

## IN THE HIGH COURT OF SINDH KARACHI

### **Before:**

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

### **C.P. No. D- 219 of 2017**

#### **Asim Sualeh**

Petitioner

Through : Mr. Umair A. Kazi, advocate.

Respondent No.1

Through : Mr. Muhammad Nishat Warsi, DAG.

Respondents No.2 to 4

Through : Mr. Muhammad Arshad Khan Tanoli,  
advocate.

Date of hearing : **29.09.2021**

Date of Order : **29.09.2021**

### **ORDER**

**ADNAN-UL-KARIM MEMON, J.** Petitioner has assailed the vires of show cause notice dated 30.12.2016 issued by respondent-Port Qasim Authority (PQA), whereby he has been called upon to explain his position concerning his initial appointment as Deputy General Manager / Director in BPS-20 in PQA.

2. Mr. Umair A. Kazi, learned counsel for the petitioner, has mainly contended that dispensation of regular inquiry to probe the allegations of inefficiency and misconduct for failing to explain about the initial appointment of the petitioner was unjustified on the part of the respondent-PQA. Learned counsel while relying upon the case law reported in 2021 SCMR 1367 and referring Pare-4 of show cause notice, which is available at Page-33 has highlighted that the law laid down by the Hon'ble Supreme Court in the aforesaid case in favor of holding a regular inquiry in a case where the major penalty is likely to be imposed on an accused officer. He prayed for allowing the petition.

3. In the present case, it is evident from the record that respondent-PQA dispensed with holding of regular inquiry in terms of section 5 (iii)

of the Government Servants (Efficiency and Discipline) Rules, 1973. An excerpt of Paragraph 4 of the show cause notice is as under:-

*“4. And whereas, the undersigned in his capacity as the “Authorized Officer” in terms of B.R No11/2014 dated 16.09.2014 and Corrigendum dated 29.10.2014, on considering the aforesaid facts, record of the case and grounds thereof, which are admittedly produced by you and on the basis thereof allegations are admittedly correct hence am satisfied that there is no need of holding an inquiry in the case in terms of Section 5(iii) of the Government Servants (Efficiency and Discipline) Rules, 1973. Same, is hereby “Dispensed with” specifically in view of above quoted provision of rules”.*

4. When the aforesaid legal position is confronted to the learned counsel representing the respondent-PQA, he candidly stated that in such circumstances regular inquiry was must, however, he reiterated the contents of show cause notice and submitted that once the facts are admitted in such circumstances regular inquiry could be dispensed with.

5. We are not in agreement with him on the aforesaid analogy for the reason that the impugned show cause notice issued to the petitioner explicitly shows that there were certain allegations against him and if the respondent-PQA succeeded in proving the allegations that would leave a stigma on the character of the petitioner. In such circumstances, the impugned dispensation of inquiry was not justified because of the law laid down by the Hon’ble Supreme Court in the cases of Muhammad Idrees Khan v. Secretary / Chairman Ministry of Railways Islamabad and five others (2006 SCMR 104) and Muhammad Naeem Akhter v. Managing Director Water and Sanitation Agency LDA Lahore and others (2017 SCMR 356).

6. For what has been discussed above, this petition is disposed of with a direction to the competent authority of respondent-PQA to proceed with the regular inquiry against the petitioner based on show cause notice dated 30.12.2016 and conclude the disciplinary proceedings within two months, after providing meaningful hearing to the petitioner strictly under the law, rules and regulations as applicable to the case of the petitioner.

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