

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP. No. D- 3052 of 2016

(Ayaz Ali Thahim v. Government of Sindh and another)

Date	Order with Signature(s) of Judge(s)
------	-------------------------------------

For hearing of main case

15.03.2022

Mr. Qadir Hussain, advocate for the petitioner
Mr. Ali Safdar Depar, AAG

Through this petition, the petitioner has assailed the notification dated 21.05.2014 issued by the Secretary, Population Welfare Department, Government of Sindh, whereby he was placed under suspension, with immediate effect till further orders. And subsequently, his services were dispensed with vide notification dated 14.7.2014, inter-alia on the ground that he has been politically victimized by the respondents at the behest of a political figure, who was on inimical terms with the petitioner due to unceremonious marriage with his daughter. Petitioner has averred that his entire family was victimized and his father was got dismissed from service.

Mr. Qadir Hussain Khan, learned counsel for the petitioner, has submitted that the petitioner was appointed as Social Welfare Officer on a contract basis in the year 2011 and had been working with full zeal, however, due to matrimonial affairs, he was placed under suspension vide notification dated 21.5.2014; and, subsequently, his services were dispensed with vide notification dated 14.7.2014. Learned counsel further submitted that the petitioner had illegally been removed from service without assigning any reason; that the Petitioner has been condemned unheard and removed from service without holding the proper inquiry into the allegations leveled against the Petitioner, which is unwarranted under the law; that the act of Respondents is based on malafide intention and politically maneuvered; that the Petitioner though appointed on contract basis, is entitled to a fair opportunity to clear his position in terms of Article 4, 10-A and 25 of the Constitution of the Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens of this Country by the State Functionaries; that it is a trite principle of law that even if a person is to be condemned for the misconduct and even if he is employed on a contract basis or probation, he is entitled to a fair trial and an opportunity should be provided to him to clear his position but in the instant matter the Petitioner was condemned unheard; that the Petitioner had been punished for raising voice against the political figure due to which he had been terminated against the settled principle of law; that the Respondents cannot be allowed to punish its employees for the illegal acts of its own. He lastly prays for allowing the instant Petition.

Learned AAG has raised the question of maintainability of instant Petition; that the Authorities of the answering Respondents have not acted malafidely nor violated any provisions of law or prescribed Rules in discharging their duties. He pointed out

that the Appointment Order dated 23.9.2011 of Petitioner, which is a contractual appointment for one year, and the service of the Petitioner had never been regularized by the Respondents. Thus such appointment would be terminated on the expiry of the contract period or any extended period on the choice of Employer or Appointing Authority. He emphasized that the case of the Petitioner is governed by the principle of Master and Servant, therefore, the Petitioner does not have any vested right to seek reinstatement in service. He further submitted that the petitioner had been absconding from the government duty with effect from 01.02.2014 and his service was terminated on 14.7.2014. He lastly prays that Petition being not maintainable is liable to be dismissed.

We have heard the learned counsel for the parties and perused the material available on record.

Prima facie, the petitioner has been terminated by the direction of the Minister of Population Welfare Department, Government of Sindh, and under the Sindh Rules of Business, 1986, the Chief/ Minister who are political persons has no direct role whatsoever in the matter of appointment, posting, transfer, promotion, and disciplinary issues. On the aforesaid proposition, the Hon'ble Supreme Court in the case of The STATE v. ANWAR SAIF ULLAH KHAN, **PLD 2016 Supreme Court 276** has held as under:

“32. Illegal interference of Ministers and legislators, etc. in the exercise of the executive authority of the competent authorities in the civil service has also been commented upon and set aside by different High Courts and Tribunals, etc. in many cases and some of such cases are detailed below with a summary of what was held therein: Mahmood Bakhsh, etc. v. Secretary Irrigation, Government of Punjab, Lahore, etc. (1986 CLC 286): A Provincial Minister has no jurisdiction to direct the competent authorities under the Canal and Drainage Act to include a particular area in the Canal Commanded Area. Muhammad Rashid v. Azad Jammu & Kashmir Government through Chief Secretary and 20 others (PLD 1987 SC(AJ&K) 60): A Minister's order regarding grant of the lease was void ab initio. Ch. Muhammad Zaman, etc. v. Azad Government of the State of J & K, etc. (PLD 1987 (AJ&K) 52): Imposition of a penalty by an Advisor to the President was without jurisdiction. Masti Khan v. The State (PLD 1987 Lah. 212): An order passed by a Chief Minister of a Province transferring investigation of a criminal case was without lawful authority. Muhammad Zaman and 8 others v. The Minister for Consolidation and 3 others (PLD 1988 Lahore 416): A Provincial Minister for Consolidation has no jurisdiction to interfere in a consolidation scheme or to order reconsolidation. Abdul Rauf v. Director, Local Government and Rural Development, Sargodha and another (1989 PLC (C.S.) 436): Transfer of an employee at the instance of a Provincial Minister was without jurisdiction. Ashnaghar v. Secretary Education, Government of NWFP, Peshawar, etc. (1989 PLC (C.S.) 439): Dismissal order passed at the direction of an MPA was set aside as without jurisdiction. Muhammad Ayub and 6 others v. Minister for Education, Punjab Province, Lahore and 2 others (1990 PLC (C.S.) 278): Termination of service upon a verbal direction of a Provincial Minister was set aside as without lawful authority. Shagufta Bibi v. Deputy Education Officer (Women). Tehsil and District Sahiwal (1990 PLC (C.S.) 345): C.P. No. D-6300 of 2020 Page 4 of 4 An order of transfer of an employee passed in compliance of an order of a Provincial Minister was set aside as without lawful authority. Muhammad Afzal v. District Education Officer (Female), Rahimyar Khan and 2 others (1989 PLC (S.C.) 677): An order of termination from service passed in compliance of a direction of a Provincial Minister was set aside as without lawful authority. Muhammad Asif v. Secretary Government of Punjab, etc. (1990 PLC (S.C.) 257): In the matter of transfer of

an employee, a Provincial Minister does not figure anywhere in the rules and administrative instructions.”

In view of the above legal position of the case, this petition is disposed of with the direction to the competent authority to enquire into the allegation leveled against petitioner a fresh after providing meaningful hearing to the petitioner so far as his absence from duty with effect from 01.02.2014 to 14.7.2014 and his defense shall also be considered; and, submit the report to this court through MIT-II. In the meanwhile, the impugned notification dated 14.7.2014 shall remain in abeyance.

JUDGE

JUDGE

Nadir/PA