

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D- 1825 of 2018

Present:

Mr. Justice Zafar Ahmed Rajput, J.

Mr. Justice Shamsuddin Abbasi, J.

Petitioner : Muhammad Nadeem s/o Islam @
Mangayi, through M/s Sikandar Ali Junejo
and Abdul Naeem Pirzada, Advocates

Respondent : Government of Sindh, through
No.1 Mr. Mehboob Ali Wassan,
Assistant A.G., Sindh

Respondents : Sukkur Municipal Corporation, Sukkur,
No.2 to 6 through Mr. Khuda Bux Chohan, Advocate

Date of hearing : 15-09-2022
Date of Order : 15-09-2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant petition, the petitioner seeks the following relief(s):

A). *That this Hon'ble Court may be pleased to pass an appropriate order and direct the respondents to restore the salary of the petitioner and act for stopping salary may be considered as illegal and against the law.*

B). *That this Hon'ble Court may be pleased to declare the act of respondents for issuing threat of termination from his service as illegal and against the law.*

C). *That this Hon'ble Court may be pleased to call report regarding issuing illegal charge sheet as well as issuing letter No. SMC/GB/ESTT/199 of 2017 dated 15.09.2017 in the title of office order then it was submitted that Muhammad Nadeem s/o Islam alias Mangayi clerk BPS-05 Octroi Branch is here by allowed to resume his duty w.e.f. 15-09-2017 against his original post lying vacant. Further the NSUSC period from 23-12-2011 to 15-09-2017 treated leave if due. However petitioner has performed duty and obtained salary through bank account of National Bank of Pakistan Branch Municipal Corporation and such letter is illegal and against the law.*

D). That this Hon'ble Court may be pleased to direct the respondents to produce the record of the service of petitioner rendered under the kind control of the respondent No.2, since his appointment of petitioner.

E). That this Hon'ble Court may be pleased to restrain the respondents not to pass any adverse as to terminate from his salary or any act regarding service of the petitioner”.

2. It is alleged that the petitioner was appointed as Octroi Clerk (BPS-05) vide Office Order No.TMA/GB/ESTT;/905 Sukkur, dated 30.12.2012, in defunct Town Municipal Administration Sukkur, now Sukkur Municipal Corporation, Sukkur on contract basis. It is further alleged that duties of the petitioner were obtained by NSUSC under verbal order of the then Administrator/Town Municipal Officer, Sukkur, however, vide Notification, dated 12.05.2017, issued by the Government of Sindh, all staff members working under NSUSC were directed to report to their parent department against original posts; as such on 30.05.2017, the petitioner submitted his joining report before Municipal Commissioner, Sukkur Municipal Corporation, where he was performing his duties as Octroi Clerk. It is also alleged that the petitioner performed his duties and got salary through bank account in National Bank of Pakistan, subsequently, his account was transferred with the order of respondent No.2 as well as Accounts Officer, Sukkur Municipal Corporation vide letter dated 08.11.2017 in the Sindh Bank, Branch Shalimar, Sukkur and since then he received his salary from the said branch of the Sindh Bank. It is the case of the petitioner that without any reasonable ground, his salary was stopped from April, 2018 and he was placed under suspension vide order dated 28.05.2018 without assigning any reason by the respondent No.2. It is further case of the petitioner that he was charge-sheeted by the respondent

No.2 vide order dated 04.06.2018. The petitioner submitted his reply to charge-sheet on 07.06.2018 and thereafter, he was called for personal hearing vide letter, dated 11.06.2018, and though he appeared before the Chairman, Establishment Committee, but no reply was given till filing of the instant petition and his stopped salary was not released by the respondent No.2 despite several requests made by him. Hence, he was compelled to file the instant petition.

3. On being served, the respondents No.2 to 6 filed their joint parawise comments to the petition, alleging therein that the petitioner was drawing double salaries on the basis of two bogus and fake appointment orders dated 30.12.2012, managed by him and when his misdeed was caught by the administration, he was placed under suspension vide order, dated 28.05.2018. It has further been stated that the Enquiry Committee vide report, dated 12.11.2021, found the following misdeeds of the petitioner:

(i) "He has drawn dual salary for the month of December-2017.

(ii). He has drawn monthly salary from June-2017 to December-2017 from NBP Sukkur.

(iii). He drawn monthly salary from December-2017 to March-2018 from Sindh Bank.

(iv). His regularization Order duly issued by Municipal Competent authority not traceable in office record.

(v). He has made forgery to take dual status salary i.e. contractual and regular simultaneously which comes under misconduct and misappropriation of Municipal Funds".

4. Learned counsel for the petitioner while reiterating the facts of the memo of petition contends that the Enquiry Committee in its report, dated

12.11.2021, recommended that the petitioner may be brought on duty and his three annual increments should be ceased being penalty on him.

5. On the other hand, learned counsel appearing on behalf of respondents/Sukkur Municipal Corporation, maintains that despite giving opportunity, the petitioner failed to produce valid appointment / regularization order and service record, which fact has also been noted by the Enquiry Committee in its aforementioned report. He, however, admits that the petitioner is still performing his duties.

6. We have heard learned counsel for the parties and perused the material available on record.

7. It is an admitted position that the petitioner was charge-sheeted for certain allegations and after perusing his personal file and available office record, the Enquiry Committee reached the following conclusion/recommendation:

"The Committee has thoroughly scrutinized the file of Mr. Muhammad Nadeem Malik, Tax/Octroi Clerk, Sukkur Municipal Corporation and also perused all documents submitted by him as annexed above and comes on this conclusion that, he has no liberty to make dual salary bill but in good norm he returned back after highlighting while his salary account was opened in Sindh Bank in the month of November -2017 as per Sukkur Municipal Corporation letter No.SMC/AO/-58 dated:08-11-2017 duly signed by the then Municipal Commissioner Sukkur Municipal Corporation as well as per NBP Bank Statement of his account it is revealed that he has drawn last salary up to December-2017 paid on 10 or 16 January 2018.

Moreover, the matter for original office order and other record he submitted several application that during the proceedings in previous year the same were called by the office and same was misplaced which shall be confirmed from the then concerned incharge officer, but he is also responsible for these lacking occurred like drawing of dual salary misplacement of service record etc.

8. On the above conclusion, the Enquiry Committee imposed upon the petitioner the penalty of ceasing three annual increments. It may be observed that it is not the employee but the employer who is the custodian of service record of the employee. In the instant case as noted by the Enquiry Committee, the officer order/original record was misplaced from the office of respondent No.2, for that obviously, the petitioner cannot be held responsible. However, it is an admitted position that for the charges leveled against him, the petitioner has already been imposed penalty, as stated above; hence, there remains no reason for the respondent No.2 for withholding his salary.

9. For the foregoing facts and reasons, we allow this petition by holding that the petitioner is entitled to receive his outstanding monthly salaries for the service he performed in Sukkur Municipal Corporation. Since, the said Corporation is the custodian of service record of the petitioner, the Municipal Commissioner, Sukkur Municipal Corporation is directed to re-constitute the service record of the petitioner within a period of 90-days hereof.

10. The petition stands disposed of in the above terms.

JUDGE

JUDGE

Ahmad