

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1920 of 2016

Ishtiaq AhmedPetitioner

Versus

Government of Sindh and others..... Respondents

Date of hearing: 15.10.2018

Mr. Muhammad Haseeb Jamali Advocate for the Petitioner.
Mr. Usman Tufail Shaikh Advocate for Respondent No. 2 to 6.
Chaudhary Muhammad Rafiq Rajorvi, AAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the instant petition, Petitioner has impugned the office order bearing No. LARP-KDA Wing/ KMC/2015/484 dated 14.12.2015 whereby he has been relieved / repatriated to his parent department that is Pakistan Navy. The reason assigned by the competent authority in the comments is that the Honorable Supreme Court of Pakistan passed certain directives in Cr. Original Petition No. 89/2011 dated 12.06.2013 (2013 SCMR 1752) and Civil Review Petition No. 193/2013 (2015 SCMR 456) to repatriate the officials, absorbed in various departments of Government of Sindh, to their parent departments.

2. The Petitioner's claim is that on 04.07.2006, he was initially appointed as driver in BPS-7 on permanent basis in City District Government, Karachi, Lines Area re-development Project (LARP-CDGK). It is further averred by the Petitioner that the Respondent department repatriated him to his previous department vide office order dated 11.10.2013 by exploiting the decision rendered by the Hon'ble Supreme Court of Pakistan as discussed supra. Petitioner has further added that on his representation, the aforesaid office order was cancelled vide letter dated 27.11.2013. Petitioner has submitted that under the garb of enquiry/investigation in relation to the affairs of LARP-CDGK Karachi, he was summoned by the NAB Authorities in the year 2015. Petitioner being aggrieved by and dissatisfied with the aforesaid action of NAB Authorities, approached this Court by filing C.P. No.D-6500 of 2015 and this Court vide order dated 19.10.2015 directed the NAB to act in accordance with law. Petitioner has submitted that the Respondent department due to their personal vendetta again issued the impugned office order dated 14.12.2015 by relieving him from his posting to report to his previous department i.e. Pakistan Navy. Petitioner being aggrieved by and dissatisfied with the impugned office order dated 14.12.2015 has filed the captioned petition on 21.03.2016.

3. Para wise comments were filed by the Respondents No. 4 & 5, who controverted the stand taken by the Petitioner.

4. Mr. Muhammad Haseeb Jamali, the learned counsel for the Petitioner has strongly contended that in pursuance of

decision/circular dated 16.06.2016 issued by the Respondent department, invited applications for the post of Driver in the LARP-CDGK and Petitioner applied for the aforesaid post, through proper channel, which was accepted accordingly, resultantly the Petitioner was appointed as Driver in BPS-7 vide office order dated 04.07.2006. He next contended that the Petitioner is a permanent employee of LARP-CDGK and not Pakistan Navy as portrayed by the learned counsel for Respondents; that the service of the Petitioner cannot be repatriated to the Armed Forces i.e. Pakistan Navy through the impugned office order, unilaterally without hearing the Petitioner as provided under the law; that the Petitioner was relieved from his posting vide office order dated 14.12.2015 with malafide intention in order to accommodate the blue-eyed person of the Respondents in place of the Petitioner; that the impugned office order dated 14.12.2015 is also against the basic spirit of law, whereby the basic rights of the Petitioner have been infringed; that the salary of the Petitioner has been wrongfully withheld by the Respondents in violation of law; that the impugned office order is void ab-initio against the principles of natural justice; that the service of the Petitioner had wrongly been repatriated to Pakistan Navy; that the decision rendered by the Hon'ble Supreme Court of Pakistan in Cr. Original Petition No. 89/2011 dated 12.06.2013 (2013 SCMR 1752) and Civil Review Petition o. 193/2013 (2015 SCMR 456) is not applicable in the case of the Petitioner as no specific order passed by the Honorable Supreme Court is in the field against the Petitioner; that the parent department of the Petitioner is LARP-CDGK and not

Pakistan Navy; that this Court may take cognizance of hardship, which the Petitioner has faced, throughout this period. He lastly prayed for allowing the instant petition.

5. Mr. Usman Tufail Shaikh, learned counsel for Respondent No. 2 to 6 supported the impugned office order dated 14.12.2015 and argued that the Respondents have acted in accordance with the decision rendered by the Hon'ble Supreme Court of Pakistan in Cr. Original Petition No.89/2011 dated 12.06.2013 (2013 SCMR 1752) and Civil Review Petition No. 193/2013 (2015 SCMR 456) on the issue of absorption. He referred to comments of Respondent No. 2 to 6 and added that the Petitioner was rightly repatriated to his parent department. He lastly prayed for dismissal of the instant petition.

