

**IN THE HIGH COURT OF SINDH, CIRCUIT  
COURT HYDERABAD**

**C.P No. D-107 of 2019**

[Naveed Hussain Halepoto v. Province of Sindh & others]

**Before:**

**Mr. Justice Arbab Ali Hakro**

**Mr. Justice Riazat Ali Sahar**

Petitioner : Naveed Hussain Halepoto through  
Mr. Ishrat Ali Lohar, Advocate

Respondents : Through Mr. Rafique Ahmed Dahri  
Assistant A.G. Sindh along with  
Muhammad Nadeem Siddiqui Deputy  
Director on behalf of respondent No.3.

Date of Hearing : **06.03.2025 & 17.03.2025**

Date of Decision : **08.05.2025**

**J U D G M E N T**

**RIAZAT ALI SAHAR.J.**, - By this order, we intend to dispose of the captioned petition wherein the petitioner has stated that in 2005, the office of Respondent No.2 / the Secretary, Government of Sindh, Agriculture Department, Karachi required the post of Water Management Officer (Engineering) under the National Program for Improvement of 29,000 Water Courses in Sindh. Pursuant to a recommendation by the Selection Committee and approval of the competent authority, the petitioner was appointed on 25.04.2005 as Water Management Officer (Engineering) BPS-17 on a **contract basis** for three years or for

the project duration completed/closed, whichever was earlier. The petitioner accepted the offer letter, submitted his joining report, obtained a medical fitness certificate from the concerned District Headquarter Hospital, and successfully completed one-month compulsory training at Mehran University of Engineering and Technology (MUET), Jamshoro. He was thereafter posted at Field Team “Kario Ghanwar”, District Badin, where he performed his duties diligently. He has stated that although the project was extended from time to time by the Government of Sindh, on 31.10.2012, a show cause notice was issued to the petitioner under Section 3(1) of the Removal from Service (Special Powers) Sindh Ordinance, 2000. The petitioner submitted his reply on 20.11.2012; however, no inquiry proceedings were initiated. Subsequently, on 03.04.2013, without adhering to the mandatory procedure under the said Ordinance, a notice for cancellation of his employment contract was issued, culminating in his termination order dated 23.05.2013. He has further stated that after issuance of the termination order, he submitted a representation dated 25.04.2013, and later approached this Court through C.P. No.D-1876 of 2015 challenging his termination. Vide order dated 18.12.2017, this Court granted him liberty to file an appeal/representation before the Chief Secretary, Government of Sindh. Accordingly, the petitioner filed an appeal and was issued notices for personal hearing on 08.05.2018 and 07.08.2018. However, he was not afforded a proper hearing as required under the Court’s order and only his attendance was marked. Due to

non-compliance with the Court's directions, he filed a contempt application. During the proceedings on 18.12.2018, it was disclosed that his appeal had been dismissed on 28.08.2018, but the dismissal order was never communicated to him earlier and was only supplied during the contempt hearing. It has been emphasized that the respondents failed to comply with the Court's order in letter and spirit and deprived the petitioner of an effective opportunity of hearing. Hence the petitioner is seeking following reliefs: -

- A. That this Honorable Court may be pleased to suspend/set aside the impugned order dated 28.08.2018 passed by the Chief Secretary.*
- B. That this Honorable Court may be pleased to declare the impugned order dated 28.08.2018 as null and void, and the same has been passed without any lawful authority, justification and stand with discrimination, malice and favoritism.*
- C. That this Honourable Court may be pleased to declare that impugned order of the termination dated 23.05.2013 and impugned order dated 28.08.2018 is passed without adopting the proper procedure and could not offer the personal hearing thus the both orders are liable to be set aside.*
- D. That this Honorable Court may be pleased to suspend the operation of the impugned order dated 28.08.2018 till the final adjudication of this petition.*
- E. That, this Honorable Court may be pleased to direct the respondents to restore the service of the petitioner with all consequent benefits.*
- F. That any other relief(s) which this Honorable Court deems fit and proper may also be awarded in favour of the petitioner.*

2. Pursuant to this Court's notice, respondent No.2 filed his reply to the petition while respondent No.3 adopted the parawise comments as filed by respondent No.2.

3. In his comments, the respondent raised preliminary legal objections that the instant petition is barred by Section 11 of the CPC as the controversy has already been decided vide order dated 18.12.2017 in C.P. No.D-1876 of 2015, whereby the petitioner was directed to file an appeal/representation before the Chief Secretary, Sindh. The petitioner also filed a contempt application (M.A. No.8551/2018), but in compliance with the Court's order, the Chief Secretary afforded a personal hearing and dismissed the petitioner's appeal through impugned order dated 28.08.2018, and a compliance report was filed, leading to disposal of the contempt application. The respondent opposed the petition, stating the petitioner remained an unwilling worker and habitual absconder and that after an initial termination notice dated 17.04.2006, which was later withdrawn with a warning; however, he again failed to report for duty, leading to repeated proceedings. He has further stated that the petitioner filed C.P. No.664/2008 before the Principal Seat, resulting in his contract employment for one year or till project completion, but he again remained absent. Consequently, after completing legal formalities, his services were terminated on 23.05.2013. The petitioner then filed C.P. No.D-1876 of 2015, which was disposed of on 18.12.2017, permitting him to file an appeal. Upon hearing the petitioner and the Agriculture Department, the **Chief Secretary dismissed the appeal**

through the impugned order. Therefore, respondents have prayed for dismissal of the instant petition.

