

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 835 of 2023

(Manzoor vs. P.O., Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. *For orders on O/objection at flag-A.*
2. *For hearing of main case.*

Before
Adnan-ul-Karim Memon, J:
Mohammad Abdur Rahman, J

Date of hearing : **7 May 2024**
Date of Announcement : **21 May 2024**

Mr. Abdul Naeem Pirzada, Advocate for petitioner
Mr. Mukesh Kumar G. Karara, Advocate for respondent No.6 to 8.
Mr. Ali Raza Balluch, AAG

MOHAMMAD ABDUR RAHMAN, J. The Petitioner has maintained this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking the following relief:

- “ ...
- a. *To direct the respondents No.3 to 8 to allow the petitioner to join/continue the duty as a Lecturer, as per the committee report.*
 - b. *To restrain the respondent not to take any action in respect of the service of the petitioner till the final decision of this petition.*
 - c. *To direct the respondent to release the salaries of the petitioner from April, 2022.*
 - d. *Any other relief may kindly be awarded as this Honourable Court may deem fit and proper under the circumstances of the case.*

2. The Petitioner contends that he was employed by the Mehran Model School and College Pano Akil (hereinafter referred to as the “School”) which is a private school operated by the Mehran Educational Cooperative Housing Society Limited (hereinafter referred to as the “Society”) and which is registered with the Director Private Schools and Colleges, Inspection Registration Private Institutions Sukkur (hereinafter referred to as the “Regulator”) under the Sindh Private Educational Institutions (Regulation & Control), Ordinance, 2001 (hereinafter referred to as the “Ordinance, 2001”).

3. It is admitted that under Section 6 of the Ordinance, 2001 the School was subject to jurisdiction of the Director Private Schools and Colleges in terms of a license issued by that authority in the following terms;

- “ ... 6. *Registration of an institute (1) Where the Registering Authority grants the application, it shall register the institution and issue a certificate of registration to the application in such form and containing such terms and conditions as may be prescribed.*
- Provided that-*
- No donation from a student voluntarily or otherwise, for development projects of an institution shall be permissible'*
- The fee structure of an institution shall be fixed with prior of approval of Government.*
- (ii-a) the institution shall provide and maintain required infrastructure including building, class rooms, Laboratory, Library, play ground, canteen and safe-drinking water facilities;*
- (ii-b) the facilities allowed to a student at the time of admission shall not be subsequently withdrawn or reduced.*
- The facilities allowed to a student at the time of admission shall not be subsequently withdrawn or reduced.*
- Curriculum taught in an institution shall be at least, at par with the curriculum approved by Government for its Schools and institutions; and*
- (v) The institution shall ensure teaching of the Sindh Language in accordance with existing law and rules.*
- (2) The Registering Authority shall maintain a register containing such particulars of an institution which is registered an granted certificate of registration, as may be prescribed.*
- (3) The person to whom the certificate of registration is issued shall be responsible for due compliance of the provisions of this Ordinance, rules, the terms and conditions of the certificate and registration and the orders, if any passed or instructions issued from time to time by the Registering Authority.*

4. Rules were framed under Section 15 of the Ordinance, 2001 which are known as the Sindh Private Educational Institutions (Regulation & Control) Rules, 2005 (hereinafter referred to as the “Rules, 2005”) and which, by virtue of Rule 10, partially regulated the obligations as between the School and its teaching staff and which regulated obligations are indicated as hereinunder:

- “ ... 10.(1) *Minimum salary and allowances of a full time teacher with twelve months of continuous service shall not be less than four time the monthly fee of the single student the highest class charged by the institutions*
- Provided that the institution running by the trust or communities, that the pay scale of teacher staff, of the institution shall be at least at par with the respective government pay scale.*
- (2) The scale and allowances of non-teaching staff of the institution shall be at least at par with the respective Government pay scales.*

(3) *The institution shall ensure payment of remuneration to its staff every month including the vacation period through a cross cheque.*

(4) *The institution shall the regulate service matter of its staff under the service rules made by the institution on the basis of guidelines issued by the registration authority."*

Further, in the event of any dispute emanating out of an obligation regulated by the Ordinance, 2001 or by the Rules, 2005 such issues could be addressed in the form of a complaint which was to be referred to the Regulator in terms of Rule 18 of the Rules, 2005 and which reads as hereinunder:

" ... 18.(1) *The registering authority on receipt on the complaint or information regarding a dispute arising between an institution and parents or guardian of a student of the institution or between an institution and its teachers or other members of staff shall institute an inquiry committee comprising of such number of members from civil society and the officers of the Education and literacy Department as it deems fit.*

(2) *The committee shall enquire into the dispute and submit its finding alongwith its recommendations to the Registering Authority within thirty days from the date of order issued to it.*

(3). *The registering authority within fifteen days of receipt of such reports, pass such order as deemed fit and convey the orders to the persons concerned which shall be final and binding on all concerned."*

5. The Petitioner contended that he was prejudiced by various allegations made by the Managing Committee of the Society and which led to his removal as a Lecturer from the School. He further contends that to address his grievance he had maintained C.P. No.D-624 of 2019 and during the pendency of which, on 29 July 2020, he was reinstated into service and an account of which that Petition was disposed of by this Court.

