

IN THE HIGH COURT OF SINDH KARACHI

Before:

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

C.P. No. D-3698 of 2021

Nadeem-uddin Siddiqui
Petitioner through : Mr. Abdul Salam Memon, advocate

Respondent No.1
through: : Mr. Muhammad Nishat Warsi, DAG

Respondents 2 to 4
Through : Mr. Muhammad Arshad Khan Tanoli, advocate

Date of hearing
& order : **27.01.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner has assailed the vires of office order dated 15.3.2021 passed by respondent-Port Qasim Authority (PQA), whereby the major penalty of compulsory retirement from service has been imposed upon the petitioner in terms of section 4(3)(c), of the Government Servants (Efficiency and Discipline) Rules, 2020, *inter alia*, on the ground that allegations leveled by the respondent-PQA against the petitioner were not probed in the manner as prescribed under the relevant law and the required procedure was not followed, so as, to ensure transparency in arriving at the decision of imposing major penalty of compulsory retirement from service upon the petitioner. The charges / statement of allegations against the petitioner clearly depict that the same was required to be established through proper inquiry as provided under the law and not otherwise.

2. Mr. Abdul Salam Memon, learned counsel for the petitioner, mainly contended that the disciplinary proceedings, which were conducted, by way of fact finding is nullity in the eyes of law; that without recording the evidence of the parties on oath and providing opportunity of cross-examination of the witnesses to the petitioner is against the basic principles of natural justice. He highlighted that the requirements enumerated in law has not been followed. Learned counsel referred to various documents attached with the memo of petition and submitted that the allegations put forward against the petitioner were of simple nature, however, he was awarded harsh punishment on account of misuse of his mobile phone by someone else, thus the petitioner could not be saddled with such liability all alone, whereas the colleague of the petitioner has been just warned to be careful in future whereas the petitioner has been condemned unheard on the purported allegations. He prayed for setting aside the impugned order dated 15.3.2021.

3. On the contrary, Mr. Muhammad Arshad Khan Tanoli, learned counsel representing the respondent-PQA has referred to the counter affidavit filed on behalf of respondents 2 to 4 and argued that this petition is not maintainable in the light of findings of the inquiry report and subsequent issuance of show cause notice to the petitioner and action was taken in accordance with law and there was no malafide intention on the part

of the respondents to single out the petitioner. Per learned counsel, the petitioner's mobile number 0315-283819 was used and a bribe demand was made from the candidate, which tantamount misconduct on his part, therefore, he is not entitled to the concession of restoration of his service. Besides that, petitioner had moved an appeal on 24.9.2021 to the appellate authority and the same has been turned down with speaking order vide order dated 2.12.2021; that order has not been called in question before the court of law, which has now attained finality. He prayed for dismissal of the instant petition.

4. Learned DAG has supported the stance of the learned counsel representing PQA and prayed for dismissal of the instant petition.

5. We have considered the contentions of the petitioner's counsel and learned counsel representing respondent PQA as well as learned DAG and have minutely gone through the material available on record.

6. In first place, we would like to examine the issue of maintainability of the instant petition under Article 199 of the Constitution, 1973.

7. This petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, against the PQA, on the ground that this Court can deal with the matters of government entities, statutory body, having statutory rules of service, therefore, the respondent-PQA is government owned and controlled authority and falls within the ambit of Article 199(5) of the Constitution.

8. Having decide the maintainability issue, the fundamental question in the present proceedings is whether there was/is an evidence against the petitioner that he had received a bribe amounting to Rs.200,000/- through his cell No. 0315-2838194, from the shortlisted candidates, who had applied for the appointment to the post of Assistant manager (BPS-17) in PQA.

9. Before deciding the said issue, we have noticed that in service jurisprudence, there are different kinds of retirement envisaged, which are as under:

i. Superannuation retirement takes place when an employee crosses the maximum age prescribed under the service rules beyond which he cannot remain in active service.

ii. Compulsory retirement is one of the penalties under different service regulations. It can be imposed on an employee upon a departmental inquiry on the basis of proved charges.

iii. Premature retirement is a concept where the employer in terms of service regulations has the power to order retirement of an employee upon crossing certain age or completion of certain number of years of service in public interest.

iv. Voluntary retirement is a concept where an employee upon completion of certain number of years of qualifying service can with the permission of the employer proceed on voluntary retirement. If the employee has put in sufficient number of years of service and is permitted to retire on voluntary retirement basis, he retains all the benefits of the service already put in and would be entitled to all post retrial benefits on the basis of number of years of service put in by him.

v. In certain service regulations, there is also a concept of retirement on medical grounds permitting the employee to seek pension called invalid pension even though the employee may not have put in sufficient number of qualifying years of service to seek pension under the normal rules.

