

ORDER SHEET

HIGH COURT OF SINDH, KARACHI

C.P. NO. D- 17/2012

Date

Order with signature of Judge

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1. For katcha peshi.
2. For hg. of Misc. 1588/13
3. For hg.of Misc. 111/12

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25.03.2013

Mr. Muhammad Nishat Warsi, Advocate for petitioner.

M/s. Rashid Anwar and Mustafa Ali, Advocates.

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The petitioner is serving as a Joint Director, Corporate Governance Division in Banking Policy & Regulations Department, State Bank of Pakistan. Sometime in May, 2011 disciplinary action was initiated against the petitioner on account of his alleged breach of discipline under Staff Regulations, 2005 of the State Bank of Pakistan. Against such action the petitioner filed the present petition claiming that the action may be declared as unwarranted.

2. Counsel for the respondents, on the other hand, took preliminary objections that this petition is not maintainable as terms and conditions of employees of the State Bank of Pakistan are not regulated by statutory regulations, therefore, the principle of “master and servant” would apply hence action is not amenable under Constitutional jurisdiction of this Court. It was argued that earlier also disciplinary action was taken against the petitioner which was challenged by him in C.P No. D-1968/2006 in this High Court and the same was dismissed being not maintainable. This Court placed reliance on the judgment of the Supreme Court reported as *PIAC vs. Tanveer ur Rehman* (PLD 1020 SC 676). The judgment of this Court in C.P. No. D-1968/2006 was challenged before the Supreme Court in Civil Appeal No.203-K of 2011, which was dismissed.

4. Counsel for the respondent also relied upon another judgment of the Supreme Court reported in 2011 PLC (C.S) 623, wherein it was held that if any adverse action is taken by the employer in violation of the statutory rules, only then such action would be amenable to the writ jurisdiction and in absence of statutory rules, the principle of

“Master & Servant” would apply and such person would be entitled to seek remedy before the competent forum permissible under the law.

5. Counsel for the petitioner argued that the allegation against the petitioner was that he violated the provisions of Section 46(a)(i) of the State Bank of Pakistan Act, 1956 and as allegations are that petitioner violated statutory provisions, the petitioner can invoke Constitutional jurisdiction of this Court. He further contended that action that was taken against the petitioner in earlier round of litigation was not based on violation of any statutory provisions hence the same was not entertained in Constitutional jurisdiction.

6. We have noted that Section 46(a)(i) of the State Bank Act, 1956 regulates confidentiality and secrecy which the employees of the State Bank have to maintain. However, violation of such regulation would obviously invoke departmental action under the Regulations of State Bank which are undisputedly not statutory. The real test is whether disciplinary action taken against an employee is regulated by statutory rules or regulations. The judgments of the Supreme Court referred to by the counsel for the respondent are binding on this Court. Furthermore, the matter has also become resjudicata when in the earlier round action under same regulations was taken which was challenged in the Constitutional Jurisdiction of this Court and it was held that proceedings are not maintainable. Such decision was challenged in the Supreme Court and the same was upheld. Hence we find no justification to interfere and hold that the petition is not maintainable in law. However, the petitioner is always free to seek legal remedy as permissible under the law.

JUDGE

JUDGE

sharif