6. Mr. Ch. Muhammad Rafiq Rajorvi, learned AAG representing Respondent No.1 has supported the stance taken by the learned Counsel for the Respondent No 2 to 6.

7. During the course of arguments we asked from the learned counsel representing the Respondents to place on record such copy of the order passed by the Hon'ble Supreme Court of Pakistan against the Petitioner. Learned counsel for Respondent No.2 to 6 in reply to the query stated that this was a general order of repatriation of all employees absorbed in various departments of Government of Sindh. He next submitted that the Petitioner was absorbed in the LARP-CDGK that is why he was repatriated to his parent department i.e. Pakistan Navy. Be that as it may, we intend to decide the matter on merit.

8. We have considered the submissions of the learned counsel for the parties and perused the material available on record.

9. On merits, the basic grievance of the Petitioner is that he is a permanent employee of LARP-CDGK by virtue of his initial appointment Vide office order dated 04.07.2006 and not Pakistan Navy and was wrongly relieved from LARP-CDGK vide office order dated 14.12.2015. The reason assigned by the Competent Authority, in the said impugned relieving order is as follows:-

OFFICE ORDER

In compliance of case No. 339/2013 of the Supreme Court of Pakistan, Mr. Ishtiaq Ahmed Tracer/Driver employee working in Lines Area Re-Development Project Scheme-35 KDA Wing KMC is hereby relieved with immediate effect and directed report to his parent Department.

**DEPUTY DIRECTOR (ADMN)
LARP KDA WING KMC**

10. To substantiate the claim, Respondent No 4 & 5 has filed statement dated 14.12.2016 accompanying documents showing details of service record of the Petitioner as well as relied upon other documents, placed on record, which are reproduced as follows:-

- i) *Letter dated 08.12.2015 issued by Government of Sindh, Services, General Administration and coordination department.*
- ii) *Letter dated 01.08.2006 issued by Commander Pakistan Navy, Commanding Officer forwarding of service documents of the Petitioner.*
- iii) *Letter dated 17.07.2006 issued by Commander Pakistan Navy, Commanding Officer regarding relieving of the Petitioner to report to LARP-CDGK.*
- iv) *Service Book Sheet No. D-No.-D-14489.*
- v) *Extract of approval of competent authority i.e. Project Director LARP-CDGK, regarding fixation of pay in B-7 as Driver in favor of the Petitioner.*
- vi) *Joining report dated 19.07.2006.*
- vii) *Letter dated 08.08.2007 of CDGK regarding transfer of G.P. Fund.*
- viii) *Letter dated 19.12.2007 issued by Account Officer (Fund).*
- ix) *Letter dated 24.05.2007*
- x) *Letter dated 07.02.2007.*
- xi) *Letter dated 11.02.2006.*
- xii) *Letter dated 24.02.2007.*
- xiii) *Letter dated 04.05.2007.*
- xiv) *Letter dated 08.08.2007.*
- xv) *Letter dated 04.07.2006.*

11. The pivotal question before us is as to whether the Petitioner was appointed afresh in the Respondent department in the year 2006 "Through Proper Channel" or he was absorbed in LARP-CDGK.

12. Perusal of the appointment order dated 04.07.2006 issued in favor of the Petitioner explicitly show that it was his initial appointment and not absorption, an excerpt of the same is reproduced as under:-

APPOINTMENT ORDER

With the approval of competent Authority dated 4th July 2006, Mr. Ishtiaq Ahmed S/o Shamshad Ali is hereby appointed as Driver in Grade-7 (viz Rs. 2555-140-6755) plus usual allowances, admissible under the (Defunct) KDA, CDGK rules with effect from the date of commencement of his joining on the following Terms & Conditions:-

