number of petitions in the past wherein the respondents, being Federal entities or corporations, did not have their principal place of business at Karachi, and a large number of such petitions is still subjudice before this Court. In support of his contentions, he relied upon the cases of Rahim Bakhsh and others v. Chief Election Commissioner and others, **PLD 1967 Lahore 49** and P.Kasilingam v. P.S.G. College of Technology, **1982 PJC 151**. He has prayed for allowing the instant petition.

5. Mr. Muhammad Fahad Pirzada, learned Counsel representing respondent No.3, has argued that the initial Civil suit, as well as this petition in its form, is not maintainable under the law on the premise that the petitioner/Plaintiff has no cause of action against the respondents/Defendants to institute the lis before this Court either in its original civil jurisdiction or Constitutional jurisdiction on the premise that the petitioner has assailed the vires of acceptance of resignation letter dated 14.4.2006 issued by the office of the Cantonment Board Rawalpindi and this Court has no territorial jurisdiction under Article 199 of the Constitution to look into the administrative affairs of the Cantonment Board Rawalpindi. He further argued that the impugned letter has been issued by Cantonment Board Rawalpindi, place of occurrence is at Rawalpindi, place wherefrom letter is being issued is in Rawalpindi, as such this Court lacks jurisdiction to entertain this matter. In support of his contentions, he relied upon the cases of He relied upon the case of Dr. Zahoor Ahmed Shah v. Pakistan Medical and Dental Council through Secretary and another, **2005 MLD 718**, Aqeel Karim Dhedhi v. National Accountability Bureau through Chairman and 3 others, **PLD 2005 Sindh 1**, and Ali J. Siddiqui through Attorney v. Federation of Pakistan through Secretary and others, **PLD 2020 Sindh 9**. He has prayed for the dismissal of the instant petition. At this stage we asked the learned counsel to assist this court on the merits of the case, he replied to the query and submitted that since the instant petition is not maintainable merits cannot be touched.

6. Mr. Muhammad Nishat Warsi learned DAG representing the respondent 1 and 2 has supported the stance of the learned counsel for respondent No.3 and referred to the letter dated 14.4.2006 issued by the office of Cantonment Board Rawalpindi and argued that this Court has no territorial jurisdiction to entertain this petition and quash the letter as discussed supra; however, he admitted that the Cantonment Board is a Federal entity having presence in the entire country but its regional offices working in the respective provinces are independent to each other. The office of Cantonment Board Rawalpindi is situated in a particular Province remains under the administrative control of the High Court Lahore. The remedy to question such vires of the letter dated 14.4.2006 under Article 199 of the Constitution if any would lie before the High Court of that Province only. Therefore, any petition challenging the same before the High Court of other provinces on the ground of petitioner's residence and other ancillary causes, there would not be maintainable. He however did not touch the merits of the case and prayed for dismissal of the instant petition.

7. We have heard learned counsel for the parties and perused the material available on record and case-law cited at the bar.

8. To address the question of the maintainability of the instant petition, it appears that section 280 of the Cantonments Act, 1924 empowers the Federal Government to make rules for carrying out the purposes and objects of the Cantonments Act and reads as under:-

"280. Power to make rules. --- (1) The Federal Government may, after previous publication, make rules to carry out the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a)

(b)

(bb)

(c) the appointment, control, supervision, conditions of service, transfer, suspension, removal, dismissal, and punishment of servants of Boards;

....."

9. It appears that in the exercise of the powers so conferred by clause(c) of sub-section(2) of Section 280 of the Act, 1924, the Central Government in the year 1954 had made the rules of service for Cantonment servants known as "The Pakistan Cantonment Servants Rules, 1954", therefore, the service-related issues of the statutory body having statutory rules of service can be looked into under Article 199 of the Constitution. In the instant case, respondent No.1 is the Federation of Pakistan through its Secretary Government of Pakistan Ministry of Defence Rawalpindi, and respondent No.2 is the Director-General Military Land and cantonment, Rawalpindi; respondent No.3 is Executive Officer Manora cantonment Karachi. In principle respondents No.1 & 2 could be sued under Article 174 of the Constitution; and, the office of respondent Director General Military Land and Cantonment, Rawalpindi, which is established by the Federal Government by notification in the official gazette as well as under the Act, 1924 as discussed supra. Thus, the respondents in the present petition are either the Federation or the Federal entities/authorities established, controlled, and managed by the Government of Pakistan, therefore, the respondents could be sued at any of the provinces of Pakistan in the light of the ratio of the judgment rendered by the Honorable Supreme Court in the case of the Federal Government through Secretary Interior, Government of Pakistan v. Ms. Ayyan Ali and others, **2017 SCMR 1179**, wherein the Hon'ble Supreme Court was pleased to hold that the Federal Government, though may have exclusive residence or location at Islamabad, would still be deemed to function all over the country. The following jurisprudential principles deduced in this context by the learned Lahore High Court in the case of LPG Association of Pakistan through its Chairman v. Federation of Pakistan through Secretary Ministry of Petroleum and National Resources Islamabad and 08 others, **2009 CLD 1498** were approved and reproduced by the Hon'ble Supreme Court in the afore-cited case :

" (a) The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the Provinces, shall still be deemed to function all over the country.

