

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D– 5467 of 2021

Jamal Muhammad

Versus

Province of Sindh and 03 others

Date of hearing & Order : 10.09.2021

Mr. Muhammad Haroon Shaikh advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through the instant petition under Article 199 of the Constitution 1973, the petitioner is seeking an early decision on his departmental appeal preferred on 05.07.2008 and 28.08.2020 against the decision of the competent authority whereby his service as police constable was dispensed with vide order dated 25.01.2001.

2. At the very outset, we inquired from learned counsel as to how the instant Petition is maintainable under Article 199 of the Constitution against the major penalty of dismissal from service order dated 25.01.2001, which relates to the terms and conditions of his service.

3. Mr. Muhammad Haroon Shaikh, learned counsel for the petitioner, has submitted that the impugned major penalty of dismissal from service, cannot be termed as the order passed within the terms and conditions of service of the petitioner. He further argued that the petitioner denied the charges leveled against him with the plea that his brother was murdered, such F.I.R No. 265 of 1999 was registered at Sheedani Sharif Police Station District Rahimyarkhan and he remained busy looking after his old aged parents, such application for grant of leave was timely dispatched to the competent authority, thus he could not attend his duties for a period effective from 13.8.2000 to 25.01.2001 and soon after he reported for duty but neither he was allowed to join his duties nor salaries were paid to him by the respondent-police department without assigning any reason. Per learned counsel, his absence period was treated as leave without pay; and, these proceedings were /are based on malafide intention; that there was/is nothing adverse against the petitioner throughout his tenure of service, therefore, depriving him of joining the service and stoppage of his salary is against the basic spirit of the law; that he was condemned unheard on the charges leveled against him; that the career

of the petitioner is at stake at the hands of respondent-police department; that the petitioner is fully entitled to be treated under the law; that the respondent-police department has failed to appreciate that the petitioner was regular Police Constable and his absence from duty was condonable due to the reasons discussed supra, therefore the impugned major penalty of dismissal from service is illegal and against the law, thus are liable to be set aside; Learned counsel further contends that he preferred mercy appeal for reinstatement in service which was not responded, compelling him to approach this Court on 10.09.2021. He added that this is a hardship case and this Court can hear and decide the matter on merit. He lastly prayed for allowing the petition.

4. We have heard the learned counsel for the petitioner on the maintainability point and perused the material available on record.

5. Primarily, the petitioner has assailed the disciplinary action of the respondent-police department, whereby he was served with a show-cause notice ('SCN') with certain allegations of misconduct i.e. absence from duty with effect from 13.8.2000 to 25.01.2001. Such inquiry was conducted to probe the allegations leveled against him, however, the inquiry officer opined against him, such adverse findings were submitted to the competent authority, which culminated in his dismissal from service vide order dated 25.01.2001.

6. Admittedly the petitioner is/was a civil servant and the question of the disciplinary proceedings initiated against him ought to have been assailed before the learned Sindh Service Tribunal under section 4 of the Sindh Service Tribunal Act, 1974, however, he remained silent for the considerable time and purportedly preferred mercy appeal for reinstatement in service in the year 2008 followed by another application in the year 2020. Besides that, the disciplinary matters fall within the expression 'terms and conditions of service'. Hence, the same cannot be called into question under Article 199 of the Constitution to set aside the dismissal from service order.

7. In view of the above legal position of the case, the instant constitution petition is held to be not maintainable being barred by laches, therefore, is accordingly dismissed in limine along with pending applications, leaving the petitioner at liberty to approach the learned Sindh Service Tribunal in accordance with law with no order as to costs.

J U D G E

J U D G E