

Order Sheet  
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

**Constitutional Petition No. D – 6192 of 2020**

Imtiaz Hussain

*Versus*

Province of Sindh and 10 others

Date of hearing & Order : 22.04.2021

Mr. Munawar Alam Khan, advocate for the petitioner.

Mr. Qaim Ali Memon advocate for respondent No.3.

Raja Jawad Ali Saahar, advocate for respondent No.10.

Mr. Ali Safdar Depar, Asst. Advocate General Sindh along with Zahid Abbas Akhund, Deputy Director Culture, Tourism & Antiquities Department, Government of Sindh.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through the instant petition, the petitioner has sought the following relief(s): -

- i) *Direct the respondents No.1, 2 and 6 not to allow the respondent No.7 to 9 being involve in massive corruption & holding pivotal positions during the pendency of corruption matters pending, because there is great apprehension of tempering / destroying the evidence of massive corruption in department.*
- ii) *Direct the respondent No.1, 2 and 6 being responsible for good governance to eradicate the corrupt officers holding pivotal positions in bureaucracy.*
- iii) *Direct the respondent No.1 to 4 to submit the detail report of criminal cases, complaints, references, inquiries, investigations pending and disposed of against respondents No.7 to 9 since 2012 to 2020 and progress report.*
- iv) *Direct the respondent No.1, 2 and 6 to submit the current manpower strength / list of all employees so as to figure out irregular appointments on nepotism / favoritism by respondent No.7 to 9.*
- v) *Direct the respondent No.1 to 4 to submit assets declaration, FBR tax returns (2000 to 2019) and ownership documents related to moveable and immovable properties of respondent No.7 to 9 and their family members as required by NAB through letter dated 16<sup>th</sup> July, 2020.*

- vi) *Kindly order to form an impartial Commission or Joint Investigation Team to probe in massive corruption and abuse of authority and office in Culture, Tourism, and Antiquities & Archives Department and to ascertain the truth and action report be submitted before this Honorable Court, this Honorable Court is last resort as justice has been offended by this sinister precedent.*
- vii) *Direct the respondent No.1 to 5 to provide access to information and freedom of expression and to act strictly in accordance with law and to maintain the good atmosphere with petitioner and his TV channel Aabtak News, as well as legal protection of life and liberty as the life and liberty as the life and liberty of the petitioner is in great danger from the hands of respondent No.7 to 11.*

2. In pith and substance, through this petition, the petitioner has prayed for issuance of the writ of quo warranto against respondents 6 to 9 to vacate the office presently they are holding, inter-alia, on the ground that they are involved in corrupt and corrupt practices and virtually destroyed the heritage department Government of Sindh, established for the preservation of national heritage, which is required to be preserved and protected in all respects, *thus* not qualified to hold the office and their appointments are hit by Article 199 (1) (b) (ii) of the Constitution, 1973.

3. At the outset, we asked learned counsel for the petitioner to satisfy this Court about the maintainability of this petition.

4. Mr. Munawar Alam Khan, learned counsel for the petitioner, briefed us on the subject questions involved in the present proceedings, by saying that the right to education is a fundamental right as it ultimately affects the quality of life which has nexus with other Fundamental Rights guaranteed by the Constitution under Articles 4 and 9 of the Constitution of Islamic Republic of Pakistan; that petitioner being a whistleblower and has brought this lis before this court on the premise that due to massive corruption committed by the respondents in the department of Culture, Tourism & Antiquities Department, Government of Sindh, it is adversely affecting the working of the institution as discussed supra. He referred to the documents attached with the memo of the petition and contended, inter alia, that his anxiety is that official respondents in connivance with the private respondents are involved in mega corruption and corrupt practices by causing colossal loss to the public exchequer; and who are enjoying senior positions in the Government of Sindh, even though they are facing NAB reference No.19 of 2019 before the competent court of law. He further submitted that certain inquiries have already been initiated against them by the Provincial Anti-corruption authorities, which factum is disclosed in

paragraph 3 and 4 of the memo of the petition, who are in league with the official respondents No.1 to 6 because they have turned their deaf ear towards their corrupt practices; and, no action has been taken against the said respondents as required under the law. He further averred that respondent No.6 to 9 are beneficiaries of such contracts awarded to respondent No.10, who has already been declared blacklist, as such it is essential for the competent authority to take prompt disciplinary action against the civil / Government servant under The Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, ('Rules') if he is found persistently corrupt; and/or is possessing pecuniary resources and/or property, etc. disproportionate to his known sources of income. Furthermore, the integrity, reliability of the respondents is now questionable, thus they are liable to be removed from their respective civil posts which they are holding presently. He emphasized that in any of the above conditions, the Competent Authority of the Government of Sindh is required to ensure that disciplinary action must be taken under Rule 5 of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, against the official respondents and all Government / civil servants, against whom disciplinary and/or criminal proceedings are pending; and, in case of disciplinary proceedings against them, the same must be concluded/decided expeditiously under law. He prayed for allowing the instant petition as prayed.

