

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. 5927 of 2019

Order with signature of Judge(s)

For order as to maintainability of petition.

Dated : 16.03.2021

Malik Naeem Iqbal, advocate for the petitioner.

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The petitioner is the Gazetted Officers' Association (School Administration Cadre) which is a duly registered body under the Society Registration Act, 1860, and claims to be committed to rights, interests, and welfare of the members of the Teaching community with a further commitment of development and advancement in Educational system in the Province of Sindh seeks direction to the respondents to decide their representation about the enhancement of sanctioned strength under Four Tier Formula from BPS-17 to 20 without discrimination.

The gist of the arguments of learned counsel for the petitioner-Association is that right to form a union or association was guaranteed to every citizen of Pakistan including a Civil/Government servant under Article 17(1) of the Constitution, which could only be subject to reasonable restrictions imposed by law. Per learned counsel no sub-constitutional legislation or executive action could place fetters upon constitutionally guaranteed fundamental rights of the petitioner-Association. In support of his contentions, he relied upon the cases of Income-Tax Servants Employees' Association Class III, Lahore v. The Commissioner of Income-Tax Gujranwala Zone, Gujranwala and 4 others, 1993 PLC (C.S) 649, Intisar Shamim Ahmed and another v. Secretary, Labour and Manpower, Government of Punjab, Lahore and 2 others, 1997 PLC (C.S) 860, Liaquat Ali Ghanghro v. Province of Sindh through Secretary Education and Literacy Department Government of Sindh and another, 2007 CLC 923.

Primarily under the Sindh Civil Servant (Conduct) Rules, 2008, the very Membership of Service Association was severely restricted to the following extent of Rules 15, 19, 21, 22, 23, 24, 25, 28, 29, 30, 31 & 32. During arguments, we have noticed that under Rule 2(4) The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, the word 'misconduct' is defined which means conduct prejudicial to the good order of service discipline or contrary to West Pakistan

Government Servants (Conduct) Rules, 1966 or unbecoming of an officer and a gentleman and includes any act on the part of a civil servant to bring political or other outside influence directly or indirectly to bear on the Government or any Government officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of the civil servant.

Article 71(1) of the Constitution provides the formation of Associations or Unions, however, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order, or morality. So far as the formation of an association by civil servants is concerned, if the same is lawfully registered without coming into the conflict with certain restrictions as imposed by law. We have seen that under rule 31 of Sindh Civil Servants (Conduct) Rules, 2008 there are certain reasonable restrictions upon the formation of association by civil servants. However, the question involved in the present proceedings is whether the Societies Registration Act, 1860 covers all such aspects or otherwise.

Prima facie, the petitioner-association working in School Education and Literacy Department, Government of Sindh, whose prime duty is to impart basic education to the children and their service-related issues come later on. Primarily, a civil servant's engagement in any other activities or profession is restricted to the extent as discussed supra; however, the formation of an association ought not to be in direct conflict with School Education.

In view of the foregoing position of the case, the important questions for our determination are as under:

- (a) Whether the right to form an association/union could be made available to the civil servants. The conduct rules 2008 could also be treated as restrictions imposed in the interest of public order which is a permissible ground of restriction under Article 17(1) of the Constitution.
- (b) Whether civil servants could use official buildings, places of their departments for the meeting, etc. for the affairs of their association.
- (c) Whether civil servants could take part during their official duty hours.
- (c) Whether Societies Registration Act covers the registration of an association of civil servants.

Let notice be issued to respondents as well as to the learned Advocate General Sindh to assist this Court on the subject issue. The petitioner's counsel is put on notice to satisfy the maintainability of the instant petition and assist this Court about the activities of the petitioner-association and their limitation about the welfare of their teachers. The Registrar, Joint Stock Companies, shall also appear in person to assist in answering to the said propositions as well as submit mechanism of breach/violation by such associations. Secretary, Education, Government of Sindh Karachi shall be present before this Court on the next date of hearing. To come up after two weeks.

Let a copy of this order be transmitted to the Secretary, Education, Government of Sindh, Karachi, for compliance.

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