

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Before:**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No.D-3985 of 2020**

Aurangzaib

*Versus*

Federation of Pakistan and 03 others

**C.P No.D-4485 of 2020**

Ashfaq Ahmed Memon

*Versus*

The Federation of Pakistan and 07 others

Date of hearing & order: 05.05.2021

Mr. Abdul Salam Memon, advocate for the petitioners.

Mr. Jaffar Hussain, advocate for respondents 2 to 4.

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## **ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Vide separate office orders dated 22.09.2020, the major penalty of “removal from service” was imposed by the respondents upon both the petitioners. Through these Constitutional Petitions, the petitioners have impugned the above office orders. Since common questions of law and facts are involved in both these petitions, the same was heard together with the consent of the parties and are being disposed of through this common order.

2. The main ground urged by Abdul Salam Memon, learned counsel for the petitioners, was that the impugned major penalty of dismissal from service could not be awarded to the petitioners without a formal/regular inquiry and without allowing them the opportunity to cross-examine the prosecution witnesses; and, as no such inquiry was conducted in the manner as discussed supra, the entire impugned exercise undertaken by the respondents and the impugned major penalty imposed by them are contrary to the law laid down by the Hon’ble Supreme Court in its various pronouncements. In addition to the above, it was further urged on behalf of the petitioners that the respondents had no authority whatsoever to dispense with the inquiry against them, without allowing them to participate in the purported disciplinary proceedings, in the facts and circumstances of the case; the impugned major penalty could not be awarded merely based on the recommendation of the Inquiry Officer; the petitioners had no nexus with the purported allegations as mentioned in the order dated

22.9.2020; proper opportunity of hearing was not afforded to the petitioners by the respondents under law before taking the impugned action against them; the petitioners were condemned unheard in violation of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973; and, the entire exercise undertaken by the respondents was arbitrary, malafide, discriminatory and illegal.

3. We queried from the learned counsel for the petitioners as to how the instant Petitions are maintainable against the disciplinary proceedings initiated against them. He in reply to the query has submitted that the impugned orders cannot be termed as the orders passed within the terms and conditions of service of the Petitioners, therefore, the disciplinary proceedings initiated against them is based on malafide intention; and issued by the respondents without ascertaining the factual aspect of the matter; that the petitioners are fully entitled to be treated under the law. He highlighted that the impugned disciplinary proceedings purportedly culminated into dismissal from their service suffer from various jurisdictional defects; and, in complete disregard to the provision provided in the law as discussed supra. Per learned counsel, the impugned action has been taken against them on account of departmental intrigues. Learned counsel referred to various documents attached with the memo of the petitions and argued that the impugned action is based on victimization and personal vendetta, thus the impugned orders dated 22.09.2020 are a nullity in the eyes of law and required to be set aside. He lastly prayed for allowing the instant Petitions.

4. We do not agree with the statement of the learned counsel for the Petitioners 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. On the aforesaid proposition, we seek guidance from the judgment passed by the Hon'ble Supreme court in the case of Ali Azhar Khan Baloch vs. Province of Sindh [2015 SCMR 456]. The Hon'ble Supreme Court in paragraphs 146 to 150, has held as under:-

“146. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters. In other words, the jurisdiction of all other Courts is barred by the provisions of the Sindh Service Tribunals Act, 1973, read with Article 212 of the Constitution.

147. Section 4 of the Service Tribunals Act provides Civil Servant with the right of filing an Appeal before the Tribunal, subject to the qualifications provided therein.

148. In this background, all the Civil Courts, including a Judge (in Chambers) of High Court of Sindh, exercising jurisdiction on the original side as a civil court under C.P.C. cannot entertain a civil suit of a civil Servant relating to the terms and conditions of his service. The exercise of jurisdiction by the High Courts is conferred under Article 175(2) which reads as under:--

"175(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."

149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals.

150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants."

