

## **IN THE HIGH COURT OF SINDH, AT KARACHI**

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Agha Faisal

**C.P No.D-5918 of 2017**

Dr. Ahsanullah Khan Wazir ..... Petitioner

Versus

Government of Sindh and others ..... Respondents

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**Date of hearing: 09.08.2018**

Mr. Nadeem Ahmed Pirzada Advocate for the Petitioner.

Mr. Shehryar Mehar, Assistant Advocate General.

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

**ADNAN-UL-KARIM MEMON,J:-** Through the instant Petition, the Petitioner has impugned Communication Letter No. E&A (HD) 10-163/2014 dated 10.08.2017 issued by the Respondent-Department whereby his contractual service has been dispensed with.

2. Brief facts of the case are that on 1.1.2016 Petitioner was appointed as Director Public Private Partnership Node Health Department Government of Sindh on contract basis for a period of one year, subsequently his period of contract was extended further for one year with effect from 1.1.2017. Petitioner has submitted that due to certain false allegations he was served with explanation

letters issued by the incompetent authority and finally his service was terminated vide impugned order dated 10.08.2017. Petitioner being aggrieved by and dissatisfied with the impugned termination letter has filed the instant petition on 5.9.2017.

3. Upon notice, Respondents filed para-wise comments and denied the allegations.

4. Mr. Nadeem Ahmed Pirzada, learned counsel for the Petitioner has contended that the impugned order dated 10.08.2017 issued by the Respondent No.2 is devoid of any factual veracity or legal sanctity and is contrary to law and on facts; that the impugned order dated 10.08.2017 issued by the Respondent No.2 is a perverse thus not sustainable in law; that the termination order dated 10<sup>th</sup> August 2017 issued by the Respondent-Department is in gross violation of law; that the Petitioner has illegally been removed from service upon false allegations and by stigmatizing his personality; that the Petitioner has been condemned unheard and removed from service without holding proper inquiry into the allegations leveled against him, which is unwarranted under the law; that the act of the Respondent-Department is based on malafide intention and personal ego; that the Petitioner though appointed on contract basis, is entitled to a fair opportunity to clear his position in terms of Article 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens of this Country by the State Functionaries. He has further contended that the Petitioner is

competent and qualified to hold the post of Director PPP Node Health Department Government of Sindh; that if the Termination Order conveys a message of a stigma the employ cannot be ousted from service without resorting the procedure as provided under the law but in the matter of the Petitioner, no procedure was adopted but he was removed from the employment against the law and procedure; that it is a trite principle of law that even if a person is to be condemned for the misconduct and even if he is employed on contract basis or probation, he is entitled to fair trial and an opportunity should be provided to him to clear his position but in the instant matter not only the Petitioner was condemned unheard but on the basis of his stigmatized removal had rendered and disentitled him for new job; that the Petitioner had been punished for raising voice against the corrupt practices, corruption and misuse of powers being practiced by the Officials within Respondent-Department due to which he had been terminated against the settled principle of law; that the Respondent-Department cannot be allowed to punish its employees for the illegal acts of its own. He lastly prayed for allowing the instant Petition.

4. Mr. Shehryar Mehar, Assistant Advocate General has raised the question of maintainability of instant Petition and argued that the contractual obligations cannot be entertained by this Court; that Authorities of the answering Respondents have not acted malafidely nor violated any provisions of law or prescribed Rules in discharging their duties; that the Petitioner was appointed

for a period of one year purely on contract basis on 14.2.2016 without codal formalities. Per learned AAG there were allegations against the Petitioner as such his service was terminated. He lastly prayed for dismissal of the petition.

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

7. The basic allegations against the Petitioner are as under:-

- a. ***Since last 4 months you take things casually and do not take your responsibilities seriously.***
- b. ***You proceed on self-granted leaves without taking prior permission from undersigned.***
- c. ***You directly correspond with PPP unit of finance Department without the approval of undersigned even agenda items not approved by under signed are placed in the agenda list of board.***
- d. ***You were assigned the task to prepare documents for short listing of Health Management Organization but you have failed to complete the task.***

Record reflects that the explanations of the Petitioner were called by the Competent Authority and finally the service of Petitioner was terminated under clause g of Notification dated 07.01.2016, which provides misconduct, inefficiency, negligence or failure of duty therefore; there is nothing left to be considered on the above proposition.

10. We have perused the summary dated 14.12.2016 floated by the Respondent-Department in favour of Petitioner, which is a contractual appointment for a period of one year. Record does not reflect that the competitive process for the appointment of the Petitioner was initiated and record does not transpire that the service of the Petitioner was regularized by the Respondent-Department. We are of the view that such appointment would be terminated on the expiry of contract period or any extended period on the choice of Employer or Appointing Authority. The case of the Petitioner is governed by the principle of Master and Servant, therefore, the Petitioner does not have any vested right to seek reinstatement in service. It is well settled law that contract employee cannot claim any vested right, even for regularization of service.

11. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondent-department on the allegations. Record reflects that though the Petitioner was temporary employee of Respondent-department, however he was issued explanation Notices, which were replied by the Petitioner and the same were found unsatisfactory by the Competent Authority vide impugned letter dated 10.08.2017.

13. It is well settled law that an opportunity of Show Cause can be issued to the employee of department, who is holding a permanent post, whereas the record does not reflect that the Petitioner was permanent employee of Respondent-department,

therefore in our view the Petitioner cannot claim vested right to be reinstated in service. It is well settled law that the service of temporary employee can be terminated on 14 days' notice or pay in lieu thereof. The Respondent-department has no ostensible reason to put false allegations against the Petitioner.

14. In the present case, there is no material placed before us by which we can conclude that Impugned Order has been wrongly issued by Respondent-department.

15. The Petitioner has failed to establish that he has any fundamental/ vested right to remain on the temporary /contractual post. Therefore, the argument of the Petitioner that he was not heard before issuance of Impugned Order dated 10. 8.2017 is not tenable in the eyes of law.

16. In view of the foregoing, the Constitutional Petition in hand is dismissed with no order as to cost.

Karachi  
Dated: 15.08.2018.

JUDGE

JUDGE