

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P. No. D – 1131 of 2011

Before :

**Mr. Justice Aftab Ahmed Gorar
Mr. Justice Mahmood A. Khan**

Date of hearing : **13-10-2020.**

Mr. Sarfraz A. Akhund, Advocate for the petitioner.
Mr. Mukesh Kumar G. Karara, Advocate for respondents No.2 to 6.
Mr. Ali Raza Pathan, Assistant Attorney General.

ORDER

MAHMOOD A. KHAN, J. – This petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 requiring declaration that after resignation of the petitioner with the Sui-Southern Gas Company on 02-02-2010, the initiation of disciplinary proceedings against the petitioner from the month of October 2010 is illegal, and that the said respondents be directed to release the unpaid salary of the petitioner for the month he served with the department till his resignation of the said date.

2. The petition contends that the petitioner was appointed as a Trainee Engineer by letter dated 21-11-1995 to which the petitioner joined, and vide letter dated 28-10-1997 was relieved from his training w.e.f 31-10-1977 with the respondent - Sui-Southern Gas Company. That in the end of 1997, the petitioner was appointed as Water Management Officer in the Agriculture Department, Government of Sindh, wherein he continued his services. That by order dated 06-04-2009, the petitioner was reinstated in Sui-Southern Gas Company Limited in compliance of the Sacked Employees Ordinance, 2009 and once again the petitioner joined his services on 17-04-2009. It is also contended that the petitioner was relieved by the Agriculture Department with lien of one year vide notification dated 23-06-2009, and that the salary of the petitioner w.e.f

15-04-2009 in the Sui-Southern Gas Company was paid partially on end of June 2009, and as no salary was further paid, the petitioner was compelled to tender his resignation on 03-02-2010. That after the said resignation, the petitioner joined his service in the Agriculture Department. That by application dated 01-04-2010, the petitioner requested the Sui-Southern Gas Company for release of arrears of unpaid salary from 15-04-2009 to 02-02-2010, followed by reminder dated 21-06-2010. That the petitioner was served with the show-cause notice dated 25-10-2010 containing the statement of allegation that the petitioner remained absconder from duty since 05-02-2010, which was replied on 01-11-2010 clarifying the legal position and the element of resignation above referred. That despite the clarification, the department proceeded with the inquiry with the disciplinary proceedings issuing charge sheet, conducting of the inquiry and issuing of final show-cause notice for dismissal of the petitioner.

3. The respondents in the matter have been served and they have denied the entitlement of the petitioner contesting this Constitution Petition on the question of maintainability on account of the said respondents not having statutory rules and on the ground that the petitioner had failed to submit proof of his acceptances of resignation by the previous organization on reinstatement. That the inquiry having determined the petitioner guilty of the charges levied and having not availed opportunity of hearing despite being so provided he was dismissed by order dated 05-07-2011 having effect from 05-02-2010; he was also advised to collect his legal dues, if any, from the Finance Department, and finally that he was paid his due salaries up to June 2009.

4. Learned counsel for the petitioner contends that the petitioner as was wronged firstly when he was dismissed, and on his right being recognized by Sacked Employees Ordinance, 2009 again wronged by the failure of the respondent-organization in entertaining the resignation which was available with them. In this regard, he has relied upon the case of

Qaiser Zaman v. Federal Board of Revenue, Islamabad and others

reported at **2014 SCMR 1199**, wherein the resignation for a period of 2-1/2 years present and not considered on the ground of personal file missing, was not entertained, and as such the order of the learned Service Tribunal was set aside directing the Secretaries, Establishment Division and Cabinet Division to ensure that the resignation cases of Civil Servants be immediately processed and the concerned Civil Servants be informed about their fate forthwith as per rules, along with the delinquent officers / officials who caused delay in processing such cases be made accountable and proceeded against departmentally.

5. Whereas, it is contended on part of the respondents including learned AAG that the petition is not maintainable and that after the proper inquiry and order passed on merits, this petition is liable to be dismissed.

6. Having heard the learned counsels and gone through the record, though the petitioner by the letters of inquiry and dismissal can raise a question as to the joining of service, however, we find that the petitioner apparently is creating a ground for his back benefits to be claimed on the alleged rejoining of the service, however in this regard, no actual period of service and working has been shown. As such we do not find the petitioner to have approached this Court with cleaned hands by merely raising a claim of joining and not having actual rendering service to entitle himself of such benefit/s. The maintainability of the petition has also not been brought home as admittedly the respondent - Sui-Southern Gas Company is not having statutory rules.

For the forgiven reason, the petition stands **dismissed**.

J U D G E

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Abdul Basit