

# IN THE HIGH COURT OF SINDH, AT KARACHI

**C.P No.D-1503 of 2015**

Present: Mr. Justice Abdul Rasool Memon  
Mr. Justice Adnan-ul-Karim Memon

Syed Tariq Mustafa.....Petitioner

Versus

National Insurance Corporation Limited.....Respondent

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**Date of hearing 29.05.2017**

Mr. Abdul Shakoor, Advocate for the Petitioner.

Mr. Furqan Ali, Advocate for Respondent.

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

**ADNAN-UL-KARIM MEMON, J:-** Petitioner has impugned Resolution dated 3.9.2013 passed by Board of Directors of Respondent Company and reliving letter No. NICL/HO-HR/2014 dated 28.2.2014, whereby the petitioner's posting/deputation as Company Secretary/General Manager in National Insurance Company Limited (NICL)/Respondent was cancelled with direction to the petitioner to report to Secretary, Ministry of Commerce Government of Pakistan, on the ground that Petitioner has damaged reputation of the Respondent-Company by creating grouping and involving in internal politics.

2. Gist of the case is that on 24.12.2012 Petitioner joined NICL as General Manager. Thereafter, Respondent Company in its 76<sup>th</sup> meeting held on 3.9.2013 passed Resolution against petitioner alleging that the petitioner has damaged the reputation of the NICL by creating grouping and involving in internal politics and relived the petitioner from Respondent Company. As per petitioner the

Respondent Company has no justifiable reason to relieve the petitioner from the service on concocted allegations. As per petitioner he made representations against Board Resolution of the respondent company and asserted that the Board of Directors cannot take decision in violation of relevant law and rules framed by the Respondent-Company by reliving the petitioner from job, who is an officer of Office Management Group (OMG BS-18). He further added that Resolution of Board of Directors of Respondent Company has adversely affected the Service career of the petitioner even without issuance of show cause notice, no enquiry was conducted and no personal hearing was given to the petitioner, such extreme action cannot be taken under the law. It is further asserted that petitioner is aggrieved by the Resolution passed by the Board of Directors of the Respondent Company and subsequently reliving him from service, therefore he has approached this Court.

3. Comments were filed on behalf of Respondent Company (NICL) denying the allegations leveled by the Petitioner.

4. Mr. Abdul Shakoor, the learned counsel for the Petitioner contended that petitioner joined Civil Service in the year 1990 and subsequently his service was placed at the disposal of NICL vide letter dated 31.10.2012 issued by Ministry of Commerce on deputation. learned counsel next contended that the impugned, relieving Letter dated 28.2.2014 is illegal and unlawful because the same has been issued without holding formal enquiry and affording an opportunity of hearing to the Petitioner which is violation of principle of natural justice and Article 10-A of constitution. The learned counsel further contended that the

allegations leveled in the impugned Letter dated 28.02.2014 are not sustainable in the eyes of law as the Petitioner has not been treated in accordance with Section 24-A of General Clauses Act and relevant Service Rules of NICL. The learned counsel added that petitioner has served NICL as Company Secretary / General Manager, therefore the said deputation of the Petitioner cannot be revoked unilaterally without providing him an opportunity of hearing. He next contended that Respondent Company has no legitimate grounds for relieving the petitioner from the post. Learned counsel further added that the petitioner wants to contest this matter to the extent to remove stigma of baseless allegations that Respondent Company has leveled against him which has caused tremendous loss to the reputation and service career of the petitioner. He relied upon the case of Muhammad Jameel and others Vs. Taluka Nazim, Taluka Municipal Administration Khairpur and others, on the case of corruption in Haj arrangements in 2010 PLD, 2011 SC 963) and argued that the instant petition is maintainable against the Respondent-Company which is a Government entity and if the orders passed by them are contrary to law the same can be amenable to the writ jurisdiction of this Court.

