

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No. D- 10 of 2018

Before:

Mr. Justice Mahmood A. Khan

Mr. Justice Adnan-ul-Karim Memon

Muhammad Ali Karim Khan

Petitioner

VERSUS

Federation of Pakistan & others

Respondents

Date of hearing: 30.08.2022

Date of decision: 30.08.2022

Mr. Ishrat Ali Lohar, Advocate for petitioner

Mr. Muhammad Arshad Pathan, Advocate for respondents 2 to 4

Mr. Bashir Ahmed Almani, Assistant Attorney General-1.

ORDER

ADNAN-UL-KARIM MEMON, J.- This matter pertains to the disciplinary proceedings initiated against the petitioner, during his tenure of service, on account of misconduct, as Manager (Commercial) Hyderabad Electric Supply Company (HESCO), whereby he was awarded the penalty of stoppage of one-year Annual increment; however, during pendency of the instant petition, petitioner reached the age of superannuation on 19.3.2020, vide office letter dated 14.10.2019.

2. The main ground agitated by the petitioner is that, lastly he was working as Manager (Commercial) HESCO Hyderabad and was served with the allegations that he failed to discharge his duties efficiently regarding the progress of recovery and other losses caused to the respondent-company, resultantly he was imposed with a penalty of 'Stoppage of one Annual increment for one year without future effect' by Managing Director (PEPCO) vide office order dated 03-08-2017, in terms of the Pakistan WAPDA Employees (E&D) Rules, 1978. Per learned counsel the impugned penalty was/ is unwarranted, un-reasonable being against the principles of natural justice, fair play, and equity; hence void ab-initio, being based on unconsidered factual aspect of the case. Learned counsel emphasized that the job description of Manager (Commercial), Manager Operation (Superintending Engineer), Deputy Manager Operation (Executive Engineer) & Assistant Manager Operation (Sub Divisional Officer) describe the duties, just to establish the responsibility according to the assigned job; and, Manager (Commercial) does not come into the picture for physical work anywhere in

the respondent-company; that Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, guarantees equal treatment to all persons similarly placed, hence in the dismal circumstances, petitioner, finding no other way has filed the instant petition based on discrimination as his colleagues i.e. eight officers who were facing the same charges had been exonerated, whereas the clog of aforesaid penalty is still subsisting in his account, which needs to be set aside, just for clearance of his consciousness.

3. In principle, learned counsel for the respondent-HESCO has agreed to the extent that the task of progress as discussed supra was/is always achievable by field officers in terms of their job description, whereas the Manager does not enjoy field post; however, he is under obligation to supervise the progress of subordinate field officers to submit a progress report to the higher authority. On the point of discrimination, he has submitted that the officers of HESCO were also served with the letter of explanation; however, they were exonerated from the charges, based on improvement on the subject issue. Learned counsel finally submitted that the instant petition is liable to be dismissed on the premise that since the petitioner had already been dealt with under Rules and Policies; and he has served out the penalty of stoppage of one-year Annual increment as such no case for discrimination is made out, rather he was treated alike and fairly.

4. We have heard learned Counsel for the parties on the analogy of similar treatment and perused the material available on record.

5. The entire case of the petitioner is based on Article 25 and Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, for the reason, that letter of explanation was issued to the petitioner in terms of Rule 5 (iv) of Pakistan WAPDA Employees (E&D) Rules, 1978 was / is against his job description. Besides the inquiry was erroneously dispensed with, without any specific order; and, even orders in original and in the appeal are without reasoning.

6. Since all the colleagues of the petitioner have already been exonerated from the aforesaid charges and the case of the petitioner was recommended by the respondent company to Managing Director PEPCO vide letter dated 13.7.2018; his case is akin to his colleagues in terms of his job description. Primarily, the aforesaid disparity is discriminatory, amounting to violation of fundamental rights guaranteed under the Constitution of 1973, therefore the penalty of stoppage of one-year annual increment was / is harsh which is now tickling the consciousness of the petitioner, as he has already reached the age of superannuation in the year 2020, thus this clog of penalty is liable to be set at naught; and, the petitioner is liable to be exonerated from the aforesaid charges. On the aforesaid proposition, we are guided by the decision of Honorable Supreme Court rendered in the case of *Government of Baluchistan v. Azizuallah Memon* **PLD 1993 SC 341** and *Attiyya Bibi v. Federation of Pakistan* **2001 SCMR 1161**.

7. In the light of above facts and circumstances of the case, and in addition to the jurisdiction conferred upon this Court under Article 199 (1)(c) of the Constitution 1973, we deem it appropriate to allow this petition in terms of the prayer clause (A and C). Resultantly the petitioner is entitled to be paid the arrears of the aforesaid period by the competent authority of the respondents, within two weeks.

JUDGE

JUDGE

Karar_hussain/PS*