

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Constitutional Petition No. D – 4896 of 2020

Muzaffar Hussain Katpar

Versus

The Province of Sindh and another

Date of hearing & Order : 23.04.2021

Mr. Qaim Ali Memon, advocate along with petitioner.

Mr. Ali Safdar Depar, AAG.

ORDER

ADNAN-UL-KARIM MEMON, J. The Petitioner has called in question his suspension from service notification dated 01.01.2018 issued by the respondent-Services, General Administration & Coordination Department, Government of Sindh on account of a NAB Reference against him.

2. We queried from the learned counsel as to how the instant Petition is maintainable against the suspension order. He in reply to the query has submitted that the impugned order cannot be termed as an order relating to the terms and conditions of service of the Petitioner, therefore, the bar of Article 212(2) of the Constitution will not come in the way of the Petitioner, more particularly, the suspension order is based on malafide intention; that the petitioner is fully entitled to be treated as per the law. He further submitted that the colleagues of the petitioner have already been reinstated in service even though some of them are convinced by the learned Accountability Court in another Reference. He emphasized that a considerable period has elapsed but the clog of suspension has not come to end. At this stage, we asked him whether departmental proceedings have been initiated against him on the ground of misconduct, he replied negatively. We do not agree with the statement of the learned counsel for the Petitioner on the aforesaid analogy for the simple reason that disciplinary proceedings fall within the ambit of expression terms and condition of service of the civil servant, therefore, the jurisdiction of all other courts is barred by the provision of Sindh Service Tribunals Act, 1973 read with Article 212(2) of the Constitution. We are fortified with the decision rendered by the Hon'ble Supreme court in the case of Ali

Azhar Khan Baloch vs. Province of Sindh [2015 SCMR 456]. Even we are surprised to note that since 2018 no departmental proceedings have taken place, which prima facie show the conduct of the competent authority of the respondent department.

3. We have noticed that the Civil / Government servants are still on posting in the Government of Sindh although they are facing NAB References based on alleged corruption and corrupt practices, and/or criminal or disciplinary proceedings. Therefore, such Civil / Government servants are not entitled under the law to perform their duties and/or to enjoy their posting(s). In a number of cases disciplinary proceedings initiated against Government / Civil servants are not decided or concluded within a reasonable time. Such unreasonable delay on the part of the department(s) concerned causes hardship for the Government / Civil servants, uncertainty within the department, and unnecessary litigation before the Courts. Therefore, we deem it appropriate to direct the Government of Sindh to ensure that in future action must be taken under Rule 5 of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, against all Government / Civil servants against whom disciplinary and/or criminal proceedings are pending; and, in case of disciplinary proceedings against them, the same must be concluded/decided expeditiously strictly under law. In the present case, the competent authority of respondents shall ensure the initiation of departmental proceedings; and, its logical conclusion within one month from today after providing an opportunity of hearing to the petitioner.

4. In the light of the above facts and circumstances of the case, this petition stands disposed of along with pending application in the terms of the preceding paragraphs.

Issue notice to the Chief Secretary, Sindh, for compliance.

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