

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

Mr. Justice Adnan-ul-Karim Memon

Mrs. Justice Kausar Sultana Hussain

**C.P No. D- 6701 of 2015**

Arbab Ali Mooro.....Petitioner

V/s

Province of Sindh & others.....Respondents

**Date of hearing: 22.10.2018**

Petitioner present in person.

Mr. Ali Safdar Depar, AAG and Mr. Imran Ali Shaikh, internee of AG office

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:-** The Petitioner is seeking reinstatement of his service and declaration to the effect that the order dated 01.09.2014 issued by the Respondent-Chairman District Zakat Committee Naushero Feroz is illegal, void ab-initio and having no legal effect.

2. Initially, Petitioner had filed the captioned petition for reinstatement of his service, which was terminated by the Respondent-Chairman District Zakat Committee Naushero Feroz vide order dated 01.09.2014, subsequently he was appointed afresh vide order dated 1.1.2016 and his contract period was extended up to 31.12.2017, but in the meanwhile, Respondent-Chairman dispensed with his service vide minutes of meeting dated 28.7.2017. Petitioner has submitted that during his service tenure, he pointed out fraudulent transaction in District Zakat and Ushr Office in the year 2008, thereafter inquiry was initiated against the Chairman District & Zakat Committee, Naushero Feroze vide letter dated 4.11.2008. Petitioner has submitted due to

his actions of pointing out illegalities and irregularities in the department, his service was again terminated on 01.09.2014. Petitioner has averred that the Respondents No. 2 had acted without lawful authority thus has violated the basic provision of Article-25 of the Constitution of the Islamic Republic of Pakistan. Petitioner being aggrieved by and dissatisfied with the aforesaid action of the Respondents has filed the instant petition on 20.10.2014.

3. Petitioner, who is present in person has submitted that due to personal grudge of the Respondent No.3, his service was wrongly terminated vide resolution dated 28.7.2017; that the appointment of the Petitioner cannot be terminated without issuing Show Cause Notice and completing other legal and codal formalities under the law, thus according to him, the entire proceedings undertaken by the Respondent No.3 are nullity in the eyes of law; He continued by stating that if there is a maladministration, malpractice and corrupt practices in public funds, it is the responsibility of the Respondent No. 1 & 2 to look into that aspect and take remedial measures and it is not the responsibility of the Petitioner to be blamed. Per Petitioner, he has been victimized from his legitimate and lawful rights and he expressed his views against the corruption and corrupt practices made in the Respondent-department, therefore, the comments filed by the Respondents cannot be considered as Gospel truth to deprive the Petitioner of his job on incorrect pleas; that depriving the Petitioner from his job amounts to depriving from his livelihood, therefore the instant Petition can be heard and decided on merits; that all the acts of the Respondents are against the law. He prays for reinstatement of his service.

4. During the course of the arguments, we asked from the Petitioner as how the instant petition is maintainable on the allegations made by him against the Respondents, which cannot be adjudicated without recording the evidence, he in reply to the query submitted that the inquiry officer had already opined against the Respondents and he suggested that the high power committee may further probe the allegations against the delinquent officials/Respondents. On merits he has submitted that though his appointment was temporary and contractual, but his service could not have been dispensed with in the manner as has been done in the case of the Petitioner, therefore the termination order cannot remain in field, even otherwise, which is against the basic principle of law. Petitioner pleads personal bias against the Respondent No.3.

5. We have heard the parties at length and have perused the entire material available on record.

6. From perusal of the pleadings of the parties, it transpires that they have made claims and counter claims against each other.

7. The pivotal question before us is that whether service of the Petitioner can be terminated without providing an opportunity of hearing. It is submitted by the Petitioner that Respondents had committed grave illegalities in disbursement of Zakat funds, thus cannot claim immunity and upon his disclosure his service was terminated.

8. We, on the basis of contentions of the parties with the material produced before us, have reached to the conclusion that we cannot determine the veracity of these allegations and counter allegations as these are disputed questions of facts between the

parties, which cannot be adjudicated by this Court, while exercising the Constitutional Jurisdiction.

9. In view of the foregoing, this Court cannot give definite findings on the aforesaid pleas of the parties and leave it for the Competent Authority to determine the genuineness or otherwise of the claim and counter claims, therefore on the aforesaid plea the Constitutional Petition cannot be maintained.

10. In view of the forgoing, we direct the Secretary Zakat and ushr to constitute a Committee headed by him and another appropriate member co-opted by him, conduct an inquiry of embezzlement in Zakat/public funds, after providing ample opportunity of hearing to the Petitioner and fix responsibility in the matter and take action against the delinquent officials strictly in accordance with law and submit report to this Court through Registrar of this Court, within a period of 90 days from the date of receipt of this order.

11. Before parting with this order, we deem it appropriate to direct the Secretary to look into the service matter of the Petitioner as he pointed out certain corrupt practices; his case may be considered for sympathetic consideration in accordance with law.

JUDGE

JUDGE

Karachi  
Dated:- 14.11.2018.