

IN THE HIGH COURT OF SINDH, KARACHI

C. P No. 4428 of 2016

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioner: **Ali Akbar Narejo, in person.**
Through M/s. Haider Imam Rizvi & Sanallah, Advocates.

Respondents: **Federation of Pakistan & Others**
Through Mr. Sanallah Noor Ghouri,
Advocate.
Mr. Syed Yasir Shah, Assistant
Attorney General.

Date of hearing: **31.10.2022**
Date of Order: **31.10.2022.**

ORDER

Muhammad Junaid Ghaffar, J: Through this petition the petitioner appearing in person seeks setting aside of this termination order dated 29.01.2013 along with grant of all consequential benefits. After briefly hearing all present on 03.10.2022, we had passed the following order: -

“Petitioner, who appears in person, has filed his written arguments, whereas, learned Counsel appearing on behalf of Pakistan Steel, submits that the Petitioner was terminated on 29.01.2013 for having being involved in some criminal matter; whereas, he filed Appeal against his termination on 13.09.2013, which was time barred and accordingly dismissed. He further submits that this Petition has been filed in 2016, which is hit by Laches and otherwise the same is not maintainable as there are no Statutory Rules of Pakistan Steel.

On the other hand, perusal of the Written Arguments reflects that the Petitioner was though terminated on 29.01.2013; but apparently this was pursuant to his conviction vide Judgment dated 27.04.2012 and all along during this period he was confined to jail custody and now reliance has been placed on Service Rule No. 6.6(1) of the Pakistan Steel Officers Service Rules and Regulations read with Sl. No.141(4)(ii) of the ESTA Code, which provides that an officer committed to prison shall be considered as under suspension. It further appears that subsequently in 2016, the Petitioner has been acquitted by a Division Bench of this Court, whereas, Appeal of the Complainant also stands dismissed by the Honorable Supreme Court

In view of the above, since the petitioner appears in person, learned Counsel appearing on behalf of Pakistan Steel is directed to come prepared and satisfy as to the above observations including reliance on Service Rule 6.6) *ibid*; as apparently the conviction of the Petitioner was outcome of some personal dispute and had nothing to do with terms and conditions of his service or any other allegation by Pakistan Steel.

To come up on 17.10.2022. office to issue intimation notice to the Petitioner, who appears in person.”

Subsequently, learned Counsel for Respondents No. 2 to 4 has filed a statement along with relevant rules as noted hereinabove; however, according to him the said rule will not apply inasmuch as there is an exception to Rule 6.6(ii)¹ of the Pakistan Steel Officers Service Rules and Regulations (“**Rules**”) provided in Rule 6.11(a)² where the accused is dismissed or removed from service or reduced to a lower post on the ground of conduct which has led to sentence of fine or imprisonment; whereas, even a Show Cause Notice can be dispensed with, therefore, the Petition is liable to be dismissed. He has also raised an objection to the very maintainability of this Petition.

We have heard the Respondent’s Counsel and perused the record. Insofar as the Petitioner is concerned, he appears in person and has filed his written arguments and his main contention is that Rule 6.6(ii) of the Rules ought to have been invoked in this matter which provides that when an officer is committed to prison, he shall be considered as under suspension from the date of his arrest and if released on bail can be reinstated by a specific order of the authority. According to him, instead of his terminating his services, he should have been placed under suspension upon his conviction, whereas, he was not in a position to pursue his remedy before the Respondents.

From perusal of the record it appears to be an admitted position that the Petitioner was terminated vide order dated 29.01.2013 and the only basis on which such order of termination was passed, was the Petitioner’s alleged involvement and conviction pursuant to Judgment dated 27.04.2012 passed in FIR No. 314/2009; however, thereafter, the Petitioner stands acquitted by a learned Division Bench of this Court vide

¹ An officer committed to prison shall be considered as under suspension from the date of his arrest and if released on bail can be reinstated by a specific order of the authority.

² Where the accused is dismissed or removed from service or reduced to lower post on the ground of misconduct which has led to a sentence of fine or imprisonment; or

Judgment dated 18.04.2016 passed in Criminal Appeal No. 158/2012, whereas, attempt of the complainant to impugn such Judgment before Hon'ble Supreme Court has also remained unsuccessful. In our considered view, since there were no independent departmental proceedings against the Petitioner; nor the Petitioner had committed any offence in relation to his conduct with the Respondent's organization; nor even otherwise, it is the case of the Respondents that any departmental proceedings were ever independently initiated against the Petitioner on such basis except his conviction in the aforesaid case which admittedly was a private dispute with the complainant, therefore, the Petitioner's stance appears to be justified that till such time his criminal case was pending, he ought to have remained suspended instead of termination simplicitor on this ground. We have, on our own, also come across a case on similar facts reported as ***Muhammad Iqbal Vs. Regional Police Officer, Sahiwal and another (2022 SCMR 1520)*** wherein, the sole basis for the dismissal of the Petitioner before the Hon'ble Supreme Court was his alleged involvement in a Criminal case under the Control of Narcotics Substance Act, 1997, who being in custody was unable to pursue his departmental proceedings and subsequently, was acquitted by the concerned High Court. The Hon'ble Supreme Court while reiterating settled law that the outcome of the disciplinary proceedings is not dependent upon the outcome of criminal proceedings, still came to the conclusion that the departmental authorities were bound to consider the subsequent development i.e. the acquittal of the Petitioner by the High Court whilst considering disciplinary action against the Petitioner. The relevant part of the said Judgment reads as under: -

"2. Learned counsel for the petitioner submits that the sole basis for the dismissal of the petitioner from service is his alleged involvement in a criminal case under the CNSA. That involvement has been rejected by the learned Appellate Court through its judgment dated 20.04.2017 which was pronounced after the learned Tribunal rejected the petitioner's service appeal. The impugned judgment is claimed to be based on an allegation which has subsequently been rejected by the learned High Court. New facts have come into the field. Such facts were not considered by any of the learned

fora below. In the circumstances, the petitioner has a right to be heard by the respondents in respect of his impugned dismissal from service.

3. Learned Additional Advocate General opposes the plea on the ground of limitation occurring before the departmental authorities. However, he does not dispute that both the inquiry proceedings as well as the impugned order of dismissal dated 02.04.2012 was passed against the petitioner ex-parte.

4. We note that the petitioner having been arrested on 04.12.2013 was not in a position to pursue his departmental remedies. Be that as it may, the fundamental basis on which the impugned action is passed against the petitioner has ceased to exist. It is settled law that the outcome of the disciplinary proceedings is not dependent upon the outcome of criminal proceedings. However, the acquittal of the petitioner by the learned High Court on 20.04.2017 is a subsequent development that ought to be considered by the departmental authorities whilst considering disciplinary action against the petitioner. Accordingly, this petition is converted into appeal and allowed. However, the respondent departmental authorities shall be at liberty to commence fresh disciplinary proceedings on the basis of the record and by the grant of opportunity of hearing to the petitioner in accordance with law.”

Since the facts of the petitioners case are almost identical as above, in our considered view the conduct of the Respondents in terminating the petitioner is not in accordance with law and their own rules of service; hence, we are constrained to set aside the termination order dated 29.01.2013 passed against the Petitioner, by holding that the Petitioner in the interregnum ought to have been dealt with in terms of Rule 6.6(ii) *ibid* and shall be deemed to be under suspension during the period under question. The Petition is allowed to this extent, whereas, as to back benefits, or retirement benefits, if any, in case if the Petitioner has attained superannuation, the Respondents shall consider the same in accordance with law and their Rules and pass an appropriate order.

J U D G E

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Arshad/