6. It seems that thereafter a further dispute arose and which resulted in certain criminal proceedings being instituted as against the Petitioner and as a consequence of which the Petitioner was once again removed from his service as a lecturer at the School and which led to him to maintain C.P No.D-997 of 2022 before this Court and in which proceedings, on 6 October 2022, the following order was passed:

" ... *Learned counsel while referring Rule 18 of the Sindh Private Educational Institutions (Regulations & Control) Rules, 2005, which provides a mechanism for redressal of grievance, inter alia, of institutions and its teachers, states that the petitioner made a complaint to Director of Regional Directorate of Inspection & Registration of Private Institutions Sukkur Region Sukkur School Education & Literacy Department Government of Sindh, which has not yet been decided as per aforesaid Rule 18, hence he would be satisfied and shall not further press instant petition in case directions are given to said Director to decide the*

complaint of the petitioner in accordance with law. Learned AAG records his no objection to the proposition of learned counsel for petitioner."

Accordingly, Director of Regional Directorate of Inspection & Registration of Private Institutions Sukkur Region Sukkur School Education & Literacy Department Government of Sindh is directed to decide the complaint of the petitioner in accordance with law expeditiously and preferable within a period of two months. The petition stands disposed of."

7. On account of the Petitioner not being permitted to join his service with the School he maintained CMA No.153 of 2023 in CP No. D-997 of 2022, being an application for contempt, and which was disposed in the following terms:

" ... *Later on, petitioner files listed application being CMA No.153 of 2023 for initiating contempt proceedings against the alleged contemnors for non-compliance of the aforesaid order. As per the comments filed by the alleged contemnor No.1, compliance of aforementioned order has already been made and such inquiry report dated 28.12.2022 is on record, which suggest as follows;*

"As Mr. Manzoor Ahmed Kalhoro is a senior teacher. He has rendered his services to this school for many years and being a hard-working, responsible and senior employee, his services should be continued with due respect. An employee who is working in an institution cannot be terminated on the basis of persons grudge. There must be concrete and legal reasons/evidences required for termination."

At this juncture, learned counsel for the petitioner submits that inspite of conclusion of inquiry, petitioner is not being given posting. Since grievance of the petitioner as agitated in this petition has already been redressed, hence listed application has become infructuous and is accordingly disposed of. However, if there is any further grievance with regard to posting or otherwise, petitioner may initiate fresh proceedings before relevant forum in accordance with law, if so advised. "

The Petitioner now, through this Petition, seeks restoration of his service with the School and for payment of his salary in lieu thereof.

8. Mr. Abdul Naeem Pirzada entered appearance on behalf of the Petitioner and contended that despite being restored to his service with the School, he is not being permitted to join his service and is not being paid his salary and hence he has maintained this Petition seeking directions to be issued to the Society to compel them to reinstate the Petitioner and to pay his salary in accordance with the terms of his employment.

9. Mr. Mukesh Kumar G. Karara entered appearance on behalf of the School and the Society and contended that while the School is regulated by the Regulator and the Society is regulated by the Registrar of Cooperative Societies under the provisions of the Sindh Cooperative Societies Act, 2020 (hereinafter

referred to the “2020, Act”) as they are each private entities, a petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 can not be maintained as against either the School or the Society. In the Counter Affidavit submitted by him on behalf of the School and the Society he has, in addition, raised a preliminary objection that this Court’s jurisdiction is barred on account of Section 116 of the 2020, Act and also on account of an adequate remedy be available to the Petitioner before the Special Court for Cooperative Societies constituted under Section 117 of the 2020, Act. On merits he contended that the Society had on 19 November 2017 passed a resolution regulating the tenure of service of an employee at a maximum of 25 years and which term having been served by the Petitioner has resulted him being deemed as retired on 1 October 2022 and on account of which he no longer can serve as a Lecturer at the School. Mr. Ali Raza Balluch, the Learned Additional Advocate General Sindh, adopted the contentions of Mr. Mukesh Kumar G. Karara.

10. We have heard Mr. Abdul Naeem Pirzada, Mr. Mukesh Kumar G. Karara and Mr. Ali Raza Balluch and have perused the record.

