

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-5552 of 2022

Mansoor Ahmed

Petitioner: Through Mr. Muhammad Khalid, advocate

Respondents No.1 to 3: Through Mr. Abdul Jalil Zubedi, AAG

Respondent No.4: Through Mr. Muhammad Yousif Narejo, advocate

Date of hearing

& Decision: 30.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – By invoking extraordinary Constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, the Petitioner seeks direction to the respondent-Chief Municipal Officer, Municipal Committee Khairpur Nathan shah to release his monthly salary, which has been stopped with effect from 01.06.2017 to 16.8.20121 against the post junior Clerk (BS-11), inter-alia on the ground that respondents have stopped his salary for the aforesaid period without issuing any show-cause notice or seeking explanation in this regard.

2. Mr. Muhammad Khalid learned counsel for the petitioner argued that the salary of the petitioners cannot be stopped by the respondents without issuing a show cause notice and completing other legal and codal formalities under the law, thus according to him, the entire proceedings undertaken by the respondents about the withholding of the salary of the petitioner with effect from 01.06.2017 to 16.8.20121, is a nullity in the eyes of law. He lastly prayed for allowing the instant Petition.

3. Mr. Muhammad Yousif Narejo learned counsel for the respondents has raised the question of maintainability of the instant petition inter-alia on the ground that the instant petition filed by the petitioner is not maintainable as the factual controversy is involved in the case which cannot be decided by this Court in constitutional jurisdiction. He next argued that the petition is based on dishonest facts & narrations, so requires no indulgence of this court, hence warrants its dismissal. He asserted that the Petitioner has remained absent from

his duty without any prior leave or intimation, therefore not entitled to the salary of the period. Further, the petitioner has been found involved in serious misconduct in misbehaving with the other officers as well as his senior officers, and in this regard, on 27.07.2022 & 10.08.2022 explanations letters were issued to him with the directions to furnish the reply thereof, but the petitioner did not mend his way and remained absent from his duty without prior sanction leave, which shows his negligence and misconduct and the department has decided to take stern action against the petitioner under law. He further argued that the petitioner has been allowed to join his duty at Municipal Committee Khairpur Nathan Shah District Dadu vide letter dated: 17.08.2021 and was paid salary from the budget of the office of Chief Municipal Officer Municipal Committee, K.N. Shah from the date of joining his duty till November 2022 and thereafter due to his absence from duty, his salary was stopped. He next argued that due to paucity of funds, the Municipal Committee K.N. Shah is unable to pay the intervening period salary to the petitioner, and further, the Council is already running in deficit. He lastly prayed for the dismissal of the instant petition.

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

5. The pivotal question before us is whether the salary of the petitioner can be withheld without providing an opportunity for the hearing on the allegations of unauthorized leave and alleged misconduct.

6. We, based on contentions of the parties with the material produced before us, have concluded that we cannot determine the veracity of 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 of respondents to determine the issue of absence of the petitioner from duty unauthorizedly and if he clears himself from the aforesaid clog by explaining, however, that is subject to regular inquiry and providing the opportunity of meaningful hearing to the petitioner, his salary for the intervening period must be released within two weeks without the intervention of this court.

7. The instant petition stands disposed of as above with no order as to costs.

JUDGE

JUDGE