

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1001 of 2016

Ahsanullah Lakho Petitioner
Versus
Province of Sindh & others Respondents

Date of hearing: 02.03.2018

Mr. Malik Altaf Jawed Advocate for the Petitioner.

Mr. Muhammad Rafiq Rajorvi, AAG.

ORDER

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

- i) Declaring that the failure of the Respondent No.1 to decide the appeal of the petitioner is illegal, unlawful, capricious, malafide, arbitrary, discriminatory, ultra vires of the law and constitution, in violation of principles of natural justice, enquiry and fairness having no legal effect whatsoever;***
- ii) To direct the Respondent No.1 to decide the appeal of the Petitioner forthwith.***

2. Brief facts of the case are that Petitioner was appointed as Sub-Engineer in BPS-11 on contract basis with the Respondent

Agriculture Department, Government of Sindh vide Office order dated 08.06.2005. Petitioner has submitted that in the year 2008 he suffered with serious disease and was bedridden thus could not attend his office. Petitioner has averred that as soon as he recovered, joined his office and resumed his duties. Petitioner has submitted that on 03.09.2008 he was transferred and posted in Executive District Officer Khairpur and remained posted there till 17.12.2008, thereafter he was directed to report in the office of the Director General Agriculture and Water Management, Sindh Hyderabad and subsequently his services were terminated vide impugned order dated 27.07.2010. Petitioner being aggrieved by and dissatisfied with the termination order dated 27.07.2010 preferred Appeal with Secretary Agriculture Department, Government of Sindh which was dismissed vide order dated 19.05.2015. Petitioner has claimed that he assailed the order dated 19.05.2015 before the Chief Secretary Government of Sindh, which is still pending. Thereafter when the Petitioner thought he has now no remedy, filed the instant Petition on 18.02.2016.

3. Upon notice, Respondent-Department filed para-wise comments and denied the allegations as leveled by the Petitioner in the instant Petition.

4. Mr. Malik Altaf Jawed learned counsel for the Petitioner has contended that failure of the Respondent No.1 to decide the Appeal of the Petitioner is against the law; that the career of the Petitioner is at stake therefore directions may be issued to the Respondent No.1 to decide the Appeal of the Petitioner for his

reinstatement in service with all back benefits. Learned counsel has next argued 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 fair opportunity to clear his position in terms of Article 4, 10-A and 25 of the Constitution of the Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matter involving denial of such rights of citizens of this Country by the State Functionaries; that the Termination Order conveys a message of a stigma hence the Petitioner cannot be ousted from service without resorting to the procedure as provided under the law but in the case of the Petitioner no procedure was adopted but he was removed from the employment against the law; that it is a trite principle of law that even if a person is to be condemned for the misconduct when he is employed on contract basis or probation, he is entitled to a fair trial and 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 earlier stigmatized removal had rendered and disentitled him for the interview call or appointment in lieu thereof. He lastly prayed for allowing the instant Petition.

5. Mr. Muhammad Rafiq Rajorvi, learned AAG has argued that the Petitioner had remained absent from his Government duty w.e.f. 29.01.2008 to 13.02.2008 without any intimation or prior approval of the competent authority; that the Petitioner was issued several explanation letters by the competent authority, however he did not reply to these letters; that after availing six and half

months self-granted leave/ absence from the Government duty he submitted his joining report along with his medical certificates in the office of Assistant Director (F) field team Tajjal District Khairpur on 15.08.2008, who forwarded the same to the Deputy Director (F) NPIW/ OFWM District Khairpur on 28.08.2008; that the competent authority terminated the contract of the Petitioner vide impugned order dated 27.07.2010 after fulfilling all the codel formalities; that Petitioner was heard on 23.09.2014 by the competent authority and regretted his request vide letter dated 19.05.2015; that the Authorities of the answering Respondents have neither acted malafidely nor violated any provision of the law or the prescribed Rules in discharging their duties. He lastly prayed for dismissal of the instant Petition with cost.

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

7. We have perused the Appointment Order dated 08.06.2005 of the Petitioner, which is a contractual appointment for fixed emoluments. We are of the view that such appointment would be terminated on the expiry of the contract period or any extended period on the choice of Employer or the Appointing Authority. In our view the case of the Petitioner is squarely governed by the principle of "Master and Servant", therefore, the Petitioner does not have any vested right to seek reinstatement in the service. It is a well settled law that a contract employee cannot claim any vested right, even for regularization of his service.

8. 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 a contractual employee of the Respondent-Department however he was issued warnings, Notice for cancellation of employment of contract, which was replied by the Petitioner, however finally the Respondent- Department terminated his contractual service under para (V) of terms and conditions of contract appointment vide letter dated 26.07.2010. Record further shows that the Petitioner was given opportunity of personal hearing vide letters dated 30.01.2015, 27.02.2015 and 17.04.2015 by the Respondent-Department. Moreover departmental Appeal was also considered and regretted by the Competent Authority vide letter dated 19.05.2015.

9. Reverting to the claim of the Petitioner that his departmental Appeal for reinstatement has not been decided by the Respondent No.1, we are of the view that under the Departmental Appeal Rules only permanent employees of the Government of Sindh can prefer Departmental Appeals relating to the terms and conditions of their service before a Competent Authority, which can be heard and decided in accordance with Sindh Civil Servant (Appeal) Rules, 1980 and not by a contractual employee.

10. In view of the above provision of law an opportunity of reply to a Show Cause can be provided to the employee of Respondent-Department, who is holding a permanent post, whereas the record does not reflect that the Petitioner was a

permanent employee of the Respondent-Department, therefore in our view the Petitioner cannot claim a vested right to be reinstated in the service or his Departmental Appeal can be taken into consideration. It is a well settled law that the service of a 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 of absence from duties against the Petitioner w.e.f. 29.01.2008 to 13.02.2008. It is also a well settled law that a disputed question of facts cannot be adjudicated in a Constitutional jurisdiction of this Court.

11. In the present case, no material has been placed before us through which we can conclude that the Impugned Order has been wrongly issued by the Respondent-Department.

12. The Petitioner has thus 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 the issuance of Impugned Order dated 26.07.2010 is not tenable in the eyes of law. Reliance in this behalf can be placed upon the case of Contempt Proceedings against Chief Secretary and others (2013 SCMR 1752).

13. In view of the forgoing, the Constitutional Petition in hand is not maintainable hence the same is dismissed, with no order as to cost.

Karachi
Dated: 02.03.2018.

JUDGE

JUDGE

