

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
C.P No. D- 711 of 2023**

Present:-

**MR. JUSTICE ZAFAR AHMED RAJPUT
MR. JUSTICE AMJAD ALI BOHIO**

Petitioner. : Hotchand Khatri, through
Mr. Mazhar Ali Laghari, Advocate

Respondents. : Province of Sindh & others, through
Mr. Muhammad Ismail Bhutto,
Addl. Advocate General Sindh.

Date of hearing. : 27.08.2023

Date of decision. : 27.08.2023

ORDER

ZAFAR AHMED RAJPUT, J: - Through instant petition, the petitioner, *inter alia*, seeks directions to the respondents to release his pension, GF Fund and other retirement dues and to award him proforma promotion for the post of Superintendent (BPS-17) w.e.f. 06.10.2021 as the inquiry on the basis thereof his promotion was deferred, has been vacated.

2. Learned counsel for the petitioner contends that the petitioner served as Assistant Accountant (BPS-16) in District Health Office, Tando Muhammad Khan and on reaching the age of superannuation, he stood retired from service on 29.03.2023; that during service, his promotion was due as Superintendent (BPS-17), which was declined due to pendency of an inquiry against him; however, vide order dated 01.04.2022, the inquiry was vacated and he was reinstated by the Secretary Health, Government of Sindh/*respondent No.1*; that after petitioner's reinstatement, the respondent No.1 issued a letter, dated 20.02.2023, to the Director General, Health Services, Sindh/*respondent No.2* and District Health Officer, Tando Muhammad Khan/*respondent No.3* for recovery of dues from petitioner

and his promotion was deferred on vague allegation; that after vacation of the inquiry against him, the petitioner is entitled to the promotion and all retirement benefits and since such entitlement of the petitioner has been denied, he has maintained this petition. As per learned counsel, the petitioner has now received his all service benefits excluding an Amount of Rs. 18,68,851/- being amount of embezzlement against him.

3. Conversely, learned Addl. A.G, Sindh maintains that an inquiry was conducted on a complaint against the petitioner, whereby he was found guilty of the charge of the embezzlement amounting to Rs.18,68,851/-; hence, he was served with a show-cause notice whereby his negligence and misuse of Government funds were communicated but the exact embezzled amount was not mentioned in the show-cause notice, therefore, the same being a faulty notice was vacated and the petitioner was reinstated in the service; that the Health Department, Government of Sindh processed the inquiry report separately whereby the embezzled amount was surfaced before the high-ups and accordingly it was communicated to the respondent No.2 and District Health Officer, Tando Muhammad Khan vide letter dated 20.02.2023 that dues determined by the Inquiry Committee must be recovered from the petitioner before issuance of his retirement notification; that since the petitioner was found in inquiry guilty of embezzlement the embezzled amount has to be recovered from his service benefits after retirement; that the petitioner is not entitled to proforma promotion and even for such relief he has not approached to the department.

4. Heard the learned counsel for the petitioner as well as learned Addl. A.G Sindh and perused the material available on record.

5. There is no denial to the fact that the Inquiry Committee vide report dated 15.06.2021 comes to the conclusion and passed the recommendations, as under:-

Conclusion:

The aforementioned facts reveal that Accounts Officer Mr. Hotchand is directly and indirectly involved in fabrication of facts, producing fake documents for his illicit intents to misuse the Government funds for his personal vested interests. That he has misguided his District Health Office and is found guilty in fraud with the office of Secretary Health Office. And that on further probe the enquiry committee had found fraudulent record of his activities in the past and hold him accountable for his intended, planned fraud with Health Department, Government of Sindh.

That the responsible chair that is of District Health Officer should not have been ignorant. It seems that he unfortunately lacks the administrative skills and is not eligible to hold this important and responsible office.

Recommendations:

- *The committee suggested / recommended the recovery of said amount and immediate compulsory retirement of Mr. Hotchand from service under E&D rules.*
- *District Health Officer Tando Muhammad Khan should be disallowed to discrete any DDO post till retirement.*

6. We have not found any substance in the arguments of learned counsel for the petitioner that the alleged inquiry was vacated against the petitioner on 01.04.2022, as it reveals from the order, dated 01.04.2022, that it was not the inquiry but the show-cause notice that was vacated. As per the conclusion and recommendations of the Inquiry Committee, the petitioner is liable to pay aforementioned embezzled amount. It is an admitted fact that the petitioner has not challenged the Inquiry Report, which has attained finality.

7. The petitioner has received service benefits excluding aforesaid embezzled amount; hence, so far prayer regarding releasing of his pensionary benefits is concerned, this petition has served its purpose. The petitioner is not entitled to receive the embezzled amount. So far the petitioner's prayer regarding proforma promotion is concerned, the petitioner at the first instance should have sought departmental remedy in accordance with law.

8. For the foregoing facts and reasons, the petition being devoid of merit is dismissed, according.

JUDGE

JUDGE

Hafiz Fahad