IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5975 of 2021
(Mohammad Taufique Khan v. Pakistan Atomic Energy and 03 others)

Petitioner present in person
Mr. Altamash Arab, advocate for respondent

Date of hearing
& Order: 15.02.2023

ORDER

This is the second round of litigation. In the first round, the petitioner filed CP No.D-1905 of 2015 before this Court, which was disposed of vide judgment dated 11.01.2017, relevant para is reproduced as under:

> "10. In view of the above facts and circumstances and while relying upon the judgment passed in aforesaid petition, we declare that the action of the respondents against the petitioner is/was illegal, without lawful authority and of no legal effect. Consequently, the petitioner is reinstated in service with back benefits. However, we leave it open for the respondents to initiate fresh action under the law, if necessary, against the petitioner and to decide it afresh after affording him due opportunity of hearing within one month. The petition is disposed of in the above terms along with listed application."

2. Thereafter, the respondent Pakistan Atomic Energy Commission assailed the aforesaid decision of this court before the Hon'ble Supreme Court of Pakistan in Civil Petition No.1317 of 2017, which was disposed of vide order dated 17.03.2020, which reads as follows:

> "After we have heard the case for a while, Mr. Ahmer Bilal Soofi, learned for the petitioners, as well as Mohammad Taufique Khan, respondent in person, agree to the disposal of the instant petition with direction that the fresh action, if any, as prescribed through the impugned judgment, shall be initiated at the earliest and shall be concluded within three months from today. The respondent shall be provided full opportunity of submitting his replies along with relevant material and shall also be provided an opportunity of hearing. The respondent shall cooperate with the petitioners in the above endeavor to the fullest. The petition stands disposed of in the foregoing terms."

3. Now, the petitioner has challenged vires of office order No.109/2021 dated 01.10.2021, whereby the competent authority of respondent Pakistan Atomic Energy Commission terminated his services on the same charges i.e. concealment of previous service in SUPARCO on contract basis with effect from 01.08.2016 to 7.08.2007. An excerpt of the office order is as under:

> "In compliance of Order dated: 17-03-2020 passed by Honorable Supreme Court of Pakistan in CP No. 1317/2017 & Judgment dated: 11-01-2017 passed by Honorable High Court of Sindh, Karachi in CP No. D-1905/2015, Mr. Muhammad Taufique Khan (PIN No. 60919), Telecom Operator-I (SPS-04), DGRE, Karachi has been proceeded afresh under NCA Employees (E&D) Rules-2010 by issuing him a Show Cause Notice dated: 15-06-2020 & afforded full opportunity of defense. He is informed that his reply dated: 19-06-2020 to the Show Cause Notice dated: 15-06-2020 has not been found satisfactory. He was also afforded opportunity of personal hearing on 07-12-2020 although he did not opt to avail the same in his reply to the said Show Cause Notice, but he could not prove his innocence. Hence, the charge of concealment of material facts

stood proved against him beyond shadow of doubt. As such, the Competent Authority has decided to terminate his services with immediate effect under Rule 6(a) of the NCA Employees (E&D) Rules, 2010 read with Rule 7 (a) (J) of ESR-2011.
2. This issues with the approval of competent Authority."

4. At the outset learned counsel for the respondents questioned the maintainability of this Petition against the National Command Authority (NCA) by the National Command Authority (Amendment) Act, 2016, envisaging Master-Servant relationship for the employees of organizations under NCA and ousting the jurisdiction of this court from the entertaining petition of employees and prayed for dismissal of the petition on the analogy that the charge of concealment of material facts of previous employment as discussed supra stood proved against the petitioner beyond the shadow of a doubt, as such, the Competent Authority terminated his services under Rule 6(a) of the NCA Employees (E&D) Rules, 2010 read with Rule 7 (a) (J) of ESR-2011 as the petitioner was not cleared from the security point of view thus he could not be retained in service of NCA which is a strategic organization.

5. Petitioner who is present in person has refuted the claim of respondents by referring to the grounds agitated by him in the memo of the petition and submitted that this petition is maintainable on the premise that the fresh action vide show cause notice dated 15.06.2020 contained same two charges leveled against him has already been quashed vide judgment dated 11.01.2017 passed by this Court following the order dated 17.03.2020 passed by the Hon'ble Supreme Court of Pakistan in CP No.1317 of 2017. As per the petitioner, the charges are not serious enough leading to the gravest form of misconduct to invoke the provision of NCA Rules, 2010, for the reason that he was working with the respondents since 2006 on a contract basis and resigned from the service. As per the petitioner, the respondents were well aware of the appointment and resignation of the petitioner from the previous post, thus raising questions about the previous appointment and subsequent purported non-disclosure is of no consequence as portrayed by the respondents in the memo of show cause notice dated 15.6.2020 followed by termination from service order dated 01.10.2021. Petitioner further submitted that the allegations were not inquired under NCA Employees (E&D) Rules, 2010 to substantiate the charges leveled against the petitioner even though they failed to ascertain the factum of previous employment with them with effect from 01.8.2006 to 07.08.2006, thus petitioner cannot be saddled with alleged misconduct within the meaning of rule-4(b) of NCA Employees (Efficiency and Discipline) Rules, 2010, therefore, his removal from service on the purported charges are liable to be quashed. He prayed for allowing the instant petition.

