

IN THE HIGH COURT OF SINDH, KARACHI

Before

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Amjad Ali Sahito

C.P NO.D-6954, 7215, 7353, 7403,
& 7475 of 2019 & C.P. NO.D- 1748
and 1965 OF 2020

M/s Abid S. Zuberi & Ayan Mustafa Memon,
Muhammad Haseeb Jamali, Danish Rashid Khan
& Shoaib Ali Khatian advocate(s) for Petitioners in their
respective Petitions

Ms. Leela Kalpana Devi, AAG

Mr. Liaquat Ali Abro, Law Officer, Law Department
Government of Sindh.

Date of Hearing : 14.04.2021, 21.04.2021,
04.05.2021, 19.05.2021,
27.05.2021 & 01.06.2021.
Date of Judgment : 13.08.2021

J U D G M E N T

AMJAD ALI SAHITO---J., The petitioners are members of the legal fraternity who have invoked the extraordinary jurisdiction of this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenging the impugned notification bearing reference No.S.GENL;6-10/2017/304 dated 16.03.2020 issued by the Government of Sindh terminating their services as law officers. The grievance of the petitioners revolves around their alleged illegal termination as law officers.

2. Precisely the necessary facts as contained in the constitution petition(s) are that Petitioners Ghulam Mustafa Mahesar and Muzzaffar Ali Laghari were appointed as Additional Advocate General Sindh, vide notification dated 18.01.2017 & 10.08.2017 respectively, whereas Petitioners Ghulam Abbas Sangi, Habib-ur Reham, Choudhry Muhammad Bashir and Agha Athar Hussain were appointed as Assistant Advocate General Sindh, vide notification dated 25.08.2017 & 07.05.2011 respectively, upon qualifying the

criterion settled by the Government of Sindh. Thereafter while petitioners were discharging their professional legal obligations as per routine when their services terminated and they were de-notified vide Notification bearing No.S.GENL-6-10/2017 dated 16th March 2020 respectively. Which are impugned in these petitions?

3. Notices of the instant constitution petitions were issued to the respondents, they came forward along with their respectively replies/objections.

4. The learned counsel for the petitioners *inter alia* contended that the impugned notification of the Petitioners is illegal, void, *ab-initio* and is against the spirit of mandatory provisions of Law and the Rules prescribed for appointment of the Additional Advocate General and the Assistant Advocate General; per learned counsel the doctrine of pleasure as stated in Rule 4(1) of the Sindh Law Officers (Conditions of Service) Rules does not give respondents license to act with unfettered discretion to act arbitrarily; that the sole purpose of these rules are to regulate the conduct of the legal affairs of the government and also the conditions of service, such as remuneration, appointment, etc. of Law Officer, accordingly the appointment and/or dismissal of such law officers including the Petitioners were to be made in consonance of these rules; the relevant Rule 3 and Rule 4 respectively provide period of appointment for such law officers; that the Rules 1940, Sindh Government Rule of Business, 1986 prescribe certain mandatory conditions which are required to be followed in cases of appointment, termination, and resignation etc. of the Additional Advocate General. Rule 5(iii) of the Sindh Government Rules of Business, 1986 framed under Article 139(3) of the Constitution prescribes procedure to be followed; the cases to which this sub-rule i.e. 5(iii) applies are enumerated in Schedule IV of the said Rules. Per learned counsel impugned notification is a third attempt to

terminate the Petitioners from their services as Additional Advocate General and Assistant Advocate General, Sindh, respectively. The first two attempts to de-notify the Petitioners were individually challenged by the Petitioners before this Court in C.P No.6954 of 2019 and C.P. No.D7353/2019, the third attempt to de-notify the Petitioners, by way of the notification impugned through this instant petition, is a malicious attempt to defeat the ongoing litigation pending in respect of the services of the Petitioners. More importantly, it is an exercise to correct the defects in the previous two notifications issued to de-notify/dismiss the Petitioners by using the Provincial Cabinet of Sindh as a rubber stamp. Thus, establishing the approval of the Cabinet to dismiss the petitioners from their services, as stated in the minutes of the Cabinet meeting dated 03.03.2020 is only a *post-facto* approval that cannot be allowed to stand.