1. *He will be probation for a period of two years which is extendable.*
2. *He must be National of Pakistan and produce a certificate of Class-1 Gazetted Officer in support thereof.*
3. *He should produce photocopy of CNIC, Domicile certificate etc.*
4. *During/before completion of probationary period the appointment is terminate-able at a fortnight's notice on either side without assigning any reason thereof.*
5. *He should produce Original certificates of qualifications and experience along with attested photocopies.*
6. *A declaring to the effect that he has not been compulsory retired. Removed, dismissed or reduced the Rank under the Public Statutory Scrutiny Ordinance 1959.*
7. *In all matters of service and discipline he will be subject to (Defunct) KDA/CDGK rules and regulations that may be issued from time to time.*
8. *If the offer is acceptable to Mr. Ishtiaq Ahmed on the terms stated above he should report for duty to the Head of Department of LARP, CDGK within 14 days from the receipt of this letter failing which this offer would be treated as cancelled.*

**DEPUTY DISTRICT OFFICER
(ADMN) LARP, CDGK)**

13. Record reflects that consequent upon appointment of the Petitioner as Driver in BPS-7 in LARP-CDGK, the Respondent department requested the parent department of the Petitioner to relieve the Petitioner from his duties in Pakistan Navy. Prima-facie it shows that the Petitioner was relieved from Pakistan Navy along with service book and the Petitioner served the Respondent

department till the impugned Office order dated 14.12.2015 was issued.

14. Record further reflects the Respondent-department vide letter dated 12.01.2016 requested the competent authority to cancel/ withdraw the impugned order dated 14.12.2015 on the premise that Petitioner was appointed in LARP-CDGK after completing all codal formalities. An excerpt of the same is reproduced as under:-

Reference: Letter No. LARP/KDA Wing/KMC/2015/484. Dated 14.12.2015.

Please refer Legal Notice served by Mr. Rasheed Ashraf, Advocate High Court dated 21.02.2015 on the subject under reference, which is quite self-explanatory, while going through the papers attached with the Legal Notice it is transpired that the Officer Order bearing No. LARP/KDA Wing/KMC/2015/484, dated 14.12.2015 is not in accordance with Supreme Court of Pakistan Decision in the case of 339/2013.

I am directed to request to please cancel/withdraw the order at once as Mr. Ishtiaq Ahmed Tracer was appointed in LARP after completing all codal formalities.

*Director (Legal Affairs)
Human Resources management KMC*

15. Next we take up the question as to whether the Petitioner was absorbed in LARP-CDGK by way of transfer from Pakistan Navy or otherwise. Prima-facie record does not reflect that Petitioner was absorbed in LARP-CDGK as driver in BPS-7 by way of transfer from Pakistan Navy, even if it is, the same cannot be treated as absorption in the transferee Department, for the simple reason that law does not permit such absorption, if any made by the Respondents, we are fortified by the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch Vs. Province of Sindh & others (2015 SCMR 456) on the aforesaid issue, which is very clear in terms, therefore in such a situation, when the Petitioner was appointed afresh in the LARP-CDGK in the year 2006. In the light of foregoing, we are of the view

that the Petitioner cannot maintain lien in Pakistan Navy after his permanent appointment in different department.

16. The Respondents failed to demonstrate that Petitioner meet the criteria and test laid down by the Hon'ble Apex Court in Crl. Original Petition No.89/2011 to justify repatriation of the petitioner to his purported parent department. In our view the case of the Petitioner does not fall within the ambit of absorption to attract the principles enunciated by the Honorable Supreme court of Pakistan in the case of Ali Azhar Khan Baloch as discussed supra.

17. In the light of above facts and circumstances of the case, we do not find any justifiable reason on the part of Respondents to repatriate the Petitioner to his parent Department i.e. Pakistan Navy, for the simple reason that Petitioner was never absorbed in LARP-CDGK as he was appointed afresh as Driver in BPS-7 in the year 2006 and he continued to serve the Respondent-department.

18. From the facts noted above and the documents furnished by the Respondents, prima facie it appears that the parent department of the Petitioner is LARP-CDGK and not Pakistan Navy. In view of the above clear position of the case, the Petitioner is entitled to claim his salary from the LARP-CDGK from the date he was repatriated/relieved from his duty.

19. Keeping in view the above facts and circumstances of the case, we are of the considered view that the Petitioner was an employee of Respondent department and his repatriation to Pakistan Navy was wrongly issued vide impugned order dated 14.12.2015.

20. As a result of above discussion, this petition is disposed of in the terms whereby the competent authority of the Respondent department is directed to take back the decision dated 14.12.2015 and allow the Petitioner to resume his duty in accordance with law and the issue of his salary in the intervening period be decided within a period of one month from the date of decision of this Court.

21. The instant Petition is disposed of in the above terms along with the listed application(s).

JUDGE

JUDGE

Shafi Muhammad /PA