

Order Sheet  
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No. D –6908 of 2018**

Shahid Hussain

*Versus*

The Registrar High Court of Sindh and 02 others

Date of hearing  
& order : 15.10.2020

Mr. Abdul Tauheed Khan, advocate for the petitioner.

Mr. Ali Safdar Debar, Assistant Advocate General along with Ms. Saima Imdad Mangi, Assistant Advocate General.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** – - Captioned Petition was disposed of vide order dated 29.10.2018 with the following observation:

“6. It is seen from the comments filed by the respondent No.2 that the main reason for not inducting the petitioner being that the job of the Naib Qasid is tedious and since admittedly the petitioner is not capable of heavy load/work hence he was not considered for the said post. The medical record of the petitioner has also been perused from where it is evident that the petitioner has been declared medically not fully fit but not incapacitated and could do some light work. Though there are versions and counter versions of the petitioner and the respondent No.2 on the aspect that the petitioner on the basis of the medical reports can perform some light work and vice versa the petitioner was Naib Qasid hence could not perform the nature of the job, which is required from him hence could not be inducted. We are of the view that some leniency in the case of the petitioner could be shown in the interest of justice as well as in view of the fact that the order whereby he was retired on the medical ground has been set aside by the Sindh Subordinate Judiciary Service Tribunal.

7. We, therefore, under these circumstances, and as stated above in the interest of justice which should always be the paramount importance for every Court, once again direct the respondent No.2 to consider the matter of the petitioner afresh and if he could be assigned any duty requiring light work then the petitioner may be accommodated purely on humanitarian grounds keeping in view his health condition in a sympathetic manner. Apropos the claim of salaries is concerned, it is expected from the respondent No.2 that this issue would also be decided by him compassionately while deciding the matter in view of the order dated 24.02.2018 passed by the Sindh Subordinate Judiciary Service Tribunal. With these directions, the petition stands disposed of.”

2. On 20.05.2019, Petitioner filed Application bearing CMA No.16224/2019 for direction to the Respondent No.2 for back benefits with effect from 01.12.2014 till 07.11.2018.

3. Mr. Abdul Tauheed Khan learned counsel for the petitioner has argued that Respondent No.2 has not complied with the above specified order of this Court. Therefore, prays for direction to the Respondent No.2 to comply with the said order and release back benefits of the Petitioner.

4. Mr. Ali Safdar Depar, Assistant Advocate General refuted the claim of the petitioner and referred to the Compliance Report dated 19.9.2020 on behalf of Respondent No.2. Learned counsel argued that petitioner [Shahid Hussain (Naib Qasid)] was heard by Respondent No.2 and while taking a lenient view about his health ordered the release of his salaries from the date of joining i.e. 07<sup>th</sup> November 2018 to the current month, after deduction of his leave encashment amount of Rs.1,06,200.00 (Rupees one hundred six thousand & two hundred only) as per rules & regulations. However, the period from 01.12.2014 to 06.11.2018 was treated as extraordinary leave without pay / salary. He further contended that the Applicant (Petitioner) has the alternate remedy to challenge the aforesaid order before the Sindh Subordinate Judiciary Service Tribunal. Lastly, he prayed for dismissal of the listed applications.

5. We have heard learned counsel for the parties, perused the material available on the record, and the decision dated 30.11.2019 of Respondent No.2 relied upon by the learned AAG.

6. The short question that arises for consideration, in the present application i.e. CMA No. 16224/2019 is whether the decision of respondent No.2 to treat the period between 01.12.2014 to 06.11.18, during which the petitioner remained absent from service, as "non-duty", is legally sustainable or not?

7. The Petitioner has specifically pleaded that after his reinstatement and joining of service, he was entitled to service benefits with effect from his purported retirement from service on medical ground in the year 2014 till he joined the service of Respondent No.2 in the year 2018. On the aforesaid proposition, Fundamental Rule 54 is clear in its terms. For ready reference, Fundamental Rule 54 is reproduced as under:-

“F.R. 54 Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty –

- (a) If he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal ; or
- (b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs.”

8. In our view, cases where a Government servant, who had been dismissed / removed or compulsory retired, is reinstated consequent to the setting aside of such dismissal / removal or compulsory retirement by a Court of law is expressly covered by FR-54. FR-54 stipulates that where such dismissal / removal / compulsory retirement is set aside by the Court, and the Government servant is consequently reinstated without further inquiry, the period during which he remained absent is required to be regularized, and pay and allowances paid to the Government servant under the said FR-54. For resolving the issue at hand we hereby reproduce the Order dated 30.11.2019 of Respondent No.2 for ready reference:

