

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-2513 of 2024
(*Irshad Ali versus M/s Karachi Cooperative Housing Societies Union Ltd and others*)

Date	Order with signature of Judge
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Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

Date of hearing & Order: 31.8.2026

Syed Nayyar Raza Zaidi & Muhammad Aslam advocates for the petitioner along with petitioner.

Mr. Khalil Ahmed, advocate for the respondent.

Mr. Zohaib Zulfiqar Sirki, Addl. AG Sindh.

ORDER

Adnan-ul-Karim Memon, J. The petitioner has filed this Constitutional Petition under Article 199 of the Constitution, challenging the judgment dated 11.03.2024 passed by the Sindh Labour Appellate Tribunal, Karachi in Appeal No. Kar-154 of 2023, whereby the judgment dated 22.08.2023 of the Sindh Labour Court No. V, Karachi in Grievance Application No.06 of 2022 was maintained. He seeks setting aside of both judgments and reinstatement in service with all consequential benefits.

2. Briefly, the petitioner claims that he was appointed as Junior Clerk by respondent No.1 on 17.05.2006 on a consolidated salary of Rs.3,500/- per month and remained on its rolls, receiving salary and being registered with EOBI. According to him, in February 2009 he was deputed to respondent No.2, Sindh Provincial Cooperative Union Ltd., where he continuously performed duties with the knowledge and consent of respondent No.1. After a change in management, his salary for August 2021 was withheld and a termination letter, retrospectively effective from 31.07.2021, was delivered to him on 25.10.2021. He alleges that he was neither served with a proper show-cause notice nor afforded an opportunity of hearing before termination, despite having rendered about 16 years of service without any previous disciplinary action. His grievance application was dismissed by the Labour Court mainly for failure to examine a witness from respondent No.2 to establish his alleged deputation, and the Appellate Tribunal upheld the decision. However, it is submitted that both decisions are without lawful justification and jurisdiction and liable to be rejected.

3. Learned counsel for the petitioner contends that the Courts below failed to properly appreciate the appointment order, salary and bank record, EOBI history and other documentary evidence establishing his employment. He submits that his

deputation to respondent No.2 was not effectively denied and that the termination was retrospective and effected without compliance with the mandatory requirements of law. He further contends that the respondents failed to produce any documentary proof of the alleged show-cause notice, disciplinary proceedings or personal hearing, while their own witness admitted during cross-examination that no such record was produced and that the termination order did not mention any personal hearing. He therefore seeks interference with the concurrent judgments and reinstatement with consequential benefits. He prayed to allow this petition.

4. Conversely, learned counsel for the respondents submits that the petition is misconceived and that the concurrent findings of the Labour Court and Appellate Tribunal are based on evidence and disclose no jurisdictional defect, illegality or perversity warranting interference under Article 199 of the Constitution. He contends that the petitioner admittedly working with respondent No.2 since 2009 and failed to produce any written order from respondent No.1 authorizing his deputation with new management. The alleged authority letter, Exh. A/7, did not bear the signature of respondent No.1 and therefore could not establish lawful deputation with respondent. According to the respondents, the petitioner had remained absent from service of respondent No.1 since February 2009 while continuing to draw salary, constituting unauthorized absence and misconduct. They further maintain that a Show Cause Notice dated 13.08.2021 was issued, a personal hearing was afforded on 20.08.2021, and thereafter Office Order dated 24.08.2021 was issued, followed by his termination. On these grounds, dismissal of the petition is sought.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The petitioner has produced material, including his appointment order, salary record, bank statements and EOBI registration, establishing that he was appointed by respondent No.1 and remained on its rolls for a substantial period. His alleged deputation to respondent No.2, even if not conclusively established through the testimony of a witness from respondent No.2, could not by itself justify termination of his service by respondent No.1 without first determining, through a lawful disciplinary process, whether his absence from respondent No.1 was unauthorized.

