

IN THE HIGH COURT OF SINDH AT KARACHI.

Constitutional Petition No.D-5472 of 2017.

Present.

**Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon**

Shahid Iqbal Shaikh, Advocate Petitioner

Versus

The Government of Sindh & 04 others Respondents.

Dates of Hearing: **22.03.2018 & 17.04.2018**

Mr. Abdul Salam Memon, Advocate for the Petitioner.
Mr. Shahriyar Mehar, AAG Sindh.

JUDGMENT.

ADNAN-UL-KARIM MEMON, J:- In the above captioned petition, Petitioner is seeking declaration to the effect that the Impugned Order dated 30.03.2017 passed by the Secretary, Law Government of Sindh/ Respondent No.3, regretting the request of the Petitioner for seeking permission to withdraw the resignation tendered by the Petitioner from his job/service as illegal, arbitrary not warranted by the law and void ab-initio and the same be set aside. Petitioner further seeks setting aside the impugned Notification dated 16.11.2016 issued by the Respondent No.03 accepting the resignation tendered by the Petitioner. Petitioner also seeks further direction to the respondents to allow him to resume his post as Assistant Director (BPS-17), Directorate of Monitoring, Implementation & Evaluation, Criminal Prosecution Service Wing, Law Department, Government of Sindh and to release his salaries.

2. The gist of the case of Petitioner is that Petitioner was appointed as Assistant Director (BPS-17), in the Directorate of Monitoring, Implementation & Evaluation, Criminal Prosecution Service Wing, Law Department, Government of Sindh vide Notification dated 09.06.2009 issued by the Government of Sindh, Law Department. Petitioner has submitted that due to the sudden death of his father on 01.01.2015, he remained mentally disturbed and thereafter tendered his resignation voluntarily from the aforesaid post. Petitioner has submitted that the Government of Sindh Law Department vide Notification dated 16.11.2016 accepted the resignation tendered by him with immediate effect. The petitioner then realized his mistake and submitted an application to the Respondent No.03 for withdrawal of his resignation vide letters dated 01.03.2017 & 21.03.2017. The Respondent Law Department then vide letter dated 30.03.2017 declined the request of the Petitioner and opined that once the resignation is accepted and notified the same could not be withdrawn as per the relevant regulations. Petitioner being aggrieved and dissatisfied with the impugned letter dated 30.03.2017 filed Appeal/review against the aforesaid letter to the Respondent No.01 for reconsideration of the case of the Petitioner and to allow him to withdraw his resignation. However, the same was not replied. Petitioner being aggrieved and dissatisfied with the aforesaid action of the Respondents thereafter has filed the instant petition on 17.08.2017.

3. Upon notice, the Respondent No. 03 has filed para-wise comments and controverted the allegations leveled against them.

4. Mr. Abdul Salam Memon, learned Counsel for the Petitioner has argued that the resignation of the Petitioner was approved by the Advisor to the Chief Minister, Sindh for Law being incompetent authority, whereas the Minister for Law was the competent authority

to accept the resignation of the Petitioner or otherwise. In support of his contention, he placed reliance upon the Judgment of this Court in the case of Fareed Ahmed Dayo Vs. Chief Minister Sindh & others (SBLR 2017 Sindh 221). As per the learned counsel for the Petitioner the resignation accepted by the incompetent authority cannot be termed as a proper acceptance of the resignation, hence, the same could be withdrawn at any stage. In support of his contention, he referred to Part III of Chapter-4 of the Civil Establishment Code (Volume I,II), Edition 2015, which deals with the term “Resignation from Government Service” and also referred to Section 11 and also emphasized the word ‘**effective**’, which is as under:-

*(ii) Withdrawal of resignation after its acceptance but before it becomes **effective** (i.e. before the government servant concerned is relieved). It should be open to the authority accepting the resignation to allow the government servant concerned to withdraw the resignation on the merits of the case.*

He next contended that the resignation was accepted, but the petitioner did not relieve his charge/duties, as the petitioner has to be presumed to be on duty, as per the provisions of the Esta-Code referred supra. He submitted that the petitioner had been continuously performing his duties and his salaries were also paid till 31st January, 2017; that the Petitioner tendered resignation from the said post since he was mentally disturbed and was under depression due to the untimely death of his father and due to this shock the petitioner even remained under treatment for a couple of months; that on 21.03.2017 the petitioner immediately filed an application containing therein whole factual position for the reasons behind his resignation and requested the Respondent No.3 to grant him the permission to withdraw his resignation, which was incorrectly rejected by the Respondent No.3 vide Impugned Order dated 30.03.2017. He next added that Section 24-A of the General Clauses

Act has not been followed as such the Impugned Order has been passed with malafide intention and with ulterior motives; that the Petitioner is entitled to be allowed to resume his duties; that the Petitioner has been seriously prejudiced by the conduct of the respondents; that the Petitioner has been denied his fundamental rights; that grave injustice has been caused to the Petitioner for no fault on his part by depriving him from resumption of his duties; that the Respondents are liable to rectify their arbitrary and illegal action so as to enable the Petitioner to claim seniority/ promotion as per law; that due to such acts and deeds of the Respondents, the Petitioner has suffered mental torture, agonies and by such situation the Petitioner is facing problems; that denial by the Respondents amounts to infringement of the fundamental legal rights of the Petitioner, as safeguarded under the Constitution of Islamic Republic of Pakistan, 1973 that are enforceable through this Court via Constitutional jurisdiction; that the Petitioner has been continuously approaching the department to allow him to resume his duties for the aforesaid post but of no avail. In support of his above contentions, the learned Counsel for the Petitioner has placed reliance on the case of Ahmad Yousuf Ali Rizvi & others Vs. Munawar Ali Butt & others (PLD 2000 Kar. 333 (d)) & Karachi Co-Operative Housing Societies Union Ltd. Vs. Government of Sindh & 06 others (1990 MLD 389). He lastly prayed for allowing the instant Petition.

