

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No.D-2207 of 2021**

Hafeez ur Rehman .....Petitioner

Versus

Province of Sindh & 02 others .....Respondents

Date of hearing & order: 29.03.2021

Mr. Saeed Ahmed Memon, advocate for the petitioner.

-----

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:-** The petitioner has called in question, his suspension from the service order dated 22.03.2021 issued by the respondent-Director-General (D.G)/Executive Sindh Building Control Authority (**SBCA**).

2. Brief facts of the case, in nutshell, are that the Petitioner is working as Deputy Director (Finance & Accounts) (BPS-18) in SBCA. It may be stated that because of urgency shown by Mr. Saeed Ahmed Memon, learned counsel for the Petitioner, he has argued the entire case on merit. He submitted that during his tenure of service, he never received any show cause/charge sheet by the competent authority of SBCA. He further argued that before taking the action by the D.G. SBCA, he failed to provide a personal hearing to him as provided under Article 10-A of the Constitution. He emphasized that the impugned order is suffering from the jurisdictional defect on the premise that the impugned suspension order dated 22.03.2021 is passed by the incompetent authority under Sindh Building Control Authority Regulations, 2016, therefore, the impugned order is a nullity in the eyes of law. He stressed that nothing adverse is available against him and despite that he has been punished without any rhyme and reason; and, without issuing the charges as required under the law, thus he could

not be suspended from service, which amounts to making him Officer on Special Duty (OSD) which is not permissible under the law. He averred that this Court can take cognizance of the illegal order passed by the incompetent authority under the hierarchy of SBCA Regulations.

3. We queried from the learned counsel for the petitioner as to how the instant Petition is maintainable against the suspension order. He in reply to the query has submitted that the impugned order cannot be termed as the order passed within the terms and conditions of service of the Petitioner, therefore, the suspension order is based on malafide intention; and issued by the incompetent authority; that the petitioner is fully entitled to be treated under the law. He highlighted that the impugned suspension order suffers from various jurisdictional defects; and, in complete disregard to the provision provided in the law as discussed supra. Per learned counsel that the impugned action has been taken against him on account of departmental intrigues. He pointed out that since he filed Constitutional Petition No.56/2021 against one Mushtaq Ibrahim Soomro, Director Research and Regulations (Administration), and on account of the pendency of this petition, he influenced the D.G. SBCA to issue the suspension order without any accusation or conducting an inquiry in the matter. He further argued that on his refusal to withdraw the aforesaid petition, the impugned action has been taken against him without show cause notice, charge sheet, and other codal formalities as provided under the law. Learned counsel referred to various documents attached with the memo of the petition and argued that the impugned action is based on political victimization and personal vendetta, thus the impugned order dated 22.3.2021 is a nullity in the eyes of law and required to be set aside. He lastly prayed for allowing the instant Petition.

4. We do not agree with the statement of the learned counsel for the Petitioner on the aforesaid analogy, for the simple reason that disciplinary proceedings fall within the ambit of expression terms and condition of service of the public servant. On the aforesaid proposition, we seek guidance from the judgment passed by the Hon'ble Supreme court in the case of Ali Azhar Khan Baloch vs.

Province of Sindh [2015 SCMR 456]. The Hon'ble Supreme Court in paragraphs 146 to 150, has held as under:-

**“146. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters. In other words, the jurisdiction of all other Courts is barred by the provisions of the Sindh Service Tribunals Act, 1973, read with Article 212 of the Constitution.**

**147. Section 4 of the Service Tribunals Act provides Civil Servant with the right of filing an Appeal before the Tribunal, subject to the qualifications provided therein.**

**148. In this background, all the Civil Courts, including a Judge (in Chambers) of High Court of Sindh, exercising jurisdiction on the original side as a civil court under C.P.C. cannot entertain a civil suit of a civil Servant relating to the terms and conditions of his service. The exercise of jurisdiction by the High Courts is conferred under Article 175(2) which reads as under:--**

**"175(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."**

**149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals.**

**150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants.”**

5. A bare perusal of the impugned order dated 22.03.2021 shows that the Petitioner was suspended without any charge. Before dilating upon the above, in the first instance, we would like to consider whether the Petitioner can challenge his suspension order in the Constitution Petition?

6. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to compel the competent authority to set aside the suspension order passed against a Public Servant against whom *prima facie* evidence, showing his involvement in the charges of misconduct or otherwise, which is yet to be probed, and interference at this stage by this Court 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 SBCA.

7. To elaborate on the term "Suspension". In law 'suspension' is not defined as a punishment but it is an intervening arrangement, which is temporary and resorted to prevent the delinquent official from influencing the outcome of subsequent inquiry on any of the charges against him.

8. In view of such position, in our view, the Petitioner cannot file the petition against his suspension from service, which is simply a temporary measure and has been taken to reduce the chances of tempering in the course of an inquiry by them. Against the adverse result of the inquiry, 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 suspension of the Petitioner illegal or void. More so, the Petitioner's objection to his suspension is technical and procedural. In such circumstances, we would not like to exercise our discretion in his favor to thwart the whole process of inquiry against him and set-aside his suspension order on any of the technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioner.

9. The Petitioner has not been able to show any material from the record as to how he is prejudiced by his suspension order. At this juncture, he has submitted that he has been denied his due salary, during the suspension period; and, the inquiry officer has not yet been appointed to probe into the allegations leveled against him, if any, besides the Petitioner has not replied to the suspension order. If this is the position of the case, and it is for the respondents to sift the chaff from the grain and reach the conclusion of the matter strictly under the law.

10. We are clear in mind that pendency of the disciplinary proceedings, the final decision against the Petitioner has yet to be taken by the respondent-SBCA and the petitioner will have an opportunity of hearing before impugned final action, if any, is taken against him by the Competent Authority of SBCA.

11. To conclude the matter, we are of the considered view that the Petitioner has to overcome the clog of pendency of disciplinary proceedings against him, if not finalized earlier; the disciplinary proceedings shall be finalized within two months from the date of the decision of this Court.

12. In the light of the above discussion the instant Petition merits no consideration and the same is accordingly dismissed in *limine* along-with the pending application(s). However, it is made clear that if the salary of the petitioner is stopped on account of pendency of disciplinary proceedings, the same shall be disbursed to him during the intervening period. The Competent Authority shall take into consideration the defense of the petitioner and after providing the meaningful hearing to him, conclude the matter within the stipulated period and report compliance through MIT-II of this Court for our perusal.

Let a copy of this order be communicated to the respondents for information and compliance.

**JUDGE**

**JUDGE**

Nadir