

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2722 of 2018

Abdul Hameed Solangi & others..... Petitioners

Versus

Government of Sindh & others Respondents

Date of hearing: 14.05.2018

Mr. M. Ilyas Khan & Ms. Farah Khan Advocates for the Petitioners.
Mr. Shahryar Mehar, Assistant Advocate General Sindh.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, Petitioners are seeking declaration to the effect that the impugned Notification dated 16th March 2018 issued by Section Officer (Judicial-I) Government of Sindh, School Education and literacy Department, is illegal/unconstitutional and without any legal force.

2. Brief facts of the case as per averments made in the memo of petition are that the Petitioners were appointed in the Respondent-Education Department on various vacant positions/posts on teaching and non-teaching cadre in BPS-09 to BPS-15 in the Directorate of School Hyderabad Region, in the years 2012. Basic grievance of the Petitioners is that the

Respondent No.1 has wrongly issued the impugned Notification dated 16.03.2018 and had stopped their salaries by misinterpreting the order dated 25.10.2017 passed by the Hon'ble Supreme Court of Pakistan in Civil Petitions No.3295-3305 of 2017. Petitioners have submitted that National Accountability Bureau (NAB) initiated various inquiries against Ex- Education officers namely Sajjan Mallah, Allah Bachayo Khaskheli and others regarding illegal appointments made by them in the District Jamshoro in the year 2012 and upon initiation of the aforesaid inquiry call up notices were issued by the NAB in the name of the Petitioners; that they appeared before the Investigating Officer and satisfied him regarding authentication of their appointments. Petitioners have averred that they were legally appointed on the respective posts. Petitioners have submitted the Investigating Officer after completing the investigation filed NAB Reference N. 9 of 2017/H against 8 accused Government officials, some of the accused/Education District Officers approached the Hon'ble Supreme Court of Pakistan against the order dated 14.9.2017 passed by this Court, Hyderabad Bench in C.P-No.D-1150,952,1000,870 and 1527 of 2016 and their bail applications were rejected with certain observations, however the Respondents have misinterpreted the findings of the Hon'ble Supreme Court of Pakistan and treated them against the Petitioners, consequently the NAB intimated the Respondent No.1 regarding such observation of the Hon'ble Supreme Court, thereafter the Respondent No.1 issued the impugned Notification dated 16.03.2018 directing the Director School Education, Hyderabad Region to stop salaries of the Petitioners and other appointees on

teaching and non-teaching cadres made in the year 2012. Petitioners being aggrieved and dissatisfied with the impugned Notification dated 16.03.2018 have filed the instant Petition on 07.04.2018.

3. At the very outset, this Court required from the counsel for the Petitioner to explain as to how the instant Petition is maintainable before this Court against the stoppage of the salaries of the Petitioners as specifically ordered/directed by the Hon'ble Supreme Court of Pakistan.

4. In response to the query raised by this Court regarding maintainability of the instant petition, Mr. M. Ilyas Khan and Ms. Farah Khan, learned counsel for Petitioners have contended that the instant petition is very much maintainable in law. They further added that Petitioners are directly aggrieved by the issuance of the impugned Notification by the Respondent No.1; that due process of law has not been followed in the case of the Petitioners; that the Petitioners are being deprived of their lawful remuneration/salaries despite being eligible/selected and qualified candidates, appointed after due process of law; that the Petitioners were appointed in accordance with the law; that the Petitioners were appointed on the vacant positions; that stoppage of the salaries of the Petitioners is violation of Fundamental Rights of the Petitioners; that the inquiry regarding illegal appointments were initiated against the concerned officers and the Petitioners were issued call up notices to make their statement; that the NAB after conducting a proper investigation and receiving official report of regularized appointments, the concerned investigating officer exonerated the Petitioners and filed Reference against 8 Accused persons, who

