

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Adnan-ul-Karim Memon

Suit No.1153 of 2006

Dr. Habibur Rehman Soomro vs. Federation of Pakistan and 02 others.

1. For orders on CMA No.4712/2019.
2. For arguments.

Date of hearing: 01.10.2019

Date of order: 01.10.2019

Mr. Abdul Ghaffar, Advocate for the Plaintiff alongwith Plaintiff.

Mr. Muhammad Fahad Prizada, Advocate for the Defendant No.3.

Mr. Aminullah Siddiqui, Assistant Attorney General.

ORDER

Basically the Plaintiff is aggrieved by and dissatisfied with the decision dated 14.4.2006 passed by the Executive Officer, Rawalpindi Cantonment, whereby his letter dated 20.8.2002 was treated as resignation and accepted by the Competent Authority with effect from 7.4.2001.

2. I enquired from the learned Counsel whether the Cantonment Board is a statutory body having statutory rules of service and present matter relates to service issue of the plaintiff. Learned counsel after arguing the matter at some length submits that Defendant- Cantonment Board against whom the plaintiff is seeking the service related relief being its employee enjoy statutory rules of service and as such suit in the present form is hit by recent pronouncement of Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch vs. Province of Sindh and others (2015 SCMR 456), wherein it has been observed that the suits filed by the employees of the corporation/statutory authority having statutory rules are to be referred to the learned Division Bench for adjudication in accordance with law. He, however, at this juncture seeks disposal of this matter in the light of paragraph No.158 of the judgment passed by the Hon'ble Supreme Court of Paksitan in the case of Ali Azhar Khan

Baloch vs. Province of Sindh and others (2015 SCMR 456). An excerpt of the paragraph-158 is reproduced as under:-

“158. In the same manner, the Civil Suits filed by the employees of statutory bodies or Government Servants relating to their terms and conditions of service inclusive of the disciplinary proceedings, who are serving in the organizations having statutory service Rules, shall be transferred to be heard by a Division Bench in Constitutional jurisdiction treating them as Constitutional Petitions for disposal in accordance with law. The Chief Justice of the High Court of Sindh shall constitute the Special Benches within a week from the date of communication of this judgment. The Special Benches, as directed above, shall take up the cases on day to day basis and complete the aforesaid exercise within two months from the date of constitution of the Benches. The Registrar, High Court of Sindh, shall submit periodic compliance report after every two weeks for our perusal in Chambers.”

3. Mr. Muhammad Fahad Pirzada, learned Counsel representing Defendants No.2 & 3 has argued that basically the present Suit in its form is not maintainable under the law on the premise that the Plaintiff has no cause of action against the Defendants to institute the *lis* before this Court in its original civil jurisdiction, however, he has conceded the legal position of the case in the light of judgment passed by the Hon'ble Supreme Court in Ali Azhar Khan Baloch's case, whereby the Hon'ble Supreme Court has held that the Civil Suits filed by the employees of statutory bodies or Government Servants relating to their terms and conditions of service inclusive of the disciplinary proceedings, who are serving in the organizations having statutory service Rules, shall be transferred to be heard by a Division Bench in Constitutional jurisdiction treating them as Constitutional Petitions for disposal in accordance with law.

4. Mr. Aminullah Siddiqui, learned Assistant Attorney General has no objection for disposal of the present *lis* in view of the submission put forwarded by the learned Counsel representing Defendants No.2 and 3.

5. I have heard the learned Counsel for the parties on the aforesaid proposition and perused the material available on record.

6. To address whether this Court has power to convert and or convert one kind of proceeding into another is always existed and can be exercised by the

High Court not only at an advance stage in order to prevent injustice. No fetters or bar could be placed on the powers of High Court to convert one kind of proceeding into another and to decide the matter either itself in exercise of its jurisdiction or to order its transfer to another Court having jurisdiction or may remit it to Court/forum/authority having jurisdiction on merits. The High Court in number of cases converted appeals into revisions or vice versa or Constitution Petitions into appeals or revision and vice versa. Reference is made to the following case law:-In the case of Jane Margret William v. Abdul Hamid Mian (1994 SCMR 1555), Capital Development Authority v. Khuda Baksh and 5 others (1994 SCMR 771), Shams-ul-Haq and others v. Mst. Ghoti and 8 others. (1991) SCMR 1135), Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 Supreme Court 539), Province of Sindh and another v. Muhammad Ilyas and others (2016 SCMR 189) Engineer Musharaf Shah v. Government of Khyber Pakhtunkhwa through Chief Secretary and 2 others (2015 PLC (C.S) 215), The Thal Engineering Industries. Ltd. v. The Bank of Bahawalpur Ltd and another (1979 SCMR 32), Karamat Hussain and others v. Muhammad Zaman and others (PLD 1987 Supreme Court 139), and more particularly in the case of Mian Asghar Ali v. Government of Punjab and others (2017 SCMR 118).

7. On the issue of statutory rules of the Defendant-Cantonment Board, it appears that section 280 of the Act 1924 empowers the Federal Government to make rules for carrying out the purposes and objects of the Cantonments Act. It appears that in exercise of the powers so conferred by clause (c) of subsection (2) of section 280 of Act, 1924, the Central Government in the year 1954 had made the rules of service for Cantonment servants known as "The Pakistan Cantonment Servants Rules, 1954, therefore, the service related issues of statutory body having statutory rules of service can be looked into by the court having jurisdiction as per law

8. In view of above discussion, by consent of the parties present in Court, prima-facie, this matter needs to be heard and decided by a learned Division Bench of this Court in its Constitutional jurisdiction in the light of paragraph No.158 of the judgment rendered by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch supra. Therefore the office is directed to place this case before a Division Bench of this Court for an appropriate order including the maintainability and other ancillary issues. The plaintiff is directed to file another set of pleadings accordingly.

JUDGE

Nadir/*