5. The learned Advocate General Sindh assisted by Law Officer, Government of Sindh, contended that the petitioners have been rightly de-notified by the executive authority; that the petitioners were terminated by the notification dated 16.03.2020, passed by the Government of Sindh; that according to Rules, 1940 the Sindh Law officers (Conditions of Service) Rules 1940, the Government of Sindh has discretion in matters about appointment and removal of law officers working in the office of Advocate General Sindh, this discretion is based on the doctrine of pleasure which is recognized and upheld by the Superior Court of Pakistan. Per learned AG the tenure of three years has already elapsed, therefore, there is no need to adjudicate the matter upon merits. Lastly learned AG contended that the instant constitutional petition merits no consideration and the same may be dismissed.

6. We have heard the arguments of both sides and perused the record.

7. The background of this case is that the petitioners namely Ghulam Mustafa Mahesar and Ghulam Abbas Sangi filed a constitution petition number D-6954 of 2019 by impugning notification dated 24-10-2019 whereby their services were de-notified/dispensed with. On 31-10-2019, the matter was fixed before this court and notices were issued to the respondents as well as AG Sindh. Meanwhile, the operation of impugned notification was suspended, and the matter was adjourned to 12-11-2019. On 12-11-2019 learned Advocate General, Sindh placed on record a new notification relating to amendments carried out in Schedule IV (Serial No. 19) along with fresh notification de-notifying and dispensing with service of petitioners which were issued in pursuance of an amended version of rules. Counsel for petitioner was directed to address the issue as to whether the petitions have become infructuous or otherwise in view of such amendment and/or action in pursuance of such amendment whereby fresh notifications de-notifying appointment of petitioners have been issued, and the matter was adjourned. On 14-11-2019, the petitioners namely Ghulam Mustafa Mahesar and Ghulam Abbas Sangi filed another Petition No. D-7353 of 2019 before this court by impugned notification dated 11-11-2019. During the pendency of the petition, Mr Abid S. Zuberi learned counsel for the petitioners had pointed out that on a similar controversy the petitions No.1748 of 2020, 7475, 7215, 7403 are pending which were not fixed before this court. Since a common question of law and facts were involved in these cases hence it was ordered that all these petitions should be heard and decided together.

8. Thus the issue in hand is whether or not services of the Petitioners were legally de-notified/dispensed with. Before dilating upon the subject, it is expedient to reproduce relevant portions of the Sindh Law Officers (Conditions of Service) Rules, 1940 (hereinafter referred to as **Rule 1940**) which read as under:

4. Period of appointment---

- (1) All Law Officers hold office during the pleasure of Government
- (2) Except the Advocate-General, no Law Officer shall ordinarily be continued in office after he has attained the age of 60 years.
- (3) Subject to the other provisions contained in this rule, a person appointed as Assistant to the Advocate-General, a Government pleader or a Public Prosecutor shall hold office for a term of 3 years in the first instance and thereafter during the pleasure of Government.
- (4) A law officer shall be liable to be removed from his office at any time, if he is guilty of any act or conduct which, in the opinion of Government, is incompatible with his duties as such Law Officer. The decision of Government in such cases shall be final.
- (5) Ordinarily the term of appointment of an Honorary Assistant shall be 3 years and on the expiry of this period, the appointment will ipso facto cease unless, for special reasons, an extension is granted by legal Remembrance.
- (6) Save as otherwise provided in sub-rule (4) and subject to the provisions of sub-rule (1), the appointment of a Law Officer shall not be terminated except by three months' notice.

It would also be relevant to reproduce notification dated 09 April 2018 whereby amendment was made in the Sindh Law officers (Conditions of Services) Rule, 1940.

AMENDMENT

For rule 3-C the following shall be substituted.

