

IN THE HIGH COURT OF SINDH, AT KARACHI

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

C.P No.D-2074 of 2017

Nabi Bux JamaliPetitioner

Versus

Federation of Pakistan and anotherRespondents

C.P No.D-2075 of 2017

Mujeeb-ur-RehmanPetitioner

Versus

Federation of Pakistan and anotherRespondents

C.P No.D-2076 of 2017

Ayaz Hussain AbroPetitioner

Versus

Federation of Pakistan and anotherRespondents

Petitioners: Through Barrister Murtaza Wahab Siddiqui.

Respondents No.1 & 2. Through Mr. Aslam Butt, DAG, a/w
Zubair Nomani, Deputy Director, Law and
Khalid Ali Lashari, AD Law, PSQCA.

Date of hearing: 11.04.2017

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- The above captioned constitutional petitions are disposed of via this common order as all the petitions pertain to common points of law and facts. In all these petitions the petitioners have challenged the impugned notification dated 30.03.2017.

2. The gist of the case of the petitioners is that they are employees of Respondent No.2 working as Field Officer (Mechanical) in BPS-16 and got regular promotion in BPS-17. It is averred by the petitioners that on 30.03.2017, they received impugned notification of suspension on account of "Corruption" charges without any show-cause notice or right of hearing or any sort of intimation by the Respondent No.2. This is also a case of the petitioners that the enquiry officer appointed by the competent authority to investigate the matter and submit the report to the Respondent No.2 has not yet even approached the petitioners, which is a clear violation of Rule 6 of the Government Servants (Efficiency and Discipline) Rules 1973. It is further stated that the impugned notification is not only in contravention to the provisions of the relevant Rules, Act and Efficiency and Disciplinary Rules but also are in violation of Section 16 of the General Clauses Act 1897. It is added that as per Section 3 Regulations 2015, the appointing authority of the petitioners is the Respondent No.1 and the impugned notification is signed by the incompetent authority.

3. Barrister Murtaza Wahab Siddiqui, learned counsel for the petitioners has argued that the Petitioners were appointed as Field Officers (Mechanical BPS-16) and were promoted in BS-17 in the year 2007. He next argued that the Petitioners have received the impugned notification dated 30.03.2017, whereby the Petitioners have been placed under suspension on account of charges of corruption, and subsequently and Enquiry Officer has been appointed to investigate the said charges within 07 days. He further contended that the suspension orders have not been issued by the competent authority as defined under the Regulations of Respondent No.2, as such the suspension orders of the Petitioners are nullity in the eyes of law. He referred to various provisions of the Pakistan Standards & Quality Control Authority Act, 1996 and Statutory Service Regulations 2015

and argued that the Respondent No.2 has completely ignored the Rules & Regulations and issued the impugned notification which is based on malafide intention. According to him the Respondent No.1 is the competent authority to suspend the Petitioners and initiate enquiry proceedings against them. Learned counsel for the Petitioners in support of his arguments has relied upon the case of Muhammad Afzal Khan v. Karachi Development Authority & others (PLD 1984 Kar. 114), Shabbir Jan Sarhandi v. Province of Sindh & others (2006 PLC CS 955) and an unreported case of Talat Iqbal v. Director General, Military Lands & others decided on 10.11.2014 in CP No.D-5661 of 2014. During the course of arguments, learned counsel for the Petitioners has filed a copy of letter dated 07.04.2017 (enquiry proceedings), statement of allegations and charge sheet dated 03.04.2017.

4. Mr. Aslam Butt learned DAG states that the enquiry proceedings have been initiated against Petitioners on the charges of corruption and in law they are required to submit their reply to the said charges. He further argued that suspension is not a penalty but an intervening arrangement till the veracity of charges against a delinquent official is ascertained. According to him, against such intervening arrangement the petition is not maintainable because in case of any adverse action as a result of the enquiry, a right of appeal is provided to the aggrieved official, and therefore in presence of such right of appeal, the petition would be incompetent. He further stressed that the since the petitions are related to the issue of suspension of the Petitioners, which falls within the ambit of terms and conditions of service, the same neither can be agitated in the constitutional jurisdiction, nor could be investigated by this Court in writ jurisdiction.

5. We have considered the contentions of the parties 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 learned counsel for the Petitioners on the last date of hearing viz. 07.04.2012, these petitions were fixed today for hearing of stay application as well as main case. Today the learned counsel for the Petitioners has argued the entire case on merits, which has been rebutted by the other side without filing the comments.

6. A bare perusal of impugned notification shows that the Petitioners were suspended on the charges of corruption by the Respondent No.2 in exercise of power conferred under Rule 5(1) of the Government Servants (Efficiency & Discipline) Rules, 1973. The entire case of the Petitioners is that since they are working in BS-17, the Respondent No.2 is not competent to suspend them and it is only Respondent No.1 (Secretary, Ministry of Science and Technology), who is competent to do so.

7. Before dilating upon the fact as to whether Respondent No.2 is competent to suspend the Petitioners or not, at the first instance we would like to consider whether the Petitioners can challenge their suspension and subsequent initiation of enquiry proceedings against them in the constitution petition.

8. 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 estimation the Petitioners cannot maintain these petitions against their 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 Petitioners 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 Petitioners illegal and void on the

ground that impugned order of suspension has not been passed by the competent authority. More so, the Petitioners' objection on his suspension is technical and procedural in nature. It is not his case that the charges mentioned in the suspension order are outcome to some malice or ulterior motives and/or against the principles of natural justice. The Petitioners are admittedly facing the allegations of corruption and in such circumstances, we would not like to exercise our discretion in their favour and thwart the whole process of enquiry against them and set-aside their suspension on any of the technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioners. The Petitioners have not been able to show, in view of above facts and circumstances, as to how they are prejudiced by their suspension. The case laws cited by the learned counsel for the Petitioners are distinguishable to the facts and circumstances of the present case, and are therefore not relevant.

9. In the light of above discussion and case law referred to above, the instant petitions merit no consideration and the same are accordingly dismissed along-with pending application(s).

JUDGE

JUDGE