(b) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other than the Federal Capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order / action has affected him.

(c) This shall be more so in cases where a party is aggrieved or a legislative instrument (including any rules, etc.) on the ground of its being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been effected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property; profession, association, etc., and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right

is likely to be affected. In this context, illustrations can be given, that if some duty / tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is maintaining the account at Lahore, though the Act / law has been passed at Islamabad, yet his right being affected where he maintains the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad ; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the enforcement of his right in any of the two High Courts.

(d) On account of the above, both the Islamabad and Lahore High Courts shall have the concurrent jurisdiction in certain matters and it shall not be legally sound to hold that as the Federal Government etc. resides in Islamabad, and operates from there ; and the assailed order / action has also emanated from Islamabad, therefore, it is only the Capital High Court which shall possess the jurisdiction. The dominant purpose in such a situation shall be irrelevant, rather on account of the rule of choice, the plaintiff / petitioner shall have the right to choose the forum of his convenience.”

10. Both the afore-cited cases were constitutional / writ petitions before the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 even otherwise this Court under Article 199(5) of the Constitution has jurisdiction to entertain the lis against the Federal Government, statutory bodies having statutory rules of service and the Government-owned and controlled entities. Indeed this Court has inherent power to convert one proceeding into another, and in the instant case, there is also an occasion for exercising such jurisdiction. On the aforesaid proposition, we are guided by the judgment rendered by the Hon'ble Supreme Court of Pakistan in the cases of Mian Asghar Ali v. Government of Punjab and others, **2017 SCMR 118** and Ali Azhar Khan Baloch v. Province of Sindh and others, **2015 SCMR 446**. Suffice it to say many provisions and general principles of the Civil Procedure Code, 1908, and the law laid down by the Superior Courts in relation thereto apply to the petitions under Article 199. Therefore, the law laid down by the Superior Courts in the petition under Article 199 with any of the provisions of CPC shall be fully applicable. The respondents in the present petition, being either the Federation or Federal entities/authorities, shall be deemed to function all over the country because of the well-settled principle reiterated by the Hon'ble Supreme Court in **2017 SCMR 1179** (supra). Our above view is fortified by the words “on account of the rule of choice, the plaintiff/petitioner shall have the right to choose the forum of his convenience” (emphasis supplied) used in **2009 CLD 1498** (supra) and approved by the Hon'ble Supreme Court. This being the legal position, this Court has the jurisdiction to entertain and adjudicate this petition. In view of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Tariq Iqbal and others v. D.G. Military and Cantonments Department, Ministry of Defence and others, **2018 SCMR 335** and principle settled by the Hon'ble Supreme Court in **2017 SCMR 1179** (supra). This petition could be heard and decided on merits, thus the objections relating to territorial jurisdiction is not sustainable.

11. Having decided the issue of maintainability of the instant petition, we intend to go ahead with the merits of the case, though the respondents failed to address the merits of the case and confined their arguments on the issue of maintainability of the instant petition on the aforesaid grounds, therefore, we confined ourselves to address the issue of resignation allegedly tendered by the petitioner and its acceptance by the respondent

Cantonment Board Rawalpindi vide order dated 14.4.2006 as well as the appellate order dated 30.06.2006 passed by the Secretary, Defence Government of Pakistan.

12. The prime question involved in this petition is whether the resignation once tendered by the civil/public servant voluntarily and accepted by the competent authority and communicated to him/her could be considered to be final and cannot be revoked afterward?

13. The word resignation has been defined in Corpus Juris Scandium, Volume LXXVII on page 77 as follows:-

“Resignation: It has been said that “resignation” is a term of legal on, having legal connotations that describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, and the work is defined generally.

14. When a civil servant / public servant submits a letter of resignation, his service/employment stands terminated from the date on which the letter of resignation is accepted by the Competent Authority.

15. Besides the above, Part III of Chapter-4 of the Civil Establishment Code (Volume I, II), Edition 2015, which deals with the term “Resignation from Government Service” and its effective date, which is as under:-

“(ii) Withdrawal of resignation after its acceptance but before it becomes effective (i.e. before the government servant concerned is relieved). It should be open to the authority accepting the resignation to allow the government servant concerned to withdraw the resignation on the merits of the case.”