10. It may be noted that the term compulsory retirement is often used for non-penal premature retirement. However, we may not lose sight of the fact that there is a distinction between these two kinds of retirements, namely, penal retirement upon departmental inquiry based on proved misconduct, which normally results in disentitling an employee from seeking any pensionary benefits; and, a non-penal retirement referred to as the premature or compulsory retirement upon completion of a certain number of years of service, in which case the employee retains all the benefits of the past service; and is entitled to full post-retirement benefits on that basis. In this case, the respondents have not bothered to look into the factum whether the petitioner had the requisite length of service to inflict the punishment of compulsory retirement, which primarily depend upon the 20 years length of service under the CSR Regulations, whereas the petitioner was initially appointed in the year 2013, thus he had no length of service in his credit to deal with such a situation.

11. Moving a head, this Court is concerned with a case of compulsory retirement of the petitioner, who is otherwise required to be retired, before the normal age of superannuation by the respondent-PQA, upon completion of 60 years of age. The short question is whether compulsory retirement of the petitioner on the aforesaid grounds would be a valid exercise of the powers; and, whether such a purpose could be termed to be in the public interest?

12. Primarily an employee who has crossed certain age that may be specified in the service rules and whose service is found to be not satisfactory may be required to be retired compulsorily before attaining the age of superannuation and such powers have been recognized and protected by the superior Courts in the public interest.

13. Prima-facie, the reason assigned by the respondent-PQA to get rid of the petitioner from PQA post, are belied from the record for the simple reason that the complainant was not bothered to come forward to say far and against the petitioner; besides that nobody has heard the conversation of the petitioner, while talking to the candidates on mobile phone for such purported demand of bribe as portrayed by the respondent-PQA. Prima-facie the case of the petitioner is based on hearsay evidence; and on the fact finding inquiry report, which has no evidentiary value under the law.

14. Perusal of the above report explicitly show that allegations leveled by the respondents against the petitioner were not probed in the manner as prescribed under the relevant law; and, the required procedure was not followed so as to ensure transparency in arriving at the decision of imposing major penalty of compulsory retirement from service upon the petitioner. The charges/statement of allegations against the petitioner, as discussed supra, clearly depict that the same was not established through cogent evidence.

15. It is apathy on the part of PQA to get rid of the employee from service in such a cursory/arbitrary manner, which is violative of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. The remarks passed against the petitioner in the impugned order dated 15.3.2021 are highly undesirable and uncalled for, which required

thorough probe under PQA (Employees Service) Regulations and/or under the Government Servants (Efficiency and Discipline) Rules, 2020

16. We have further noticed that the inquiry proceedings which were conducted by way of fact finding which procedure has been deprecated by the Honorable Supreme Court in the case of *Auditor General of Pakistan & others vs. Muhammad Ali & others*, **2006 SCMR 60**.

17. On the issue of principle of natural justice we are fortified with the decision of the Honourable Supreme Court in the case of *Pakistan Defence Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed*, **2013 SCMR 1707**.

18. Hence, in our view, the action suggested by the inquiry committee for imposing major penalty of compulsory retirement is violative of the principles of natural justice, which is not sustainable under the law. On the aforesaid proposition, the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of *Jan Muhammad v. the General Manager, Karachi Telecommunication Region and another*, **1993 SCMR 1440**, is clear in its terms.

19. In service matters, the extreme penalty for minor acts depriving a person of the right of earning defeats the reformatory concept of punishment in the administration of justice. On the aforesaid proposition of law, we are fortified with the decision rendered by the Hon'ble Supreme Court in the case of *Auditor General of Pakistan & others* (supra).

20. So far as merits of the case are concerned, dispensing with the regular inquiry and awarding major penalty of compulsory retirement from service is not in consonance with law, when the charges leveled against the petitioner were denied. However, the grounds mentioned in paragraph 3 of the counter affidavit filed on behalf of respondents No.2 to 4 cannot be attended on the premise that the petitioner has not been dealt with on that ground, but simply in terms of Section 4(3) (c) of the Government Servants (Efficiency and Discipline) Rules, 2020, which action of the respondent / PQA has already been dealt with in the preceding paragraphs, therefore, this ground is found to be untenable at this stage and point in time.

21. In view of the above legal position, the contentions of the learned counsel for the Petitioner have force, in the result; we find merit in the petition and allow the instant Constitutional Petition, consequently, compulsory retirement order dated 15.3.2021 passed by the respondent-PQA is set aside. Resultantly, the petitioner is directed to be reinstated in service forthwith along with back benefits as Skilled / Semi-skilled worker (BPS-02) in the respondent-PQA.

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