

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI.

Present:-
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Shamsuddin Abbasi

C.P.No.D-3217 of 2017
Muhammad Ali Khaskheli

Versus

Federation of Pakistan & others

C.P.No.D-1867 of 2019
Noor Muhammad Leghari

Versus

DG NAB & others

C.P.No.D-3967 of 2019
Naz Parveen

Versus

Federation of Pakistan & others

C.P.No.D-3968 of 2020
Muhammad Ali Shah

Versus

The NAB & others

C.P.No.D-3976 of 2020
Dr. Kishor Kumar

Versus

The NAB & others

C.P.No.D-5818 of 2020
Mushtaq Ahmed Abbasi

Versus

The NAB & others

C.P.No.D-5819 of 2020
Khalid Suleman

Versus

The NAB & others

C.P.No.D-5820 of 2020
Abdul Rehman

Versus

The NAB & others

For date of hearings : 21.01.2021, 02.02.2021, 18.02.2021
For date of order : 26.02.2021

Mr. Muhammad Saleem Khaskheli, advocate for petitioner in C.P.No.D-3217/2017.

Mr. Zubair Ahmed Rajput, advocate for petitioner in C.P. No.D-1867/2019

Mr. Muneer Ahmed, advocate for petitioner in C.P. No.D-3967/2019

Mr. Muhammad Ahmed Pirzada, advocate for petitioner in C.P.No.D-3968/2020.

Mr. Muhammad Naeem Memon, advocate for petitioner in C.P. No.D-3976/2010

M/s Ali Azad Salim and Shamim Bano, advocate for petitioner in C.P. No.D-5818/2020, 5819 & 5820/2020

Mr. Shahbaz Sahotra, Special Prosecutor NAB a/w Hamidullah I.O. NAB

Mr. Mukesh Kumar Khatri, Assistant Attorney General

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioners standing a trial in Reference No.19 of 2020 pending before the learned Accountability Court Sindh at Karachi, are seeking concession of pre-arrest bail. They are alleged to have misused their authority jointly while working in Education Department by appointing 294 people illegally on various posts in Special Education Wing in the years 2012 and 2013 through a walk-in-interview process in violation of a Notification No.SOV(S&GAD)/X15/90-98 dated 14.02.2005 issued by Services, General Administration & Coordination Department, Government of Sindh, causing a loss of more than Rs.250 million to the national exchequer.

2. Learned counsel for petitioner Muhammad Ali Shah, the then Secretary, Special Education has submitted that he had no role in the appointments, and had caused only issuance of advertisement inviting application from the candidates which contained a clause indicating specifically that such process was only limited to short listing of candidates and was to be followed by a written test and interview; he was transferred on 06.11.2012, and all the appointments were made thereafter; before his transfer, he was on ex-Pakistan leave from 12.09.2012 and to 11.01.2012, as such even the interviews were not conducted in his presence. He has not committed violation of any government directives.

3. Learned counsel for petitioner Noor Muhammad Leghari has submitted that his posting as the Secretary lasted for only one month from 06.11.2012 to 05.12.2012; and before his posting, entire process of recommendation had already been done by the Regional Committees constituted by co accused Muhammad Ali Shah. Although he was the Chairman of the Provincial Committee, but it only approved recommendations already made by the Regional Committees and had nothing to do with appointment process. He further said that even

otherwise no wrong was committed and all the appointments were made as per Appointment, Promotion and Transfer, Rules, 1973. He referred to the copies of offer letters available in the reference to highlight that the same were issued after transfer of petitioner and yet bear his name sans his signature, a *pima facie* proof of tampering and manipulation in the record behind him. He further stated that NAB has not been able to collect any impeaching evidence against him and the statements of three accused made approvers against him have been discarded by NAB itself. He has relied upon the case laws reported in **PLD 2003 SC 668, 2016 P Cr. L.J. 761, 2016 P. Cr. L.J 79, 2002 SCLR 282 and 2012 SCLR 353.**

4. Learned counsel for petitioner Dr. Kishor Kumar has submitted that he was a Section Officer and had issued the offer orders in compliance of directives of the then Secretary and had not performed any act independently to constitute an offence under National Accountability Ordinance (NAO), 1999. He further submits that he was not the custodian of record and there is no evidence that he caused its disappearance as alleged by NAB.

