

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

CP. No. D- 1471 of 2021

Shahid Ahmed Khan Qaboolio v. Province of Sindh & others

**BEFORE :**

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Petitioner: Shahid Ahmed Khan Qaboolio through  
Mr. Ashar Majeed, Advocate

Respondents: Province of Sindh and others through  
Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing & decision: 27.10.2021

**O R D E R**

**ADNAN-UL-KARIM MEMON, J:-** Through instant petition the petitioner has prayed as under:-

- a. Hold and declare that the suspension order dated 1.6.2021 which is lapsed 3 months has lost its legal sanctity.
- b. Hold and declare that the allegations leveled in the SCN are not based upon any documentary evidence at all.
- c. Set aside the show cause notice, transfer order of petitioner being violative of the law.
- d. Direct the respondents to ensure compliance of judgment of Honourable Supreme Court in Cr. Org. 89/2011 and Cr.193/2013 which restricts re-appointment of a retired employee.

2. We queried from learned counsel as to how the instant petition is maintainable against the suspension of service and issuance of show cause notice by the competent authority, calling upon the petitioner to submit his explanation against the penalty proposed to be imposed upon him. Mr. Ashar Majeed learned counsel for the

petitioner replied that the petitioner was appointed as Office Assistant cum Accountant in Sindh Sports Board Hyderabad Sports Complex in BPS-11 on 9.9.2006 on temporary basis; thereafter his services were upgraded in BPS-14; that after 4 years of temporary services the petitioner and other employees of Sindh Sports Board approached the respondent-department and appealed for regularization of their services but they could not get their grievance redressed; therefore the petitioner and other employees filed CP No. D- 1310 of 2010 and CP No. D-1757 of 2012; the said petition was disposed of vide order dated 22.11.2017 with direction to the competent authority to create regular posts and consider the case of the petitioners in accordance with rules and on the basis of period of service which they rendered in the respondent-department; that after passing of the above order no compliance could be made; therefore the petitioners filed contempt application which is still pending; that on 3.9.2019 respondent No.4 retired from the post of Incharge SSB Sports Hostel Hyderabad on attaining the age of superannuation i.e. 60 years; thereafter respondent No.4 succeeded in getting the charge of coordinator; however, the respondent No.1 vide order dated 4.9.2019 engaged the services of respondent No.4 on need basis as coordinator Sindh Sports Board Hyderabad Division for 89 days only, which is sheer violation of order of Honourable Supreme Court passed in Cr. Org. 89 of 2011 and Cr. 193 of 2013 which restricts appointment after retirement; that besides above the grievance of the petitioner is that respondent No.4 after getting charge of caretaker broke open the locks of accounts office and illegally occupied the office due to which the office record of employees of Sports Board remained insecure; the petitioner therefore made such complaint in writing to Provincial Ombudsman Sindh but no any action was taken against him; that respondent No.4 after retirement is still occupying the post of Incharge office; and, reluctant to physically hand over the charge for which complaint was made by incharge SSB Sports Hostel Hyderabad to Section Officer (Admin) Sports & Youth Affairs Department Government of Sindh but no any action has been taken against him; that the above named respondent No.4 annoyed with petitioner as he moved complaint against them therefore he got him suspended from Respondent No.1 on 1.6.2021 with further direction to him to report at Nazimabad Sports Complex Karachi without any reason; that under the law suspension cannot be continued beyond 3 months; that the impugned show cause notice was issued without

jurisdiction and subsequent order of his suspension from service cannot be termed as the order passed within the terms and conditions of service of the petitioner; more particularly, the suspension order is based on malafide intention by the incompetent authority; that the petitioner is fully entitled to be treated in accordance with law; He prayed for allowing the petition.

3. We do not agree with the submissions of learned counsel for the Petitioner for the simple reason that Efficiency & Discipline Rules speak of the issuance of show cause notice only against the penalty proposed to be imposed. Such show cause notice contains the accusations and the material which is the basis for such action. The aforesaid principle is well settled as the disciplinary proceedings fall within the ambit of expression terms and conditions of service of the public servant. The aforesaid issue is settled by Hon'ble Supreme court in the case of *Ali Azhar Khan Baloch v. Province of Sindh*, 2015 SCMR 456.

4. Before dilating upon the above, at the first instance we would like to consider whether the petitioner can challenge show cause notice issued against him and his suspension order in Constitutional Petition?

5. We may observe that, indeed the writ jurisdiction of this Court is not meant to be exercised to compel the competent authority to set aside the show cause notice and suspension order passed against a public servant against whom prima facie evidence showing his involvement in 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.

6. In service jurisprudence, show cause notice is not a punishment, show cause notice is issued when a government official/ public servant is held prima facie responsible for misconduct. In the SCN the delinquent is required to be informed that he is responsible for such misconduct. He is then required to submit his reply to the disciplinary authority as to why the disciplinary proceedings should not be initiated against him within stipulated period, prescribed in the SCN. In such an eventuality, no writ petition lies, until and

unless it is shown that show cause notice is patently illegal, malafide, or without jurisdiction, which is not the case in hand as the petitioner is facing serious charges of misconduct under Efficiency and Discipline Rules.

7. Suspension is not defined in law as a punishment but is an intervening arrangement, which is temporary and resorted to prevent the delinquent official from influencing the outcome of subsequent inquiry on any of the charges against him. In view of such a position, in our view, the Petitioner cannot file a petition against his suspension from service, which is simply a temporary measure and has been taken to reduce the chances of tampering in the course of an inquiry by them. Against the adverse result of inquiry, 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 suspension of the petitioner as illegal or void. Moreover, if any adverse order is passed against him pursuant to the impugned show cause notice and suspension, the petitioner will be at liberty to challenge the same before the competent forum and to urge the grounds before such forum that have been urged before us.

8. In such circumstances, we would not like to exercise our discretion in his favor to thwart the whole process of disciplinary proceedings initiated against him and set-aside show cause notice or his suspension order on any of the technical ground, which will amount to interference in the right of the authority to enquire into allegations against the petitioner.

9. The petitioner has not been able to show any material from the record as to how he is prejudiced by the issuance of show cause notice and his suspension order, besides the Petitioner has replied to the show cause notice and suspension order available at page 29 of memo of petition, which is sufficient for the respondents to sift the chaff from the grain.

10. We are clear in mind that pendency of disciplinary proceedings, a final decision against the petitioner has yet to be taken by the respondent-department and he has to overcome the clog of pendency of disciplinary proceedings against him, if not finalized earlier; the said proceedings shall be finalized within two months from the date of decision of this Court.

11. Before parting with this order, we expect from the competent authority of the respondents to ensure compliance of directions contained in the judgment of Honorable Supreme Court in Cr. Org. 89/2011 and Cr.193/2013 which restricts re-appointment of retired employee. Let such report be filed through Additional Registrar of this court for our perusal in the chamber.

12. In the light of above discussion the instant petition merits no consideration and the same is accordingly dismissed in limine along with the listed application(s).

Let a copy of this order be communicated to the competent authority of respondents for information and compliance.

JUDGE

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