

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 6022 of 2019 : Shakeel Ahmed vs.
Pakistan Machine Tool
Factory & Another

For the Petitioner : Mr. M. Jamshed Qazi, Advocate

For the Respondents : Mr. Muhammad Humayun, Advocate

Qazi Abdul Hameed Siddiqui
Deputy Attorney General

Date/s of hearing : 22.08.2022

Date of announcement : 22.08.2022

ORDER

Agha Faisal, J. Briefly stated, the petitioner met with an admittedly incapacitating accident, unrelated to his employment, in the year 2000. Despite availing medical attention, per entitlement with the respondent, he remained unable to perform his task, as a *turner*. The respondent offered the petitioner to do desk work instead, however, he submitted in writing that he is unable to perform the said task either. Upon recommendation of a medical board, the constitution and findings whereof remained un-assailed, the petitioner was retired. Despite the manifest absence of any grievance notice, the learned Member NIRC allowed the grievance application vide order dated 12.07.2017; however, the same was set aside in appeal vide the order of the learned Appellate Tribunal NIRC dated 21.08.2019 (“Impugned Order”). The present petition assails the Impugned Order.

2. The crux of the petitioner’s counsel’s argument was that the medical report ought not to have been the basis to consider the petitioner *unfit*, as the petitioner was in fact fit and did not merit being retired on medical grounds. The respondent’s counsel adverted to the record demonstrating the petitioner’s incapacity and concluded by adverting to the petitioner’s very own letter, whereby he had informed the respondent that he was incapable of performing any task, including a desk job.

3. Heard and perused. It is imperative to consider that Article 199 of the Constitution contemplates the discretionary¹ writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy, however, the same was duly availed / exhausted and the findings, based on the appreciation of record / evidence, had been rendered in favor of the respondent.

4. The Impugned Order records that the findings of the medical board determined the petitioner to be unfit. The petitioner's letter, conveying his incapacity, was reproduced in the order and the petitioner's counsel admitted the veracity thereof before us. The order further observes that the record does not substantiate any allegation of *mala fide* or non-observance of codal formalities, attributable to the respondent, and it is imperative to record that no argument in such regard was endeavored by the petitioner's counsel before us today.

5. The Impugned Order shows that the petitioner had remained unable to rebut the preponderance of record / evidence relied upon and furthermore the petitioner's counsel remained unable to articulate before us today as to why the impugned findings could not be rested on the record relied upon. The crux of the petitioner's case was that his retirement ought not to have been predicated on his medical unfitness; however, the counsel remained unable to articulate any cogent rationale as how such an argument could be entertained when the petitioner had himself admitted to having been incapacitated. The report of the medical board stands duly corroborated by the petitioner's letter.

6. The ambit of constitutional petition is not that of yet another forum of appeal and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order/s impugned. It is trite law² that where the fora had exercised its discretion in one way and that the discretion had been judicially exercised on sound principles, interference in such discretion would not be merited unless the same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned.

¹ Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

² Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

7. In view hereof, this court is constrained to observe that no case has been set forth for the invocation of the discretionary writ jurisdiction of this Court, hence, this petition, along with pending application/s, is hereby dismissed.

JUDGE

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