were the office bearers at that time; that the Petitioners were neither named as beneficiaries/accused in the reference nor were they made witness in the Reference pending for trial; that the Respondent No.1 after filling of the reference cannot hold any departmental inquiry into the appointments of Petitioners; that the impugned Notification is against the basic sprit of the law; that after the directions of the Honorable Supreme Court, the Respondent No.3 without making any inquiry, directly issued a letter and requested the Respondent No.1 to take necessary action against the Petitioners, whereas the Respondent No.1 is required to take necessary action in accordance with law and not otherwise, whereas the Respondent No.1 without issuing the show-cause notices to any of the Petitioner and without providing any opportunity of hearing immediately issued the impugned Notification; that the impugned Notification is issued without conducting any inquiry into the fact in issue; that the Respondent No.1 and 3 did not comply with the orders of the Honorable Apex Court in its true sense and has exercised their power arbitrarily, which resulted into abuse and misuse of powers causing a serious denial of rights to the Petitioners; that since after the order of the Honorable Supreme Court no reference was made against the Petitioners, their names were not added as the accused in the pending reference; that the Petitioners are serving at their respective schools since 2012, some of them were even sent for further trainings by the Government; that the impugned Notification issued by the Respondent No.1 is unjustified and illegal. That the Petitioners are serving at their respective positions and performing their duties and they are lawfully entitled to receive

their salaries for giving their services. He has further argued that the Investigation officer of the NAB has duly accepted the DRC report issued by the District Education officer showing the names of the regular appointments in the year 2012; that such report, was not challenged nor the concerned officer, who is the signatory of the report, was made accused in the pending Reference; that the Petitioners have qualified for the vacant positions and they have submitted their applications in due course of time and all of them appeared for their respective exams and test and after clearing their test they were subjected to Medical Examination; that after completing all the required procedures they were issued Appointment Letters and they joined the places where they were appointed and they are serving on these posts since 2012; that during this period none of the Petitioner was ever held accountable for any misdeed or was called for any departmental inquiry for any reason, which could possibly indicate that the conduct or the characters of the Petitioners was doubtful or they were involved in any corrupt practices; that the Notification issued is still in field and there is a continuous apprehension that if the same is implanted it shall deprive Petitioners from their lawful remunerations/ salaries; that the decision of the Hon'ble Supreme Court is binding under Article 189 of the Constitution to the extent that it decides a question of law or is based upon or enunciates a principle of law, learned counsel attempted to convince us that the aforesaid decision rendered by the Honorable Supreme Court is not against the Petitioners as such this Court may direct the Respondent No.1 to release the salaries of the Petitioners. Learned counsel for the Petitioners in support of their

contentions have placed reliance upon the case of Messrs Ahmed Clinic Vs. Government of Sindh and others (2003 CLC 1196), Mst. Bashart Jehan Vs. Director General Federal Government Education and others (2015 SCMR 1418), Muhammad Tariq Badar and another Vs. National Bank of Pakistan (2013 SCMR 314), S. Nasim Ahmed Shah and 115 others Vs. State Bank of Pakistan through Governor and another (2017 PTD 2029), Messrs MFMY Industries Ltd and others (2015 SCMR 1550), Sohail Baig Noori Vs. High Court of Sindh through Registrar and 2 others (2017 PLC (C.S) 1142), Commissioner of Income Tax and others Vs. Mubashar Sheikh, City Towers (2017 PTD 795), Mst. Basharat Jehan Vs. Director General Federal Government Education and others (2015 SCMR 1418) Shahid Pervaiz and others Vs. Ejaz Ahmed and others (2017 SCMR 206) and Khan Gul Khan and others Vs. Daraz Khan (2010 SCMR 539). They lastly prayed for allowing the instant petition.

5. We have gone through the case file and heard the learned counsel for the Petitioners at some length and have perused the material available on record and the case law cited at the bar.

6. The issue of maintainability of the captioned Constitutional petition has been raised, in view of the verdict by the Honorable Supreme Court of Pakistan in the case of Punjab Textbook Board Lahore & others Vs. Muhammad Akhtar Sherani & others (PLD 2001 SC 1032) and Ali Azhar Khan Balouch Vs. Province of Sindh & others (2015 SCMR 456), as such we would confine ourselves to that issue only and refrain ourselves to dilate

upon the merits of the case, if we find the instant matter is not maintainable under the law.

7. In our view, once the Hon'ble Supreme Court has passed the order dated 25.10.2017 in the terms that why no action has been taken against the beneficiaries and those, who sit and sleep over the wrong committed and its continuation as the persons appointed are still serving and receiving salaries, this Court in our view would not be justified in taking a contrary view or dilating upon the same. In this context the Hon'ble Apex Court in the order dated 25.10.2017 passed in Civil Petitions No.3295-3305 of 2017 has held as follows:-

“Petitioners who are facing a reference in one of the Accountability Courts of Karachi when failed to get the concession of pre-arrest bail from the High Court sought indulgence of this Court mainly on the grounds that their cases are indulgence of this Court mainly on the grounds that their cases are arguable for the purpose of bail; that many others similarly placed have not been hauled up even for interrogation that not only the appointees are still serving in the department and drawing salaries but the officers of the helm of the department having become their accomplices are equally culpable inasmuch as they have not taken any action against them and that it would be unjust and unfair in the circumstances of the case to single out the petitioners for discriminatory treatment.

