

IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2844 of 2021

Muneer Ahmed & 02 othersPetitioners

Versus

Health Department, Government of SindhRespondents

Date of hearing & order: 30.04.2021

Syed Mustafa Mehdi, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- The petitioners have called in question, their suspension from the service order dated 01.04.2020 and subsequent order dated 18.08.2020, whereby their reinstatement in service order dated 22.7.2020 was cancelled/withdrawn by the respondent-Secretary, Health Department, Government of Sindh.

2. Brief facts of the case, in nutshell, are that the Petitioners are serving on different posts in BPS-07 to BPS-14 in the Health Department, Government of Sindh. During their tenure of service, they were placed under suspension vide office order dated 01.04.2020, which was subsequently withdrawn vide order dated 22.07.2020, however, the same order was recalled by the respondent-Secretary vide office order dated 18.08.2020. Learned counsel for the petitioners submitted that during their tenure of service, they never received any show cause/charge sheet by the competent authority of the Health Department, Government of Sindh. He further argued that before taking the action by the Secretary Health Department, he failed to provide a personal hearing to them as provided under Article 10-A of the Constitution. He emphasized that the impugned orders are suffering from the jurisdictional defect on the premise that the impugned suspension order dated 01.04.2020 is passed by the respondent-Secretary, Health Department, in a haphazard manner in violation of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, therefore, the impugned order is a nullity in the eyes of law. He stressed that nothing adverse is available against

them and despite that, they have been punished without any rhyme and reason; and, without issuing the charges as required under the law, thus they could not be suspended from service, which amounts to making them Officer on Special Duty (OSD) which is not permissible under the law. He averred that this Court can take cognizance of the illegal orders passed by the respondent-Secretary, Health Department, under the hierarchy of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 and enabling law.

3. We queried from the learned counsel for the petitioners 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 Petitioners, therefore, the suspension order is based on malafide intention; and issued by the respondent-Secretary without ascertaining the factual aspect of the matter; that the petitioners are 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, the impugned action has been taken against them on account of departmental intrigues. He pointed out that their suspension order was recalled and they were reinstated in service vide office order dated 2.07.2020, however, some extraneous considerations prompted them to cancel/recall the reinstatement order vide office order dated 18.08.2020 without any accusation or conducting an inquiry in the matter. He further argued that the impugned action has been taken against them 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 victimization and personal vendetta, thus the impugned orders dated 01.04.2020 and 18.08.2020 are 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 Petitioners on the aforesaid analogy, for the simple reason that disciplinary proceedings fall within the ambit of expression terms and condition of service of the civil 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 orders dated 01.04.2020 & 18.04.2020 show that the petitioners were suspended without any charge. Before dilating upon the above, in the first instance, we would like to consider whether the Petitioners can challenge their 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 Civil Servant against whom *prima facie* evidence, showing their involvement in the charges of misconduct or otherwise, which is yet to be probed by the respondent-department, 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 the Health Department, Government of Sindh.

7. To elaborate on the term "Suspension". In law 'suspension' is not defined as a punishment but 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 Petitioners 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 Petitioners 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 Petitioners illegal or void. More so, the Petitioners' objection to their suspension is technical and procedural. In such circumstances, we would not like to exercise our discretion in their favour to thwart the whole process of inquiry against them and set aside their 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 Petitioners.

9. The Petitioners have not been able to show any material from the record as to how they are prejudiced by their suspension order. At this juncture, he has submitted that they have been denied their due salary, during the suspension period; and, the inquiry officer has not yet been appointed to probe into the allegations levelled against them, if any, besides the Petitioners have replied to the suspension order vide applications *available at page 47 to 63* of the memo of the petition. 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 Petitioners has yet to be taken by the respondent-Health Department, Government of Sindh, and the petitioners will have an opportunity of hearing before impugned final action, if any, is taken against them by the Competent Authority of Health Department, Government of Sindh.

11. To conclude the matter, we are of the considered view that the Petitioners have to overcome the clog of pendency of disciplinary proceedings

against them, 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 petitioners is stopped on account of pendency of disciplinary proceedings, the same shall be disbursed to them during the intervening period. The Competent Authority shall take into consideration the defence of the petitioners and after providing the meaningful hearing to them, 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