

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Constitutional Petition No. D –8063 of 2019**

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Hafiz Muhammad Tabish

*Versus*

Federation of Pakistan and 02 others

Date of hearing & order : 09.12.2020

Mr. Muhammad Tamaz Khan, advocate for the petitioner.

Mr. Bashir Ahmed, advocate for respondents 2 & 3.

Mr. Muhammad Nishat Warsi, DAG.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through the instant petition under Article 199 of the Constitution 1973, the petitioner has sought the following relief(s):

- i) Declare that the Impugned Notice is illegal and void ab initio.
- ii) Restrain the Respondents and their officers and assigns from directly and indirectly, taking any action on the basis of the Impugned Notice including discontinuation of the salary and allowances of the petitioner;
- iii) Direct the Respondent No.2&3 to allow the petitioner to join the duty and continue payment of monthly salary and allowances as already order passed in CP No.2446/2016 & others CPs including arrears since April, 2016.

2. Primarily, the petitioner has called in question the disciplinary action of the Respondent-Karachi Port Trust (KPT), whereby he was served with show cause notice (**'SCN'**) dated 12.11.2019 with certain allegations of misconduct.

3. At the very outset, we inquired from learned counsel as to how the instant Petition is maintainable against the SCN, which relates to the terms and conditions of his service and the outcome of the disciplinary proceedings has yet to come, and after its conclusion, he has the remedy under the law to assail the findings adversely affecting him, if any.

4. Mr. Muhammad Tamaz Khan, learned counsel for the petitioner, has submitted that the impugned SCN cannot be termed as the order passed within the terms and conditions of service of the Petitioner. He further argued that petitioner denied the charges leveled against him vide letter dated 21.11.2019 with the plea that soon after acquittal from criminal case i.e. Sessions Case

No.444 / 2016 arising out of FIR No.358 / 2010, registered with police station Sharifabad, under Section 302 / 34 PPC vide Judgment dated 02.07.2019 passed by the learned Additional Sessions Judge-VII, Karachi Central, he approached the respondent-KPT, but nothing could be done. Per learned counsel, the SCN was / is based on malafide intention; that there is nothing adverse against the Petitioner, therefore, depriving him of joining the service is against the basic spirit of the law; that he was condemned unheard on the charges leveled against him; that the career of the petitioner is at stake at the hands of Respondent-KPT who are bent upon to deprive the Petitioner of his salary; that the petitioner is fully entitled to be treated under the law; In support of his contention, he relied upon the documents attached with this petition; that this is a hardship case and this Court can hear and decide the matter on merit. He prayed for allowing the petition.

5. On the other respondent-KPT has taken the plea that his initial appointment was without competitive process against the post of Lascar on a stipend basis and his subsequent regularization of service in the year 2013 was without lawful process, however, the petitioner remained absent from his alleged service due to involvement in criminal activities even after his release on bail in the aforesaid crime he never reported for duty w.e.f. 05.04.2016 till date. He further stated that the petitioner was served with the SCN and his stance was considered and rejected based on his criminal record. Finally, his salary was stopped from April 2016 due to his unauthorized absence from duty. He prayed for dismissal of the instant petition.

6. We have heard the learned counsel for the parties on the issue of show cause notice and perused the material available on record.

7. We do not agree with the statement of the learned counsel for the Petitioner for the simple reason that disciplinary proceedings fall within the ambit of expression terms and condition of service of the petitioner.

8. A bare perusal of impugned SCN dated 12.11.2019 shows that the petitioner was charged with allegations of Misconduct in the following manner:

*“WHEREAS, you were appointed in Karachi Port Trust as lascar KPT (PS-03) in M&EE department vide HR letter No.HR/Rect/862 dated 08.01.2013 and your services were regularized on 20.12.2012. You are unauthorized absent from duty w.e.f. 10.04.2016 till todate.*

2. *WHEREAS, it has been reported by the SSP District Central, Karachi that you were nominated in case FIR No.358/2010 u/s 302/34 PPC of PS Sharifabad,*

*which is under trial before Honorable Court ADJ/III Central, Karachi and presently you are on bail. Whereas, Dy Superintendent of Police (Special Branch), Karachi has also intimated that address is not correct. Hence, your Character verification was disposed off as Un-verified.*

3. **WHEREAS**, *the concerned Intelligence agency has also not recommended you for the said job.*

4. **NOW THEREFORE**, *in exercise of the powers conferred on me, I do hereby dispense with the enquiry under rule 5(iii) of E&D Rules 1973 and call upon you to Show Cause Notice within the span of 14 (fourteen) days on receipt of this notice as to why one or more than one penalties as prescribed in the rules should not be imposed upon you, failing which ex-parte decision will be taken in the matter.*

5. *You may also intimate whether you would like to be heard in person.”*

9. Before dilating upon the above, at the first instance we would like to consider whether the Petitioner can challenge his SCN, which is prima-facie yet to be acted upon, in a constitution petition?

10. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to restrain the competent authority from taking action in accordance with law against a public Servant against whom prima facie evidence showing his involvement in the serious charges of misconduct was available, for the reason that any such direction would be disharmonious to the principle of good governance and canon of service discipline. Rather causing undue interference to hamper the smooth functioning of the departmental authorities, more particularly in Karachi Port Trust.

11. In law show cause is not defined as a punishment. In our view, the Petitioner cannot file a petition against the issuance of SCN, which is simply an opportunity to explain the position in the course of the inquiry. Against the adverse result of enquiry arising out of SCN, if any, the petitioner will have the remedy of appeal and in presence of such adequate remedy; this Court at this juncture will not step in to declare the SCN issued to the Petitioner illegal or void. More so, the Petitioner's objection on the issuance of SCN is technical and procedural, since we do not see malice or ulterior motives on the part of respondent-KPT and/or violation of the principles of natural justice. In such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process arising out of the SCN and set-aside SCN on any of the technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioner. Besides respondents have leveled serious allegations against the petitioner in their comments with regard to his appointment, regularization in service at the back door, and subsequently, his involvement in

criminal activities as discussed supra, which will certainly be considered by the competent authority in the inquiry proceedings, if any, against the petitioner.

12. Adverting to the point raised by the learned counsel with regard to his acquittal in the criminal case, we are of the considered view that merely obtaining acquittal from a criminal case is no ground to take benefit to bypass the disciplinary proceedings. Since the show cause was issued against the petitioner and he replied and it is for the respondent-KPT to decide in accordance with law for which this Court is not required to show indulgence in the matter under Article 199 of the Constitution to set-aside the disciplinary proceedings initiated against him.

13. Keeping in view the above-mentioned facts and circumstances of the case, we do not see any infringement of the right of the Petitioner which could be called in question by way of Writ Petition. It is a well-settled principle of law that a public Servant has no vested right to call in question the disciplinary proceedings in Writ Petition. During the course of arguments, we have been informed that petitioner's service has been dispensed with under the disciplinary proceedings.

14. Since the petitioner has not assailed the impugned termination order in this petition, therefore, at this stage this Court cannot look into the vires of termination letter, if any, issued by the respondent-KPT. This being the legal position of the case, we find no merits in the instant petition, which is dismissed accordingly with no order as to costs, leaving the petitioner to avail the remedy against dispensation of his service by the respondent-KPT as provided under the law.

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