- 2. Learned Special Prosecutor appearing on behalf of the NAB contended that in the absence of any mala fides or any ill-will on the part of the investigating agency or the persons performing functions in the National Accountability Bureau, the petitioners who are, prima facie, connected with a crime attracting prohibitory clause do not deserve the grant of pre-arrest bail.***
- 3. We have gone through the record carefully and considered the submissions of the learned ASCs for the petitioners as well as special prosecutor NAB.***
- 4. A perusal of the record does not even remotely suggest that the charge against the petitioners could be held to be trumped up or motivated by mala fides. There is also nothing on the record to show that any of the high ups in the National Accountability Bureau or any other officer functioning thereunder has any malice or motive to falsely implicate the petitioners, when this being the case, we do not think a case for grant of pre-arrest bail is made out.***
- 5. For the reasons discussed above, these petitions being without merit are dismissed. The petitioners however would***

be at liberty to move the High Court afresh for post-arrest bail which shall be decided on merits without being influenced by any of the observations made by the High Court or this Court, we while parting with the judgment would observe that why no action has been taken against the beneficiaries and those who sit and sleep over the wrong committed and its continuation as the persons appointed are still serving and receiving salaries we thus direct the NAB to ensure accountability across the board and eschew double standards so that the poor and rich, law and high share the scourge of law alike if their roles are equally culpable.” (Emphasis Added)

8. So far as the above observation given by the Honorable Supreme Court is concerned, we are of the view that if the Petitioners feel aggrieved by the aforesaid observation, the only remedy available to them is to approach the Hon’ble Apex Court in a Review and not this Court under Article 199 of the Constitution.

9. Reverting to the claim of the Petitioners that they were legally appointed and the Hon’ble Supreme Court has not given any observation against them, therefore the Respondents cannot stop the salaries of the Petitioners as they are still working on their respective posts. Suffice to say that the Petitioners are Civil Servants; therefore, the forum chosen by the Petitioners by invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law in view of the bar contained in Article 212 of the Constitution, as the Petitioners have agitated the issue of non-payment of their salaries. We are of the considered view that the expression terms and conditions includes salary, and the Sindh Services Tribunal has jurisdiction to decide the issue of salaries of the Petitioners and the validity of the impugned Notification dated 16th March 2018, we are fortified by the decision rendered by the Hon’ble Supreme Court of Pakistan in the case of Punjab Textbook Board Lahore & others Vs.

Muhammad Akhtar Sherani & others (PLD 2001 SC 1032) The Hon'ble Supreme Court has held at paragraph No.8, as under:-

“ Even the case reported as Administrator, District Council, Larkana and another v. Ghulam Khan and 5 others (2001 SCMR 1320) is also not attracted herein that in he said precedent the question of withholding of salaries of the employees was involved as their appointments were allegedly made in violation of the rule. We respectfully disagree with the dictum that the objection raised on behalf of the petitioners therein to the effect that the High Court has no jurisdiction to entertain the matter in relation to salary of the employees as it has a direct nexus with the terms and conditions of service of the employees in view of the bar imposed under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 was a technical objection. In our considered view the objection to the jurisdiction of the High Court to entertain a writ petition raised on behalf of the petitioners therein, was not technical in nature but going to the very root of the case. This Court has repeatedly held that the Service Tribunal alone is the appropriate forum having jurisdiction to deal with matters relating to the terms and conditions of service of civil servants in view of the bar contained in Article 212 of the Constituent. To this extent we respectfully overrule the above dictum.”(Emphasis Added).

10. The case law cited by the learned counsel for the Petitioners have been examined and are found to be distinguishable from the facts and circumstances of the present case.

11. Petitioners thus have failed to make out their case for indulgence of this Court under Article 199 of the Constitution at this stage, in the light of dicta laid down by the Hon'ble Supreme Court of Pakistan in the cases discussed supra. Consequently the instant Petition stands dismissed in limine along with the listed applications. However, the Petitioners may avail the appropriate remedy as provided to them under the law.

Karachi
Dated:

JUDGE

JUDGE