

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D- 1578 of 2021

Muhammad Saqib

Versus

The Province of Sindh through Home Secretary and 03 others

Date of hearing &
Order : 05.04.2021

Mr. Naeemullah Bhutto, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Basically, the petitioner through the instant petition, has called in question, the departmental proceedings initiated against him as contemplated under Section 3(b)(c) of the Efficiency and Discipline Rules, 1988, (E&D Rules) vide order dated 06.11.2020; and, subsequently culminated into the final order dated 01.02.2021, whereby his services had been dispensed with on account of misconduct as defined under E&D Rules, 1988, on the allegations that he was indulged in running Rummy Club/gambling den under his patronage by extorting Rs.5,000/- per day in the name of the police department, Government of Sindh.

2. We have noticed that a show cause notice was served upon the petitioner with the aforesaid accusations, whereby he replied and denied the allegations leveled against him, however, respondent-department did not agree with his defence plea and issued the final show cause notice dated 19.01.2021. However, he failed and neglected to reply the final show cause notice, though he was given a fair opportunity to be heard by calling him in the orderly room, but he failed to appear before the Competent Authority to prove his innocence.

3. At the very outset, we have asked learned counsel as to how this petition is maintainable against departmental proceedings initiated against him and the final order for dismissal from service served upon him, which action of the respondent-department ought to have been assailed before the learned Sindh Service Tribunal (SST) at Karachi.

4. Learned counsel for the petitioner replied the query raised hereinabove and argued that the allegations levelled against him are false and fabricated one and nothing was observed against him during his tenure of service. He further submits that the final show cause notice issued against him was illegal and based on malafide intention. Per learned counsel, the Inquiry Officer did not find him guilty of the charges as discussed supra, however, they continued with such disciplinary proceedings, without any oral as well as documentary evidence; and, knocked him out on false plea, by the respondent-department. On the maintainability of this petition, learned counsel reiterated his submissions at discussed supra and argued that this is a hardship case and this Court is in a better position to look into the factual as well as legal aspects of the case and take cognizance of the impugned action taken against him by the respondent-Police department, which is without lawful authority, therefore, this petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

5. We have heard learned counsel for the petitioner on the maintainability of this petition and have gone through the record available before us.

6. *Prima facie*, the impugned order dated 01.02.2021, whereby he has been dismissed from service, which action needs to be looked into by the learned SST as he is a Civil Servant as defined under Section 2(1)(b) of the Sindh Civil Servants Act, 1973, as well as under Police Rules, 1934; and, the vires of impugned order could be challenged before the learned SST under Section 3(2) of the Sindh Service Tribunals Act, 1973. On the aforesaid propositions, we are fortified with the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch v. Government of Sindh and others, 2015 SCMR 456.

7. In view of the above legal position of the case, without touching the merits of the case, we hold that this petition is not maintainable under Article 199 of the Constitution and is dismissed in limine along with the pending application(s), leaving the petitioner at liberty to avail his remedy as provided to him under the law.

J U D G E

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Shahzad