

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-994 of 2014

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Arshad Ali Petitioner

Versus

The Director General,
G.H.Q.Rawalpindi and 4 others..... Respondents

Date of hearing: 17.04.2017

Syed Ehsan Raza, Advocate for the Petitioner.
Mr. Muhammad Aslam Butt, D.A.G.

ORDER

ADNAN-UL-KARIM MEMON, J:- The Petitioner has impugned the Letter bearing No. 1972/9790/2153/Est., dated: 4.10.2017, whereby he was removed from service. The charge against the Petitioner in the statement of allegations in that Petitioner remained absent from service with effect from 08th June 2007 till 23rd June 2007 without prior permission/sanction of leave. Resultantly, the service of the Petitioner was dispensed with and his Departmental Appeal under Rule 4 of Civil Servant (Appeal Rule), 1977 was also rejected on 17.4.2012.

2. The necessary facts of the case are that the Petitioner was appointed as Lower Divisional Clerk (LDC BS-5) ORD/9790, in the year 1996. The Respondents vide order dated 20.02.2007 transferred the Petitioner to COD Rawalpindi from Sub-ordinate COD Karachi. It is averred that the mother of the Petitioner, addressed a letter dated 15.03.2007 to the Respondent No.2 requesting therein that the transfer order of the Petitioner may be withdrawn on the ground that she was ill and there was no one except the Petitioner to look after her. It is added by the Petitioner that the request of his mother was accepted vide letter dated 15.09.2007 by the Respondents and the Transfer Order dated 20.02.2007 was cancelled. The Petitioner further disclosed that he sent another application to the COD Commandant for consideration of his request, but instead of looking into the facts and circumstances of the matter another Letter dated 04.10.2007 was issued, whereby the service of the Petitioner was terminated. The Petitioner submitted a Representation for reinstatement in service against his Termination Order and submitted Death Certificate of his mother, who passed away on 27.12.2011. But, the Representation of the Petitioner was rejected vide letter dated 17.04.2012, being time barred, as per Rule-4 of Civil Servant (Appeal Rules) 1977.

3. Syed Ehsan Raza, Learned counsel for the Petitioner has contended that the Transfer Order of the Petitioner was cancelled by the respondent No.2. But, said order was never communicated to the Petitioner in time due to negligence on the part of the office of the Respondents, therefore, the Petitioner could not resumed his duty in time. Per learned counsel the Petitioner submitted another application to the Respondents for consideration of his case, but instead of considering the request of the Petitioner the service of the Petitioner was terminated on 04.10.2007 on account of the allegations of prolong absence from duty without prior permission/sanction of the competent authority. He next contended that the allegations leveled in the Termination Order dated 04.10.2007 are vague and not based on the true facts as the Petitioner never remained absent from duty w.e.f.08th June 2007. The reason for the alleged absence of the Petitioner from duty is that the Letter dated 15.09.2007 was kept in concealment and was not communicated to the Petitioner in time. The learned counsel has further contended that the Respondents conducted all proceedings ex-parte against the Petitioner in violation of the Article 10-A of the Constitution. The learned counsel concluded his arguments by saying that the Termination Order dated 04.10.2007 is nullity in the eyes of law.

4. Mr. Muhammad Aslam Butt learned D.A.G. raised the question of maintainability of the instant Petition under Article 199 of the Constitution. He has contended that the Petitioner is a Civil Servant and his service is governed under Civil Servant Act 1973 and

Rules framed thereunder, this Court has no jurisdiction to entertain the instant Petition. The learned DAG has next contended that the jurisdiction of this Court is barred under Article 212 of the Constitution. On merits, the learned DAG has contended that the Petitioner was appointed as LDC in (BS-5) and he was transferred from COD Karachi to COD Rawalpindi on 09.02.2007. Per learned DAG, the Petitioner was required to report to the Department upto 10th March 2007. Learned DAG next argued neither Petitioner provided any Medical Certificate nor disclosed that his mother was sick at any time and it was the responsibility of Petitioner to serve both the job as well as his domestic affairs regarding ailment of his mother with honesty but he failed to do so. Learned DAG has next argued that Petitioner remained absent from service with effect from 08.06.2007 without any plausible excuse. In this connection, a Call-Up Notice dated 13.06.2007 was issued to the Petitioner to resume duty upto 19.06.2007, but the Petitioner neither reported nor responded to the Charge Sheet alongwith Statement of Allegations dated 23.06.2007. Learned DAG has further contended that an enquiry was ordered by the Competent Authority on 16.07.2007 and Petitioner was directed to appear before the Enquiry Committee but neither he reported nor recorded his statement. Hence, Show Cause-cum Personal Hearing Notice was served upon the Petitioner vide letter dated 12.09.2007, but Petitioner again failed to submit his reply and did not appear for his personal hearing. Learned DAG has next contended that the Cancellation Order of Transfer of the Petitioner was received in COD Karachi, whereas

the service of the Petitioner was terminated on 29.09.2007 after completion of all the legal formalities under Efficiency and Disciplines Rules, 1973 because of prolonged/unauthorized absence of the Petitioner from duty with effect from 08.06.2007. Learned DAG has concluded his arguments by saying that against removal from service order, the Petitioner availed the statutory remedy of appeal which was rejected on 04.10.2007 being hopelessly time barred against which the Petitioner has remedy before the Federal Service Tribunal.

6. We have considered the arguments of the learned counsel for the Parties and perused the material available on record.

7. Firstly, we would address the issue of maintainability of the instant Petition under Article 199 of the Constitution. Admittedly, the Petitioner is a Civil Servant within the definition of Section 2 (a) of Service Tribunal Act 1973 and Civil Servants Rules are applicable in his case. The Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have the exclusive jurisdiction in respect of matter relating to the terms and condition of service Civil Servants including the disciplinary matters. In other words, the jurisdiction of all other Courts is barred by the Provisions of Service Tribunal Act, 1973 read with Article 212 of the Constitution. In view of the principle enunciated by the Honourable Supreme Court in the case of Azhar Ali Khan Baluch v. Province of Sindh and others (2015 SCMR 456) a Civil Servant cannot invoke the Constitutional jurisdiction of this Court under Article 199 of the Constitution, due to clear bar of jurisdiction under Article 212

of the Constitution . The disciplinary matter fall within the ambit of expression “Terms and Conditions of Service”, therefore, the service related matters of Civil Servants cannot be entertained in Constitutional Petition. It may be added here that against the Dismissal Order as well as Appellate Order, the Petitioner has remedy to approach the learned Federal Service Tribunal.

In the light of above facts and circumstances of the case, we are of the view that the Petitioner has failed to make out his case for indulgence of this Court.

9. Consequently the instant Petition is dismissed along with listed application.

JUDGE

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