

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-6145 of 2022

Date Order with signature of Judge

FRESH CASE.

- 1) For orders on Misc. No. 26069/2022.
- 2) For hearing of main case.

12.10.2022.

Mr. Muhammad Nishat Warsi, Advocate for Petitioner.

Through this Petition, the Petitioner has sought the following relief:-

“In view of the above, it is respectfully prayed by the above named petitioner that this Hon'ble Court may kindly be pleased to:

- i) Call comments from the respondents:
- ii) Declare that after conclusion of proceedings upto Hon'ble Supreme Court in the shape of judgment dated 27-7-2021, the earlier termination was not for misconduct but during probationary period and the same is not an stigma;
- iii) Direct the respondents to consider the request of petitioner for fresh appointment, without influencing from the earlier termination:
- iv) Direct the respondents to consider the request of the petitioner for relaxation of age on the basis of earlier experience:
- v) Direct the respondents to decide his request before appointment making pursuant to advertisement dated 26.09.2022;
- v) Restrain the respondents from appointing any person on the post of Cook, as per request of petitioner, till final disposal of this petition, as per attached application;
- vii) Award cost;
- viii) Any other relief(s) this Hon'ble Court may deem fit and proper under the circumstances of the case in the case of petitioner.”

We have, at the very outset, confronted the Petitioner's Counsel as to the grant of the above relief(s) inasmuch as earlier, the Petitioner was terminated and remained unsuccessful up to the level of Hon'ble Supreme Court, whereas, presently, there appears to be no cause of action to exercise any discretion under our Constitutional jurisdiction and

in response learned counsel has relied upon *Mrs. Abida Parveen Channar Vs. High Court of Sindh at Karachi (2009 S C M R 605)* and *Muhammad Siddiq Javaid Chaudhry Vs. The Government of West Pakistan (P L D 1974 SC 393)*, and has argued that a termination during probation is not a stigma; hence, there is no bar upon the petitioner to seek a fresh appointment with the Respondents.

We have heard the Petitioner's Counsel and have perused the record. As to the proposition expounded by the Petitioner's Counsel by placing reliance on the dicta laid down by the Hon'ble Supreme Court in the aforementioned cases, perhaps there can't be any cavil to that being a binding precedent. However, not only the facts of petitioners case are different but is a case of an exception, inasmuch as though he was dismissed during his probationary period; however, the order of termination was on the basis of various allegations, whereas, such order was assailed before the Federal Service Tribunal ("FST") and the learned Tribunal was pleased to observe that pursuant to explanation two out of three allegations were accepted and admitted by the Petitioner; that he could have been dismissed or terminated during probation; that he was also served with a notice, and therefore, per FST all requirements of law were met; hence, the appeal being meritless was dismissed. The order of FST was impugned by the Petitioner and leave was refused by the Hon'ble Supreme Court; whereas, a review also failed. In these circumstances, the argument that there isn't any stigma on the petitioner in seeking employment once again with the same respondent afresh is wholly misconceived and untenable. We are in fact surprised at the conduct of the petitioner who has shown audacity to once again take recourse to litigation on entirely misconceived and ill-founded grounds, by seeking indulgence of this Court seeking directions against the respondents to ignore the earlier allegations and findings on the basis of which he was terminated. Even if such dismissal or termination was during probation, and assuming for the sake of arguments, that it was not a stigma as contended, even then, it is always the prerogative of the Employer to look into the credentials of the applicant. In the earlier round the allegations were that the petitioner used to misbehave; was a late comer; used to make lame excuses as and when there was rush of work; whereas, such allegations remained uncontroverted till the Hon'ble Supreme Court, including by way of a review; hence, we are at a loss to understand as to how the petitioner can seek any further relief once again on this aspect of the case. The matter stands decided against him,

whereas, all remedies have been availed, and therefore, no indulgence can be granted once again in this Constitutional jurisdiction.

We may further add that on the one hand the petitioner claims that he was a probationer and any termination or dismissal is not a stigma; whereas, in his review application before FST it was contended that the petitioner was a regular employee. This contradictory stance of the petitioner alone does not warrant any indulgence at this stage of his case.

As to the cases of *Muhammad Siddiq Javed and Mrs. Abida Parveen Channar* (Supra) relied upon by the petitioners Counsel, it would suffice to observe that firstly the facts involved were materially different, whereas, the said relief, if any, ought to have been asked for in the earlier round of proceedings culminating up to the Hon'ble Supreme Court. At this stage, if this argument is accepted, then this would amount to review the findings of the Court(s) in the earlier proceedings, which we are afraid cannot be asked for. Lastly, if at all a case is made out, even then, admittedly the petitioner is over age as of now, and stands disqualified by all means.

In view of hereinabove facts and circumstances of the case, we are not inclined to exercise any discretion in this matter by entertaining this Petition for Petitioner's appointment once again; hence, the Petition being misconceived and not maintainable was dismissed by means of a short order in the earlier part of the day and these are the reasons thereof.

J U D G E

J U D G E

Arshad/