

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-102 of 2022
(Muhammad Uris v. The Province of Sindh and another)

Order with signature of Judge(s)

For orders as to maintainability of instant petition

28.02.2022

M/S Farrukh Shareef & Ali Asghar Kumbhar, advocates for the petitioner.
Mr. Ali Safdar Depar, AAG

At the outset, we asked the learned counsel for the petitioner to satisfy this Court about the maintainability of the instant petition on account of laches as he has impugned the order dated 18.3.1999 and appellate order dated 20.04.2018 and seeks reinstatement of his service from the date he was dismissed. Learned counsel for the petitioner submits that after the acquittal of the petitioner from the criminal case which was the basis for his dismissal from service he is entitled to be reinstated in service; that the original impugned and appellate orders are illegal, void ab initio, and not sustainable under the law. Learned counsel cited the case of his colleagues Abdul Raheem Rahujo, Ex-District Agricultural officer of Defunct Sindh Agriculture Supplies Organization (SASO), who has been reinstated in service by the Worthy Chief Minister Sindh. Per learned counsel, without inquiry, he was dismissed from service in 1999. He preferred an appeal before the learned Sindh Service Tribunal against the impugned orders, however, due to the pendency of the appeal before the competent authority, the matter was pursued and the respondents finally decided his departmental appeal on 20.4.2018, which was, later on, supplied the copy of the order to the petitioner, as such he has filed the instant petition.

Prima facie, the case of petitioner is akin to the case decided by this court in C.P. No. D-2954 of 2021 vide order dated 28.02.2022 as under the similar circumstances the inquiry proceedings were conducted under the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 as adopted by SASO, without recording the evidence of the parties on oath and opportunity of cross-examination of the witnesses to the petitioner. It is a well-settled law that if the inquiry officer has decided that there should be an inquiry then the procedure laid down in the aforesaid Rules-1973 has to be followed and the requirements enumerated therein had to be adhered to i.e. charge shall be framed and the said employee would be allowed to give reply of those charges after which evidence is to be recorded by examining the witnesses in respect of the charges. The said employee can also produce witnesses in his/ her defense.

In the present case, it is noted that this procedure has not been followed in its letter and spirit and the witnesses were not examined in respect of the charges on oath, as provided under the law, which was necessary before imposing a major penalty upon the said employee. In such circumstances, in our view, the petitioner

was entitled to a fair opportunity to clear his position in terms of the principle of natural justice. On the aforesaid proposition of law, we are fortified with the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of *Pakistan Defense Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed* (2013 §CMR 1707), *Muhammad Sharif Abbasi vs. Member, Water, WAPDA Lahore* (2013 §CMR 903), and *Lahore Development Authority vs. Muhammad Nadeem Kachloo* (2006 §CMR 434).

So far as the charges leveled against the petitioner vide office order dated 18.03.1999 that petitioner misappropriated SASO stocks in connivance with Ghulam Hussain Chowkidar has been belied by the judgment dated 05.06.2015 of the learned trial Court in Special Case No.98/2010 and the statements of the witnesses of the respondent department were recorded on oath and this was the reason the petitioner was acquitted from the charges, however, since the Criminal Case has no bearing in the departmental proceedings, therefore, we are not inclined to dilate upon the subject issue furthermore in the light of judgment passed by the Hon'ble Supreme Court of Pakistan as discussed supra. However, we are cognizant of the fact that the petitioner was appointed in 1984 and was dismissed from service in 1999 has 15 years' service in his credit, which is sufficient for conversion of his major penalty of dismissal from service into compulsory retirement for the reason that petitioner was dismissed from service with the stigma of alleged misappropriation and adulteration of SASO stock at the relevant time and the respondent department did not confront him with the relevant record and report of competent authority about misappropriation/adulteration of SASO stock if any, and even he was not allowed to produce witnesses and cross-examined the witnesses of the respondent department on the purported allegations leveled against him.

Prima facie, the punishment awarded to him through the impugned office order dated 18.03.1999 is harsh, therefore, we deem it appropriate in the best interest of justice to remit this matter to the Chief Secretary, Government of Sindh/appellate authority to look into the case of the petitioner in light of order dated 28.02.2022 passed by this court in C.P. No. D-2954 of 2021 and observation made in the preceding paragraph; and decide the case of the petitioner afresh on the point whether the petitioner has a requisite length of service; and, whether the major penalty of dismissal from service of the petitioner could be converted into either the major penalty of compulsory retirement from service and/or reinstatement in service if he has not crossed the age of superannuation.

The petition stands disposed of in the above terms.

JUDGE

JUDGE