

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –8261 of 2019

Attaullah Arbab

Versus

Province of Sindh and 02 others

Date of hearing
& order : 23.10.2020

Mr. Jaffer Raza, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner has questioned his repatriation from the post of Additional Deputy Commissioner-I, Hyderabad to his parent department i.e. Sui Southern Gas Company Ltd. vide Notification dated 12.2.2016 issued by Chief Secretary, Government of Sindh, which is in pursuance of the directions contained in the orders dated 12.01.2016 and 13.01.2016 passed by the Honorable Supreme Court of Pakistan in Criminal Original Petition No.89 of 2011 and Civil Review Petition No.193 of 2013 respectively. For convenience, an excerpt of the Notification dated 12.02.2016 is reproduced as under:

“In compliance of Judgments dated 12.06.2013 & 05.01.2015 passed by the Honourable Supreme Court of Pakistan in Criminal Original Petition No.89/2011 and Civil Review Petition No.193/2013 respectively and orders dated 12.01.2016 & 13.01.2016, the appointment of the following officers/officials as Assistant Commissioner / Deputy District Officer (BS-17) in Ex-PCS Cadre under the West Pakistan Civil Service (Executive Branch) Rules, 1964 is hereby cancelled / withdrawn ab-initio and they stand relieved and directed to report to their parent departments/organizations:-

S.#	Name of Officers	Department/Organization at the time of appointment as Assistant Commissioner	Present place of posting
1.	Mr. Shahid Ali Leghari	Pakistan International Airlines Corporation (PIA)	Deputy Secretary (BS-18) Finance Department (doing MCMC)
2.	Mr. Attaullah	Sui Southern Gas Company Ltd.	Additional Deputy Commissioner-I, Hyderabad.

Sd/-

MUHAMMAD SIDDIQUE MEMON
PAS
CHIEF SECRETARY, SINDH

2. Relevant facts of the case that have emerged from the petition and documents filed therewith are that, petitioner was appointed in the year 1994 as Career Executive Officer in Sui Southern Gas Company Ltd.. Thereafter, he was promoted to Grade-III vide office order dated 26.8.2004. Petitioner averred that his services were requisitioned by the Sindh Government vide office order dated 11.1.2004 on deputation for three (03) years and was subsequently promoted to BPS-18 on regular basis by the order of the competent authority of the Government of Sindh. Finally, he was relieved from the post of Additional Commissioner-I, Hyderabad to report to his parent department i.e. Sui Southern Gas Company Ltd. vide notification dated 12.02.2016 issued by the Chief Secretary, Government of Sindh.

3. At the outset, learned counsel for the petitioner was directed to satisfy this Court about the maintainability of this petition in view of the order passed by the Honorable Supreme Court of Pakistan, whereby respondent-Chief Secretary, Government of Sindh, was directed to repatriate the petitioner to his parent department i.e. Sui Southern Gas Company Ltd.

4. Mr. Jaffer Raza, learned counsel for the petitioner has argued that the petitioner after fulfilling all the prerequisites / codal formalities was appointed as Assistant Commissioner by way of transfer vide Notification No.SO-V (S&GAD) X-20/2006 dated 14.6.2006; that appointment of the petitioner in Ex-PCS cadre (BPS-17) in Sindh Government was under Rule 5(5)(C) of West Pakistan Civil Service (Executive Branch) Rules, 1964, and his case did not fall within the ambit of the ratio of the order passed by the Hon'ble Supreme Court of Pakistan in Criminal Org. Petition No.89 of 2011 reported as 2013 SCMR 1752, whereby absorption of employees in different cadres was declared as illegal and they were ordered to be reverted to their respective parent departments. It is contended that the petitioner's repatriation is based upon malafide intention and without legal sanctity as such liable to be struck down. It is contended that the appointment of the petitioner as Assistant Commissioner in Ex-PCS cadre was permissible as this was the appointment by transfer and the same could be made under Rule 9 (1) of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974; that the appointment of the petitioner was within the quota prescribed under Rules of West Pakistan Civil Service (Executive Branch) Rules, 1964; that he had also qualified the Departmental Examination of Assistant Collector Part-I & II conducted by the Sindh Public Service Commission in 2012 and secured First Position; that initial appointment of the

