

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
CP.No.D-4989 of 2021

Date: Order with signature(s) of the Judge(s)

1. For orders on Misc. No.20430 of 2021 (U/A).
2. For orders on office objection No. 04 & 18.
3. For orders on Misc. No.20431 of 2021 (Ex/A).
4. For orders on Misc. No.20432 of 2021 (Stay/A).
5. For hearing of main case.

23rd August 2021

Mr. Abdul Salam Memon, advocate for petitioner alongwith petitioner.

Heard learned counsel for the petitioner.

2. Case of the petitioner is that an inquiry has been initiated with regard to alleged illegal appointments, made while working as SSP Special Branch at Hyderabad in 2018. Counsel for the petitioner while relying upon 2000 CLC 606 [Karachi] has referred para-15, which is that:-

“15. In view of the above, in my humble opinion, the application is, both mala fide and groundless. Nevertheless one aspect of the matter has seriously disturbed and persuaded us to order that the matter be heard by another Bench. The petitioner No.1, in his column appearing in the daily “Dawn” of March 21, 1999, has commented upon our order, dated 12-3-1999 and has chosen to single us out for compliments. No doubt Judges who have taken an oath to act strictly according to law and the Constitution are not so fragile as to be swayed by newspaper comments, such comments, when made by a litigant himself, can cause apprehensions in the mind of adversary parties. Without going into the question as to whether these comments constitute contempt or whether the petitioner as a journalist has a right to comment on issues of public concern, we must strongly disapprove of the same. Even when he approaches the Court in the interest of public-at-large, he must exercise restraint and refrain from creating impressions about proclivities of individual Judge. What is of the utmost importance that the faith of the people in institutions of dispensation of justice, irrespective of the individuals occupying such offices is not impaired. Any hope or apprehension as to likelihood of a particular verdict emanating from a particular Bench must be dispelled and it must be known that justice according to

law can be delivered by any Bench of this Court. Therefore, in the larger interest of maintaining public confidence in the system of administration of justice, we decided that this Bench will not hear this case."

Further he contends that under Article 10-A fair trial is constitutional right of the petitioner and respondent No.2 is biased and incompetent person to initiate inquiry against him. Prior to this an inquiry was conducted by Sultan Ali Khuwaja, the then DIG but that report was not shared with him, now denovo inquiry has been ordered against him that reflects at page 163 of the court file. He has also referred page 173 which contents disciplinary proceedings against PSP officer, relevant paragraph-3 is reproduced herewith:-

"3. The undersigned as Authorized Officer entrusted the subject Enquiry to Mr. Sultan Ali Khawaja PSP (BS-20) Additional Director General FIA Sindh Zone Karachi to complete the remaining 04 enquiries within the stipulated period of time against the delinquent officers namely Mr. Fida Hussain Shah, PSP (BS-18) and Syed Imdad Ali Shah PSP (BS-18) as per laid down procedure of Rule-6(4) and (5) of Government Servants (Efficiency & Discipline) Rules, 1973."

3. No doubt, the fair-trial, as guaranteed by the Article 10-A of Constitution as well 'due process' are applicable in all matters, including departmental proceedings. I am guided by case of Ishtiaq Ahmed v. Hon'ble Competent Authority 2016 SCMR 943 wherein it is held as:-

4. The right of due process is not new to our jurisprudence and finds expression in the provisions of Article 4 of the Constitution. This right has been interpreted by this Court in several pronouncements. The case of New Jubilee Insurance Company v. National Bank of Pakistan (PLD 1999 SC 1126) summarizes the features of that right very aptly. It is held that **the right of due process requires that a person shall have notice of proceedings which affect his rights; such person must be given a reasonable opportunity to defend himself; the adjudicatory tribunal or forum must be so constituted as to convey a reasonable assurance of its impartiality and that such tribunal or forum must possess competent jurisdiction.** Insofar as the right of fair trial under Article 10A of the Constitution is concerned in Suo Motu Case No.4 of 2010 (PLD 2012 SC 553) that right has been interpreted to ensure the grant of a proper hearing to an accused person by an unbiased competent forum; that justice should not only be done but be seen to be done. The above noted features of this right share attributes associated with the fundamental right of access to justice enunciated by

this Court in Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416 at page-489), Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324) and reiterated in Liaquat Hussain v. Federation of Pakistan (PLD 1999 SC 405 at pge-562). This right casts on an adjudicatory tribunal or forum a duty to treat a person in accordance with law, to grant him a fair hearing and for itself to be an impartial and a fair tribunal. Upon comparison, the said constitutional conditions requirements expand the principles of natural justice which according to our jurisprudence are treated as inherent rights that underlie the elements of fairness, both in terms of hearing as well as impartiality of the forum.

7. There is significant difference between the substantive nature of trial by a Court of law as against the proceedings in a domestic disciplinary forum. Consequently, the entitlement of representation of an accused by counsel before a trial Court cannot by analogy be imported for the proceedings of a domestic appellate disciplinary forum constituted by Rule 11 of the SC Rules, 1882. The relief claimed by the petitioner is neither apt nor appropriate for the *fora* established under disciplinary laws governing the service rights of officers and staff that are governed by rules having the force of law. It may also be kept in mind that the rights assured to such officers and staff under the applicable statutory rules, constitutional principles and inherent legal rights are available as an exception to the rule of master and servant. This is because an employment governed by statutory instrument assures rights conferred by law as opposed to contract. This Court has held that the violation of such rights of an accused officer to be justiciable in the constitutional jurisdiction of the superior Courts of the country. Reference is made to Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed (2013 SCMR 1707). The SC Rules, 1982 (now the SC Rules, 2015) that govern the discipline of officers and staff of the Supreme Court, including in the present case the petitioner, rest on the secure foundation of Article 208 of the Constitution. Such legal backing makes an accused officer eligible for relief by a competent Court of law to be granted in accordance with settled legal parameters governing exercise of its jurisdiction in relation to substantive rights appurtenant to disciplinary proceedings conducted under rules that have the force of law.

