

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2072 of 2017

Jawed Akhtar Petitioner

Versus

Secretary Education & others Respondents

Date of hearing: 30.08.2018

Mr. Imtiaz Mansoor Solangi Advocate for the Petitioner.

Mr. Waqarullah Korejo Advocate for the Respondent No. 1.

Malik Altaf Jawed Advocate for the Respondent No.2 & 3 along with Mr. Muhammad Nadeem Qureshi, Deputy Director Sindh Education Foundation.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition, the Petitioner is seeking declaration to the effect that the impugned order dated 03.03.2017 terminating the service of the Petitioner is without lawful authority.

2. Brief facts of the case in a nutshell are that the Petitioner was appointed as Junior Officer on contract basis for a period of 03 years commenced from 1st July 2013 to 30th June 2015 in Sindh Education Foundation/Respondent No.2 vide Office Order dated 14.04.2014. Petitioner has submitted that his service was continued without any break, however all of sudden he was

wrongly demoted from the post of Administrative Officer to Assistant without any fault on his part. Petitioner has submitted that on 01.02.2017 the Petitioner met with a serious road accident whereby he suffered radial head-fracture and was brought at Jinnah Postgraduate Medical Centre and thereafter shifted to South City Hospital Karachi, where he was treated and finally discharged with recommendation of Sick leave for three weeks. Petitioner has submitted that on 03.02.2017 his service was terminated by Respondent No.2, without assigning any cogent reason and hearing him. Petitioner being aggrieved by and dissatisfied with the impugned termination letter dated 03.02.2017 submitted departmental appeal on 11.03.2017 to the Competent Authority which was not properly heard and decided. Petitioner being aggrieved by non-action on the part of the Respondent No.2 has filed the instant petition on 05.04.2017.

3. Upon notice, Respondents filed para-wise comments and denied the allegations.

4. Mr. Imtiaz Mansoor Solangi, learned counsel for the Petitioner has contended that the Termination Order dated 03.03.2017 issued by the Respondent Sindh Education Foundation is in gross violation of law and Sindh Education Foundation Employees Service Rules, 1999; that the Petitioner has illegally been removed from service upon false allegations and by stigmatizing his personality; that the Petitioner has been condemned unheard and removed from service without holding a proper inquiry into the allegations leveled against him, which is

unwarranted under the law; that the act of the Respondent-Education Foundation is based on malafide intention and personal ego; that the Petitioner though appointed on contract basis, is entitled to a fair opportunity to clear his position in terms of Articles 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens by the State Functionaries. He has further contended that if the Termination Order conveys a message of a stigma an employee cannot be ousted from service without resorting to the procedure as provided under the aforesaid Service Rules, 1999, but in the matter no procedure was adopted but he was removed from the employment against the law and procedure; that it is a corny principle of law that even if a person is to be condemned for the misconduct and even if he is employed on contract basis or probation, he is entitled to a fair trial and an opportunity should be provided to him to clear his position but in the instant matter, the Petitioner was condemned unheard; that the Petitioner has been punished for raising voice against the corrupt practices, corruption and misuse of powers being practiced by the Officials within the Respondent-Sindh Education Foundation due to which he was terminated; that the Respondent-Education Foundation cannot be allowed to punish its employees for the illegal acts of its own. He lastly prays for allowing the instant Petition.

5. Malik Altaf Jawed learned counsel for the Respondent-Sindh Education Foundation has raised question of

maintainability of instant Petition; that the Authorities of the answering Respondents have neither acted malafidely nor violated any provision of law or prescribed Rules in discharging their duties; that Petitioner is not entitled to the relief claimed; that the Petitioner was appointed on contract basis and thus has no vested right to claim reinstatement of his service. He has further contended that the Petitioner was informed along with the Suspension Order. The Competent Authority had duly appointed Mr. Aziz Kalani, Mr. Rafique Mustafa Shaikh and Mr. Nadeem Qureshi as Inquiry Committee to probe into the allegations leveled against him; that the Inquiry Committee recommended termination of service of the Petitioner, consequently the service of the Petitioner was terminated by the Competent Authority of the Respondent-Sindh Education Foundation. He lastly prays that Petition being not maintainable is liable to be dismissed.

6. Mr. Waqarullah Korejo, learned counsel for the Respondent No. 1 has supported the stance taken by the learned Counsel for the Respondent- Sindh Education Foundation.

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

8. Foremost, we would address the question of maintainability of instant Petition under Article 199 of the Constitution. Admittedly, the Sindh Education Foundation Employees Service Rules, 199 have been framed under Section 16 of the Sindh Education Foundation Act, 1992 duly approved by the Government of Sindh.

We have to see whether or not the statutes, referred to above, are statutory in nature. Perusal of Section 16 of Sindh Education Foundation Act 1992 reveals that these statutes are statutory in nature and Sindh Education Foundation Employees Service Rules 1999 are statutory Rules of Service. Reference can safely be placed on the case of Muhammad Zaman etc. Vs. Government of Pakistan (2017 SCMR 571) wherein it was held as follows:-

“The test of whether rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the nature and efficacy of such rules/regulations. Court had to see whether the rules/regulations in question dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which event they would be statutory.”

