

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-296 of 2021

Abdul Qayyum
Petitioner through : Mr. Tahir Hassan Qureshi, advocate.

1. For order on Misc No.1459/2022
2. For order on office objection no.18,19 & 27
3. For order on Misc No.1460/2022
4. For hearing of main case

Date of hearing
& order : **20.01.2022**

1. Urgency granted.
2. Deferred for the time being.
3. Granted subject to all just legal exceptions.
4. The petitioner has called in question the disciplinary proceedings initiated against him and culminated vide office order dated 18.02.2011 whereby he was awarded a major penalty of dismissal from service under Rule 4(i) (b)(iv) of Karachi Water and Sewerage Board (KW&SB) employees (Efficiency and Discipline) Rules, 1987 besides minor penalty of recovery of Rs. 200,000/- was awarded to him as per rule 4(1)(a)(iii) of the above rules.

We asked the learned counsel as to how this petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, based on disciplinary proceedings initiated against him on account of misconduct and he was awarded a major penalty of dismissal from service and minor penalty of recovery of Rs.200,000/-, besides that the petition is suffering from laches.

Learned counsel for the petitioner, has replied to the query and has submitted that the impugned order dated 18.02.2011 is without jurisdiction, illegal, unlawful, ultra-vires of the law having no effect whatsoever; that first inquiry was conducted by the former DDO/Managing Director of respondent No.3 and the same was filed after considering the reply of the petitioner; that the second inquiry was unlawfully ordered by Nazim City District Government, Karachi, as he was not the competent authority of Grade-18 & 19 officers who were included in the list of accused, as such the inquiry was without jurisdiction; that the committee members were incompetent to hold an inquiry against the officials of Grade-18 & 19. Learned counsel for the petitioner has emphasized that no proceedings of inquiry was conducted including issuance of show cause, charge sheet which is a mandatory requirement under the Efficiency and Discipline Rules, besides that no evidence was recorded and simply a report was prepared by the member of Inquiry Committee which has no legal value under the law; that no final show cause notice and opportunity of hearing was given to the petitioner; that no major penalty could be imposed unless a regular inquiry has been conducted giving opportunity to the accused official to lead evidence and cross-examine the witnesses; that in

presence of the admission on the part of Computer Operator he had feed the names of ghost employees in the system in place of retired/expired employees, the responsibility could not be shifted to other; that inquiry report has no legal value under the law as it has neither been ordered by the competent authority nor carried out by authorized officer under the law. Learned counsel for the petitioner emphasized that the inquiry could not have been carried out under the Efficiency and Discipline Rules as Removal from Service (Special Powers) Ordinance, 2000, has already been field having an overriding effect; that Board has more than 10000/- employees and insertion of 30 ghost employees in its record by the computer could not have been done by the petitioner or other colleagues which has been established after the admission by him; that Grade-18 office could not be demoted to Grade-14 and the same amounts degrading treatment under Article 14 of the Constitution; that demotion of the petitioner below the grade of Accountant BS-17 in which he was initially appointed is unlawful as no one could be demoted to the grade lower to the one in which the accused officers initially recruited. He lastly prayed for setting aside the disciplinary proceedings and the impugned order dated 18.2.2011 with direction to the respondents to restore his service and release pensionary benefits from the date of retirement.

To appreciate the above contentions of the petitioner, and to ascertain whether major penalty could be imposed upon the petitioner without holding a regular inquiry and whether the petitioner was condemned unheard before imposing the major penalty of dismissal from service in the year 2011 under the rules of KW&SB Employees (E&D) Rules, 1987 in presence of removal from service (Special Powers) Ordinance, 2000; and, whether petitioner is entitled to the pensionary benefits after attaining the age of superannuation, let notice be issued to the respondents as well as AAG for **28.01.2022**.

J U D G E

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Nadir*