

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4236 of 2012

Bashir Ahmed Lanjwani Petitioner

Versus

Province of Sindh and others Respondents

Date of hearing: 08.09.2017

Mr. Ali Asghar Buriro Advocate for Petitioner.

Mr. Qurban Ali Malano Advocate for the Respondent No.2&3.

Mr. Abdul Jalil Zubaidi, AAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant

Petition, the Petitioner has prayed for the following relief(s).

- a) Declare the order of Respondents illegal, void and contrary to the rules framed by the Board of Governors.
- b) Direct the Respondent No.1 and 2 to produce the notification, whereby the first Board of Governors was constituted vide notification dated 10.08.2010.
- c) Direct the Respondent No. 5 to produce the complete bio-data including his domicile before this Hon'ble Court.

- d) Direct the Respondents to restore the Petitioner on his original position with all consequential benefits from the date of termination.

2. Brief facts of the case are that Petitioner was appointed as Principal, Cadet College Sanghi, Taluka Pano Aqil in BS-20, on contract basis for a period of one year vide order dated 02.09.2008 issued by Executive District Officer (Education) Sukkur on behalf of District Government. It is added by the Petitioner that the contract period of the Petitioner was extended from time to time and continued till 30th March 2012, when the Respondents through the Resolution passed by the Board of Governors in its meeting held on 24th March 2012 dispensed with service of the Petitioner without Show Cause Notice and proper enquiry, which is in violation of Cadet College Pano Aqil Rules & Regulations 2010 (hereinafter referred to as Rules & Regulations). Consequently, Deputy Commissioner, Sukkur issued Impugned Termination Order on 07.04.2012. Petitioner aggrieved by and dissatisfied with the Impugned Termination Order preferred this Petition on 28.11.2012.

3. Upon notice, the Respondent-College filed para-wise comments and denied the allegations leveled against it.

4. Mr. Ali Asghar Buriro, learned counsel for the Petitioner argued that the termination order issued by the Chairman Board of Governors is in deviation of Rules & Regulations; that Petitioner was condemned unheard, while passing the Impugned Order, no Show Cause Notice was issued, no inquiry was conducted, no

personal hearing was given to the Petitioner; that Impugned Order has been issued to the Petitioner in respect of charges, viz., incompetency and lack of administration capability, without hearing him is in violation of Article 10-A of the Constitution; that the Respondent-College is established by the then District Government, and Government of Sind has constituted the Board of Governors for Cadet College Pano Aqil vide Notification dated 10.8.2010, therefore, all actions of the concerned authority are amenable under Article 199 of the Constitution; that the Petitioner has been discriminated just to accommodate their blue-eyed person as Principal, who neither possesses the domicile of Sindh nor a retired defense personnel as per criteria set forth in the advertisement for the post of the Principal of the College; that impugned order is against the principle of natural justice; that Petitioner submitted Departmental Appeal against the impugned action before the Chairman and the Members of Board of Governors Cadet College Pano Aqil, but his request was not acceded to and the post of Principal was advertised in various Newspapers and even Petitioner was non-suited for the said post; that Deputy Commissioner Sukkur issued Impugned Termination Order on 07.04.2012 without lawful authority. He lastly prayed for allowing the Petition. The learned counsel for the Petitioner in support of his contention, has placed reliance upon the case of Qayyum Khan Vs. Divisional Forest Officer (2016 SCMR 1602), Rizwan Jawed and others Vs. Secretary Agriculture Lives Stock and others (2016 SCMR 1443), Syed Mujaid Hussain Shah Vs. Province of Sindh and others (2012 PLC (C.S) 1519), Ayaz Ahmed

Memon Vs. Pakistan Railways, Ministry of Railway Islamabad and another (2011 PLC (C.S) 281.