5. Mr. Shahryar Mahar learned A.A.G Sindh representing the Respondents has contended that once the resignation of a civil servant is accepted and notified, the same could not be withdrawn or taken back as per law. He next contended that all the actions of the Advisor to the Chief Minister Sindh for Law were protected as per the doctrine of Defacto. In support of his contention, learned AAG has placed reliance on the case of Manzoor Hussain Vs. The State (PLD

1998 Lah.239) Malik Asad Ali and others Vs. Federation of Pakistan through Secretary Law Justice & Parliament Affairs, Islamabad & others (PLD 1998 SC 161 (355)) Sindh High Court Bar Association Vs. Federation of Pakistan (PLD 2009 SC 879) Mirza Abdul Rehman Vs. Federation of Pakistan and others (PLC 2017 (C.S) 1327) Gokaraju Rangaraju & Achanti Sreenivasa Rao appellants Vs. State of Andhra Pradesh (AIR 1981 SC 1473 Para-4) the Chairman, P.I.A.C & others Vs. Nasim Malik (PLD 1990 SC 951). He lastly prayed for dismissal of the instant petition.

6. We have heard the learned counsel for the parties and have perused the material available on record and the case law cited at the bar.

7. The primordial question in the subject Petition is:-

i) Whether the resignation once tendered by the Petitioner voluntarily and accepted by the competent authority and communicated to him could be considered to be final and cannot be revoked afterwards?

8. Let us first take the legal issue of resignation tendered by the petitioner from his service. It has been agitated by the learned counsel for the Petitioner that resignation accepted by the incompetent authority cannot be termed as a proper acceptance of the resignation under the law.

9. To rebut the aforesaid contention of the Petitioner, learned AAG has stated that the Adviser to Chief Minister, Sind for Law was competent to accept the Resignation of the petitioner on the premise that the competent authority i.e. Chief Minister, Sindh assigned the status of Provincial Minister to the Advisor vide Notification dated 21.05.2015; that the resignation tendered by the Petitioner was accepted and communicated to the petitioner, as such tendering of

resignation by the Petitioner, which was voluntarily as could be seen from the record cannot be declared a nullity if the Petitioner has changed his mind at a belated stage.

10. To appreciate the contention of the parties, it is beneficial to shade light on Rule-12-B of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974.

11. Rule 12-B of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 explicitly provides as under:-

“12-B. Resignation once tendered by a civil servant accepted by the competent authority and communicated to a civil servant shall be final and irrevocable.”

12. It is an admitted position that the Petitioner had voluntarily tendered his resignation on 03.11.2016 from the post of Assistant Director (BPS-17) in the Criminal Prosecution Service and he in our view is precluded from asking for its withdrawal after approximately three months from acceptance of the resignation i.e. 16.11.2016 by the competent authority at the relevant time.

13. Rule 12-B of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 as discussed supra, leaves no room for any doubt or ambiguity as to the fact that once resignation is accepted the same subsequently cannot be revoked and “shall” be treated as final.

14. Reverting to the second proposition put forward by the learned Counsel for the Petitioner that the Advisor to Chief Minister, Sindh for Law was not competent to act as Law Minister either to accept the resignation of the petitioner or otherwise under the law.

15. We asked from the Learned Counsel for the Petitioner to satisfy this Court as to how Advisor to Chief Minister was not competent to

accept the resignation of the Petitioner. In support of his contention he relied upon rule 4 (1) Sr.No.7 of the Table shown in the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 and argued that Minister concerned is the competent authority, whereas Advisor to Chief Minister is not a Minister within the provisions of law, therefore, he cannot be termed to be the competent authority to accept the resignation of the Petitioner. In support of his contention, he placed reliance upon the case of Mr. Fareed Ahmed Dayo supra and argued that the powers conferred upon Advisor to the Chief Minister, Sindh for Law was set aside by this Court vide Judgment dated 22.11.2016. He however admitted that the Judgment passed by this Court in the aforesaid case has been suspended by the Hon'ble Supreme Court of Pakistan in the case of Province of Sindh through the Chief Secretary Vs. Fareed Ahmed A.Dayo & others in Civil Petition No.3816/2016 and Civil Petition No.77/2007 vide Order dated 16.02.2017.

16. Since the present matter pertains to the acceptance of resignation of the Petitioner by the Advisor to Chief Minister Sindh for Law vide Notification dated 16.11.2016 duly communicated to the Petitioner and accepted which is without exception, therefore, we will refrain ourselves in making any observation on the issue of powers of Advisor to Chief Minister, Sindh for Law as the matter is sub-judice before the Hon'ble Supreme Court of Pakistan in aforesaid matter.

17. In the light of foregoing, we have already held in the preceding paras that the Petitioner voluntarily tendered his resignation hence he cannot ask for its withdrawal after approximately three months from acceptance of his resignation, which was duly accepted and acted upon. Rule 12-B of Sindh Civil Servants (Appointment,

Promotion and Transfer) Rules 1974 in our view is quite clear in its terms which require no interpretation on our part.

18. In view of the above legal position in our view the application of the petitioner was rightly rejected vide order dated 30.3.2017 by the Respondent No.3, which does not require any interference.

19. The other case law cited by the Learned Counsel for the Petitioner are found to be distinguishable from the facts and circumstances of the case in hand.

20. In the light of above discussion, the instant constitutional petition, along with the pending application(s), is dismissed being meritless.

Karachi

JUDGE

Dated

JUDGE

Nadir/P.A