

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 7936 of 2018

Saeed Ahmed.....Petitioner

Versus

Prime Minister of Pakistan & others.....Respondents

Date of hearing: 05.12.2018

Mr. Faiz Rasool Jalbani, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- By the above Constitution Petition, the Petitioner has challenged the validity of the notification No. F.1 (9)Bkg-III/2017 dated 15.10.2018, whereby his service was terminated, as President of the National Bank of Pakistan (NBP) by the Respondent No. 2, Federation of Pakistan through Secretary, Ministry of Finance, Government of Pakistan. It has been prayed that the notification of his termination be declared illegal, null and void. It has further been prayed that the Petitioner may be allowed to resume his office and perform his functions in the capacity of President of (NBP) till 1.1.2019.

2. The Petitioner has submitted that he was appointed as President/Chief Executive Officer, National Bank of Pakistan on 22.3.2017, for a term ending on 01.01.2019; that during his tenure of service, he was suspended from the service vide Notification dated 28.8.2018 by the Government of Pakistan, Finance Division. Petitioner being aggrieved by and dissatisfied with the Notification dated 28.8,2018, assailed the same before the learned Single Judge of Islamabad High Court, in Writ Petition No. 3264/2018, which was dismissed vide order dated 24.9.2018. The

Petitioner has submitted that he impugned the order of the learned Single Judge before the Division Bench of the Islamabad High Court in Intra Court Appeal No. 403/2018, which was dismissed as withdrawn vide order dated 31.10.2018. Petitioner has submitted that his service was dispensed with vide Notification dated 15.10.2018 issued by the Respondents. Petitioner being aggrieved by and dissatisfied with the Termination Order has approached this Court on 12.11.2018.

3. During the course of arguments, we queried from the learned counsel for the Petitioner as to how the instant Petition is maintainable against the aforesaid Termination Order before this Court. He in reply to the query has submitted that the impugned Notification has been issued by the Respondent No.2 without allowing the Petitioner to complete the tenure of his service; that the Petitioner has been condemned unheard on the allegation leveled against him; that the impugned Notification is arbitrary, fanciful, capricious and repugnant of the morality; that mere pendency of the Accountability Reference/Criminal Case is no ground to terminate the service of the Petitioner; that since no departmental proceedings are pending against the Petitioner, therefore, his service ought not to have been terminated by the Respondents. He has lastly prayed for allowing the instant Petition.

4. We have heard the learned counsel for the Petitioner and have gone through the relevant provisions of the law and Constitution. It may be stated that in view of urgency shown by learned counsel for the Petitioner on the last date of hearing viz. 14.11.2018, this petition was fixed today for hearing of stay application as well as main case. Today the learned counsel for the Petitioner has argued the entire case on merits.

5. Foremost, we would address the question of maintainability of the instant Petition under Article 199 of the Constitution.

6. The main question falling for determination by this Court in the instant case is whether Section 11(3) (a) of the Banks (Nationalization) Act 1974, which related to the appointment of Chairman, President and members of the NBP Board, therefore, for better understanding to determine this question, we have to shed light upon the Section 11 of the Act of 1974:

**(1).....
(2).....
(3) The Chairman, the President, and other members of the Board representing the Federal Government’s direct and indirect shareholding” –**

(a) Shall be appointed by the Federal Government, in consultation with the State Bank, for a term of three years, on such terms and conditions as may be fixed by the General Meeting of the bank; provided that the Chairman and the President shall be appointed from amongst professional bankers whose names are included in a panel of bankers qualified to be maintained and varied, from time to time, by the State Bank;

(b) May be removed for misconduct or physical and mental incapacity before the expiry of the three years’ term by the Federal Government in consultation with the State Bank;

(c) Shall stand removed if he becomes ineligible on any of the grounds specified in subsection (12); and

(d)”

7. We have noticed that the General Clauses Act, 1897 also gives power to the Competent Authority to make appointment or to dismiss any person appointed in exercise of that power.

8. In view of the foregoing provision of law, in our view, since the basis of appointment of the Petitioner was contractual and the Respondents have suspended the services of the Petitioner, in view of the charges of corruption and corrupt practices as his case was forwarded to the Competent Authority and the Respondent No.3

decided at the first instance to suspend the service of the Petitioner with effect from 28.8.2018.