1. *That in compliance of the order dated 18.10.2018 of Honorable High Court of Sindh, Karachi Shahid Hussain, Naib Qasid was allowed to join his duty on 07<sup>th</sup> November 2018 with direction to appear before the Medical Superintendent Services Hospital Karachi as per advised.*
2. *As per record, Shahid Hussain Naib Qasid after his retirement he has received leave encashment amount of Rs.1,06,200/- in lieu of his retirement as per rules.*
3. *That Shahid Hussain, Naib Qasid filed an application for release of his salaries as he has been restored on his service by the Honorable High Court and he resumed his duties from 07<sup>th</sup> November 2018, however, till date he did not receive his salary.*
4. *That such application, the report was called from the Office Superintendent & Accountant of District & Sessions Court Karachi South, who submitted that in compliance of the Order of Honorable High Court of Sindh, Karachi Shahid Hussain (Naib Qasid) was allowed to join his duty vide order dated 07.11.2018 with direction to appear before the medical Superintendent Services Hospital Karachi, but he failed to appear before the Medical Superintendent, as for the release of his salary, he was repeatedly directed to refund, the leave encashment amount of Rs. 1,06,200/- in lieu of his retirement received by him, after retirement in the year 2014 which is to be refunded & in this regard the applicant submitted an application in writing that the amount of Rs. 1,06,200/- received by him may be deducted from his salaries and the remaining amount be paid to him.*

5. *Applicant Shahid Hussain (Naib Qasid) heard in person and taken lenient view about his health and allow the instant application partly vide order dated 29.11.2019 with direction to Accountant General Sindh, Karachi to release his salaries from the date of his joining i.e. 07<sup>th</sup> November 2019 to the current month, after deduction of his leave encashment amount of Rs. 1, 06,200/- (Rupees one lac six thousand & two hundred only) as per rules & regulations. As per the period of retirement from 01<sup>st</sup> day of December 2014 to 06<sup>th</sup> November 2018 be treated as extraordinary leave without pay/salary.*

9. On 19.9.2020, Respondent No.2 submitted another report, alleging therein commission of forgery in the deposit of cheque in the account of Petitioner. An excerpt of the said Report dated 19.9.2020 is as follows:

*“3. That the allegation of the petitioner regarding forgery in the deposit of cheque in his account of Rs. 106,200 is false. Shahid Hussain Naib Qasid himself applied on 29.11.2019 that the amount withdrawn by him may be deducted from his salary and an order was passed on his application vide this office letter No.A/S/5144/2019 dated 29.11.2019.*

*4. In respect of regularization of service of the petitioner, it is submitted that the then-District and Sessions Judge, Karachi South, vide his letter No.A/S/5144/2019 dated 29.11.2019 has treated the period of retirement w.e.f. 01.12.2014 to 06.11.2018 as extraordinary leave without pay/salary. It is further submitted that according to the report of Accountant of District Karachi South, the petitioner is receiving his salary since his joining date i.e. 07.11.2018.”*

10. *Prima-facie* the explanation offered by Respondent No.2 vide statement to the extent of denying the back benefits to the petitioner as discussed supra is not tenable under the law for the reasons that the Petitioner had been reinstated unconditionally by the Sindh Subordinate Judiciary Service Tribunal vide order dated 24.12.2018 with effect from the date of his purported retirement i.e. 15.12.2014. Therefore, petitioner would not only be entitled to all his salaries from the date of impugned action till the date of his reinstatement, but also to the increments and other benefits which were granted to other similarly placed colleagues from time to time including annual grade increments. Besides, Petitioner's absence from duty, which in any event was forced, could neither be converted into extraordinary leave without pay nor could he be denied annual grade increments for the year during which he was not in service.

11. We have scanned the file and nothing is available on record to suggest that the petitioner was gainfully employed during the period that he was kept away from his job. The decision of respondent No.2 to the extent of treating the period with effect from 01.12.2014 to 06.11.2018 as extraordinary leave without pay is

erroneous for the simple reason that the petitioner was reinstated in service by the order of Sindh Subordinate Judiciary Service Tribunal and no appeal was preferred against the said order. We have noted that respondent No.2 has not assigned valid reasons to decline the back benefits to the petitioner for the aforesaid period. Therefore, the Petitioner is entitled to the back benefits after his reinstatement in service under the law.

12. In the light of the above facts and circumstances of the case, we are of the considered view that denial by respondent No.2 to allow back benefits to the petitioner is patently violating the 'right to equality' enshrined in Article 25 of the Constitution of Pakistan, 1973. Therefore, the listed applications i.e. CMA No. 16224/2019 filed by the petitioner is allowed to the extent indicated above with a direction to respondent No.2 to calculate and include the service benefits of the petitioner in his pay for the aforesaid period under the law and award service benefits / dues to him including back benefits within one month from the date of receipt of this order. Resultantly, CMA No.16491/2020 is also disposed of in the above terms.

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