

IN THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Naimatullah Phulpoto
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-2782 of 2021

(Abdul Sajjad Khan and 07 others v. Sindh Building Control Authority and 07 others)

Khawaja Shamsul Islam, advocate for the petitioners
Mr. Ali Asadullah Bullo, advocate for the respondent No.1
Mr. Ali Safdar Depar, AAG along with Dr. Saeed Ahmed Qureshi,
Focal Person to Chief Secretary Sindh

Date of hearing
& order : 30.05.2022

ORDER

Through the captioned petition, the petitioners have assailed the suspension from service order, inquiry proceedings initiated by respondent No. 8, and subsequent issuance of show-cause notices to them by the Director-General (DG) SBCA without hearing them is illegal, unlawful, malafide, without jurisdiction and ultra-vires to the Articles 4,5,6,9,14,10-A of the Constitution and the provisions of Sindh Building Control Authority (Recruitment) Regulations 2017 read with Rule 5,6,7,8,9 and 12 of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973.

2. Khawaja Shamsul Islam, learned counsel for the petitioners, has attacked the basic appointment of respondent No.8 as well as posting of respondent No.2 as D.G SBCA, however, he opted to confine his submissions to the extent of disciplinary proceedings initiated against the petitioners in terms of the notification dated 03.03.2020 issued by the Secretary Local Government and Housing Town Planning Department, whereby all the petitioners were suspended from service, without any rhyme and reason, and without giving any opportunity of hearing, and is a sham inquiry. Learned counsel next submitted that to victimize the petitioners, one-sided behind the closed door, a discrete inquiry report was initiated by respondent No.8, although he was not a member of the purported Committee to probe the purported allegations, and was not a part of the Committee in terms of the notification dated 03.03.2020, however, he continued with the proceedings, and made, the petitioners a scapegoat to save the actual culprits; therefore, the entire proceedings initiated against the petitioners were/are void ab-initio and nullity in the eyes of law, thus liable to be annulled. The learned counsel further argued that the aforesaid office order has been issued by the Secretary, Sindh Local Government without lawful authority. It is further contended that there was/is no complaint whatsoever pending against the petitioners during their tenure of service to justify the initiation of disciplinary proceedings against the petitioners; that through the impugned office order, the petitioners have been restrained from performing their functions as officers of SBCA, which action could only be taken in terms of any malpractice on the part of petitioners, which factum is lacking in the matter; that before issuance of the impugned order, no show cause notice or charge sheet, about the purported allegations, was served upon the

petitioners nor they were afforded an opportunity of being heard on the allegations. Learned counsel next argued that the impugned order was not in conformity with law; therefore, it is liable to be struck down. He further submitted that under the law order of interim suspension could be passed against an employee while the inquiry was pending into his conduct and in the present case no inquiry was pending against the petitioners. Learned counsel emphasized that the disciplinary proceedings could be held by the competent authority only, which has the power to appoint a public servant, whereas in the present case, the competent authority has not done the said action, which factum is sufficient to discard the version of the official respondents; thus, on general principles, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental inquiry into his conduct. He asserted that, if the suspension order is passed in contemplation of a disciplinary proceeding, the charge sheet must be served upon the employee by the competent authority, within three months from the date of issuance of the suspension order and, If the charge sheet is not framed within the said three months, the suspension order shall be revoked, unless the competent authority passes an order renewing the suspension along with the reasons to be recorded in writing for the delay in the framing of the charge sheet. He added that such extension of the period of suspension in contemplation of a departmental proceeding could remain in vogue only for a further period of four months and if, within the extended period of four months, the charge sheet is not framed the suspension order shall stand revoked. Learned counsel further submitted that the impugned order cannot be termed as the order passed within the terms and conditions of service of the Petitioners. More particularly, the suspension order is based on malafide intention and ulterior motives, thus could be interfered with by this Court under Article 199 of the Constitution; that the petitioners are fully entitled to be treated under the law and not otherwise. He further submitted that, when the manner of exercising power is laid down, such power is to be exercised in the manner prescribed or not at all. Learned counsel averred that an order of suspension, in contemplation of a departmental proceeding, which has a life span of three months, can be renewed for a further period of four months by an order renewing the suspension for reasons to be recorded in writing; that the manner of exercising such a right is prescribed and, therefore, it has to be exercised in the manner prescribed and not in any other way. In support of his contentions has referred to rule 31 of Sindh Building Control Authority (Recruitment) Regulations 2017 and submitted that suspension of the person could only be made who is involved in criminal proceedings and not otherwise. Learned counsel also referred to the Sindh Government Rules of Business 1986 and submitted that the inquiry committee was not competent to hold an inquiry against the officers of SBCA even though he went ahead and submitted that the respondent No.8 being a Grade-18 officer of Sindh Local Government Board was/is not competent to hold an inquiry against the officers of Grade-18 & 19 thus the entire proceedings are a nullity in the eyes of law.

3. Mr. Ali Safdar Depar, learned AAG assisted by Mr. Ali Asadullah Bullo learned Counsel for the respondent-SBCA, initially resisted the petition on the ground that 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 the

prima-facie evidence is available; that any such direction 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 particular in SBCA affairs, which is meant for public service. On the issue of suspension from service, they have submitted that suspension is not defined as a punishment under the service law 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 leveled against him. Therefore the Petitioners cannot file a constitution petition against their 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. They further submitted that 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 from service, illegal or void. More so, the Petitioner's objection to their suspension is technical and procedural, therefore this petition is liable to be dismissed. Finally, they agreed to the disposal of the matter in the terms that the matter may be remanded to the competent authority for holding regular disciplinary proceedings afresh as envisaged under the law, so far as the allegations are concerned.