4. Learned counsel for the petitioner has contended that the impugned order dated 28.08.2018 is illegal, arbitrary, and passed without fulfilling the mandatory procedural requirements. He submitted that the petitioner was initially appointed lawfully through selection in 2005 under a **Government Project**, but his services were terminated on 23.05.2013 without conducting any proper inquiry, thus violating Section 3 of the Removal from Service (Special Powers) Sindh Ordinance, 2000. Learned counsel has questioned the respondents' inconsistent application of statutory laws: *firstly*, that a show cause notice was issued purportedly under the Removal from Services (Special Power) Sindh Ordinance, 2000; *secondly*, that the termination order was issued solely on the basis of the show cause notice without conducting any inquiry and without specifying under which statute the termination was ordered; and *thirdly*, that the petitioner's appeal was decided under Rule 3 (i) of the Sindh Civil Servants (Appeal) Rules, 1980, despite **the petitioner being a contractual employee, not a civil servant**. He argued that such procedural irregularities render the entire disciplinary action unlawful. He has further contended that pursuant to the Court's earlier order dated 18.12.2017 in C.P. No.D-1876 of 2015, the petitioner was entitled to a full and fair hearing before the Chief Secretary; however, the hearing was a mere formality where only the petitioner's attendance was marked and his detailed

submissions were neither considered nor reflected in the impugned decision. Learned counsel emphasized that the impugned order was also never communicated to the petitioner in a timely manner and was only supplied during contempt proceedings. He maintained that the respondents acted with mala fide intent, discrimination, and in violation of the principles of natural justice. Therefore, he prayed for setting aside the order dated 28.08.2018 and for reinstatement of the petitioner with all consequential benefits.

5. On the other hand, learned A.A.G. Sindh vehemently opposed the petition and supported the stance taken by the respondents in their comments. He argued that the controversy in the present petition is already barred under Section 11 of the CPC by virtue of the earlier decision dated 18.12.2017 passed by this Court in C.P. No.D-1876 of 2015. He has further contended that in compliance with the said order, the petitioner was afforded personal hearings and thereafter his appeal was rightly dismissed on merits by the competent authority through a well-reasoned order. Learned A.A.G. has further contended that the petitioner had a history of remaining absent without permission and showed **consistent unwillingness** to perform his duties, which justified the termination of his contractual service. He emphasized that no fundamental right of the petitioner has been infringed as the employment was purely contractual and no vested right accrued to him for continuation. He has further contended that all necessary formalities were observed and therefore, no case for interference

by this Court is made out. Learned A.A.G. maintained that the petition is misconceived, time-barred and deserves to be dismissed with costs.

6. We have carefully considered the submissions of the learned counsel for the petitioner, the learned A.A.G. Sindh and have also perused the entire material available on record, including the order dated 18.12.2017 passed in C.P. No.D-1876 of 2015, the impugned order dated 28.08.2018 issued by the Chief Secretary, Government of Sindh and the terms and conditions contained in the petitioner's original contract appointment letter dated 25.04.2005.

7. It is an admitted position that the petitioner was engaged purely on a contractual basis, his appointment being expressly governed by *“the Sindh Civil Servants Rules, as amended from time to time and the prevailing service instructions issued under the Sindh Civil Servants Act, 1973, and the rules framed thereunder”*. This is clearly stipulated in Clause (iv) of the terms and conditions of the appointment order dated 25.04.2005 of the petitioner [available at page-15 of the petition], which reads as under:-

*“You will be governed by the Sindh Civil Servants Rules as amended from time to time and the instructions in force relating to the service and the Sindh civil Servants Act, 1973 and rules made there under.*

Furthermore, Clause (v) of the terms and conditions of the appointment order of the petitioner unambiguously provides that:

*“The contract shall be liable to termination at any time before the expiry of the project period, upon one month’s notice from either side or upon payment in lieu thereof, and if the post is retrenched for any reason whatsoever.”*

8. The petitioner’s service record reveals a persistent and habitual pattern of misconduct, including unauthorized absences, disobedience of lawful departmental instructions, and a general disregard for the discipline required of a government employee. Despite two previous termination orders issued on account of such misconduct, the petitioner was reinstated on both occasions with considerable leniency. Nevertheless, he failed to exhibit any improvement in conduct. It is further notable that even after having been reinstated pursuant to judicial proceedings, the petitioner once again absented himself from duty without lawful justification.

9. His service record is replete with repeated violations of service discipline, which disentitles him to any equitable relief. Under settled principles of law, consistent absenteeism alone constitutes sufficient grounds for termination of a contractual employee, and does not warrant the initiation of a detailed inquiry, which is a safeguard reserved for regular civil servants. In



these circumstances, the termination of the petitioner's services cannot be termed as unlawful or arbitrary.