7. The crucial aspect is that the respondents themselves assert misconduct in the form of unauthorized absence since February 2009. Such an allegation carries serious civil consequences and could not lawfully be converted into a ground of termination without compliance with the principles of natural justice and due

process. If the respondents considered the petitioner to have remained absent without authorization, they were required to confront him with the specific allegation, afford him a meaningful opportunity to explain his position, conduct the regular proceedings in accordance with the applicable service/labour law and thereafter pass a reasoned order on the basis of the material brought on record through evidence.

8. The respondents' assertion that a Show Cause Notice dated 13.08.2021 was issued and that a personal hearing was afforded on 20.08.2021 also required proper proof. Mere assertion by a departmental witness cannot substitute the production of the relevant disciplinary record, particularly when termination of a person after approximately sixteen years of service is challenged on the specific ground that no effective opportunity of hearing was provided. The admission of the respondents' witness that the relevant record was not produced and that the termination order itself did not disclose that any personal hearing had been afforded materially weakens the respondents' defence.

9. Furthermore, the termination was communicated on 25.10.2021 with retrospective effect from 31.07.2021. Such retrospective termination, particularly where it carries adverse consequences against an employee, cannot ordinarily be sustained unless clearly authorized by law and preceded by a valid determination of the employee's status and alleged misconduct. An employer cannot retrospectively extinguish an existing employment relationship merely by issuing an order after the event.

10. The Labour Court appears to have placed decisive reliance upon the petitioner's failure to examine a witness from respondent No.2 regarding his deputation with respondent No.2. However, this approach does not adequately address the fundamental question of whether the petitioner could be terminated for alleged unauthorized absence without a lawful disciplinary process. The issue of deputation and the issue of procedural fairness are distinct. Even if the petitioner ultimately failed to establish that his posting with respondent No.2 was formally authorized, the respondents were still required to establish the alleged misconduct in accordance with law and to afford him a proper opportunity of defence when he received salary of this period from respondent No.1, if any, or respondent No.2. The burden could not be discharged merely by pointing to the absence of a written deputation order, particularly when the petitioner asserts that he continuously worked with respondent No.2 openly and with the knowledge and consent of respondent No.1 for many years. This aspects of the case has been ignored by two Courts below.

11. The concurrent findings of the Labour Court and the Appellate Tribunal are ordinarily entitled to respect in constitutional jurisdiction; however, such findings are not immune from interference where the Courts below have misread or ignored material evidence, failed to consider a material legal issue, or upheld an order passed in violation of mandatory procedural safeguards and natural justice. Article 199 of the Constitution empowers the High Court to intervene where an act or proceeding of a public authority is without lawful authority or where the impugned determination suffers from a patent illegality or jurisdictional defect. The present matter falls within that exceptional category because the legality of the termination order cannot be examined independently of the undisputed requirement that the alleged misconduct be dealt with through a lawful process in terms of ratio of various pronouncement by the Supreme Court and the Federal Constitutional Court.

12. Accordingly, the impugned judgment dated 11.03.2024 passed by the Sindh Labour Appellate Tribunal, Karachi in Appeal No. Kar-154 of 2023, as well as the judgment dated 22.08.2023 passed by the Sindh Labour Court No. V, Karachi in Grievance Application No.06 of 2022, are liable to be set aside. The termination of the petitioner, having been effected without satisfactory proof of compliance with the mandatory requirements of disciplinary proceedings and the principles of natural justice, cannot be sustained.

13. Consequently, the respondents are directed to reinstate the petitioner in service with continuity of service and consequential benefits, subject to determination of back benefits in accordance with law. In the alternative, if the competent authority still considers that the petitioner committed unauthorized absence or any other misconduct, the respondents would be at liberty to proceed against him strictly in accordance with law by issuing a proper charge/show-cause notice, supplying the relevant material, affording him a meaningful opportunity of defence and passing a speaking order thereafter.

14. Therefore, the petition is allowed, with the impugned judgments and termination order set aside and the petitioner restored to service with all lawful consequential benefits.

JUDGE

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