6. We have heard the petitioner who is present in person and learned counsel representing the respondents and perused the material available on record.

7. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution, 1973. The issue of maintainability of the captioned Constitutional Petition has been raised. The Honorable Supreme Court in the case of *Shafique Ahmed Khan and others v. NESCOM through Chairman Islamabad and others* (**PLD 2016 SC 377**), has settled the aforesaid proposition and held that "the rules framed under Sections 7, 9, and 15 of the Act are statutory on all accounts and by every attribute. They are thus declared as such". Besides, on the subject issue, we seek guidance from the judgments rendered by the Hon'ble Supreme Court of Pakistan on the issue of maintainability of the petitions on the ground of statutory and non-statutory rules of service and maintainability on the point of violation of law in the cases reported as *Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed*, **2013 SCMR 1707**,

8. Progressing further, we have noticed that the (Amendment) Act, 2016, and the decision of the Honorable Supreme Court in the case of Shafique Ahmed Khan and others supra came on 21st January 2016, which clarified the status of NCAES Rules, 2011 of National Command Authority. Therefore, there is no further discussion on the aforesaid proposition is required on our part. Our view is further cemented by the various decisions rendered by the Honorable Supreme Court as discussed supra. The first decision of a five Member Bench of the Honorable Supreme Court in the case of Pakistan Defence Officers' Housing Authority supra after examining the statute through which the Respondent-Authority and other statutory bodies were established and functioning, in Para-27 of its judgment, held them to be statutory bodies performing some of the functions of the Federation/State and, therefore, "person" within the meaning of Article 199(1)(a)(ii) read with Article 199 (5) of the Constitution and if their actions or orders are violative of the statute creating those bodies or of rules/regulations framed under a statute, the same could be interfered with by the High Court under Article 199 of the Constitution.

9. We are cognizant of the fact that in service matters it is important to disclose the material facts on the part of the candidate; and, once the verification form requires certain information to be furnished, the declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of

candidature in an appropriate case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be grounds for the employer to cancel candidature or to terminate services.

10. The question arises as to whether the allegations leveled against the petitioner could be inquired under Article 199 of the Constitution.

11. To answer the aforesaid proposition, in principle, the role of the Court is not to remake the decision being challenged or to inquire into the merits of that decision, but to conduct a review of the process by which the decision was reached to assess whether that decision was within the parameter of law or otherwise; and observance of rules of natural justice. Of course, fair play is the basis, and if perversity or arbitrariness, bias vitiates the conclusions reached. In such a scenario, more particularly in service matters, this Court can only see whether:

(a) the inquiry is held by a competent authority;

(b) the inquiry is held according to the procedure prescribed on that behalf;

(c) there is a violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

12. However, we are also cognizant of the fact that this Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the inquiry, in case the same has been conducted under the law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be

(vii) go into the proportionality of punishment unless it shocks its conscience.

13. It is well-settled law that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion that the authority reaches is necessarily correct in the eye of the Court. It is also a well-established proposition of law that when an inquiry is conducted on charges of misconduct by a public servant, the Court is concerned to determine whether

the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules nor proof of a fact or evidence in the Stricto-Sensu, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge.

14. In our view, the Court in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its independent findings on the evidence. The Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding is such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding and mold the relief to make it appropriate to the facts of each case. It is a well-established principle of service jurisprudence that the disciplinary authority is the sole judge of facts. Where the appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment.

15. It is an established principle of service jurisprudence, even in the cases of Master and servant, who cannot be permitted to play hide and seek with the law of dismissals. The same processes must be grounded on the substantive reason for the order. Even the discretion to dispense with the inquiry could not be exercised arbitrarily but honestly, justly, and fairly in consonance with the spirit of the law, after the application of a judicious mind, and for substantial reasons. For this purpose, the nature of the allegations against the accused public servant has to be considered.

16. In a case when it is clear to the authority that the allegations could be decided about the admitted record or it forms an opinion that un-rebuttable evidence on the touchstone of QANUN-E-SHAHADAT, to prove the charge against the accused/employee is available on the record, the procedure for regular inquiry, may be dispensed with, otherwise, the ends of justice demand an inquiry. However, there can be a situation where the real fate of allegations can only be adjudged by a regular inquiry and not by mere textual proof.

