

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -331 of 2021

Waqas Behlum

Versus

Trustees of the Port of Karachi (KPT) and 06 others

Date of hearing
& order : 28.01.2021

Ms. Fozia Muneer, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through the instant petition under Article 199 of the Constitution 1973, the petitioner has called in question the judgment dated 10.12.2020 passed by the learned Sindh Labour Appellate Tribunal Karachi (SLAT) in Appeal No.Kar-24/2020, whereby the findings of the learned Labour Court No.V vide order dated 11.08.2020 was affirmed; and, while disposing of his grievance application of unfair labour practice No.17 of 2020 restrained the respondent-KPT from taking any action against him without due process of law and directed them to conduct the inquiry in accordance with the law.

2. Primarily, the petitioner has assailed the disciplinary action of the Respondent-Karachi Port Trust (KPT), whereby he was served with a fresh show-cause notice ('SCN') dated 19.10.2020 with certain allegations of misconduct. Such inquiry was conducted to probe the allegations and the findings were submitted to the competent authority vide report dated 02.10.2020 (pages 215 to 225).

3. At the very outset, we inquired from learned counsel as to how the instant Petition is maintainable against the SCN as well as disciplinary proceedings initiated against him, 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 decision adversely affecting him, if any.

4. Ms. Fozia Muneer, learned counsel for the petitioner, has submitted that the impugned SCN, as well as disciplinary proceedings, cannot be termed as the order passed within the terms and conditions of service of the petitioner. She further argued that the petitioner denied the charges leveled against him vide letter dated 29.10.2020 with the plea that in December 2016 he fell ill and was hospitalized at Sarfraz Rafique Shaheed Hospital KMC, Karachi for a period effective from 27.12.2016 to 08.05.2017 and soon after his recovery he reported for duty but neither he was allowed to join his duties nor salaries were paid to him by the respondent-KPT without assigning any reason. Per learned counsel, the fresh SCN and further proceedings were /are based on malafide intention; that there was/is nothing adverse against the petitioner throughout his tenure of service, therefore, depriving him of joining the service and stoppage of his salary 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 duty; that the petitioner is fully entitled to be treated under the law; In support of her contention, she heavily relied upon the documents attached with this petition as well as judgment dated 30.11.2020 passed by the learned Division Bench of this Court in C.P. No. D-2611/2016 and other connected petitions and argued that he was one of the petitioner No.15 in C.P. No. D-2611/2016 whereby the show cause notice issued to the petitioner in the year 2016 was declared illegal, thus the respondent-KPT could not issue fresh show cause notice dated 19.10.2020 and initiate disciplinary proceedings against him; learned counsel for the petitioner has further contended that petitioner being aggrieved by and dissatisfied with the aforesaid action of respondents approached the learned SLC but could not succeed, he preferred a statutory appeal before learned SLAT which met the same fate, compelling him to approach this court. She next argued that the impugned Judgments passed by the learned SLC and the learned SLAT are full of errors based on misreading and non-reading of evidence; that the findings of the learned courts below are arbitrary and perverse; that the averments of the Petitioner were not considered in the impugned Judgments, therefore both the judgments are a nullity in the eyes of law; that both the learned courts below have failed to appreciate the material aspects of the matter; that the learned Presiding Officer of SLC, as well as a member of SLAT, have failed to appreciate that the service of the petitioner had already been regularized and his absence from duty was condonable due to his health issues, therefore the impugned Judgments are illegal and against the law, thus are liable to be set aside; that

this is a hardship case and this Court can hear and decide the matter on merit. She lastly prayed for allowing the petition.

5. We have heard the learned counsel for the petitioner on the issue of maintainability of the instant petition.

6. The inquiry report dated 02.10.2020 reveals that his initial appointment on a stipend basis in KPT was without due process of law and his subsequent purported regularization of service in the year 2013 was without lawful process, however, the petitioner remained absent from his alleged service due to reasons as discussed supra even after his alleged recovery he never reported for duty w.e.f. 22.12.2016 to 08.05.2017. He was served with fresh SCN and his stance was also considered and subsequently rejected based on documentary evidence. Finally, his salary was stopped from 2016 due to his unauthorized absence from duty.

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 19.10.2020 shows that the petitioner was charged with allegations of Misconduct in the following manner:

(a) Whereas, you are unauthorizedly absent from duty with effect from 23.12.2016 without any prior approval.

(b) Whereas, you turned up on 09.05.2017 and submitted an application along with medical certificate issued from Karachi Metropolitan Corporation covering period from 22.12.2016 to 08.05.2017 and requested to take you on duty but you have not been taken on duty as medical certificate issued from outside hospitals more than 06 days is not acceptable as per rules.

(c) Whereas, you travelled abroad on several occasions during your unauthorized absence without obtaining NOC from KPT. The same has been revealed by the Travel History provided by FIA immigration.

(d) *Your such acts constitute misconduct at your part.*

2. **WHEREAS**, the Departmental Enquiry was conducted against you and Enquiry Officer after giving you full opportunity to defend your case **proved** the charges levelled against you.

3. **I, THEREFORE**, by this notice, inform you, **Mr. Waqas Behlum**, on the above grounds, it is proposed to impose upon you any or all the penalties prescribed in Rule-4 (a&b) of the KPT Officer and Servants (E&D) Rules 1973. You are accordingly called upon the Show Cause as to why proposed action should not be taken against you for the said conduct.

4. *You reply should reach the undersigned within fourteen (14) days from receipt of this Show Cause Notice, failing which it shall be assumed that you have nothing to offer in your defense and, therefore, appropriate legal action would be taken against you. You are to state if you desire to be heard in person, in writing.*

5. *Acknowledge receipt of this Show Cause Notice.”*

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

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 disciplinary action under 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 decision 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 about his appointment, regularization in service at the back door, and subsequently, his absence from duty due to certain political activities as discussed supra, which will certainly be considered by the competent authority after finalizing the inquiry proceedings dated 02.10.2020 initiated against him on account of his alleged misconduct.

12. Adverting to the point raised by the learned counsel concerning the annulment of his earlier show cause notice issued in the year 2016 by this court in the aforesaid proceedings, we are of the considered view that the respondent-KPT has initiated disciplinary proceedings a fresh against the petitioner with certain allegations that are yet to be finalized as per record, however, the vacation of his earlier show cause notice by the order of this Court 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 as per law for which this Court is not required to show indulgence in the matter, at this stage, 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 arguments, we have been informed that the petitioner's service has not yet been dispensed with under the disciplinary proceedings, however, they are at liberty to conclude the disciplinary proceedings (if not earlier concluded) within a reasonable time under law after providing an opportunity of hearing to the petitioner.

14. In light of the above facts and circumstances of the case, we are of the view that this Court in its Constitutional jurisdiction cannot interfere in the concurrent findings recorded by the competent fora below as we do not see any illegality, infirmity, or material irregularity in their Judgments warranting interference of this Court. Hence, the instant petition is found to be meritless and is accordingly dismissed in *limine* along with the listed application (s).

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