5. Mr. Qurban Ali Malano, learned counsel for the Respondent No.2 & 3, has supported the Impugned Termination Order of the Petitioner and argued that the instant Petition is not maintainable in law as the Respondent-College has no statutory rules of service; that there is no violation of Code of Conduct of Board of Governors framed by the Board of the Respondent-College; that the case of the Petitioner was discussed by the Board in its meeting held on 24.03.2012 and it was unanimously resolved to dispense with the service of the Petitioner as his contract period ended in the month of March 2012; that the post of Principal was decided to be advertised and the Petitioner has no vested right to remain on contract for an indefinite period and claim regularization; that the Petitioner is contract employee and his contract was not extended, therefore, there is no need of issuing Show Cause Notice or hold enquiry in the matter; that the post of Principal was advertised and a suitable/qualified person was appointed as Principal of Respondent-College, in accordance with law and the Petitioner has no vested right to claim extension in contract. The Counsel for the Respondents No. 2 & 3 lastly prayed for dismissal of the instant Petition.

6. Mr. Abdul Jalil Zubedi, learned AAG has supported the stance taken by the learned Counsel for the Respondent-College and argued that the Respondent-College is not a Statutory Body not created under any statute and it has no Statutory Rules of

Service; therefore the instant Petition is not maintainable under Article 199 of the Constitution; that the Petitioner has been appointed for the post of Principal BPS-20 by an Officer of Grade-19 by the then Executive District Officer (Education), Sukkur (now defunct) as per his appointment order dated 02.09.2008, therefore his basic appointment is sketchy; that the contract employee cannot claim vested right to be appointed as Principal of College on regular basis; that the service of the Petitioner has been dispensed with due to completion of his contract period; therefore, he cannot claim extension in his contract as a matter of right. It is well settled law that contractual obligations in service matters cannot be enforced by invoking Constitutional Jurisdiction of this Court.

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

8. First of all, we would address the question of the jurisdiction of this Court to entertain the Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. We have noted that the Board of Cadet College Pano Aqil is a Body Corporate. The Rules and Regulations of Cadet College Pano Aqil are not statutory as the same were framed by the Board of Governors of the College, pursuant to Rule 3 of Cadet College Pano Aqil Business Rules 2010. Petitioner was appointed on contract basis, which expired. It is well settled principle of law that the

appointment on contract basis cannot be regularized. The post of Principal of Respondent-College was advertised and everyone had a right to participate, as there is no violation of fundamental right of the Petitioner. As such, we are of the view that this Petition is not maintainable under Article 199 of the Constitution. In this regard, we are fortified by the principle enunciated by the Hon'ble Supreme Court in the case of Pakistan Defense Housing Authority Vs. Lt. Col. Javaid Ahmed (2013 SCMR 1707), Anwar Hussain v. Agricultural Development Bank of Pakistan (PLD 1984 SC 194), Aitcheson College, Lahore through Principal v. Muhammad Zubair (PLD 2002 SC 326), Pakistan International Airlines Corporation and Others Versus Tanweer -ur- Rehman and others (PLD 2010 SC 676), Abdul Wahab and others v. HBL and others (2013 SCMR 1383), Shafique Ahmed Khan and others Versus Nescom and others (PLD 2016 SC 377).

10. The service of the Petitioner was not governed under the statutory rules of service and his appointment is within the domain of the Board of Governors of Cadet College Pano Aqil as per its Rules and Regulations 2010.

11. Thus the conclusion of the above discussion is that the Rules & Regulations 2010 are basically instructions for the internal control or management of Cadet College Pano Aqil and are therefore non-statutory. Hence the Petitioner cannot invoke the Constitutional Jurisdiction of this Court. This principle of law has already been settled by the Hon'ble Supreme Court in the case of Muhammad Zaman etc. Vs. Government of Pakistan through

Secretary Finance Division (Regulation Wing), Islamabad, (2017 SCMR 571).

12. The case law relied upon by the learned Counsel for the Petitioner is on different footing, hence distinguished from the facts and circumstances of the present case. Consequently, the Constitutional Petition is dismissed alongwith pending application(s) with no order as to costs.

13. Foregoing are the reasons of our short order dated 08.09.2017.

Karachi
Dated:

JUDGE

JUDGE