

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P No. D- 1177 of 2010

BEFORE :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Petitioner : Pervaiz Khan through Mr. Pirbhulal-u-Goklani, Advocate

Respondent No.1 : Federation of Pakistan through Mr. Aslam Pervaiz Khan, Asst. Attorney General for Pakistan

Respondents 2 to 4 : Through Mr. Fayyaz Ahmed Leghari, Advocate along with Abdul Sattar Mallah, Deputy Manager (L), JPCL, Jamshoro.

Date of hearing : 24.12.2019
& decision

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner is seeking reinstatement of his service as attendant in Jamshoro Power Company Limited (JPCL) whereby his service was terminated under Section 3(i) of the Removal from Service (Special Powers) Ordinance, 2000, vide office order dated 19.05.2010.

2. At the very outset, we asked learned counsel for WAPDA to satisfy this Court with regard to the impugned action taken against the petitioner under repealed law i.e. Removal from Service Ordinance (Repeal) Act-III of 2010 (hereinafter referred to as RSO). He concedes the aforesaid legal position of the case. He however, states that the proceedings against the petitioner were initiated in the year 2009 i.e. much prior to the above ordinance ; that by virtue of Section 2(ii) of the Repealing Act-III of 2010, all proceedings pending under the repealed Act or the Rules made there-under immediately before the commencement of Act-III, 2010, against any person whether in government service or corporation service, were to continue under the repealed ordinance or the Rules made there-under ; that due to the protection provided by Section 2(ii) of Act-III of 2010, the impugned office order dated 19.05.2010 issued after repealed Ordinance 2000 was legal. We posted another question as to whether while awarding major penalty of removal from service under RSO 2000 a regular enquiry was conducted or otherwise ? he replied that regular enquiry was dispensed with under Section 5(iv) of the RSO 2000. We again asked him when a major penalty is imposed upon any

government official regular enquiry is necessary, he reiterated his submissions as discussed supra.

3. While going through the record we have come across with the order dated 29.06.2010 passed by the respondent-company whereby the appeal of the petitioner was rejected. We asked learned counsel representing WAPDA to satisfy this Court as to whether any reason has been assigned while rejecting the appeal, he reluctantly conceded that no reason has been assigned in the appellate order dated 29.06.2010.

4. We do not accept the reasoning of the respondent-department who have dispensed with the services of the petitioner without holding any inquiry into his culpability and even no reason has been assigned while rejecting the appeal. The aforesaid action of the respondent-company is in utter violation of Article 10-A of the Constitution. It is settled law that nobody should be condemned unheard, more particularly, in the cases where major penalty is imposed upon the government servant. On the aforesaid proposition we seek guidance from the judgment rendered by the Honourable Supreme Court in the case of Mrs. Abida Parveen Channar v. High Court of Sindh (2011 PLC (C.S.) 836.

5. This being the legal position of the case, this petition is disposed of with direction to the competent authority of respondent-company to reinstate the service of the petitioner forthwith and initiate denovo proceedings against him if his case squarely falls within the ambit of misconduct, by adopting all legal and codal formalities as required under the law. The issue of back benefits shall depend upon the outcome of the enquiry proceedings. The aforesaid exercise shall be completed within a period of two (02) months from the date of receipt of this order.

JUDGE

JUDGE

Fahad Memon