11. It is common ground that the Society is incorporated under the provisions of the 2020, Act and which under section 33 of that statute has been conferred corporate status in the following terms:

“ ... 33. *The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute, and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.*”

It seems that one of the enterprises which the Society has undertaken is that of establishing and operating the School and which is as such an undertaking of the Society and which School cannot therefore be classified as a separate legal entity to the Society. Under Section 110 of the 2020, Act all officers of the Society are to be considered as “public servants” and which provision reads as hereinafter:

“ ... 110. Every ***officer*** of a society, including a Co-operative bank, shall be ***deemed*** to be a public servant within the meaning of section 21 of the Pakistan Penal Code.1860 (XLV of 1860).”

Under Sub-Section (k) of Section 2 of the 2020, Act, an “officer” of the Society is defined as:

“ ... (k) “Officer” includes a Chairman, Secretary, Treasurer, member of committee or other person empowered under the rules or under the byelaws of a society to give directions in regard to the business of such society”

Section 110 of the 2020, Act is analogous to Section 65B of the Cooperative Societies Act, 1925 and by which an officer of a Cooperative Society is to be deemed to be public servant.¹ We are clear that the status of an “officer” of a Cooperative Society being deemed to be that of a “public servant” in turn cannot confer such “public” status on a cooperative society that is incorporated under the provisions of the 2020, Act unless it can be shown, in terms of the Functions Test², that the Society is directly or indirectly owned or controlled by either the Federal Government, Provincial Government or a Local Government. That being the case we are inclined to agree with the contentions of Mr. Mukesh Kumar G. Karara that no directions can be issued under Article 199 of the Constitution of the Islamic Republic Pakistan, 1973 by this Court to the Society or for that matter any cooperative society registered under the 2020, Act unless such Society is found to be directly or indirectly owned or controlled by either the Federal Government, Provincial Government or a Local Government. That being the case we do not need to consider the objection that was raised by Mr. Mukesh Kumar G. Karara as to whether the establishment of the Special Court for Cooperative Societies, by virtue of Section 117 of the 2020, Act, would constitute an adequate remedy to maintain his cause of action as against the Society so to prevent him for invoking this Court jurisdiction under Article 199 of the Constitution of the Islamic Republic Pakistan, 1973.

12. While the Petitioner cannot maintain this Petition directly against the Society we are left to consider whether the grievance of the Petitioner i.e. the passing of the Resolution on 19 November 2017 restricting the tenure of service of an employee of the School to a maximum term of 25 years can be subject to the jurisdiction of the Regulator and who can vary such a resolution. It would seem that in terms of Sub-Rule (1) of Rule 18 of the Rules, 2005 a complaint could be maintained by the Petitioner in respect of a “dispute” as between “an institution and its teachers or other members of staff” and which the Regulator can in terms of Sub-Rule (4) of Rule 10 of the Rules, 2005 regulate “on the basis

¹ See *Haji Raja Mubarik vs. Dr. Enayar Hussain* 2009 P Cr LJ 875

² See *Aitchson College Lahore vs. Muhammad Zubair* PLD 2002 SC 326; *Federal Government Employees Housing Foundation vs. Muhammad Akram Alizai, Deputy Controller* 2002 PLC (C.S.) 1655; *Ziaullah Khan Niazi vs. Chairman, Paksitan Red Crescent Society* 2004 SCMR 189; *Pakistan Red Crescent Society vs. Syed Nazir Gillani* PLD 2005 SC 806; *Pakistan International Airline Corporation vs. Tanweer ur Rehman* PLD 2010 SC 676; *Noor Jehan Shah vs. Pakistan Defence Officers Housing Authority* 1997 MLD 2261; *Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Limited Tokht Bhai and 10 others* PLD 1975 SC 244

of guidelines” issued by the Regulator. In addition, under Sub-Rule (4) of Rule 10 of the Rules, 2005 read with Sub-Rule (1) of Rule 18 of the Rules, disputes regarding the payment of remuneration by the School to the Petitioner can also be considered by the Regulator. It would therefore seem that the Petitioners grievance both in terms of the passing of the Resolution restricting the tenure of his service and the nonpayment of remuneration by the School or the Society, while not amenable to this Court’s constitutional jurisdiction, could be amenable to the jurisdiction of the Regulator under the above mentioned rules as they pertain to a dispute as between a teacher and the School. However, as the Petitioner has not appended any document to the Petition to show that he has approached the Regulator, we are not in a position to issue any direction to the Regulator to decide such a complaint and would only say that in the event that the Petitioner does approach the Regulator, his complaint may be considered and disposed of expeditiously. This Petition is however not maintainable.

13. For the foregoing reasons, we are of the opinion that this Court jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 does not extend to issuing directions to the Society as it not a body controlled by either the Federal Government, Provincial Government or a Local Government. In addition there being no complaint preferred by the Petitioner under Sub-Rule (1) of Rule 18 of the 2005, Rules, while competent, we cannot issue directions to the Regulator as there is no complaint before that body and hence at present no cause of action has accrued in favour of the Petitioner as against it. The Petition is therefore misconceived and is dismissed, along with all listed applications, with no order being passed as to costs.

JUDGE

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