17. The Hon'ble Supreme Court of Pakistan in the case of *Abdul Qayyum vs. D.G. Project Management Organization JS HQ, Rawalpindi, and 2 others* **2003 SCMR 1110** held that requirement of regular inquiry could be dispensed with in exceptional circumstances. Where recording of evidence was necessary to establish the charges, then departure from the requirement of regular inquiry under the Rules would amount to condemning a person unheard. On the aforesaid proposition, we are guided by the decisions of the Honourable Supreme Court in the cases of **2012 PLC (CS) 189**: *Mst. Sajida Shaikh v. Deputy Post Master General, Northern Sindh Circle Postal Services, Hyderabad and others*, **2012 PLC (CS) 728**: *Muhammad Afzal v. Regional Police Officer Bhawalpur and Others*, **2008 PSC 1180**: *Member (ACE & ST), Federal Board of Revenue, Islamabad and others v. Muhammad Ashraf and 3 others*, **2008 PLC (CS) 910**: *Ehsanullah Khan Ex-Assistant Director, FIA v. Federation of Pakistan through Secretary Establishment and another*, **2007 SCMR 1726**: *Saad Salam Ansari v. Chief Justice of Sindh High Court, Karachi through Registrar*, **1998 SCMR 1970**: *Shakeel Ahmed v. Commandant 502 Central Workshop E.M.E., Rawalpindi and another, 1973* and, **2008 PLC (CS) 786**: *Ali Muhammad Samoo and 2 others v.Chairman, Pakistan Steel, Karachi, and 2 others*.

18. On merits, so far as the punishment in the present case is concerned, the petitioner has inflicted the extreme punishment of removal from service for the alleged sin of not disclosing factum of the previous service in service in SUPARCO on a contract basis with effect from 01.08.2006 to 7.08.2006, though petitioner resigned from service vide letter dated 11.08.2006 and as per petitioner his dues were cleared by the respondents long ago, therefore, alleged non-disclosure on the part of the petitioner is an afterthought for the reason that respondent No.1 is strategic organization and keeps the computerized record of employees as such the allegations are the mere excuse to nonsuit the petitioner from service; beside the respondents have not removed him from previous service on account of misconduct based on moral turpitude. The petitioner was inducted in service as a fresh candidate through a competitive process vide the offer of appointment order dated 21.5.2013, subsequently followed by the appointment order.

19. Adverting to the case in hand, there is nothing available on record that could show that upon denying the allegations by the petitioner any regular inquiry was conducted and or any opportunity to cross-examine the witnesses was provided by the respondents on the aforesaid allegations in terms of the

decision dated 17.3.2020 rendered by the Hon'ble Supreme Court of Pakistan and this court vide judgment dated 11.01.2017.

20. As discussed above, in this case, specific allegations had been leveled against the petitioner which included inefficiency and misconduct. When the petitioner in response to Show Cause Notice, and a charge sheet had specifically denied the charges leveled against him and considering the nature of the charges, all those allegations required evidence, then it had become incumbent upon the authority to have ordered a regular inquiry rather than issuing mere show cause notice is not sufficient to hold the petitioner guilty of the gravest charge of misconduct, and in the above-given situation departure from a normal course does not reflect bonafide on the part of the respondents. In this regard reliance can be placed on the case of *Basharat Ali v. Director, Excise and Taxation, Lahore, and another*, **1997 PLC [CS] 817**.

21. It is by now well settled that the right to a fair trial means the right to a proper hearing by an unbiased competent forum. The right to a fair trial has been associated with the fundamental right of access to justice, which should be read in every statute even if not expressly provided for unless specifically excluded. While incorporating Article 10-A in the Constitution and making the right, to a fair trial a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as is broadly universally recognized and embedded in jurisprudence in Pakistan. Reliance can be placed on the *Suo Motu Case No.4 of 2010* **PLD 2012 SC 553**.

22. Applying the above principles, the impugned order dated 01.10.2021 in the instant, case, cannot be treated to be a simpliciter termination. It was an order passed by way of punishment and, with stigma, therefore, was an order of dismissal from service which having been passed without holding a regular departmental inquiry.

23. The above circumstances would strike to any ordinary prudent man that the extent of the above purported misconduct would never warrant any severe punishment more so the removal from service. It shows the law and standards of justice that are being applied by the Honorable Supreme Court, regarding the imposition of punishment, has been forgotten. Besides that justice, equity, and fair play demand that the punishment must always be commensurate with the gravity of the offense charged. The punishment imposed on the petitioner is

disproportionately excessive and it is not within the reach of natural justice for the simple reason that the petitioner has explained to the extent that he informed the respondents by showing a clearance certificate and other documents and if the assertion of the petitioner was not accepted they ought to have inquired the allegations which they have failed to do so, thus leaving this court with no option but to accept the version of the petitioner at this stage.

24. Accordingly, the order of termination dated 01.10.2021 is quashed and set aside. The petitioner is directed to be reinstated in service. The respondents are directed to take back the petitioner in service on his original post and position with continuity of service, salary, and wages for the interregnum as if the order of termination is not passed. Let a copy of this order be transmitted to the respondents for compliance.

JUDGE

JUDGE

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