5. Learned counsel for petitioner Muhammad Ali Khaskheli has submitted that he had nothing to do with the process of appointment. He was PS to the Secretary, Special Education, and the allegation that he caused disappearance of record is not supported by any material. He was simply complying with directives of his Secretary and insofar appointment of his wife is concerned, it was recommended by the Regional Committee and approved by the Provincial Committee. Learned counsel has referred to Manual of Secretariat Instructions to support his point that he was not tasked with preserving the record.

6. Learned counsel for remaining petitioners have submitted that they have been falsely implicated in this case and there is no confidence inspiring evidence against them. That petitioner Khalid Suleman had already endured prosecution against same allegations before the Anti-Corruption Court (Provincial), Karachi; and acquitted in the year 2018, therefore, his involvement in the present case is in violation of principle of double jeopardy.

7. On the other hand, learned Special Prosecutor, NAB and I.O. have opposed bail to the petitioners and have submitted that they are involved in illegal appointments made without observing required procedure, and more so they substituted even the original candidates, who appeared in

the interviewee, with their favorites. They assigned 99 marks to each candidate, which otherwise is not humanly possible and smacks of ill act induced by malintent to accommodate their dear ones illegally. In order to support their case, they referred to several documents relating to posting terms of the petitioners, their signatures, their role in the alleged offence, etc. and in order to counter the point of double jeopardy impressed by petitioner Khalid Suleman, they relied upon the case of **2014 P Cr.LJ 1698, PLD 2002 SC 610, 1995 SCMR 626 and PLD 2020 Sindh 739.**

8. We have considered submissions and perused material available on record including the case law cited by the parties. In fact, no one, among the petitioners, has denied their role in the appointments, which everyone, however, has tried to justify were made in accordance with law to press for extraordinary concession warding off their arrest pending trial. Record, however, speaks otherwise and shows that this process of appointment covering posts from BPS-1 to 16 was routed through a procedure lacking a competitive profile and was merely premised on walk-in-interview, a criterion against the standard set by the government vide notifications dated 14.02.2005 and 12.02.2008 envisaging a complete code encompassing written test, interview, etc. for the post of BPS-5 and above. In addition to 294 appointments, it is also reflected, 38 appointments, without even such procedure, were made by the petitioners during their tenure.

9. Role of each petitioner has been detailed in reference and Investigation Report (IR), and as stated above, no one has denied doing his/her involvement, however, from a different angle as stated above disputing allegation. In any case, in the statement u/s 161 Cr.PC, the witnesses, some of whom are said to be part of the committees tasked to conduct interviews have cast a cloud over authenticity of list of successful candidates by asserting that those successful have been replaced with phony ones who had not even appeared in the interview. We have seen, with a bit of surprise, straining credulity to limits, the list, available at page-343 onwards in the reference, showing each candidate from High School Teacher, BS-15/BS-16, to Chowkidar in BS-01 has obtained 99 marks. This position, in our view, is sufficient to suspect authenticity of this whole process and, augers *prima facie* misuse of authority by the petitioners.

10. Learned counsel appearing on behalf of petitioner Muhammad Ali Shah, during his arguments tried to make a point that he had only caused publication of advertisement, which specifically contemplated a

condition/clause (Sr. No.8) that it was only for the purpose of shortlisting the candidates, and since thereafter, he was transferred did not know what procedure was adopted for appointment. We don't feel persuaded by this argument, this condition/clause at Sr.No.8 does not propose such arrangement, but posits unambiguously to the test/interview of only short listed candidates in the process. Reading of this condition i.e. only short listed candidates would be invited for interview/test, with the others conditions mentioned above it demystifies clearly that this procedure was not for short listing of the candidates but after shortlisting (perhaps to be done internally based on qualification profile of each candidate) the candidates were to be called for the interview/test. Notwithstanding, any such conclusion or otherwise requires a deep appreciation of material, which exercise admittedly cannot be undertaken while deciding an arrangement interim in nature like pre arrest bail, which allows scrutiny of material only tentatively.

11. As to contention of learned counsel on behalf of Khalid Suleman, that in his case principle of double jeopardy contemplated under Article 13 of the Constitution and 403 Cr.PC is attracted, we may say that while harping on an application for pre-arrest bail, we cannot embark upon an exercise aimed at ascertaining nature of offences or prosecution suffered by him previously so as to give in this respect a finding in his favour. *Prima facie*, however, in this case, he has been charged with offence of misuse of authority punishable under section 9 of NAO, 1999, which appears to be distinct and separate from the ones pursued against him earlier under Prevention of Corruption Act, 1947. But, in any case, regardless of our opinion on this issue at this stage, it will be always open to the petitioner to approach the trial court for this purpose by invoking relevant jurisdiction.