petitioner on deputation in Sindh Government in the year 2004 was/is protected by the order of Hon'ble Supreme Court of Pakistan in para No.175 (2013 SCMR 1752) ; that the petitioner is holding the post of BPS-18 in accordance with the law laid down by the Hon'ble Supreme Court in the above-cited authority as well as in the case of Ali Azhar Khan Baloch and others vs. Province of Sindh and others, **2015 SCMR 456**. It is further contended that the impugned notification dated 12.02.2016 is null and void thus liable to be set aside; consequently, the post of the petitioner is deemed to be revived. He concluded his arguments and prayed for allowing the instant petition.

5. We have heard learned counsel for the petitioner on the issue of maintainability of the instant petition under Article 199 of the Constitution of Pakistan, 1973.

6. The pivotal questions involved in the present proceedings are as to whether the petitioner was qualified to be inducted from Sui Southern Gas Company in Sindh Government on deputation for three years? And, whether the Chief Minister, Sindh was competent to nominate the petitioner as Assistant Commissioner in Ex-PCS cadre under the Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964? and, whether his repatriation to his parent department is in accord with the direction given by the Hon'ble Supreme Court?

7. To elaborate on the aforesaid issues, we take a glance at Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, which provides as under:-

“5. Method of Recruitment-(1) Recruitment to the Service shall be made in the following manner: - (4) Vacancies to be filled by promotion shall be filled as follows: - (b) The remaining 12½ percent of such vacancies shall be filled from among persons whose names appear in Select List B & C to be maintained in accordance with clause (b) and clause (c) of sub rule (5) of this rule.”

8. We have noticed that Rule 5(4)(b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, essentially provides that 12½ percent posts of such vacancies shall be filled from amongst persons, possessing graduation degree, who hold posts of Assistants, Superintendents working in Secretariat and attached departments, Private Secretaries, Public Relations Officers to the Governor, Chief Minister, and Ministers and Chief Secretary, considered fit, could be appointed by way of nomination against the post of Assistant

Commissioner/Assistant Collector (BS-17) in Ex-PCS Cadre. The Select Lists "B" and "C" are maintained under clause (b) quota and clause (c) of Sub-Rule (5) of this Rule. *Prima-facie*, the petitioner did not meet the aforesaid criteria and he was not even eligible to be inducted in the Sindh Government on deputation. Hence, petitioner's purported appointment was based on malafide intention to accommodate him in Ex-PCS cadre, which was / is not permissible under the law.

9. On the aforesaid proposition, the Honorable Supreme Court in Criminal Original Petition No.89 of 2011 (2013 SCMR 1752) directed that the nominations made by the Chief Minister over the quota given by Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964 are without lawful authority with further direction to Sindh Government to formulate a mechanism for such appointments in future. An excerpt of paragraph No.110 of the judgment supra is reproduced as under:-

"110. We may observe that nominations of Assistant Commissioners by the Chief Minister after exhausting his quota shall affect the seniority of the incumbents who will pass the P.C.S. exams on merits and appointed as Assistant Commissioners till 2017. Therefore, all the aforesaid officers inducted in excess of the quota shall be relegated to their original positions. In future, the Sindh Government shall formulate mechanism for nomination of such appointments by transfer to the post of Assistant Commissioner (BS 17) in Ex-PCS cadre."

10. It appears from the record that under section 3 of the Sindh Public Service Commission (Functions) Rules, 1990, initial appointments in BPS-17 are to be made only through a competitive process and not otherwise.

11. We have noticed that in the instant case, such powers appear to have been exercised by the Chief Minister, Sindh in disregard of law and dicta laid down by the Honorable Supreme Court from time to time in its various judgments. As stated above admittedly the petitioner was an employee of Sui Southern Gas Company Ltd., therefore he was not eligible to be inducted in Sindh Government on deputation. Thereafter, his appointment in Ex-PCS cadre by way of nomination was not in consonance with law.