However, needless to add that insist or repetition of such terms *alone* shall never be sufficient to give a *license* to accused or delinquent to get the matter delayed or choose the person of his choice while uttering words '*mala fide*' or even '*biasness*' because such course, *otherwise*, shall cause prejudice to same entitlement for other-side. Guidance is taken in such conclusion from the case of Said Zaman Khan v. Federation of Pakistan 2017 SCMR 1249 wherein it is held as:-

81. The Supreme Court of India in the case, reported as *State of Andhra Pradesh and others v. Goverdhanlal Pitti* (AIR 2003 SC 1941) held as under:-

“12. The legal meaning of malice is “illwill or spite towards a party and any indirect or improper motive in taking an action”. This is sometimes described as “malice in act”. “Legal malice” or “malice in law” means “something done without lawful excuse”. In other words, ‘ it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite’. It is a deliberate act in disregard of the rights of others. (See Words and Phrases legally defined in Third Edition, London Butterworths 1989.)”

82. All judicial and quasi-judicial forums for that matter even Executive Authorities exercise only the powers conferred upon them by law so as to fulfill the mandate of such law and to achieve its declared and self-evident purpose. However, where any action is taken or order passed not with the intention of fulfilling its mandate or not achieve its purpose but is inspired by a collateral purpose or instigated by a personal motive to wrongfully hurt somebody or benefit oneself or another, it is said to suffer from malice of facts. In such cases, the seat of the malice or bad faith is the evil mind of the person taking the action be it spite or personal bias or ulterior motive. Mere allegations, in this behalf, do not suffice. Malice of fact must be pleaded and established at least prima facie on record through supporting material.

83. All persons purporting to act under a law are presumed to be aware of it. Hence, where an action taken is so unreasonable, improbable or blatantly illegal that it ceases to be an action countenanced or contemplated by law under which it is purportedly taken malice will be implied and act would be deemed to suffer from malice in law or constructive malice. Strict proof of bad faith or collateral propose in such cases may not be required.

91. A challenge can also be thrown on the independent ground of malice in law or constructive or implied malice for which purpose it is sufficient to establish that action complained of was not only illegal but so unreasonable and improbable that it cannot be said to be contemplated or countenanced by the law whereunder such action has purportedly been taken. It would include an act done wrongfully and willfully without reasonable or probable justification. Unlike cases of malice in fact evil intention need not necessarily exist or required to be proved. Any action suffering from *mala fides* of fact or malice in law constitutes a fraud upon the law and is without jurisdiction.

4. *Prima facie*, it has been surfaced that the same issue of appointments was adjudicated by the apex Court in HRC No. 16082-S of 2015. Relevant paragraph-15 is that:-

“15. The illegal appointments made by the Selection Board in SRP Hyderabad or in any other District of Sindh shall be enquired into by the following officers:

- (1) A.D. Khawja Additional I.G. Police.
- (2) A.I.G. Sanaullah Abbasi.
- (3) A.I.G. Naeem Ahmed Shaikh.

The above, *prima facie*, shows that the initiation of the enquiry can't be challenged to be as *unreasonable*, particularly in view of the fact that it was, so directed, by honourable Apex Court. Petition is also annexed with inquiry report by the competent officers, nominated by the apex court which shows departmental proceedings against the petitioner. Further, page 177 shows charge sheet whereby petitioner has been charged with regard to illegal/irregular appointments while he was posted at Hyderabad in the year 2018. It is also matter of record that petitioner, being SSP, is enjoying his position as SSP Sujawal and inquiry is pending since 2018, yet same has not been completed which is shocking, particularly when it relates to irregular appointment under directives of Honourable Apex Court. The competent officer(s), *surprisingly*, yet failed to conduct inquiry within stipulated period.

5. Without prejudice to this *denovo* inquiry has been notified, hence, petitioner cannot chose a particular officer and manner of inquiry other than provided under the law.

6. While taking into consideration learned counsel for the petitioner who has emphasized that respondent No.2 Dr. Aftab Ahmed Pathan, PSP/DIG, Regional Director NPF Southern Region is biased against him. He further contends that before this, same officer conducted inquiry in a bomb blast at Hyderabad against him but learned counsel for the petitioner has not placed on record that inquiry record. Needless to mention that mere allegation that respondent No.2 is biased is not sufficient to avoid *least* delay of conclusion of the '*inquiry*'. Needless to add that inquiry officer is bound to conduct to impartial inquiry and submit report to the competent authority; hence at this premature stage we are not inclined to interfere with the inquiry proceedings

merely on uttering of word '*biasness*' when there has been placed nothing on record to substantiate such allegation. Accordingly, petition is dismissed in limine along with listed applications. However, with directions to respondent No.2 that he shall conduct inquiry by providing all rights of hearing and complete the same preferably within one month. With regard to case law, cited by learned counsel for the petitioner, we have examined the same, that is not pertinent to this case in peculiar circumstances; hence, same is not applied.

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