

IN THE HIGH COURT OF SINDH AT KARACHI

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

C P D 4872 of 2020 : Muhammad Fareed Khan vs.
Federation of Pakistan & Others

For the Petitioner : Mr. M. Arshad Khan Tanoli, Advocate

For the Respondents : Mr. Bashir Ahmed, Advocate

Date/s of hearing : 07.10.2022

Date of announcement : 07.10.2022

ORDER

Agha Faisal, J. Briefly stated, on account of unauthorized wilful absence from duty with effect from 17.05.2017, the petitioner was subjected to disciplinary proceedings and removed from service vide order dated 23.06.2020. The review against the aforesaid order was dismissed vide order dated 20.08.2020 (“Impugned Order”), hence, this petition.

2. The petitioner’s counsel primarily sought for the Impugned Order to be declared unlawful on the premise that the same was *mala fide*, rendered without proper appreciation of the record and even otherwise void as having been rendered in the absence of a regular inquiry.

3. Per respondent’s counsel, the petition was misconceived as the petitioner failed to exercise his right of appeal per section 23 of the KPT Act 1886 and even otherwise, being a worker, he had an alternate remedy per section 34.

On merits, it was articulated that per reports of sensitive intelligence agencies the petitioner was a member of a banned organization and had gone underground since 2017 to evade prosecution. The purported correspondence, albeit scant at best, was alleged to be false and foisted. It was concluded that the unauthorized absence of the petitioner was manifest and under such circumstances, coupled with the national security aspect of the matter¹, there was no requirement to conduct a regular inquiry.

¹ Reference was made to the Proviso to Rule 5(iii)(b).

4. Heard and perused. The petitioner's counsel remained unable to dispel the argument that the petitioner was a worker and ought to have agitated his grievance in the statutory hierarchy. Nothing in rebuttal was endeavored to address the issue as to why the petitioner abjured the forum of appeal per the KPT Act. Notwithstanding the foregoing, we are conscious of our jurisdiction and confine ourselves to the determination as to whether a fit case for exercise of writ jurisdiction is made out.

5. It is an admitted position that the petitioner remained absent from duty with effect from 17.05.2017. Since the petitioner was briefly arrested and released on bail on 06.06.2017, it is inconceivable as to why he did not resume service at the said time. In the period between 2017 and the removal in 2020, reference is made to 5 letters and the last one alleged to have been written on 02.02.2019. Notwithstanding the challenge to the very existence / veracity of these letters by the respondent, it appears inconceivable that a person devoid of livelihood would confine his efforts to such scant correspondence and abjure any legal recourse. It is also brought to our attention that the petitioner did file a petition in this Court, however, the same was filed in 2020 and not even notice has been sought / issued therein till date. In such circumstances, we may observe that no infirmity could be demonstrated in the factual narrative relied upon by the respondent.

Even otherwise the entire plea of the petitioner is based upon seeking evaluation by this Court of the respective record / letters, requiring detailed factual inquiry, investigation etc. It is settled law that the adjudication of disputed questions of fact, requiring evidence etc., is not amenable in the exercise of writ jurisdiction².

6. The antecedents and absence of the petitioner are a matter of record and no case for any *mala fide* could be set forth before us. In so far as the issue of foregoing a regular inquiry is concerned, we have been assisted with the law that the same was dispensable³. The absence of the petitioner from duty was manifest and unauthorized; and in such circumstances no case for requiring a regular inquiry could be made out⁴. The august Supreme Court has

²2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415;

³ Rule 5.

⁴ Per *Ijaz ul Ahsan J in Chief Postmaster Faisalabad vs. Muhammad Afzal* reported as 2020 SCMR 1029; *Pakistan vs. Mamoon Ahmed Malik* reported as 2020 SCMR 1154.

recently reiterated in *Zakir Ali*⁵ that in instances of manifest wilful absence from duty no regular inquiry was necessitated for dismissal of the employee⁶.

7. The writ jurisdiction of this Court is discretionary⁷ in nature and we are constrained to observe, in view of the reasoning as aforesaid, that the petitioner has failed to set forth a case for exercising such jurisdiction. Therefore, this petition is found to be misconceived, hence, dismissed along with pending application/s.

JUDGE

JUDGE

⁵ Per Ayesha A. Malik J in *Secretary Govt. of Punjab vs. Zakir Ali* reported as 2022 SMCR 951.

⁶ Reliance was placed on *Secretary Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar & Others vs. Noor-ul-Amin* reported as 2021 SCMR 959 and *National Bank of Pakistan & Another vs. Zahoor Ahmad Mengal* reported as 2021 SCMR 144.

⁷ 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.