4. Taking a leaf out of the above discussion, it would be reasonable to construe that on failure on the part of the competent authority as defined in Rule 5 of Sindh Building Control Authority (Recruitment) Regulations, 2017, read with Rule 31 of Sindh Building Control Authority (Conditions of Service) Regulations, 2016, and Sindh Building Control Authority (Efficiency and Discipline) Regulations, 2016, to frame a charge sheet within three months, the concerned employee gets a right to seek reinstatement. It is well settled now that, if the employee exercises the right by filing an appropriate application either before the competent/appointing authority or even in a court of law, the order of suspension is bound to be revoked and the competent/appointing authority and/or Chief Executive of the Authority cannot have any other option. However, if the employee fails to exercise such right of being reinstated and either the charge sheet is framed or the order of suspension is renewed for reasons to be recorded in writing as envisaged under the aforesaid rules, the imperfect right of the suspended employee gets defeated. In other words, the employer has the authority to pass an order renewing the suspension for reasons to be recorded in writing not only within three months but also after the expiry of such period of three months, provided the employee has failed in the meantime to exercise his right of being reinstated by making the appropriate application.

5. Concluding on the aforesaid analogy, we are of the view that on the failure of the competent/appointing authority and/or Chief Executive of the SBCA to frame a charge sheet on account of misconduct, within three months if an order of suspension is passed in contemplation of a disciplinary proceeding, in the absence of any order of extension of the suspension for reasons to be recorded in writing, the concerned employee has a right to claim that he should be reinstated and at this stage, the competent authority is bound to reinstate such person in service. However, thereafter, it will always be open to the

competent authority to pass a fresh order of suspension once the charge sheet is framed. However, it is imperative for the inquiry officer who has been assigned the work to conduct the inquiry into the misconduct of the officers of SBCA, he is bound to follow the procedure as provided under sections 5, 6, and 8 of the Sindh Building Control Authority (Efficiency and Discipline) Regulations, 2016.

6. Taking up the issue of Show Cause Notice (SCN), in-service jurisprudence, show cause notice is not a punishment, show cause notice is issued when a government official/civil/public servant is held prima facie responsible for misconduct. In the SCN the delinquent employee is required to be informed that he is responsible for such misconduct. He is then required to submit his reply to the disciplinary authority as to why the disciplinary proceedings should not be initiated against him within a stipulated period, prescribed in the SCN. In such an eventuality, if it is shown that the show cause notice is patently illegal, malafide, or without jurisdiction, then the matter could be looked into that aspect by the competent court of law, subject to all just exceptions provided under the law.

7. So far as suspension from service is concerned, primarily, the suspension is not defined in service law 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. The purpose of such suspension is generally to facilitate a departmental inquiry and to ensure that while such inquiry is going on, it may relate to serious lapses on the part of a public servant.

8. In the present case, it is apparent that the entire spectrum of departmental proceedings to establish the culpability of the petitioners more particularly about allegations of illegal construction of different buildings in Karachi has not yet been exhausted on merits. Primarily, merely issuance of show cause notice is not sufficient to deprive the employee of regular inquiry to probe his/her guilt, as the employer has to stand on its own feet rather than relying upon the weaknesses of the defense side as portrayed in the inquiry report dated 23.11.2020, which has several loop sides on the legal aspect. Even otherwise, it is well settled that a plea of guilt has to be unequivocal in its terms. At this stage, learned counsel for the petitioners vehemently argued that impugned order, as well as show cause notice dated 08.04.2021, inflicting the perceived punishment without holding an inquiry, is against the basic spirit of the law, therefore, he prayed that impugned orders/show cause notices are liable to be set aside. He asserted that impugned orders do require to be interfered with by this Court because there was/is a violation of the principles of natural justice. Moreover, the charges leveled against the petitioners are not serious ones as they have not indulged in any embezzlement of public funds, rather the matter pertains to the illegal constructions of several buildings situated in Karachi which required a thorough probe through a regular mode of inquiry under the law.

9. Since it is the case of the petitioners that the charges mentioned in the SCN are the outcome of some malice or ulterior motives and/or against the principles of natural justice. In such circumstances, we are clear in our mind that pendency of the disciplinary

proceedings, a final decision against the petitioners has yet to be taken by the competent authority and they have to overcome the clog of pendency of disciplinary proceedings against them, therefore, we had given an option to the learned counsel for the parties for resolution of the matter, and they have agreed to remit the case to the competent authority for holding regular disciplinary proceedings afresh as envisaged under the law, rules, and regulation of SBCA, so far as the allegations are concerned.

10. In the facts and circumstances and the statement made by learned counsel for the parties, we do not propose to go into the merit of the impugned orders/SCN. Accepting the statement of learned counsel for the parties to be correct. Resultantly, the suspension orders automatically come to an end on expiry of three months from the date of the first order where no charge sheet has been issued before the expiry of three months or no order extending the period of suspension has been made by a reasoned order.

11. In view of the above, this petition stands disposed of with directions to the Chief Secretary Sindh to constitute the committee of competent officers to probe the allegations leveled against the petitioners and the competent committee shall initiate the disciplinary proceedings afresh and conclude the same within a reasonable time, after providing an opportunity of hearing to the petitioners. However, it is made clear that the previous inquiry report dated 23.11.2020 shall not come in the way of the inquiry officer/ committee in reaching the correct conclusion on the allegations leveled against the petitioners. The aforesaid exercise shall be preferably undertaken within two months.

Let a copy of this order be transmitted to the Chief Secretary Sindh, Secretary Local Government, and D.G. SBCA, for compliance.

JUDGE
JUDGE

Nadir*