12. Against accused Noor Mohammad Leghari, relevant record of his posting to constituting another committee begging 38 extra appointments for him without any procedure has been collected, which is sufficient to indicate his role in the alleged offence. His strive to trance us into believing that he was merely a figure head and a signing authority without any substantial power or knowledge is beside the mark as it is he, being the head of the committee, which actually appointed those alleged phony candidates, who has played the main role.

13. Besides, his questionable actions as P.S. to Secretary, petitioner Muhammad Ali Khaskheli has been burdened with causing disappearance

of entire appointment record to protect himself and others from repercussions on the one hand, and to save appointment of his wife made in the process on the other hand. His counsel's attempt at taking refuge in Manual of Secretariat Instructions for convincing us that he was not custodian of the record and therefore not responsible for its safe keeping is irrelevant. For it is not the case of prosecution, that he was custodian of the record and was found deficient in this regard, but that he has a hand in causing disappearance of the record, which stands established not only from material collected by NAB in investigation but from the departmental enquiry, which besides him has labeled petitioners Dr. Kishor Kumar and Naz Perveen equally responsible for that in addition to issuing offer orders to alleged phony nominees with their signature for which they have not been able to offer any explanation.

14. Prosecution material, containing 161 Cr.PC statements, a list of candidates each obtaining 99 marks, recommendation of Regional Committees, offer and posting orders, etc. collected in investigation, *prima facie* provide sufficient evidence containing signature of each petitioner in the alleged offence, which on account of salaries to the appointees has caused a loss of 250 million to the national exchequer.

15. In view of such matter, the petitioners are not found entitled to concession of pre arrest bail, a relief rooted into equity to be extended to only innocents implicated in the case on account of malafide or ill motive on the part of complainant or investigation agency. Accordingly, these petitions are dismissed and the interim bails earlier granted to the petitioners by this Court are hereby recalled.

JUDGE

JUDGE

This petition is primarily directed to the validity of the posting/transfer order dated 18.12.2020, whereby the assignment of Administrator SS Hospital Landhi was given to the petitioner. This petition is virtually against the transfer and posting order of the petitioner. It is stated on behalf of the petitioner that, basically the impugned transfer order in respect of the petitioner is issued by the Director Administration for Commissioner Sindh Employees' Social Security Institution, in complete violation of Regulation No. 10 of Sindh Employees' Social Security Institution (Revised) Service Regulation 2006. Perusal of the aforesaid Regulation, which explicitly provides that the member of the service is liable to transfer and to serve in any other equivalent post in the same cadre in the service within the province. It is noted that the Competent Authority may transfer an employee of respondent-institution, belonging to the service cadre. Per learned Counsel representing the petitioner that the posting/transfer of the petitioner was based on malice as he could not be transferred out of his cadre in the service. At this juncture, learned Counsel for the petitioner was asked to show us the original cadre of the petitioner. She relied upon the statement dated 18.2.2021 filed on behalf of the petitioner and argued that initially he was appointed as Social Security Officer(BPS-16) in the year 1998 and was subsequently promoted in the year 2012 as Director (BPS-18) in the general cadre. Per learned counsel, the post of Administrator is an ex-cadre post and the requirement/eligibility/qualification of the said post did not fulfill by him. She further argued that this posting is related to the medical cadre with certain qualifications which he lacks as discussed supra, as such he could not be transferred and posted against the post of Administrator. She emphasized that in place of the petitioner a Junior Officer in Grade-17 has been posted which violates the transfer policy and the judgment passed by the Hon'ble Supreme Court of Pakistan in Own Pay Scale cases. In support of her contentions, she relied upon the case of and argued that the impugned transfer order amounts to a change of cadre which has to be done under the provisions of regulations and not otherwise as discussed supra. The contentions raised require consideration to the extent whether the transfer and posting of the petitioner as Administrator in SS Hospital Landhi is/was out of cadre posting or otherwise, let notice be issued to the respondents as well as to learned AAG for a date to be fixed by the office, after three weeks. In the meanwhile, no coercive action shall be taken against petitioner so far as his posting as Administrator in SS Hospital Landhi is concerned.