

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. Nil of 2023
(Muhammad Ahsan vs. Province of Sindh and others)

Date	Order with signature of Judge
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For orders on CMA No. 20723/2023

Date of hearing: **19th December 2023**

Date of decision: **15th January 2024.**

Mr. Jahanzaib Ali Dahri and Ms. Sehrish Mushtaque advocates for plaintiff

Salahuddin Panhwar, J:- By dint of this order, I intend to dispose of the objection raised by the office with regard to maintainability of this suit.

2. The relevant facts are that vide office order dated 16.12.2022, the plaintiff and two others who were working in the BISE, Mirpurkhas on different posts were placed under suspension on account of misconduct under the provisions of Rule 6(1) of the Efficiency and Disciplinary Rules 2007 of BISE, Mirpurkhas and vide Notification dated 31.01.2023 an Enquiry Committee was constituted to probe into matter regarding apprehension of manipulation/fraudulent act in HSC Part-II, Annual Examination 2021 and 2022 at BISE Mirpurkhas. It is further stated that reason behind such action was that the then Deputy Secretary did not allow joining of an Office Assistant who was posted in HSC (Secrete) Science Branch, BISE, Mirpurkhas, whose posting was made by defendant No.2 vide office order dated 06.12.2022, due to such grudge, the defendant No.2 in order to teach lesson to the Deputy Secretary, suspended him as well as other staff including the plaintiff through the referred suspension order. It is further submitted that since nearly one year has been passed but the enquiry is not being concluded by the enquiry committee and delaying tactics are being undertaken in order to linger on the matter; that the action of the defendant No.2 is nothing but sheer abuse of principles of natural justice. Therefore, the plaintiff has prayed for the following reliefs:

- A) To declare the impugned office order No. BISE/PS/CH/MPS/31 dated 16.12.2022 as illegal, unlawful, null and void and cancel/set aside the same and allow the plaintiff to perform his duties as computer programmer (BS-17) in BISE, Mirpurkhas.
- B) To suspend the operation of Notification dated 31.01.2023 and impugned office order No. BISE/PS/CH/MPS/31 dated 16.02.2023 and reinstate the plaintiff to his previous place of posting with further restraining the defendant No.2 from taking any coercive action against the plaintiff in any manner whatsoever including transfer and posting

etc. till pendency of the instant suit or impartial conclusion of inquiry against the plaintiff whichever is earlier.

C) Costs of the suit be saddled upon the defendant No.2.

D) Any other relief(s) which this Honorable Court may deem fit, just and proper be awarded to the plaintiff.

4. Before proceeding further, it would be pertinent to first decide the issue of maintainability of the instant Suit. Counsel for the plaintiff vehemently argued that the suspension order is based on malafide intention and issued by the defendant No.2 without ascertaining the factual aspect of the matter as such, it is in complete disregard to the provision provided in the law. According to learned counsel, the impugned action has been taken by the defendant No.2 in order to satisfy personal grudge, which is in sheer violation of natural justice. So far suspension of the plaintiff is concerned, it is observed that suspension is not defined in law as a punishment but is an intervening arrangement, which is temporary and resorted to prevent the delinquent official from influencing the outcome of subsequent inquiry on any of the charges against him. However, against the adverse result of inquiry, if any, the plaintiff will have the remedy of appeal and in presence of such remedy; this Court at this juncture will not step in to declare the suspension of the plaintiff as illegal or void. Moreover, it is an admitted position that Board has statutory regulations of service approved by the Government of Sindh, as such, in service matters, a petition under Article 199 of the Constitution is maintainable in order to examine the propriety of an impugned action taken against the delinquent official, if the same is taken in disregard of the procedural requirements or in violation of the principle of natural justice and/or it was passed in violation of Article 4 and Article 10-A of the Constitution. In the case of **President, ZTBL, Head Office Islamabad, vs. Kishwar Khan and others (2022 SCMR 1598)**, wherein the apex Court has inter-alia held that *".....if the employment is covered and governed under the statutory rules of service then obviously in the event of any violation, such employees may file Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973....."*. In these circumstances, the objection raised by the office is sustainable under the law. Accordingly, instant suit is not maintainable before this Court under its original jurisdiction, hence the same is dismissed. However, the plaintiff may avail the remedy as provided to him under the law.

J U D G E

Sajid