

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5496 of 2019

Hassan JanPetitioner

Versus

Federation of Pakistan & 04 othersRespondents

Date of hearing: 28.08.2019

Date of Order: 28.08.2019

Mr. Ali Asadullah Bullo, advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- The petitioner, through the captioned Petition, has sought the following relief(s):

- a. Declare the impugned 2nd De-novo enquiry and impugned charge sheet dated 16.01.2019 illegal, against Article 13 of the Constitution of Islamic Republic of Pakistan, 1973 principles of natural justice, equity and fair play and quash / set aside the same.
- b. Direct the Respondents to consider the case of the Appellant for promotion against the post of Accounts Officer BS-18 and grant its effect from the date his juniors were promoted along with all consequential benefits.

2. Basically, the Petitioner has called into question the De-novo enquiry and charge sheet dated 16.1.2019 duly served upon him with the following allegations:-

- i. You made fraudulent GP Fund payments for the year 2009-2010 and 2010-2011 amounting to Rs.23, 512,166/- respectively.
- ii. You submitted wrong figures of monthly/yearly accounts for the year 2009-2010 and 2010-2011 amounting to Rs.870,755/-

3. We have noticed that the Petitioner along with other officials of the Accountant General Sindh Karachi, during their tenure of posting at District Accounts Office , Sukkur were allegedly found involved in the embezzlement of huge amount of Rs.247.243 million. As per record an enquiry was conducted and they were found guilty of the aforesaid charges, however, minor penalty of stoppage of increment for three years was imposed upon the delinquent officials including the Petitioner. Later on, the learned Sindh Service Tribunal Karachi vide judgment dated 16.2.2017 in Service Appeal No.922/2016 observed that the officials should have been sufficiently penalized in view of quantum of their involvement in the scam in accordance with law. Consequently, a de-novo enquiry

was ordered vide letter dated 16.1.2019. Petitioner being aggrieved by and dissatisfied with the holding of aforesaid de-novo enquiry has filed the instant Petition on 27.8.2019.

4. We inquired from the learned Counsel as to how this petition is maintainable against holding of de-novo enquiry.

5. Mr. Ali Asadullah Bullo, learned Counsel for the Petitioner has briefed us that earlier Petitioner was served with the similar allegations vide charge sheet dated 19.2.2013 and finally he was found guilty to the extent of negligence on his part and a minor penalty of stoppage of increment for three years was imposed upon him vide letter dated 24.12.2014; that once petitioner was punished, he cannot be vexed twice for the same negligence by conducting de-novo enquiry. Learned counsel in support of his contentions has relied upon Article 13 of the Constitution of Islamic Republic of Pakistan, 1973 and argued that once punishment is given to a civil servant on the same cause of action, no further punishment can be awarded for the same offence; that the case of Petitioner for promotion has been deferred from time to time which is illegal.

6. We have asked the learned Counsel for the Petitioner as to how through the instant petition he is calling in question the disciplinary proceedings initiated against him, in the light of judgment dated 16.2.2017 passed by the learned Sindh Service Tribunal at Karachi in Service Appeal No.922/2016, wherein his name is appearing at paragraph 6 and 10 of the judgment as discussed supra on the premise that he is found to be involved in the alleged scam. He replied that, though the Petitioner has exercised the option of voluntary return alongwith other officials of District Accounts Office Sukkur before the National Accountability Bureau on account of bogus GP Fund Cases pertaining to Education Department at District Accounts Office Sukkur as a consequence of corruption and corrupt practices, however, he emphasized that the same cannot be basis for holding de-novo enquiry against him on the same charges for which he has already faced the consequences. He next argued that the action of the Respondent-department is malafide and without lawful authority. He lastly prayed for allowing the instant Petition.

7. We have heard the learned Counsel for the Petitioner on the point of maintainability of the instant petition and perused the material available on record.

8. Foremost point in the present proceedings is whether the Civil Servant can file a Writ Petition by invoking Constitutional Jurisdiction of this Court in respect of the terms and conditions of his service when there is a bar contained in Article 212 of the Constitution?

9. 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, 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 Service Tribunals.

10. Admittedly, the Petitioner is a Civil Servant and his case falls within the ambit of Section 3(2) of the Sindh Service Tribunals Act, 1973 which says that Sindh Service 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 order adversely affecting the terms and condition of his service before the Tribunal subject to the qualification provided therein.

11. However, before parting with this order, we are mindful of the above fact and have gone through the judgment dated 16.2.2017 passed by the learned Sindh Service Tribunal at Karachi in Service Appeal No.922/2016 available at Page 71 of the file, which prima facie shows that the Petitioner accepted the option of voluntary return and Petitioner, being Assistant Accounts officer knew the consequences arising out of the Proviso of Section 15 of the NAB Ordinance. A look at the Order dated 16.1.2019 clearly shows that no illegality has been committed by the Respondents by holding De-novo enquiry against the petitioner. Prima facie the case of the Petitioner was based on corruption and corrupt practices as defined under the law and the same falls within the definition of "moral turpitude". The expression "moral turpitude" has been explained in Words and Phrases. Permanent Edition 27-A, which is as follows:-

“In determining whether crime is one involving “moral turpitude”, the test is whether the act denounced by the statute offends the generally accepted moral code of mankind.” -----

----- “Moral turpitude” is a vague term, and its meaning depends to some extent on the state of public morals; it is anything that is done contrary to justice, honesty, principle or good morals; and act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man; it implied something immoral in itself, regardless of fact whether it is punishable by law.”

12. For the above reasons, we are of the view that the Petitioner has not been deprived of his fundamental rights as alleged by the learned counsel for the Petitioner, as the Petitioner, being Assistant Accounts officer was, for the reasons given in the Order dated 16.1.2019, rightly ordered for facing the charges leveled against him under the law, coupled with the fact that the act of voluntary return was an admission of his guilt under the NAB Law. The act of the Petitioner accordingly falls within the ambit of “Moral Turpitude” and the Petitioner at this stage accordingly is not entitled for any relief from this court under Article 199 of the Constitution. This principle is enunciated by the Honourable Apex Court in the case of Ghulam Hussain vs. Chairman P.O.F Board, Wah Cantt and another [2002 SCMR 1691], relevant portion of which is as under:-

“Perusal of the meaning of above expression clearly indicates that anything which is done contrary to the good principles of morality is within the circuit of above expression. In fact, any act which runs contrary to justice, honesty, good moral values, established judicial norms of a society, falls within the scope of above expression. Keeping in view above, it is noted that Petitioners was tried and convicted for the offence mentioned earlier. The line of demarcation drawn by learned counsel for the Petitioner to test as to which offender falls within the ambit of above expression, is incorrect. An offence of murder or attempt to murder is definitely against the well-recognized principles of a society. Narrow interpretation to the extent as propounded by the learned counsel for the Petitioner, is not only unrealistic but also contrary to law. The Tribunal correctly reached the conclusion that the Petitioner is not entitled to the pensionary benefits. Learned Tribunal has already ordered to return G.P.F Fund, after deducting any amount outstanding against him.”

13. This Court cannot entertain the grievance of the Petitioner under Article 199 of the Constitution against disciplinary proceedings undertaken against him by the Respondent-Department. Consequently, the instant Petition stands dismissed in limine alongwith listed application[s]. However, the Petitioner may avail appropriate remedy as provided to him under the law.

14. The petition stands disposed of in the above terms.

JUDGE

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