12. The stance taken by the petitioner that his initial appointment in Ex-PCS cadre (BPS-17) in the year 2006 was by way of nomination under Rules of West Pakistan Civil Service (Executive Branch) Rules, 1964, on the face of it, is misleading and malafide as the petitioner's services were initially placed at the disposal of the Sindh Government on deputation for three years. Therefore, his services ought not to have been regularized in the Ex-PCS cadre.

13. Even otherwise the Sindh Civil Servants Act, 1973, and rules framed thereunder also restrict out-of-cadre absorption of a non-civil servant in civil service.

14. It is well-settled law that a deputationist does not have any vested right to remain on the post as deputationist forever or for a stipulated period. He can be repatriated to his parent department at any time. The Honorable Supreme Court in the case of Shafiur Rehman Afridi v. CDA, **2010 SCMR 378**, has settled the issue on the aforesaid proposition. Therefore, no further deliberation is required by us.

15. We are not impressed by the submissions of the learned counsel for the petitioner for the simple reason that the appointment of the petitioner in Ex-PCS cadre (BPS-17) in Sindh Government had already been declared as illegal by the Honorable Supreme Court and ordered his repatriation to his parent department i.e. Sui Southern Gas Company. An excerpt of the order dated 30.06.2016 passed by the Honorable Supreme Court in CRL.MISC. Application No.351 of 2016 in criminal original petition No. Nil of 2016 in criminal original petition No.89 of 2011 is reproduced as under:-

“Review has been sought by the Petitioner against the Notification dated 12.02.2016, issued by the Government of Sindh, repatriating the Petitioner to his parent department Sui Southern Gas Co.

2. It is contended by the learned counsel for the Petitioner that the Petitioner was inducted in the Sindh Government and his nomination in terms of Wet Pakistan Civil Service (Executive Branch) Rules, 1964, was made by the Chief Minister, Sindh, and pursuant to the judgments of this Court reported as Contempt Proceedings Against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), he was wrongly repatriated.

3. Mr. M. Sarwar Khan, learned Additional Advocate General, Sindh, submits that the aforesaid order of repatriation of the Petitioner was passed in the light of the directions made by this Court in Crl. M.A.No.354 of 2015, filed by the Provincial Government. According to the learned Law Officer, in the case of Qazi Jan Muhammad, who was an employee of Ministry of Information, Government of Pakistan, and was inducted in the same manner, was ordered to be repatriated on 12.10.2016. He submits that the Petitioner was an employee of Sindh Southern Gas Co. and he has been rightly repatriated.

4. We have heard the learned Counsel for the Petitioner, the learned Law Officer and have perused the record. It is not in dispute that the Petitioner was an employee of Sui Southern Gas Co., therefore, the orders passed in Crl. M.A. No.354 of 2015 and Crl. M.A. No.1308 of 2016 cover the case of the Petitioner. The learned Counsel for the Petitioner claims that other similarly placed employees have not been repatriated to their parent departments by the Sindh Government. He has placed a list of such employees before this Court. The Sindh Government shall respond to the case of each nominee named in the list

as to why they were not repatriated. A report in this respect shall be submitted within three weeks, for our perusal in Chambers.

5. *This C.M.A., for the aforesaid reasons, is dismissed.”*

16. *Prima-facie*, the induction of petitioner in Ex-PCS cadre is against the Judgment of Hon’ble Supreme Court of Pakistan rendered in the case of Cr.Org.Petition No.89 / 2011 (2013 SCMR 1752). In our view, since the direction of the Honorable Supreme Court in the aforesaid matters is still in the field, we are bound to follow it under the Constitution. Besides the respondents have issued the impugned notification in pursuance of the orders passed by the Honorable Supreme Court in the aforesaid proceedings, therefore, no indulgence of this Court is required in the present matter.

17. As to the contention of learned counsel for the petitioner that the ratio of judgments of the Honorable Supreme Court in the cases (*supra*) is not applicable, suffice it to say that petitioner’s appointment in Ex-PCS cadre (BPS-17) in Sindh Government on deputation basis and subsequent regularization is itself illegal and void-abinitio. Therefore, the question raised is not worth consideration and is hereby discarded.

18. In the light of above discussed legal position of the case, this petition is hereby dismissed in *limine* along with the pending application(s) with no order as to costs.

19. Above are the reasons of our short order dated 23.10.20120.

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