9. Record reflects that the Petitioner has failed to achieve favorable result from the learned Single Bench and Division Bench of Islamabad High court and thereafter he has attempted to convince this court on the similar grounds. Perusal of record does not reflect that the service of the Petitioner was regularized by the Respondents. 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 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 of his contractual service. It is a well settled law that contract employee cannot claim any vested right, even for regularization of service.

10. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondents before issuing the impugned Notification No. F.1 (9)Bkg-III/2017 dated 15.10.2018. In the present case, there is no material placed before us by which we can conclude that Impugned Notification has been wrongly issued by the Respondents. The Petitioner has failed to establish that he has any fundamental/ vested right to remain on the contractual post. Therefore, the argument of the Petitioner that he was not heard before issuance of Impugned Notification dated 15.10.2018 is not tenable in the eyes of law.

11. We, thus are of the view that the instant Petition is not maintainable, prima-facie on the ground that the Petitioner was charged along with absconding accused, on the following allegations:-

- i. that certain bank accounts were found in his name and certain assets, which were under investigation by NAB authorities;**
- ii. that seven accounts were opened in name of the Petitioner and used by first Hajveri Modarba Company owned by absconding accused and Petitioner has been shown as one of the Directors' along with absconding accused;**
- iii. that Petitioner has been charged that he intentionally allowed absconding accused to open Bank Account in his name to protect his ill-gotten money and to protect him from penal liability by providing a cover to his criminal acts and the first Hajveri Modarba took finance facility by mortgaging its shares and his account.**
- iv. that he aided, assisted and abetted the absconding accused No.1 in commission of offences under section 9(a) (v) punishable under Section 10 NAO 1999.**

12. Record reflects that NAB Reference was filed against the Petitioner and others before the learned Accountability Court at Islamabad, under Section 9(a)(v) and (xii), punishable under section 10 NAO, which is pending adjudication.

13. We are cognizant of the fact the President NBP can be removed for misconduct, before the expiry of the three years' term by the Federal Government, in consultation with the State Bank of Pakistan.

14. In the light of forgoing discussion, we are of the considered view that merit includes qualification for certain posts in Statutory/Public Sector Organizations. The power to prescribe or modify the said criteria vests in the Federal Government, pursuant to Article 90 of the Constitution of Pakistan. The said Article vests exclusive power in the Executive not only to appoint, but to remove, heads of Statutory Bodies, Autonomous Bodies, Semi-

Autonomous Bodies, Regulatory Bodies, Public Sector Companies/State Owned Entities etc. and also to make appointment on merits under the Acts / Ordinances and Rules framed thereunder. The Cabinet/Competent Authority is well within its right to prescribe criteria under Article 90 of the Constitution of Pakistan. Responsibility of fixing criteria of appointment and removal of Public Sector Companies/State owned Entities which primarily falls on the Executive Branch of the State, subject to the law. It is also a settled law that Courts ordinarily refrain from interfering in the policy making domain of the Executives, unless it is shown that it has violated the fundamental rights of the citizens of Pakistan.

15. Perusal of record reveals that the Petitioner approached the learned Single Judge at Islamabad High Court who declined to exercise the discretion in favour of the Petitioner. His petition was dismissed, thereafter he approached learned Division Bench of Islamabad High court by way of filing ICA No. 403/2018 which too was dismissed as not pressed vide order dated 31.10.2018, with the following observations:-

**“At the very outset counsel for the appellant wants to withdraw the instant appeal under the instructions of his client.
2. In view of above, instant appeal is dismissed as withdrawn.”**

16. We have examined every aspect of the case and are of the considered view that the allegations leveled against the Petitioner were regarding assisting and abating main accused in financial transactions which matter is subjudice before the competent Court of law, therefore, at this stage we are not inclined to set aside the Notification dated 15.10.2018 issued by the Respondent No.2, whereby his service was terminated.

17. In the light of above facts and circumstances of the case the instant Petition is found to be devoid of merits and is accordingly dismissed in limini along with the listed application(s).

Karachi:
Dated: 10.12.2018.

JUDGE

JUDGE

Nadir/PA.