

IN THE HIGH COURT OF SINDH KARACHI

Before:

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

C.P. No. D-1052 of 2020

Arshad Rafique
Petitioner through : Mr. Ali Asadullah Bullo, advocate

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

Respondents 2 to 4
through: : Mr. Bashir Ahmed, advocate

Date of hearing
& order : **07.02.2022**

ORDER

Through this petition, the petitioner has called in question the vires of disciplinary proceedings initiated against him by the respondent-Karachi Port Trust (KPT) with certain allegations of misconduct.

2. At the very outset, we inquired from learned counsel as to how the instant Petition is maintainable against the disciplinary proceedings, which relates to the terms and conditions of his service and the outcome of the disciplinary proceedings has yet to come, and after its conclusion, he has the remedy under the law to assail the findings adversely affecting him, if any.

3. Mr. Ali Asadullah Bullo, learned counsel for the petitioner, mainly contended that the petitioner has impugned the charge sheet dated 04.2.2020 issued by the Chairman of respondent No.2/KPT calling upon him to submit a reply in respect of the statement of allegations made therein. He next submitted that Chairman KPT was not competent to issue the impugned charge sheet against the petitioner as the same could be issued only by respondent No.3 Manager (Human Resources) and the Chairman is the appellate authority in respect of the decision taken by the respondent No.3. It is further contended that as a result of the impugned action petitioner is deprived of his statutory right of appeal before the appellate authority/chairman if any order is passed against him. It is stated that no inquiry has so far been initiated in pursuance of the impugned charge sheet. Per learned counsel, a full-fledged inquiry is to be conducted under the rules and regulations of the KPT so far as the purported allegations are concerned, but till today, no such inquiry has been conducted, without providing any opportunity of hearing to the petitioner to cross-examine the witnesses/complainant, neither the appointment of the inquiry was made under the rules.

4. Mr. Bashir Ahmed, learned counsel representing respondent-KPT, has argued that the petitioner during duty hours assaulted the Deputy Manager and misbehaved with him for which he has been charge-sheeted on account of misconduct and indiscipline; that

preliminary inquiry was conducted which established culpability of the petitioner; that disciplinary proceedings have been initiated under KPT Officers and Servants (Efficiency and Discipline) Rules, 1973; that the petitioner has remedy before the learned labor Court against the outcome of the disciplinary proceedings. He further stated that the petitioner was served with the Show Cause Notice and charge sheet, however, he obtained interim order dated 04.02.2020 from this Court. He prayed for dismissal of the instant petition.

5. We have heard the learned counsel for the parties on the issue of disciplinary proceedings initiated against him on account of alleged misconduct and perused the material available on record.

6. The inquiry report dated 24.12.2019 has been placed on record. The findings and recommendations of the inquiry officer are as under:

Part-III FINDINGS

(1). *In view of the foregoing, it appears that prima facie case exists, against Mr. Arshad Rafique, Lascar, Port Department for his misbehavior and rowdy action with Mr. Muhammad Iqbal, Dy. Manager (HR) in his office.*

(2). *During cross examination session, Mr. Talha Mansoor, AMHR, has also stated that whenever, Mr. Arshad Rafique, Lascar, came to my office, he used the harsh language against Mr. Muhammad Iqbal, Dy. Manager (HR). This was reported to Mr. Muhammad Iqbal, Dy. Manager (HR) and Manager (HR) was well.*

Part-IV RECOMMENDATIONS

It is recommended that further action as may be deemed appropriate be taken in this matter."

7. In view of the pendency of the disciplinary proceedings, we cannot stop the disciplinary proceedings for an indefinite period on the plea that the alleged charge sheet was issued by the incompetent authority for the simple reason that disciplinary proceedings fall within the ambit of expression terms and conditions of service of the petitioner and all the defenses including the agitated by the petitioner in the present petition before the forum available to him under the law.

8. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to restrain the competent authority from taking action under law against a public servant against whom prima facie evidence showing his involvement in the 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, more particularly in Karachi Port Trust.

9. Adverting to the point raised by the learned counsel is no ground to take benefit to bypass the disciplinary proceedings. Since the show cause notice/charge-sheet was issued against the petitioner and he replied to it vide letter dated 13.02.2020 and it is for the respondent-KPT to decide under the law for which this Court is not required to show indulgence in the matter under Article 199 of the Constitution to set aside the disciplinary proceedings initiated against him.

10. Keeping in view the above-mentioned facts and circumstances of the case, we do not see any infringement of the right of the Petitioner which could be called in question by way of Writ Petition. It is a well-settled principle of law that a public Servant has no vested right to call in question the disciplinary proceedings in Writ Petition.

11. This being the legal position of the case, we find no merits in the instant petition, which is dismissed accordingly with no order as to costs, leaving the petitioner to avail the remedy against the outcome of the disciplinary proceedings conducted by the respondent-KPT as provided under the law, which shall be concluded within two months from today and the petitioner shall be provided a meaningful hearing under law.

J U D G E

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Nadir*