5. On the other hand, Raja Jawad Ali Saahar, learned counsel for respondent No.10 has robustly argued the matter with a vehemence that the instant petition is not maintainable under the law by referring two orders passed by this Court in C.P. Nos. D-4092/2020 and 4263/2020. He averred that the burden of proof was upon the Petitioner to demonstrate as to which of his fundamental rights had been infringed upon but he failed to point out an infraction of any of his fundamental rights to claim issuance of Writ of Quo warranto; that the entire case of the Petitioner is based on fraudulent and misleading facts. He next argued that the Petitioner has no locus standi to file this Petition because he is not an aggrieved person; that petitioner earlier approached this Court through the aforesaid petitions which were dismissed on account of non-prosecution as well as on the point of maintainability, therefore, similar relief cannot be claimed by filing subsequent legal proceedings as it would fall within the mischief of constructive res-judicata. He asserted that these proceedings are in respect of civil/public servants against whom NAB reference/inquiries are pending and his client has nothing to do with such proceedings being a private contractor; and, further, he has wrongly been

arrayed as the party in the proceedings with malafide intention. He prayed for dismissal of the captioned petition with cost.

6. Mr. Ali Safdar Depar, learned Assistant Advocate General Sindh at the outset raised the objection about the maintainability of this petition on the plea taken by the learned counsel for respondent No.10 and referred the comments filed on behalf of the official respondents, however with the addition that respondent No.8, who is a civil servant is incarcerated in jail on account of NAB reference; and, disciplinary proceedings are underway against him, and that there is no NAB reference pending against respondents No.7 and 9.

7. Mr. Ghulam Akbar Panhyar, learned counsel for respondents No.7, 8, and 11, has adopted the arguments of learned counsel for respondent No.10 and submitted that respondent No.11 is a simple private contractor against whom no reference is pending, thus he has been erroneously arrayed as the party in the present proceedings with malafide intention. He prayed for dismissal of the instant petition with cost.

8. We have heard learned Counsel for the parties and perused the material available on record on the aforesaid pleas.

9. We, based on contentions of the parties with the material produced before us, have concluded that we cannot determine the veracity of the documents attached with their pleadings, their claims, and counter-claims as these are disputed questions of facts between the parties, which cannot be adjudicated by this Court while exercising the Constitutional Jurisdiction; and, leave it for the Competent Authority i.e. Chief Secretary Sindh, to look into the affairs of Culture, Tourism & Antiquities Department, Government of Sindh; and attend all other allegations leveled by the petitioner against the respondents including private contractors, by providing all concerned a meaningful hearing; and take immediate action against the civil/ public servants, who are still serving in the Government of Sindh even though they are facing NAB References based on alleged corruption and corrupt practices, and/or criminal or disciplinary proceedings? Therefore, such Civil / Government servants are not entitled under the law to perform their duties and/or to enjoy their posting(s), therefore the Chief Secretary Sindh has to ensure that all such Civil / Government servants are not given any posting and/or administrative assignment till the reference(s) / case(s) / matter(s) pending against them is/are

concluded under law. The aforesaid exercise shall be undertaken within a reasonable time.

10. Before parting with this order, in the above context, we have observed in the number of cases that disciplinary proceedings initiated against Government / Civil servants are not decided or concluded within a reasonable time. Such unreasonable delay on the part of the department(s) concerned causes hardship for the Government / Civil servants, uncertainty within the department, and unnecessary litigation before the Courts. Therefore, we deem it appropriate to direct the Government of Sindh to ensure that in future action must be taken under Rule 5 of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, against all Government / Civil servants against whom disciplinary and/or criminal proceedings are pending; and, in case of disciplinary proceedings against them, the same must be concluded/decided expeditiously strictly in accordance with law.

11. This petition stands disposed of along with the pending application(s) in terms of preceding paragraphs.

Issue notice to the Chief Secretary Sindh for compliance through MIT-II of this court.

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