

IN THE HIGH COURT OF SINDH, AT KARACHI

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

C.P No.D-5861 of 2018

Abdul Latif MughalPetitioner

Versus

Government of Sindh & others Respondents

Petitioners: Through Mr. Abdul Salam Memon.

Date of hearing: 16.08.2018

ORDER

ADNAN-UL-KARIM MEMON,J:- The petitioner has challenged the impugned Notification dated 04.07.2013, whereby his service was placed under suspension.

2. The gist of the case of the Petitioner is that he is employee of Education & Literacy Government of Sindh working as Education Officer (BS-19) in School Management Cadre / HM Cadre since the last 25 years. It is averred by the Petitioner that in the month of May 2013 he was posted as Head Master in EAB Government Boys Secondary School Karachi. Petitioner has submitted that on 04.07.2013 he received impugned Notification of suspension on account of an inquiry regarding illegal appointments made in Education & Literacy department, Karachi Region without any show-cause notice or right of hearing or any sort of intimation by the Respondents. This is also a case of the Petitioner that the inquiry committee was constituted by the Competent Authority to investigate the matter and submit the report to the Respondent No. 4, which according to the Petitioner is a clear violation of the Removal of Service (Special Powers) Sindh Ordinance 2000. It is further stated that

the impugned Notification is not only in contravention to the provisions of the relevant Ordinance-2000, Rules, Act and Efficiency and Disciplinary Rules. It is added that Petitioner filed an Appeal dated 10.07.2013 to the Additional Chief Secretary Education Literacy Department, on the grounds that the name of the Petitioner had never been mentioned in the entire inquiry report and prayed for exclusion of his name from the orders passed by the Competent Authority, including the aforesaid suspension order. Petitioner has submitted that he was served, with the Show Cause Notice dated 01.03.2014 belatedly, issued by the Competent Authority calling upon the Petitioner to Show Cause as to why any of the major penalty prescribed under Section 3 of the Removal from Service (Special Powers) Ordinance 2000 should not be imposed upon him, on account of the alleged acts of misconduct for non-reporting the matter to the Administrative department regarding illegal/fake appointments made by the Director of School Education Karachi Region and thereafter allowing joining duty to the beneficiaries beyond sanctioned strength of the vacancies. Petitioner has submitted that he filed comprehensive reply dated 08.04.2014 of the allegations but to no avail. Petitioner has submitted that 22 months have lapsed since the service of the Petitioner was placed under suspension in spite of the fact that suspension period cannot be continued for more than three months. Petitioner has added that he made representation to the Competent Authority in the Month of May 2016 for decision on the case, resultantly he was heard by the Competitive Authority appointed in this regard to scrutinize the conduct of the Petitioner; that inquiry was conducted and concluded with the recommendation of awarding minor penalty against the Petitioner under RSO, 2000. Petitioner has averred that he being aggrieved by and dissatisfied with the aforesaid recommendation submitted another application dated 28.10.2017 to the Competent Authority, which was later on forwarded to the Secretary, School Education Department. Petitioner further added that he agitated

his claim for decision on his suspension from service vide letter dated 13.02.2018 and the Competent Authority finally reinstated the service of the Petitioner vide order dated 17.02.2018 on the recommendation of the Chief Secretary Sindh but the same order has not yet been implemented by the Respondent Education Department. Petitioner being aggrieved and dissatisfied with the illegal and malafide action of the Respondents has filed the instant Petition on 11.08.2018.

3. A query was raised by this Court as to how the instant petition is maintainable against the suspension order, since the service of the Petitioner has already been reinstated by the order of the Competent Authority /Chief Minister Sindh.

4. Mr. Abdul Salam Memom, learned counsel for the Petitioner has argued that the suspension period of any civil servant cannot be continued for more than three months and if the Competent Authority decides the disciplinary proceeding they can extend further period but not otherwise; that since 2013 Petitioner has remained under suspension, which is a clear case of nepotism and violation of law. In support of his contention he has relied upon the case of Mushtaq Ahmed Sabto 7 others Vs. Federation of Pakistan & others (2001 PLC 623). Learned counsel has submitted that the Petitioner has been placed under suspension on account of not reporting the matter regarding illegal appointments made in Education & Literacy department Karachi Region, which could be hardly a ground to place the service of the Petitioner under suspension, and subsequently appointment of Enquiry Officer has to investigate the said charges leveled against the Petitioner. He further contended that the suspension order has not been issued by the Competent Authority as defined under the law, as such the suspension order of the Petitioner is a nullity in the eyes of law. He referred to various provisions of Removal from service (Special Ordinance) Sindh 2000 and argued that the Respondents have

completely ignored the Rules & Regulations and issued the impugned Notification, which is based on malafide intention. He lastly prayed for allowing the instant Petition.

5. We have considered the contention of the learned counsel for the Petitioner and perused the material available on record and case law cited at the bar. It may be stated that in view of urgency shown by the learned counsel for the Petitioner he has argued the entire case on merits.