1. **“3-C Appointment of Additional Advocate General.**
The appointment of Additional Advocate General shall be made by the Chief Minister from amongst the Lawyers with not less than seven years standing as an advocate of High Court”.
2. After rule 3-C the following new Rule 3-D shall be added;-
“3-D. Appointment of Assistant Advocate General.
The appointment of Assistant Advocate General shall be made by the Chief Minister from amongst the lawyers with not less than five years standing as an advocate of High Court.

9. The Secretary Law Department, Government of Sindh floated a Summary to Chief Minister Sindh, wherein it was briefed that Sindh Law Officers (Conditions of Service) rules, 1940 were amended to the extent to replace the **“Governor”** with the **“Chief Minister”** as to the appointing authority of Additional and Assistant Advocate General. Consequent upon the amendment entry 19 of Schedule-1V which empowers the Governor to pass orders on the advice of the Chief Minister was omitted. In compliance with Chief Minister Sindh directives/orders and following decisions, amendment of Schedule-1V of Sindh Government Rules of Business, 1986 had been approved through circulation by the Cabinet Members and finally Chief Minister Sindh has also approved the same. In consequence of the decision of a Cabinet notification dated 11th November 2019 was issued, which reads as under;-

NOTIFICATION

No. SORI(SGA&CD)1-105/2019;- *In pursuance of the provision of clause (3) of Article 139 of the Constitution of the Islamic Republic of Pakistan, 1973 the Government of Sindh are pleased to make the following amendments in the Sindh Government Rules of Business, 1986.*

AMENDMENT

1. In Schedule-1V, the following entries at serial No.19 shall be deleted;-

“19. Additional Advocate General, Appointment, resignation, removal, duties and terms and conditions of services”

MUMTAZ ALI SHAH
CHIEF SECRETARY SINDH
Karachi dated the 11th November 2019.

10. Finally the case of the petitioners was placed before the Cabinet of Sindh. The Cabinet approved the proposal of the department for de-notifying the services of the petitioners/Law officers. In compliance with the decision of Cabinet, Notification dated 16.03.2020 was issued and the services of the Petitioners were de-notified/dispensed, with immediate effect. The petitioners namely Ghulam Mustafa

Mahesar and Ghulam Abbas Sangi have impugned the above notification through C.P. D.1965 of 2020.

11. The learned counsel for the petitioners argued that the petitioners were appointed as Additional Advocate General Sindh and Assistant Advocate General Sindh for a minimum period of three years and as such their post was a tenure post that could not have been prematurely terminated save following the applicable laws and procedure. It may be noted that for the post of Additional Advocate General neither the tenure is provided in Rules, 1940 nor in the amendment made through a notification dated 09.04.2018. As per rule 4(3) of the Sindh Law officers (conditions of Service) Rules, 1940, the tenure of Assistant to the Advocate General, a Government pleader or public Prosecutor is three years in the first instance and thereafter during the pleasure of the government. Whereas Rule 4(1) provides that all law officers hold office during the pleasure of the government. But one thing is strikingly clear, the provisions of rule 4 (3) are subject to rule 4 (1) as is obvious from its language **‘Subject to the other provisions contained in this rule, a person appointed as Assistant to the Advocate-General,.....’** pleaders. The term of 3 years appearing in rule 4 (3) is dependent on the rule (1) which makes the pleasure of government a foremost consideration for continuing services of the petitioners. The doctrine of pleasure of government has its origin in the common law of England. The term was used first regarding the tenure of a civil or public servant appointed by the Crown and had the right to hold office at the pleasure of the Crown and until the Crown deems it necessary to. The source of pleasure doctrine is that it is a historical rule of common law that a public servant under the British Crown had no fixed tenure but held his/her position at the absolute discretion of the Crown. The pleasure doctrine is not based upon any special prerogative of the Crown but is based on public policy and is in the public interest and for the public good. The

public is extremely interested in the efficiency and integrity of the civil servants and therefore, public policy and public good demand that the civil servants who are insufficient, dishonest, or corrupt or have become a security risk should not continue in the service. The Doctrine of Pleasure, which has been recognized in Article 140 of the Constitution of Pakistan wherein the post of the Advocate General, etc. is held to be at the pleasure of government terminable at its will, is not alien to dictates of the law.

