

IN THE HIGH COURT OF SINDH, AT KARACHI

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

C.P No.D-2899of 2017

Yasser Qureshi.....Petitioner

Versus

Federation of Pakistan and others.....Respondents

Date of hearing: 22.05.2017

Mr. Muhammad Mansoor Mir, Advocate for the Petitioner.
Mr. Muhammad Aslam Butt, D.A.G.

ORDER

ADNAN-UL-KARIM MEMON, J:-Through the instant Petition, the
Petitioner has sought following relief(s):-

- (a) To declare that the release/relieving letter No. PED/5056 dated 26.4.2017 issued by PNSC Secretary and addressed to Section Officer PMI is illegal, unlawful and void ab initio and is of no legal effect; and be further pleased to suspend the operation thereof till the finalization of the instant petition.
- (b) To declare that the repatriation/relieving of the petitioner without affording him any hearing or taking any decision on his representations is an act grossly in violation of the fundamental rights of the petitioner, particularly the right to a fair trial and due process under Article 10-A of the Constitution.
- (c) To declare that the petitioner's deputation with PNSC is for 3 years expiring in May 2018, and before that, he cannot be repatriated or transferred by PNSC or PMI;

(d) In addition as an Interim Relief this Hon'ble High Court may be pleased to prohibit/restrain the Respondents from taking any further action in respect of the service of the Petitioner till finalization of this Petition.

(e) To grant any other reliefs deemed appropriate under the circumstances.

2. The brief facts of the case are that Petitioner is a Civil Servant who joined as Assistant Director (BPS-17) in Respondent No. 3/Pakistan Manpower Institute, Islamabad (hereinafter referred to as PMI). Petitioner's service was requisitioned by Respondent No. 4/Pakistan National Shipping Corporation, Karachi (hereinafter referred to as PNSC) as Assistant Manager on deputation basis for a period of three years. The said request was approved by Respondent No.3 vide Notification dated 15.05.2015. Consequently, Petitioner joined PNSC on 22.05.2015 vide office Order No.28/2015. It is the assertion of Petitioner that he was repatriated by Respondent No.4 vide impugned Letter dated 26.04.2017 without completion of period of three years as deputationist in violation of the terms and the conditions of Order dated 15.05.2015. Petitioner further asserted that the Respondents cannot rescind the order unilaterally without providing opportunity of hearing to the Petitioner.

3. Mr. Muhammad Mansoor Mir, learned counsel for the Petitioner has argued that service of the Petitioner was requisitioned by PNSC and permission for which was accorded by the parent department of the Petitioner that is, PMI for a period of three years. Therefore, Petitioner has to complete the tenure of his deputation period. Per learned counsel the Repatriation Order is based on internal politics of Respondents without any fault on the part of Petitioner. He next contended that Petitioner's salary has been withheld from the date when the petitioner's Relieving Order was issued. However, as per learned counsel the Petitioner has not

yet relinquished his charge as Assistant Manager (Legal) PNSC. He lastly submitted that the Petitioner has been trying his level best to contact the Respondents to resolve the matter of his premature repatriation to his parent department. And, in this regard the Petitioner was given assurance by both the departments that no final decision will be taken without consulting and/or hearing him. Despite the said assurance Petitioner has received a copy of Relieving Order dated 26.04.2017 on 05.05.2017. Per learned counsel the said Relieving Order is issued without providing opportunity of hearing to the Petitioner in violation of Article 10-A of the Constitution. Learned counsel relied upon the *ESTACODE* on issue of deputation and argued that Petitioner can only be reverted to parent department on expiry of the period of deputation fixed initially.

4. Mr. Muhammad Aslam Butt, learned DAG representing Respondents No.1 to 3 has argued that parent department of the Petitioner i.e. PMI required the service of the Petitioner to be back from PNSC. In this regard PMI issued Letter dated 24.01.2017 with request to repatriate the Petitioner on the ground that the official work of PMI is badly suffering due to acute shortage of officers. He next contended that Petitioner is a deputationist and has no vested right to remain on deputation. Petitioner's parent department can call him back to join the duty at any time and Petitioner cannot refuse or claim any violation of fundamental right in this regard.

5. We have heard learned counsel for the parties and perused the material available on record.

6. We have noted that on 17.05.2017 Mr. Ch. Muhammad Ashraf, Advocate undertook to file power on behalf of Respondent no. 4/PNSC and claimed copy of the memo of petition. However, on 19.05.2017 Petitioner moved an urgent hearing application which was granted and the matter was fixed today for hearing of case. But today the learned counsel for Respondent No. 4 is called absent and learned counsels for the Petitioner and learned DAG have argued the matter on merits.

7. The foremost point in the present proceedings is whether a deputationist has a legal right to call in question his repatriation before completion of deputation period and ask for personal hearing before such order.

8. Admittedly, Chairman PNSC vide Letter dated 23.01.2015 requisitioned the service of Petitioner (Assistant Director, PMI) and in pursuance of the said request Petitioner was relieved from his parent department to join PNSC vide Office Order No.28/2015 dated 22.05.2015 for a period of three years with certain terms and conditions. Petitioner continued to serve PNSC and finally parent department of the Petitioner vide Office Memorandum dated 24.01.2017 requested PNSC to repatriate the Petitioner to PMI on the ground that their official work is suffering due to acute shortage of officers. PNSC accepted the said request of PMI and repatriated the Petitioner to his parent department vide impugned Letter dated 26.04.2017.

9. The main contention of learned counsel for the Petitioner is that Petitioner has a right to complete deputation period of three years which will expire on 21.05.2018.

9. It is a well settled principle of law that a deputationist could not be treated as an aggrieved person because he has no vested right to remain on a post as deputationist forever or for a stipulated period and can be repatriated any time to his parent department. Reference is made to the case of Dr. Shafi-ur-Rehman Afridi vs. CDA, Islamabad through Chairman and others (2010 SCMR 378).

10. As regards the contention of learned counsel for the Petitioner that petitioner was not provided an opportunity of hearing before passing of the impugned Letter dated 26.04.2017, it is stated that there is no cavil to the proposition that the principle 'audi-alteram-partem' has always been considered to be embedded in the statute even if there is no implied or express provision

because no adverse action can be taken against anyone yet at the same time the principle could not be treated to be of universal nature. Because before invoking / applying the said principle one has to specify the infringement of a vested right. In the present case, Petitioner has failed to establish that he has a vested right to remain on deputation. Therefore, argument that Petitioner was not heard before issuance of impugned Letter is of no importance.

11. Considering the case of the petitioner in the above perspective, we find no merit in the instant petition which is dismissed accordingly. However, Respondents may consider the request of Petitioner for salary in the intervening period in accordance with law.

JUDGE

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