5. Mr. Furqan Ali, learned counsel for Respondent Company has contended that Petitioner was posted on deputation basis in NICL vide Order dated 24.12.2012 issued by Government of Pakistan Ministry of Commerce. Per learned counsel the petitioner challenged the Notification dated 9.5.2013 issued by Ministry of Commerce, whereby the petitioner was repatriated to the Establishment Division Islamabad, in Constitution Petition No D-

2161 of 2013 before this Court however vide order dated 13.12.2013 the same was dismissed as not pressed and no permission was sought to file fresh petition therefore he cannot file fresh petition on the same set of facts and circumstances; that the instant petition is barred by principle of laches; that petitioner has relinquished the charge on 28.2.2014 and he is no more on the payroll of the Respondent Company; that the petitioner is a Civil Servant and has no right to claim posting in NICL as a matter of right, therefore this court has no jurisdiction to entertain the instant petition. Learned counsel further contended that the Petitioner after taking charge of the position of Company Secretary never attended meetings of Board of Directors and was found involved in office politics and lobbying within the Respondent Company which caused unrest and damaged to the cause of Respondent Company, therefore, the Competent Authority took notice of the conduct of the petitioner and cancelled his deputation order by repatriating him to the Establishment Division vide Letter dated 9.5.2013. Lastly learned counsel prayed that Petitioner does not deserve leniency as he has approached this Court with unclean hands.

6. In exercising right of rebuttal, learned counsel for the Petitioner has referred to the Board Resolution of the Respondent Company and argued that the Respondent Company cannot level the allegation against the petitioner which have not been proved in any manner rather the same has caused grave damage to the career of the petitioner in this regard he made various representations to the respondent company but of no avail. He also referred his relieving letter dated 28.2.2014 and argued that there

is no reason assigned in the letter of the Respondent Company. Learned counsel further argued that as per Section 2 (g) of Public Sector Company (Corporate Governance) Rules 2013 the petitioner cannot be relived from his service in breach of Section 6 (6), 12(c) and Section 13 of Rules 2013.

7. We have considered the submissions put forth by learned counsel of the parties and perused material available on record.

8. The foremost point in the present proceedings is whether a deputationist has a legal right to call in question his repatriation before completion of deputation period and ask for personal hearing before such order.

9. The perusal of record clearly depicts that Respondent Company has revoked deputation order of the Petitioner as Company Secretary / General Manager in NICL vide Letter dated 28.2.2014 which was issued in supersession of NICL letter dated 3.9.2013 and relived him from NICL. Learned counsel for the petitioner has admitted that the petitioner has relinquished the charge of the post vide letter dated 28.2.2014. Learned counsel further admitted that the petitioner earlier filed Constitution Petition No. 2161 of 2013 challenging the Notification dated 9.5.2013 issued by the Ministry of Commerce Government of Pakistan whereby the petitioner was repatriated to the Establishment Division Islamabad and the same petition was dismissed as not pressed by the petitioner vide order dated 13.12.2012.

10. We are of the view that even otherwise Petitioner has failed to make out his case on merits. Assertions made by the learned counsel for the petitioner are denied by the Respondent Company with the contention that Petitioner has damaged the organization

and he was involved in office politics, therefore was not fit person to remain posted in NICL. We are of the view that we cannot determine the veracity of assertions made hereinabove, as disputed questions of facts are involved in this matter which cannot be adjudicated by this Court while exercising constitutional jurisdiction. Besides, Petitioner has no vested right to claim particular post at particular place because, requisition of services of a government employee on deputation is the prerogative of Competent Authority. Reliance is placed on the case of Shafiq-ur-Rehman Afridi vs. CDA (2010 SCMR 378).

11. Learned Counsel for the petitioner emphasizes during course of hearing that the petitioner has been condemned unheard while passing the impugned order hence the cancellation of his deputation by Respondent Company is illegal. However said assertions have been refuted by Respondent Company. As regards the contention of learned counsel for the Petitioner that petitioner was not provided an opportunity of hearing before passing of the impugned Letter dated 28.02.2014. In the present case, Petitioner has failed to establish that he has a fundamental right to remain on deputation. Therefore, argument that Petitioner was not heard before issuance of impugned Letter is not tenable in eyes of law. Reliance is placed upon the case of Contempt Proceedings against Chief Secretary and others (2013 SCMR 1752)

12. The case laws cited by the learned counsel for the petitioner are distinguishable from the facts and circumstances of the present case.

13. In view of above discussion no case for interference of this court is made out hence, the instant petition is dismissed along with pending application(s).

14. Above are the reasons of our short order dated 29.5.2017 vide which we dismissed the instant petition along with listed application(s).

JUDGE

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