5. During the hearing, we have been informed that the dismissal from service orders dated 22.09.2020 has been withdrawn by the Superintendent, Pakistan Railways Karachi vide order dated 14.10.2020. This factum has been endorsed by Mr. Jaffar Hussain, learned counsel for respondents, however, he has reservation about the maintainability of this petition on the premise that the petitioners are civil servants and against the major penalty they have the remedy before the learned Federal Service Tribunal against the decision dated 22.09.2020. He further contended that it was an open and shut case against the petitioners in view of the findings and recommendations of the Enquiry Officer. It was further contended by him that in view of the above, the competent authority had the discretion and power to dispense with the services of the petitioners under the Pakistan Railways Police (Efficiency and Discipline) Rules, 1996. It was also contended by him that the petitioners never objected when the Inquiry Officer was appointed to inquire into the allegations made against them, and as such, they are now estopped from questioning the findings and recommendations of the Enquiry Officer and/or the action taken by the respondents in pursuance thereof. In support of his above contentions, he placed reliance upon the case of National Assembly Secretariat through Secretary v. Manzoor Ahmed and others, 2015 SCMR 253 and Syed Niaz Hussain Shah Bukhari, Technician (Process) v. Oil and Gas Development Corporation Ltd. Through Chairman, OGDCL Head Officer, Islamabad, 2003 SCMR 228. He prayed for dismissal of the instant petitions on the aforesaid analogy. At this stage, we queried from him whether the petitioners

were allowed to participate in the disciplinary proceedings, he submitted that the impugned major penalty of removal from service was imposed upon the petitioners merely based on such findings and recommendations of the Enquiry Officer, however, they were given chances to appear and participate in the disciplinary proceedings, but to no avail. Resultantly, major punishment of dismissal from service was imposed upon them ex-parte.

6. Before parting with this order, we may observe that in this context, it is well-settled that the purpose of providing major and minor penalties in the service law was to give choice to the departmental authorities to determine the quantum of punishment in light of the nature of misconduct ; the authorities concerned may in their discretion award major or minor penalty, but this power must not be exercised in an unjust and arbitrary manner ; except in special circumstances, a civil servant must not be awarded major penalty of dismissal from service without proper/regular inquiry and providing him fair opportunity to explain his position ; imposition of major penalty of dismissal from service, without regular inquiry, would suggest the element of bias and unfair treatment at least in the matter of quantum of sentence ; findings of a fact finding inquiry, without joining the civil servant against whom findings are compiled, cannot be made basis for his removal from service as such proceedings would be contrary to the principles of natural justice enshrined in the maxim audi alteram partem ; the competent authority must not dispense with the inquiry that may be necessary to probe into charge, particularly when there is a likelihood of imposition of major penalty of removal from service if the allegation is proven ; if inquiry is dispensed with without any plausible reason, such dispensation would not be justified ; and, imposition of major penalty of removal from service without holding regular inquiry would result into grave miscarriage of justice and prejudice to the aggrieved civil servant.

7. In view of the office orders dated 14.10.2020, we are clear in mind that pendency of the disciplinary proceedings, the final decision against the Petitioners has yet to be taken by the respondents afresh, and the petitioners will have an opportunity of hearing before impugned final action, if any, is taken against them by the Competent Authority of respondent-Pakistan Railways Karachi. The views expressed by us in the preceding paragraph are fortified by the law laid down by Hon'ble Supreme Court in the cases of (1) Muhammad Idris Khan V/S Secretary / Chairman, Ministry of Railways Islamabad and 5 others, 2006 SCMR 104, (2) Fatima Bibi V/S Deputy District Education Officer and others, 2007 PLC (C.S.) 597, (3) Divisional Forest Officer Kasur and another V/S Zahid Ali, 2011 PLC (C.S.) 1382, (4) Muhammad Afzal V/S Regional Police Officer, Bahawalpur and

others, 2012 PLC (C.S.) 728, and (5) Muhammad Naeem Akhtar V/S Managing Director Water and Sanitation Agency LDA, Lahore and others, 2017 SCMR 356.

**8.** To conclude the matter, since the impugned orders have been withdrawn by the respondents as discussed supra, we have no option but to observe that the petitioners have to overcome the clog of the disciplinary proceedings initiated against them by the respondents and direct them to culminate it to its logical conclusion.

**9.** For what has been discussed above, both these petitions are disposed of, however, with no order as to costs. Resultantly, the impugned orders of removal of the petitioners from service are hereby set aside and their cases are remanded back to the competent authority of respondent-Pakistan Railways Police for holding a regular inquiry against them after providing the opportunity of hearing/representation to them strictly under law, which exercise shall be completed within two (02) months from the date hereof. Needless to say, the question of granting back benefits to the petitioners shall depend upon the outcome of the inquiry to be held in pursuance of this order. However, it is made clear that if the salary of the petitioners is stopped on account of pendency of disciplinary proceedings, the same shall be disbursed to them during the intervening period. Petitions stand disposed of in the above terms along with the listed and pending applications.

Let a copy of this order be communicated to the respondents for information and compliance.

**JUDGE**

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