9. We, therefore, are of the considered view that issue in hand is fully covered by the Judgment passed by the Hon'ble Apex Court referred to hereinabove, which provides that the Constitutional Jurisdiction of this Court can be invoked against the Department having statutory Rules of service, therefore the instant petition can be heard and decided on merits being maintainable.

10. Allegations against the Petitioner are that he has been found involved in the female harassment at the work place and his track record was also not satisfactory. The other allegation against the Petitioner was that he leaves the office early without permission of the Competent Authority and he continued the same practice. The third allegation against the Petitioner was that he used filthy language against the senior officials, which falls within the ambit of misconduct, which on being proved will render the employee to be dealt with punishment of dismissal from service.

Record reflects that the aforesaid allegations against the Petitioner were enquired by the Committee constituted vide letter dated 19th June 2016. The Enquiry Committee submitted Enquiry Report and recommended as under:-

V. RECOMMENDATIONS

“1. As per the clause 18 & 18(a) of the SEF employment contract, contract of Mr. Javed Akhtar Jr. Officer, Admin, SEF, may be terminated on the basis of his past/track record and unacceptable/objectionable attitude in consideration.

OR

2. As per the clause 05 of the SEF employment contract, Mr. Javed Akhtar , Jr. Officer, Admin, SEF, may be demoted as Assistant with corresponding reduction in his emoluments down to salary Rs. 25,000/- and kept him under strict watch/ observation for a period of three months and transferred to the region. Upon review of his performance during three months, management may decide his professional fate subsequently.”

11. Record further reflects that the Petitioner was involved in offensive and disrespectful behavior/attitude and Show Cause Notices were served upon him even a first information report was also lodged against him at a police station.

12. We have perused the Appointment Order dated 14.04.2014 of the Petitioner, which is a contractual appointment. Record does not reflect that the service of the Petitioner was regularized by the Sindh Education Foundation. We are of the view that such appointment would be terminated on the expiry of contract period or any extended period on the choice of Employer or the Appointing Authority. The case of the Petitioner is governed by the principle of Master and Servant, therefore, the Petitioner does not have any vested right to seek reinstatement in service. It is a well settled law that contract employee cannot claim any vested right, even for regularization of service.

13. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondents on the allegations leveled upon him. Record reflects that though the Petitioner was a contract employee of the Respondents, however he was issued Show Cause Notices, which were replied by him. Learned counsel for the Respondents has stated at the bar that Petitioner was issued notices to appear before the Inquiry Committee and his interview was conducted by the Inquiry Committee, thereafter the Inquiry Committee submitted its Inquiry Report and recommended termination of the service of the Petitioner.

14. The perusal of termination Order dated 03.03.2017 prima facie show that Petitioner was served with a Show Cause Notice and his reply was found unsatisfactory. Petitioner was reprimanded many times not to leave the office early and also without permission but he continued his practice and used foul language. Petitioner was provided an opportunity of hearing and he produced medical certificate issued by a Private Hospital and requested for three weeks' leave as advised in the said Medical Certificate. Such leave was granted to the Petitioner w.e.f. February 2, 2017 and he was directed to appear for personal hearing on February 24, 2017 along with a Medical Certificate from the Medical Superintendent Services Hospital Karachi but he failed to produce the said Certificate. During the course of arguments, we enquired from the learned counsel for the Petitioner that as to why the Petitioner did not attend the Services Hospital and produced such Medical Certificate. Learned counsel in reply to the query has

argued that the Medical Certificates produced by the Petitioner were also relevant to substantiate his claim of sustaining head injury, for which he was advised to take rest for three weeks. We under the given circumstances cannot dilate upon on the aforesaid issue, which requires evidence.

15. The question involving the controversy at hand is whether the service of a contract employee can be dispensed with at any time? In our view it has now become a principle of law that the service of temporary employees could be terminated on 14 days' notice or pay in lieu thereof. Respondents have no ostensible reason to put false allegations of harassment to the female staff of SEF, offensive, disrespectful behavior and remaining absent from the duty by the Petitioner. During the course of arguments, both the parties put allegations and counter allegations against each other on this issue. In this regard, we would like to state that it is a well settled law that disputed question of facts cannot be adjudicated upon in Constitutional jurisdiction of this Court.

16. In the present case, there is no material placed before us, by which we can conclude that Impugned Termination Order dated 03.03.2017 has been wrongly issued by the Respondents. The Petitioner has 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 issuance of Impugned Order dated 03.03.2017 is not borne out of the record. In our view ample opportunity by way of fulfilling all the legal & codal formalities, which includes issuance of Show

Cause Notice, conducting inquiry etc. have duly been fulfilled and such aspects have not been controverted by the learned counsel for the Petitioner. Hence at this juncture it could not be stressed that opportunity of hearing was not provided or the allegations as mentioned in the termination order, do not find mention in the Show Cause Notice since all the allegation leveled against the Petitioners were duly communicated in the Show Cause Notice issued to him and are also duly reflected in the inquiry proceedings initiated against him so also termination letter.

17. In view of the foregoing, the Constitutional Petition is found to be devoid of any merit and is accordingly dismissed along with the listed application(s).

Karachi
Dated:

JUDGE

JUDGE

Shafi Muhammad P/A