16. Primarily, resignation is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, here petitioner moved grievance application dated 20.8.2002 to the competent authority of Cantonment, but the competent authority remained mum and waited for four years to decide the fate of his application; and, after a considerable period, they rejected the prayer of the petitioner for early retirement, vide letter dated 18.2.2006 with the assertion that the competent authority considered the representation of the petitioner for retirement on medical grounds and release of salary dues and rejected. An excerpt of the letter dated 18.02.2006 is reproduced as under:

“Subject: **REPRESENTATION-DR. HABIB-UR-REHMAN SOOMRO**

Reference:- ML&C Deptt. Letter No.92/575/ADG/(Est)/ML&C/82 dated 31/01/2006.

2. It is to inform you that the self-explanatory application of Dr. Habib-ur-Rehman Soomro, Senior Medical Officer of Cantonment General Hospital Rawalpindi Cantt., on the above subject has been considered and rejected by the competent authority (DGML&C), hence regretted.

Sd/-
Executive Officer
Rawalpindi Cantonment”

17. Prima facie, respondents under the law, rules/regulations framed under the Act, 1924, were responsible for expediting the process of the application of the petitioner for early retirement in time, failure thereof, petitioner could not be held responsible. Prima facie, he just uttered the words that if justice is not being done to him, he is left with no option but to sever his service with respondents, prima-facie this could not be construed to be voluntarily resignation under the legal paraphrase. However, the application for early retirement from service was misconceived and misconstrued by the respondents and treated the application as resignation and accepted by the Competent Authority vide letter dated 14.6.2006 without looking into the fact that they had already rejected the application of the petitioner vide letter dated 18.02.2006, thus they were legally precluded from giving effect to the rejected application, and resurrected it; and, treating that application as resignation and subsequent its acceptance is illegal based on extraneous consideration.

18. We have noticed that the respondent Cantonment in the intervening period failed and neglected to look into the various letters/representations dated 05.07.2004, 24.08.2004, 08.10.2004, 29.11.2004, legal notice dated 14.02.2005 moved by the petitioners on the subject issue, however, they remained mum, prima-face the reasons are obvious. However, petitioner being aggrieved by and dissatisfied with the decision dated 14.4.2006 passed by the Executive Officer, Rawalpindi Cantonment, whereby his letter dated 20.8.2002 was treated as resignation and accepted by the Competent Authority with effect from 07.04.2001, preferred Review Application of the impugned order with the assertion that he never tendered resignation, however, he had been requesting for retirement on medical grounds and his request was turned down vide letter dated 18.2.2006 and prayed for retirement benefits and other ancillary payments, however, the same was rejected vide letter dated 30.06.2006 by the Secretary, Defence. An excerpt of the letter dated 30.06.2006 is reproduced as under:

*“Subject: **REVISION APPLICATION UNDER RULE -54 OF PAKISTAN CANTONMENT SERVANT RULES 1952.**”*

The undersigned is directed to refer your application dated 11.3.2006 on the above subject, and to inform that your revision application has been considered and not acceded to by the competent authority i.e. Secretary Defence, hence rejected.

*Sd/-
(Muhammad Azam Khan)
Asstt. Director General (Estt)”*

19. In the present case, we are only confined to the issue of impugned letters of acceptance of resignation letter dated 14.6.2006 and appellate order dated 30.6.2006 passed by respondent No.1, leaving the petitioner to avail and pursue his remaining prayers so far as damages are concerned to the competent forum having jurisdiction under the law, for the reasons that the petitioner has called in question the office order dated 14.4.2006 merged into the appellate order dated 30.06.2006 passed by the Government of Pakistan, Secretary Defence, Military Lands in Cantonments Rawalpindi,

whereby his services were dispensed with on account of acceptance of resignation of the petitioner which was denied by him through various letters. Prima facie, the impugned action was taken against the petitioner in his absence and after the rejection of his representation vide letter dated 18.2.2006 which amounts to condemning him unheard in violation of the principle of natural justice, though he was a regular employee, no regular inquiry was conducted to probe the purported allegations leveled against him during his tenure of service so far as medical grounds are concerned and constitution of the second medical board; and, his purported resignation letter dated 20.08.2002, was erroneously accepted as a resignation for the reasons discussed in the preceding paragraph.

20. In view of the above facts and circumstances of the case, the impugned letters dated 14.4.2006 and appellate order dated 30.06.2006 issued by the Secretary Defence, Government of Pakistan, are set aside; and, the same is converted into his early/voluntarily retirement from service from the post of Senior Medical Officer GGH Rawalpindi. Resultantly, respondents No.1 and 2 are directed to release the pensionary benefits of the petitioner based on early/voluntarily retirement as per law as he has sufficient length of service in his credit to claim early/voluntarily retirement from service. The aforesaid exercise shall be undertaken within two months from the date of receipt of this order.

21. Petition stands allowed in the above terms.

J U D G E

J U D G E

Nadir*