6. A bare perusal of impugned Notification dated 04.07.2013 shows that the Petitioner was suspended on the charges of not reporting the matter regarding illegal appointments made in Education and literacy department Karachi Region and allowing the beneficiaries to join the duties. The entire case of the Petitioner is that since he is working in BS-19 and the Competent Authority i.e. Chief Minister Sindh has recommended him for reinstatement which directives have not been implemented by the Respondent No.1.

7. Before dilating upon the above, at the first instance we would like to consider whether the Petitioner can challenge his suspension and subsequent initiation of enquiry proceedings pending against him in a Constitution Petition.

8. During the course of argument, learned counsel for the Petitioner has drawn our attention that the Respondent No.2 vide letter dated 08.05.2018 has disclosed the fact that the service of the Petitioner has been reinstated from suspension pursuant to the directives of the Chief Minister Sindh but the same has not been complied with. If this being the position of the case the Petitioner has the remedy to approach the Competent Authority for implementation of the order of the Chief Minister Sindh as such this Court is not an executing Court of the orders of the Chief Minister Sindh.

9. In the light of foregoing factual position of the case, it appears that the Petitioner has misconstrued the things and has approached this Court for the aforesaid relief which in our could hardly be granted in a Constitutional jurisdiction of this Court for the simple reason that the Petitioner is still facing the disciplinary proceedings initiated against him and a date and time for personal hearing of the Petitioner is required to be set by the Competent Authority, therefore at this juncture we would not like to dilate upon the aforesaid matter for the reasons alluded hereinabove. However we would like to shed light on the term "Suspension".

10. In law 'suspension' is not defined as a punishment but it is an intervening arrangement, which is temporary in nature and resorted to prevent the delinquent official from influencing the outcome of subsequent enquiry on any of the charges against him. In view of such position, in our view the Petitioner cannot file a petition against his suspension, which is simply a temporary measure and has been taken to reduce the chances of tempering in the course of enquiry by them. Against the adverse result of enquiry, if any, the Petitioner will have the remedy of appeal and in presence of such adequate remedy; this Court at this juncture will not step in to declare the suspension of the Petitioner illegal or void. More so, the Petitioner's objection on his suspension is technical and procedural in nature, since it is not his case that the charges mentioned in the suspension order are the outcome of some malice or ulterior motives and/or against the principles of natural justice.

11. We have perused the summary of disciplinary proceedings pending against the Petitioner and an excerpt of the same is reproduced as under:-

" 3. Copy of Enquiry report submitted by Mr. Muhammad Nawaz Shaikh, Special Secretary, Home Department/ Chairman of the Inquiry Committee was

forwarded to the School Education Department for comments/ views. The school Education & Literacy Department requested to take necessary action as per recommendations of the enquiry report submitted by Dr. Muhammad Nawaz Shaikh, Special Secretary, Home Department / chairman of the Inquiry Committee.

4. Show Cause Notice dated 16.02.2018 under section 3 of the Removal from Service (Special Powers) Sindh Ordinance, 2000 was issued against Mr. Abdul Latif Mughal, amongst others, on the allegation of misconduct.

5. The School Education & Literary Department has forwarded the reply to the Show Cause Notice submitted by Mr. Abdul Latif Mughal (Bs-19), former Deputy District Education Officer (Elementary) (Male), Karachi, along with comments of Director Schools Education (Elementary)/ Secondary & Higher Secondary) Karachi, with the request that the Competent Authority may consider and finalize the proceedings of Mr. Mughal in the light of comments of Director Schools Education (E/S&HS) Karachi.

6. The Director Schools Education (Elementary/Secondary *& Higher Secondary) Karachi, in his comments has stated that the alleged officer was working as Deputy District Education Officer during the period while the appointments were made. The incumbency of the DEEO, does not allow him to play any role in appointment. neither Mr. Abdul Latif Mughal was having any knowledge nor was taken on board while any such exercise was being carried out beyond his own office, thus he was not able to inform about the incident.

7. Besides the Chief Minister's Secretariat Sindh has forwarded an application of Mr. Abdul Latif Mughal (BS-19) for his reinstatement in service, containing the following remarks of the Chief Minister Sindh, for taking necessary action in accordance with law and relevant rules/ policy.

8. Pursuant to the directive of the Chief Minister Sindh, it is requested to kindly convey a date and time of personal hearing to Mr. Abdul Latif Mughal (Bs-19) as convenient to the Honourable Chief Minister Sindh for finalization for the disciplinary proceedings initiated against him.

12. The Petitioner is admittedly facing the allegations of illegal appointments in Education & Literacy department Government of Sindh Karachi Region and in such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process of enquiry against him and set-aside his suspension on any the technical ground,

which will amount to interfering in the right of the authority to enquire into allegations against the Petitioner.

13. The Petitioner has not been able to show, in view of above facts and circumstances, as to how he is prejudiced by his suspension as he has been receiving his salary during the suspension period.

14. The case laws cited by the learned counsel for the Petitioner is distinguishable to the facts and circumstances of the present case, and thus is therefore not relevant.

15. In the light of above discussion and case law referred to above, the instant petition merit no consideration and the same is accordingly dismissed in-limine along-with the listed application(s).

JUDGE

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