10. With regard to the contention that the petitioner was denied a fair inquiry or proper opportunity of hearing, it is sufficient to observe that the record reflects due compliance with procedural requirements. The petitioner was duly served with a show cause notice under the Removal from Service (Special Powers) Ordinance, 2000, to which he was afforded a reasonable opportunity to respond. Thereafter, in accordance with the prescribed procedure, the petitioner exercised his right of appeal under the Civil Servants (Appeal) Rules, 1980. The appeal was heard by the Chief Secretary, Government of Sindh, who, acting in the capacity of Appellate Authority, was pleased to dismiss the same vide order dated 28-08-2019. The relevant abstract of the said appellate order is reproduced hereunder for ready reference:

*“NOW THEREFORE after detailed examination of record and hearing both the parties i.e. (Mr. Naveed Hussain Halepoto) and respondent representative of Agriculture, supply & Prices Department, Government of Sindh) on 07.08.2018. I, Major (R) Azam Suleman Khan, Chief Secretary Sindh/ Appellate Authority in exercise of the powers conferred on me under **Rule 3 (i) of the Sindh Civil Servants (Appeal) Rules, 1980**, am satisfied to dismiss his departmental appeal and maintain the order of Administration Department intact.”*

11. It is more pertinent to note that so the allegation of the petitioner that the hearing was a mere formality is concerned,

we see that the same stands contradicted by the appellate order itself, which elaborately discussed the facts, the petitioner's repeated misconduct and departmental observations. The petitioner's failure to establish any *mala fide* intent, discrimination or violation of due process further weakens his case. Mere procedural technicalities, even if presumed for the sake of argument, cannot outweigh the irresistible material showing gross misconduct and habitual neglect of duty by the petitioner. It is well settled that one who seeks equity must come with clean hands; unfortunately, the petitioner's record does not support any equitable relief.

12. In light of the contractual nature of the petitioner's employment, we are of the considered view that appointments made on a contract basis, wherein the terms of service are exclusively governed by the *Sindh Civil Servants Act, 1973* and the rules framed thereunder, do not warrant the exercise of constitutional jurisdiction by this Court in the capacity of an appellate forum. The appropriate and competent forum for the petitioner to assail the decision of the Chief Secretary would be the *Sindh Service Tribunal*, as no violation of the petitioner's fundamental rights has been demonstrated during the course of the disciplinary or administrative proceedings. It is a well-settled principle that where a statutory remedy is available, the constitutional jurisdiction of this Court under Article 199 cannot be invoked unless there is a clear breach of fundamental rights or lack of jurisdiction or *mala fide*. Accordingly, as the petitioner's

grievance pertains to terms and conditions of service governed by statutory rules, the petition is not maintainable before this Court. In support of this legal position, reliance is placed on the case of *Muhammad Asghar v. Pakistan Defence Officers Housing Authority through Administrator and others* [2010 PLC (C.S.) 303]<sup>1</sup>

13. In view of the foregoing discussion, it is evident that the termination order dated 23.05.2013 and the appellate order dated 28.08.2018 were passed strictly in accordance with the applicable law, the terms and conditions of the petitioner's contractual appointment and after affording adequate opportunity of hearing to the petitioner. There appears no procedural impropriety, illegality or violation of any fundamental right that would justify interference by this Court in exercise of its constitutional jurisdiction. Accordingly, the instant petition, being

---

<sup>1</sup>"Whereas, according to learned counsel for petitioner, as the respondents did not have the statutory rule, therefore, observations made in case of *Muhammad Idrees v. Agricultural Development Bank of Pakistan and others* (supra) will not apply in the present case. But the arguments advanced by learned counsel for the petitioner in the light of termination order issued on 16-2-2006 under para.3 clause 1(b) of Removal from Service (Special Powers) 'Sindh Ordinance, 2000 is sufficient to observe that the petitioner's case is governed by this Ordinance of 2000 and thus, in view of above referred judgment of honourable Supreme Court with an addition to the observations made in the case of *Anwar Parveez v. Chairman Board of Intermediate and Secondary Education, Abbottabad and 2 others* 2005 SCMR 1063, which is almost of the same nature had observed, with reference to the compulsory retirement from service under

N.-W.F.P. Removal from Service (Special Powers) Ordinance, 2000 that:

'This law being the latest special law has provided a forum of appeal to anyone, who is proceeded against this Ordinance of 2000. Hence we hold that the appeal was competent before the Tribunal, which was wrongly dismissed. Consequently, the petition after-conversion into appeal is accepted and the case is remanded to the N.-W.F.P. Service Tribunal for decision on merits. "

See also *Anwar Parvez v. Chairman Board of intermediate and Secondary Education, Abbottabad and other* [ 2005 SCMR 1603]

devoid of merit, is hereby dismissed, along with all pending applications, if any, with no order as to costs.

JUDGE

JUDGE

\*Abdullahchanna/PS\*