

IN THE HIGH COURT OF SINDH, KARACHI
Constitution Petition No. D- 4305 of 2022

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Justice Ms. Sana Akram Minhas.

Petitioner: Dr. Faisal Ahmed
Through Mr. Moulvi Iqbal Haider, Advocate.

Respondents: The Province of Sindh & others
Through Mr. Ali Safdar Depar,
Assistant Advocate General.

Date of hearing: 19.09.2023
Date of Order: 19.09.2023

ORDER

Muhammad Junaid Ghaffar, J: Through this petition, the Petitioner has impugned Notification dated 14.06.2022 issued by Respondent No.2; whereby, the petitioner stands terminated.

2. Learned Counsel for the petitioner submits that the Termination Order has been issued without any Show Cause Notice or explanation; hence the same is in violation of law and the rights of the Petitioner as guaranteed under the Constitution of Islamic Republic of Pakistan. He further submits that prior to filing of this Petition, the present Petitioner had filed C.P No. D-1691 of 2022 along various other Petitioners and on 30.03.2022 an order was passed; whereby, the Respondents were directed not to take any coercive action against the Petitioners. According to him, the impugned Notification has violated the said order of the Court; therefore, it is liable to be set-aside.

3. On the other hand, learned AAG submits that the Petitioner was appointed on contract basis and his terms and conditions of service provides that he can be terminated or dispensed with without any notice thereof. According to him, he was found involved in misuse of COVID vaccines and a criminal case was also lodged against the Petitioner, which is pending, and therefore, no case for indulgence is made out.

4. We have heard the Petitioner's Counsel and perused the record. It appears that the petitioner was appointed on 14.6.2022 on contract basis as COVID-19 Doctor on "service rendered basis".

Thereafter, he along with others filed CP No. D-1691 of 2022 primarily seeking regularisation of their contract employment, wherein, some restraining order was passed. However, insofar as passing of any ad-interim order in that petition is concerned, we may observe, firstly, that the same cannot be agitated by way of a fresh petition. For that an appropriate remedy, if at all, was by way of contempt proceedings. Secondly, as already observed, the prayer in that petition, was only to the extent of regularization of contract employment. This was notwithstanding that an FIR was already pending against the present Petitioner, however, no specific prayer to that effect was ever made; hence, even if some ad-interim order was in field, it is of no help. We have been further informed that an attempt to initiate contempt proceedings has also failed. In that case, the said plea of any restraining order in field cannot be looked into while adjudicating the present petition.

5. As to the argument that Termination order was passed without show cause notice and any enquiry, it is an admitted position that the Petitioner's services were engaged during COVID-19 period and was purely on contract / temporary basis and subject to withdrawal / cancellation at any time without any notice thereof. In that case, the Petitioner's arguments that no notice was served is misconceived. Once the petitioner had voluntarily entered into a contract having certain conditions, including Respondents right to withdraw or cancel the appointment without notice, which stands exercised and the Petitioner stands terminated; then, we while exercising discretionary jurisdiction under the Constitution, must not intervene as a matter of routine, barring exceptions and the present case does not fall in such exceptions. The High Court cannot step into the shoes of the appointing authority as the High Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan cannot extend the scope of a contract that has been signed by an employee as the same goes against the spirit of the very concept of contract employment¹.

¹ Government of Khyber Pakhtunkhwa v Sher Aman (2022 SCMR 406)

6. In view of hereinabove facts and circumstances, no case for indulgence was made out; and therefore, by means of a short in the earlier part of the day, this petition was dismissed along with pending applications and these are the reasons thereof.

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