12. It appears from the record that the post of Advocate General, Additional Advocate General and Assistant Advocate General have always remained pleasure post and terminable at the will of the government. The nature of services rendered by Advocate General, Additional Advocate General and Assistant Advocate General and other law officers in his office constitute a lawyer-client relationship. The government is the client and the aforesaid official are lawyers who against a fixed monthly fee agree to provide their expert services in the legal field. The said relationship is quite different from the relationship of the government with government servants who may serve in their positions so long as the government repossess confidence in them and maybe removed after fulfilling some procedural formalities. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to terminate his services at any time. He is under no obligation to give a reason for withdrawing his brief from his lawyer. The lawyer cannot force his client to continue his contract/relationship with him and appear in court against his will. A law officer shall remain in services as long as his services are desirable by the Government in the public interest and shall always be at the pleasure or the discretion and sweet will of the Government. The appointment to service of Pakistan and in the case of the service of a province, service is regulated under Article 240 of the

constitution of Pakistan. The services of the petitioners do not fall within the domain of services of Pakistan or the Sindh Civil Service Act 1973 and therefore do not require completion of formalities envisaged therein before terminating their services. In the instant case, the petitioners were appointed against the terms and condition as admissible under the Rules, 1940 with immediate effect whereas in the case of those who are in the services of Provinces (Sindh), it has been specifically mentioned that his or her service shall be governed by the Sindh Civil Servant Act, 1973.

13. By nature of their appointment and functions, an Additional Advocate General and Assistant Advocate General have no vested right to force to ask for the continuation of their appointment or reinstatement in service for the leftover period of their service (which has already expired) against the wishes of the Government.

14. In the case in hand, Rule 4(6) clarifies that save as otherwise provided in sub-rule (4) and subject to provisions of sub-rule (1), the appointment of a law officer shall not be terminated except by three months' notice. We have noticed that no notice was given to the petitioners as provided in Rule 4 (6). The notice means an announcement or intimation and conveys information regarding the subject being addressed. The services of the petitioners were de-notified through a notification dated 24.10.2019 and thereafter new notification was issued on 16.03.2020, which means sufficient notice was given to the petitioner that their services are no more required. At this juncture, it would be appropriate to reproduce the date of appointment of an individual, tenure of service, ended the period of the Petitioners:-

S.No.	Name of the Individual	Date of the appointment	Ended period
1	Barrister Ghulam Mustafa Mahessar, Addl. A.G Sindh.	18.01.2017	18.01.2020

2	Mr. Ghulam Abbass Sangi, Assistant A.G Sindh	25.08.2017	25.08.2020
3	Muzaffar Ali Leghari Addl; A.G Sindh	10.08.2017	10.08.2020
4	Habib-ur-Rehman Jamali assistant A.G	28.05.2018	27.05.2021
5	Choudhry Muhammad Bashir Asst; A.G Sindh	07.05.2011	07.05.2014
6	Ali Gul, Addl; Advocate General Sindh.	30.04.2018	30.04.2021

15. Suffice to say that, the petitioners were appointed on the above-mentioned dates and the services of the Petitioners have been de-notified/dispensed with as on **24.10.2019**. Secondly, the services of the Petitioners were de-notified/dispensed with as of **16.03.2020**. Simultaneously, Petitioners are continuing their grievances and are availing job privileges for approximately sixteen months and are drawing salary after the stay granted by this Court as on **31.10.2019**, hence the petitioners have almost completed the tenure of their services.

16. In view of the above, the instant constitution petitions are dismissed along with the listed application(s). Before parting with the judgment we make it clear that the impugned notifications de-notifying the petitioners are an order simpliciter dispensing with the services of the petitioners as Government law officer/pleader and same shall in no manner cast any stigma on the petitioners as lawyers.

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