

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1608 of 2015

Nizamu-din-Din

Versus

..... Petitioner

The Province of Sindh & others

..... Respondents

Date of hearing: 22.08.2019

Date of Judgment: 22.08.2019

Mr. Muhammad Saleh, advocate for the Petitioner.

Mr. Shahiryar Mahar, AAG a/w Muhammad Irfan Zaman, DSP, Adeel Raza, SI & Raza Mian, DSP (Legal) on behalf of IGP Sindh,

J U D G M E N T

ADNAN-UL-KARIM MEMON-J. Primarily, through the instant Petition under Article 199 of the Constitution 1973, the Petitioner has called in question the disciplinary action of the Respondent-Police Department, whereby his name was deleted from Upper School Course, commencing from 20.12.2014 at Police Training Centre (PTC) Saeedabad, Karachi. Petitioner has also impugned the Show cause notice dated 15.1.2015 served upon him on the accusation of Misconduct.

2. At the very outset, we inquired from the learned counsel as to how the instant Petition is maintainable against the show Cause Notice, pertaining to terms and conditions of his service and bar of Article 212(2) of the Constitution is fully attracted in the present case.

3. Mr. Muhammad Saleh, learned Counsel for the Petitioner has submitted that the impugned order cannot be termed as order passed within the terms and conditions of service of the Petitioner, therefore, bar of Article 212(2) of the Constitution will not come in the way of the Petitioner, more particularly, the show Cause Notice is based on malafide intention; that there is nothing adverse against the Petitioner, therefore, depriving him from attending Upper Course is against the basic spirit of law and Police Rules, 1934; that the career of the petitioner is at stake at the hands of Respondent-Police Department who are bent

upon to deprive the Petitioner from promotion in the next rank; that the petitioner is fully entitled to be treated in accordance with law; that the Respondent-Department heard the Petitioner and vide order dated 31.12.2016 considered his departmental appeal and his major punishment of compulsory retirement from service was set aside. In support of his contention, he relied upon the reply to the comments filed by respondents; that this is a hardship case and this Court can hear and decide the matter on merit.

4. We do not agree with the statement of the learned counsel for the Petitioner for the simple reason that disciplinary proceedings falls within the ambit of expression terms and condition of service of civil servant, therefore, the jurisdiction of all other courts is barred by the provision of Sindh Service Tribunals Act, 1973 read with Article 212(2) of the Constitution. We are fortified with the decision rendered by the Hon^{ble} Supreme court in the case of Ali Azhar Khan Baloch vs. Province of Sindh [2015 SCMR 456]. The Hon^{ble} Supreme Court in paragraphs 146 to 150 has held as under:-

“146. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters. In other words, the jurisdiction of all other Courts is barred by the provisions of the Sindh Service Tribunals Act, 1973, read with Article 212 of the Constitution.

147. Section 4 of the Service Tribunals Act provides Civil Servant with the right of filing an Appeal before the Tribunal, subject to the qualifications provided therein.

148. In this background, all the Civil Courts, including a Judge (in Chambers) of High Court of Sindh, exercising jurisdiction on the original side as a civil court under C.P.C. cannot entertain a civil suit of a civil Servant relating to the terms and conditions of his service. The exercise of jurisdiction by the High Courts is conferred under Article 175(2) which reads as under: -- "175(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."

149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals.

150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants.”

5. A bare perusal of impugned show cause notice dated 15.1.2015 shows that the Petitioner was charged with allegations of Misconduct in the following manner:

“A misconduct report received from the Addl: IGP Karachi, that on 05.12.2014 at above 11:30 p.m DSP ACLC Malir visited his investigation staff room then you sitting with his staff and at that time you misbehaved with DSP ACLC Malir and used abusing language. This act of negligence is shown that you are undisciplined and disobedient member of disciplined force. Thus you are liable to be dealt departmentally and punished exemplary”.

6. Record reflects that the Petitioner was awarded major punishment of compulsory retirement from service vide order dated 09.11.2016 and final order dated 09.11.2017 being involved in FIR No.171/2016, however, his major punishment was set-aside by Additional Inspector General of Police Sindh Karachi vide order dated 31.12.2016, therefore, the aforesaid status of the Petitioner explicitly show his patchy service record and this Court cannot dilate upon the service issues of the Petitioner.

7. Before dilating upon the above, at the first instance we would like to consider whether the Petitioner can challenge his show cause notice, non-inclusion of his name in Upper School Course in a Constitution Petition?

8. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to compel the competent authority to set aside the show cause notice issued against a Civil Servant against whom prima facie evidence showing his involvement in the serious charges of misconduct was available, for the reason that any such direction would be disharmonious to the principle of good governance and canon of service discipline. Rather causing undue interference to hamper smooth functioning of the departmental authorities, more particular in Police Department.

9. In law show cause is not defined as a punishment. In our view the Petitioner cannot file a petition against issuance of Show cause notice, which is simply an intimation to explain the position in the course of enquiry. Against the adverse result of enquiry arising out of Show cause notice, 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 show cause notice issued to the Petitioner illegal or void. More so, the Petitioner's objection on issuance of Show Cause notice is technical and procedural in nature, since it is not his case that the charges mentioned in the impugned order is the outcome of some malice or ulterior motives and/or against the principles of natural justice. In such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process arising out of enquiry, if any, against him and set-aside show cause notice on any of the technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioner. Besides that we are of the view that Article 212 of the Constitution ousts the jurisdiction of this Court in respect of the matters pertaining to terms and conditions of Civil Servants. The ouster clause under Article 212 of the Constitution is a Constitutional command, which restricts the jurisdiction of this Court under Article 199 of the Constitution on the subject which squarely falls within the exclusive domain of the Tribunals. Admittedly, the Petitioner is Civil Servant and his grievances as agitated by him in the prayer clauses 1 to 5 relate to service issues which explicitly fall within the ambit of Section 3 (2) of the Sindh Service Tribunals Act, 1973 which says that Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants as under Section 4 of the Service Tribunal Act a Civil Servant has a right to file an appeal against the impugned orders adversely affecting the terms and condition of his service before the Tribunal subject to the qualification provided therein.

10. Prima-facie, the Petitioner has been proceeded under disciplinary proceedings vide show cause notice dated 15.1.2015 (*available at page-65 of the Memo of Petition*) on the ground of Misconduct, though his compulsorily retirement from service was set-aside by the order dated 31.12.2016, which is essentially an administrative matter falling with the exclusive domain of the

hierarchy of Respondent-Police Department and interference with such matters is not warranted under the Constitutional Jurisdiction. In the facts and circumstance, on this point, this Court has no jurisdiction to interfere by means of Writ. We are fortified on this issue by the decisions rendered by the Hon'ble Supreme Court in the case of Government of Khyber Pakhtunkhwa and others v. Hayat Hussain and others (2016 SCMR 1021).

11. As regards the contention of the learned counsel for the Petitioner that the show cause notice dated 15.1.2015 issued by the Respondent-Police Department has adversely effected the vested right of the Petitioner, suffice it to say that per impugned show cause notice dated 15.1.2015 Competent Authority has observed misconduct against the Petitioner. Merely issuance of show cause notice cannot be construed as adverse action and it is for Respondent-Department to probe and finally decide the disciplinary matter by either way, if not decided earlier.

12. During the course of arguments, learned A. A. G. invited our attention to the comments filed on behalf of the respondents and argued that the petitioner joined Security-I, Karachi on 9.9.2014. A misconduct report was submitted whereby he was issued show cause notice dated 15.1.2015. Petitioner replied, but failed to appear before the Competent Authority for decision. He next submitted that earlier Petitioner was awarded major punishment of reduction in his substantive rank from ASI to Head Constable on 7.11.2013. Subsequently, he was dismissed from service on 8.11.2013 and finally reinstated in service vide order dated 17.4.2014 with clear cut warning, however, he did not mend his ways and continued to commit misconduct by misbehaving with his superiors which amounts indiscipline attitude, thus the Petitioner is not entitled for any relief from this Court. Learned AAG relied upon the report in compliance of order dated 29.11.2017 passed by this Court and submitted that Petitioner is not eligible for Upper School Course, however, he agreed that he will be sent for Upper School Course on his turn after his promotion as Sub Inspector. He lastly prayed for dismissal of the instant Petition.

13. Keeping in view the above mentioned facts and circumstances of the case, we do not see any infringement of right of the Petitioners which could be called in question by way of Writ Petition.

14. It is a well settled principle of law that a Civil Servant has no vested right to call in question the disciplinary proceedings in Writ Petition.

15. Adverting to the main contention of the Petitioner that he is eligible to undergo Upper School Course, suffice it to say, the name of the Petitioner does not transpire in the office order dated 11.12.2014, as earlier he was superseded due to major punishment, however, all his grievances relate to the service matter and the forum for redressal of his grievances is available under the law.

16. Considering the case of the Petitioners in the above perspective, we find no merits in the instant petition, which is dismissed accordingly. However, Petitioner may seek appropriate remedy as provided under the law.

JUDGE

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